

WEST VIRGINIA LEGISLATURE

2019 REGULAR SESSION

Enrolled

Committee Substitute

for

Committee Substitute

for

Senate Bill 402

SENATORS SYPOLT, BEACH, STOLLINGS, HAMILTON,
BOSO, CLINE, BALDWIN, MARONEY, AND PREZIOSO,

original sponsors

[Passed March 9, 2019; in effect 90 days from
passage]

1 AN ACT to amend and reenact §19-1A-3b of the Code of West Virginia, 1931, as amended; and
2 to amend and reenact §61-3-52 of said code, all relating to authorizing the Division of
3 Forestry to investigate and enforce timber theft and intentional damage to the timber of
4 another; increasing the threshold between felony and misdemeanor from \$1,000 to
5 \$2,500; requiring enhanced penalties for subsequent offenses occurring within 10 years
6 of the first offense; and establishing criminal penalties.

Be it enacted by the Legislature of West Virginia:

CHAPTER 19. AGRICULTURE.

ARTICLE 1A. DIVISION OF FORESTRY.

§19-1A-3b. Timber theft; investigations; criminal and civil penalties.

1 (a) Timber theft is the misappropriation or taking of timber belonging to another, or
2 proceeds derived from the sale of timber, either taken without the consent of the owner, or by
3 means of fraudulent conduct, practices, or representations, with the intent to deprive the owner
4 permanently of the timber or proceeds derived therefrom.

5 (b) The Division of Forestry has the primary responsibility for the collection, preparation,
6 and central registry of information relating to timber theft. The division has the authority to
7 investigate and enforce the provisions of this section when violations of the provisions of §61-3-
8 52 of this code occur.

CHAPTER 61. CRIMES AND THEIR PUNISHMENT.

ARTICLE 3. CRIMES AGAINST PROPERTY.

§61-3-52. Wrongful injuries to timber; criminal penalties.

1 (a) Any person who knowingly and intentionally cuts down, injures, removes, or destroys,
2 without the permission of the owner or his or her agent, timber of a value of \$2,500 or less is guilty
3 of a misdemeanor and, upon conviction thereof, shall be fined not more than \$2,500 or confined
4 in jail for not more than 30 days, or both fined and confined.

5 (b) Any person who knowingly and intentionally cuts down, injures, removes, or destroys,
6 without the permission of the owner or his or her agent, timber of a value of \$2,500 or more or
7 who is convicted of a second or subsequent violation within 10 years of subsection (a) of this
8 section shall be guilty of a felony and, upon conviction thereof, shall be fined not more than three
9 times the value of the timber cut down, injured, removed, or destroyed, or imprisoned in a state
10 correctional facility for not less than one nor more than three years, or both fined and imprisoned.

11 (c) The necessary trimming and removal of timber to permit the construction, repair,
12 maintenance, cleanup, and operations of pipelines and utility lines and appurtenances of public
13 utilities, public service corporations, and to aid registered land surveyors and professional
14 engineers in the performance of their professional services, and municipalities, and pipeline
15 companies, or lawful operators and product purchasers of natural resources other than timber,
16 shall not be considered a willful and intentional cutting down, injuring, removing, or destroying of
17 timber.

18 (d) The necessary trimming and removal of timber for boundary line maintenance, for the
19 construction, maintenance, and repair of streets, roads, and highways, or for the control and
20 regulation of traffic thereon by the state and its political subdivisions or registered land surveyors
21 and professional engineers, shall not be considered a willful and intentional cutting down, injuring,
22 removing, or destroying of timber.

23 (e) No fine or imprisonment imposed pursuant to this section shall be construed to limit
24 any cause of action by a landowner for recovery of damages otherwise allowed by law. If a person
25 charged or convicted under the provisions of this section enters into an agreement with a
26 landowner to make financial restitution for the landowner's timber damages, any applicable
27 statute of limitations effecting the landowner's cause of action shall be tolled from the date the
28 agreement was entered into until a breach of the agreement occurs.

29 (f) If a criminal action is brought under the provisions of this section, the county prosecutor
30 shall publish a Class II legal advertisement in compliance with the provisions of §59-3-1 *et seq.*

31 of this code in the county where the property involved is located which provides a description of
32 the property and a general summary of the timber damages. If a landowner suffering timber
33 damages is not aware of those damages prior to the publication of the Class II legal
34 advertisement, any applicable statute of limitations effecting the landowner's cause of action for
35 the recovery of damages shall be tolled from the time the damages were incurred, and may not
36 commence until the date the final Class II legal advertisement is published.

The Joint Committee on Enrolled Bills hereby certifies that the foregoing bill is correctly enrolled.

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Chairman, Senate Committee

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Chairman, House Committee

Originated in the Senate.

In effect 90 days from passage.

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Clerk of the Senate

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Clerk of the House of Delegates

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President of the Senate

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Speaker of the House of Delegates

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Day of, 2019.

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Governor