

1 **ENROLLED**

2 COMMITTEE SUBSTITUTE

3 FOR

4 **Senate Bill No. 458**

5 (SENATORS LAIRD, FANNING, D. FACEMIRE, WILLIAMS, McCABE AND PLYMALE,
6 *original sponsors*)

7 _____
8 [Passed March 2, 2011; in effect ninety days from passage.]
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12 AN ACT to amend and reenact §19-1B-3, §19-1B-4, §19-1B-5, §19-1B-7,
13 §19-1B-11 and §19-1B-12a of the Code of West Virginia, 1931,
14 as amended, all relating to updating the Logging Sediment
15 Control Act; increasing licensure and certification fees;
16 requiring the Division of Forestry to report certain
17 information to the Tax Commissioner on a monthly basis;
18 requiring the Director of the Division of Forestry to notify
19 the Director of the Division of Water and Waste Management of
20 the Department of Environmental Protection of licensure
21 suspension or revocation within thirty days; establishing
22 renewal of licensure and certification on a biennial basis;
23 permitting the director the discretion to immediately suspend
24 a timbering operator or operation, or any part of a timbering
25 operation, in any part of the state; and requiring the
26 Director of the Division of Forestry to convene a committee to

1 review best management practices at least every five years.

2 *Be it enacted by the Legislature of West Virginia:*

3 That §19-1B-3, §19-1B-4, §19-1B-5, §19-1B-7, §19-1B-11 and
4 §19-1B-12a of the Code of West Virginia, 1931, as amended, be
5 amended and reenacted, all to read as follows:

6 **ARTICLE 1B. SEDIMENT CONTROL DURING COMMERCIAL TIMBER HARVESTING**
7 **OPERATIONS.**

8 **§19-1B-3. Definitions.**

9 (a) "Best management practices" means sediment control
10 measures, structural or nonstructural, used singly or in
11 combination, to reduce soil runoff from land disturbances
12 associated with commercial timber harvesting.

13 (b) "Chief" means the Director of the Division of Water and
14 Waste Management of the Department of Environmental Protection, or
15 his or her designee.

16 (c) "Director" means the Director of the Division of Forestry
17 of the Department of Commerce or his or her designee.

18 (d) "Operator" means any person who conducts timbering
19 operations.

20 (e) "Timbering operation," or the plural, means activities
21 directly related to the severing or removal of standing trees from
22 the forest as a raw material for commercial processes or purposes.
23 For the purpose of this article, timbering operations do not include
24 the severing of evergreens grown for and severed for the traditional
25 Christmas holiday season; the severing of trees incidental to

1 ground-disturbing construction activities, including well sites,
2 access roads and gathering lines for oil and natural gas operations;
3 the severing of trees for maintaining existing, or during
4 construction of, rights-of-way for public highways or public
5 utilities or any company subject to the jurisdiction of the Federal
6 Energy Regulatory Commission unless the trees so severed are being
7 sold or provided as raw material for commercial wood product
8 purposes; or the severing of trees by an individual on the
9 individual's own property for his or her individual use provided
10 that the individual does not have the severing done by a person
11 whose business is the severing or removal of trees.

12 (f) "Sediment" means solid particulate matter, usually soil or
13 minute rock fragments, moved by wind, rainfall or snowmelt into the
14 streams of the state.

15 **§19-1B-4. Timbering license required; requirement for license;**
16 **exemption; annual fee; rules.**

17 (a) A person may not conduct timbering operations, purchase
18 timber or buy logs for resale until he or she has obtained a license
19 and met the requirements of this article.

20 (b) *Exemptions.*- A person who severs or removes, or hires or
21 contracts with another to sever or remove, standing trees from his
22 or her own land is exempted from the timbering operations licensure
23 requirement of this section during any calendar year in which all
24 trees severed or removed by or for this owner have an aggregate
25 stumpage value that does not exceed \$15,528. A person hired or
26 contracted to sever or remove standing trees from the land of

1 another is exempted from the timbering operations licensure
2 requirement of this section during any calendar year in which all
3 trees severed or removed by the hired or contracted person have an
4 aggregate stumpage value that does not exceed \$15,528.

5 (c) An applicant for a timbering operation license shall submit
6 an application and the fee of \$150 for each biennial renewal of the
7 license. The application shall contain the following information:

8 (1) Name, address and telephone number of the applicant and if
9 the applicant is a business entity other than a sole proprietor, the
10 names and addresses of the principals, officers and resident agent
11 of the business entity;

12 (2) The applicant's West Virginia business registration number
13 or a copy of the current West Virginia business registration
14 certificate. The Division of Forestry shall submit this information
15 and a list of all applicants to the Tax Commissioner each month of
16 the calendar year to ensure compliance with payment of severance,
17 income withholding and all other applicable state taxes; and

18 (3) Any other information as required by the director.

19 (d) The director shall propose rules for legislative approval
20 pursuant to the provisions of article three, chapter twenty-nine-a
21 of this code, regarding the acquisition, suspension and revocation
22 a license under this article. The rules are the proper subject of
23 emergency legislative rules that may be promulgated in accordance
24 with the provision of section fifteen, article three, section
25 twenty-nine-a of this code.

26 (e) The director shall prescribe a form providing the contents

1 and manner of posting notice at the timbering operation. The notice
2 shall include, at a minimum, the operator's name and license number.

3 **§19-1B-5. Compliance orders; suspension of timbering operation**
4 **license.**

5 (a) Upon a finding by the chief that failure to use a
6 particular best management practice is causing or contributing, or
7 has the potential to cause or contribute, to soil erosion or water
8 pollution, the chief shall notify the director of the location of
9 the site, the problem associated with the site, and any suggested
10 corrective action. Upon the failure of the director to take
11 appropriate action within three days of providing notice to the
12 director, the chief may seek relief through the conference panel in
13 accordance with section eleven of this article.

14 (b) Upon notification of the chief or upon a finding by the
15 director that failure to use a particular best management practice
16 is causing or contributing, or has the potential to cause or
17 contribute, to soil erosion or water pollution, the director shall
18 issue a written compliance order requiring the person conducting the
19 timbering operation to take corrective action. The order shall
20 mandate compliance within a reasonable and practical time not to
21 exceed ten days. The person subject to the order may appeal the
22 order within forty-eight hours of its issuance to the conference
23 panel in accordance with section eleven of this article.

24 (c) The director has the discretion to immediately suspend a
25 timbering operator or operation, or any part of a timbering
26 operation, in any part of the state if:

1 (1) The director believes that the observed damage or
2 circumstances on a timbering operation are sufficient to endanger
3 life or result in uncorrectable soil erosion or water pollution, or
4 if the;

5 (2) The operator is not licensed pursuant to this article; or

6 (3) A certified logger is not supervising the timbering
7 operation.

8 (d) The timbering operation, the operator, or both shall remain
9 suspended until the corrective action mandated in the compliance
10 order is instituted. The director shall not lift the suspension
11 until compliance is satisfactory or until overruled on appeal.
12 Failure to comply with any compliance order is a violation of this
13 article. The timbering operator or operation subject to the
14 compliance order may appeal to the conference panel in accordance
15 with the provisions of section eleven of this article.

16 (e) For a second violation within any two-year period, the
17 director may suspend the license of any operator conducting a
18 timbering operation or the certification of any certified logger
19 supervising a timbering operation for no less than thirty nor more
20 than ninety days if the person is found in violation of this article
21 or article eleven, chapter twenty-two of this code. One or more
22 violations for the same incident is only one violation for purposes
23 of this subsection.

24 (f) For a third violation within any two-year period, the
25 director may revoke the license of any operator conducting timbering
26 operations or the certification of any certified logger if the

1 person is found in violation of this article or article eleven,
2 chapter twenty-two of this code. One or more violations for the
3 same incident is only one violation for purposes of this subsection.
4 A revoked license is not subject to reissue during the current
5 licensing period.

6 (g) The director shall notify the chief of any order issued or
7 any suspension or revocation of a license pursuant to this section
8 within thirty days of the director's action.

9 **§19-1B-7. Certification of persons supervising timbering**
10 **operations; timbering operations to be supervised;**
11 **promulgation of rules.**

12 (a) Any individual supervising any licensed timbering
13 operation, or any individual supervising any timbering operation
14 that is not exempted from the licensing requirements set forth in
15 section four of this article, must be certified pursuant to this
16 section.

17 (b) The director is responsible for the development of
18 standards and criteria for education, training and examination that
19 must be successfully completed for persons to be certified to
20 supervise any timbering operation. The program for certified
21 loggers shall provide for education and training in the safe conduct
22 of timbering operations, in first aid procedures and in the use of
23 best management practices to prevent soil erosion on timbering
24 operations. The goals of this program will be to assure that
25 timbering operations are conducted in accordance with applicable

1 state and federal safety regulations in a manner that is
2 environmentally sound and safe.

3 (c) The director shall provide programs using the resources of
4 the division, other appropriate state agencies, educational entities
5 and other qualified persons. Each inspector under the jurisdiction
6 of the chief shall attend a certification program free of charge and
7 complete the certification requirements of this section.

8 (d) The director shall propose rules for legislative approval
9 in accordance with article three, chapter twenty-nine-a of this
10 code, to effectuate the purposes of this article.

11 (e) Upon a person's successful completion of the certification
12 requirements, the director shall provide proof of the completion by
13 issuing a numbered certificate and a wallet-sized card to that
14 person. The division shall maintain a record of each certificate
15 issued and the person to whom it was issued.

16 (f) A certification granted pursuant to this section is
17 renewable only for four succeeding years. For the second renewal
18 and every other renewal thereafter, the licensee shall first attend
19 a program designed by the director to update the training.

20 (g) Every timbering operation that is required to be licensed
21 under section four of this article must have at least one person
22 certified pursuant to this section supervising the operation at any
23 time the timbering operation is being conducted. All timbering
24 operators shall be guided by the West Virginia forest practice
25 standards and the West Virginia silvicultural best management
26 practices to reduce sediment movement during a timber operation.

1 (h) The director shall, at no more than five-year intervals,
2 convene a committee to review the best management practices to
3 ensure that they reflect and incorporate the most current
4 technologies. The committee shall, at a minimum, include a person
5 researching silvicultural best management practices, a person in the
6 field of silviculture, two loggers certified under this article, a
7 representative of the Division of Water and Waste Management of the
8 Department of Environmental Protection and a representative of an
9 environmental organization. The director shall chair the committee
10 and may amend the best management practices according to the
11 suggestions of the committee for the next certification cycle.

12 **§19-1B-11. Creation of conference panels; authority.**

13 (a) Each forestry region in this state shall contain an
14 informal conference panel composed of three persons to decide
15 appeals of the director's orders. One member of the panel shall be
16 selected by the director, one member shall be selected by the chief
17 and one member shall be selected by agreement between the chief and
18 the director. If a vacancy exists on the panel, the vacancy shall
19 be filled by whomever made the initial selection. The members of
20 the panel shall serve without compensation.

21 (b) Upon appeal of a decision under this section or upon
22 petition by the chief, pursuant to the provisions of subsection (a),
23 section five of this article, the panel shall hold an informal
24 conference affirming, modifying or vacating an order of the
25 director, or issuing an order in the name of the director. The
26 panel shall forthwith notify the parties of its decision and as soon

1 as practicable send written notice of its decision to the parties.

2 The decision of the panel is final.

3 (c) A party aggrieved by a decision of a panel may appeal to
4 the circuit court of the county wherein the cause for the order
5 arose. The appeal must be filed with the circuit court within
6 twenty days of the date of decision of the panel and shall be heard
7 de novo by the court. The court may reverse, vacate or modify the
8 decision of the panel. The decision of the circuit court is final
9 unless reversed, vacated or modified on appeal to the Supreme Court
10 of Appeals in the manner provided by law.

11 **§19-1B-12a. Criminal penalties.**

12 (a) A person who knowingly or willingly commits one of the
13 following violations is guilty of a misdemeanor and, upon conviction
14 thereof, shall be fined not less than \$250 and not more than \$500
15 for each violation:

16 (1) Conducts timbering operations or purchases timber or buys
17 logs for resale in this state without holding a valid license from
18 the Director of the Division of Forestry, as required by section
19 four of this article;

20 (2) Conducts timbering operations or severs trees for sale at
21 a location in this state, without providing the Director of the
22 Division of Forestry with notice of the location where the timbering
23 or harvesting operations are to be conducted, as required by section
24 six of this article;

25 (3) Conducts a timbering operation in this state that is not
26 supervised by a certified logger who holds a valid certificate from

1 the Director of the Division of Forestry, as required by section
2 seven of this article; or

3 (4) Continues to conduct timbering operations in violation of
4 an existing suspension or revocation order that has been issued by
5 the Director of the Division of Forestry or a conference panel under
6 sections five, ten or eleven of this article.

7 (b) For the purposes of this section, each day that a person
8 conducts timbering operations in this state without a license as
9 required by this article, without the supervision of a certified
10 logger as required by this article, without providing notice of the
11 location to the director as required by this article, or in
12 violation of an outstanding suspension or revocation order shall
13 constitute a separate offense.

14 (c) In addition to any other law-enforcement agencies that have
15 jurisdiction over criminal violations, any forester or forest
16 technician employed by the Division of Forestry, who, as a part of
17 his or her official duties is authorized by the Director of the
18 Division of Forestry to inspect timbering operations, is authorized
19 to issue citations for any of the listed violations in this article
20 that he or she has witnessed. The limited authority granted to
21 employees of the Division of Forestry to issue citations to enforce
22 the provisions of this section does not include the power to place
23 any individual or person under arrest.