

WEST VIRGINIA LEGISLATURE

2019 REGULAR SESSION

Committee Substitute

for

Committee Substitute

for

Senate Bill 402

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

original sponsors

[Originating in the Committee on the Judiciary;

Reported on February 18, 2019]

1 A BILL to amend and reenact §19-1A-3b of the Code of West Virginia, 1931, as amended; and to
2 amend and reenact §61-3-52 of said code, all relating to authorizing the Division of
3 Forestry to investigate and enforce timber theft violations on all lands; clarifying the
4 criminal penalties for violations; and modifying said criminal penalties.

Be it enacted by the Legislature of West Virginia:

CHAPTER 19. AGRICULTURE.

ARTICLE 1A. DIVISION OF FORESTRY.

§19-1A-3b. Timber theft; ~~on state forests~~ 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. ~~in state forests~~ The division has the
7 authority to investigate and enforce the provisions of this section when violations ~~occur in state~~
8 ~~forests. The division may assist law enforcement agencies in investigations of violations of the~~
9 provisions of §61-3-52 of this code ~~when requested~~ occur.

10 ~~(c) Criminal and civil penalties. -- A person who commits timber theft in a state forest where~~
11 ~~the timber taken is of a value of \$25,000 or less is guilty of a misdemeanor and shall be fined not~~
12 ~~more than \$5,000 or confined in jail for not more than one year, or both. A person who commits~~
13 ~~timber theft in a state forest where the timber taken is of a value of \$25,000 or more is guilty of a~~
14 ~~felony and shall be fined not more than \$10,000 or imprisoned in a state correctional facility for~~
15 ~~not more than five years, or both. In addition to any fines and costs that may be assessed by the~~
16 ~~court, a person convicted of a violation of this section shall be ordered to pay a \$500 civil penalty~~
17 ~~to the division within 60 days of the entry of a final order of conviction. The civil penalty shall be~~
18 ~~collected by the court in which the person is convicted and forwarded to the State Treasurer for~~

19 deposit in the Division of Forestry Fund (3081) for use in administering the provisions of this
20 section.

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 willfully and maliciously and with intent to do harm unlawfully enters~~
2 ~~upon the lands of another, cuts down, injures, removes or destroys any timber, without the~~
3 ~~permission of the owner or his or her representative is guilty of a misdemeanor and, upon~~
4 ~~conviction thereof, shall be fined not more than three times the value of timber injured, removed~~
5 ~~or destroyed, or confined in the county or regional jail for thirty days, or both: *Provided*, That if the~~
6 ~~timber is valued at \$1,000 or less, the fine shall be no more than \$1,000: *Provided, however*, That~~
7 ~~a person convicted of a first offense violation of the provisions of this section in which the timber~~
8 ~~is valued at more than \$1,000 is guilty of a felony and, upon conviction thereof, shall be confined~~
9 ~~in a correctional facility for not less than one nor more than two years, or fined not more than three~~
10 ~~times the value of the timber injured, removed or destroyed, or both fined and confined: *Provided*~~
11 ~~further, That a person convicted of a second or subsequent violation of the provisions of this~~
12 ~~section is guilty of a felony and, upon conviction thereof, shall be confined in a correctional facility~~
13 ~~for not less than one nor more than three years, or fined not more than three times the value of~~
14 ~~the timber injured, removed or destroyed, or both fined and confined.~~

15 (a) Any person who knowingly and intentionally cuts down, injures, removes, or destroys,
16 without the permission of the owner or his or her agent, timber of a value of \$1,000 or less is guilty
17 of a misdemeanor and, upon conviction thereof, shall be fined not more than \$1,000 or confined
18 in jail for not more than 30 days, or both fined and confined.

19 (b) Any person who knowingly and intentionally cuts down, injures, removes, or destroys,
20 without the permission of the owner or his or her agent, timber of a value of \$1,000 or more or
21 who is convicted of a second or subsequent violation of subsection (a) of this section shall be

22 guilty of a felony and, upon conviction thereof, shall be fined not more than three times the value
23 of the timber cut down, injured, removed, or destroyed, or imprisoned in a state correctional facility
24 for not less than one nor more than three years, or both fined and imprisoned.

25 ~~(b)~~ (c) The necessary trimming and removal of timber to permit the construction, repair,
26 maintenance, cleanup, and operations of pipelines and utility lines and appurtenances of public
27 utilities, public service corporations, and to aid registered land surveyors and professional
28 engineers in the performance of their professional services, and municipalities, and pipeline
29 companies, or lawful operators and product purchasers of natural resources other than timber,
30 shall not be considered a willful and intentional cutting down, injuring, removing, or destroying of
31 timber.

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

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

43 ~~(e)~~ (f) If a criminal action is brought under the provisions of this section, the county
44 prosecutor shall publish a Class II legal advertisement in compliance with the provisions of §59-
45 3-1 *et seq.* of this code in the county where the property involved is located which provides a
46 description of the property and a general summary of the timber damages. If a landowner suffering
47 timber damages is not aware of those damages prior to the publication of the Class II legal

48 advertisement, any applicable statute of limitations effecting the landowner's cause of action for
49 the recovery of damages shall be tolled from the time the damages were incurred, and may not
50 commence until the date the final Class II legal advertisement is published.