

VIRGINIA ACTS OF ASSEMBLY -- 2019 SESSION

CHAPTER 353

An Act to amend and reenact §§ 10.1-1105 and 55-332 of the Code of Virginia and to amend the Code of Virginia by adding sections numbered 55-334.2 and 55-334.3, relating to timber theft; accounting; disclosure; penalty.

[S 1469]

Approved March 12, 2019

Be it enacted by the General Assembly of Virginia:

1. That §§ 10.1-1105 and 55-332 of the Code of Virginia are amended and reenacted and that the Code of Virginia is amended by adding sections numbered 55-334.2 and 55-334.3 as follows:

§ 10.1-1105. Additional powers and duties of State Forester.

A. The State Forester shall supervise and direct all forest interests and all matters pertaining to forestry within the Commonwealth. He shall have charge of all forest wardens and shall appoint, direct and supervise persons he employs to perform labor in the forest reservations or the nurseries provided for herein, and he is authorized to employ temporary forest wardens to extinguish forest fires in the Commonwealth. He shall take such action as is authorized by law to prevent and extinguish forest fires; develop a program to promote the use of prescribed burning for community protection and ecological, silvicultural, and wildlife management; enforce all laws pertaining to forest and woodlands; prosecute any violation of such laws; develop silvicultural best management practices, including reforestation, prevention of erosion and sedimentation, and maintenance of buffers for water quality, pursuant to Article 12 (§ 10.1-1181.1 et seq.) of this chapter; collect information relative to forest destruction and conditions; direct the protection and improvement of all forest reservations; and, as far as his duties as State Forester will permit, conduct an educational course on forestry at the University of Virginia for credit toward a degree, at farmers' institutes and at similar meetings within the Commonwealth. He shall provide for the protection of state waters from pollution by sediment deposition resulting from silvicultural activities as provided in Article 12 (§ 10.1-1181.1 et seq.) of this chapter. In addition, the State Forester shall cooperate with counties, municipalities, corporations and individuals in preparing plans and providing technical assistance, based on generally accepted scientific forestry principles, for the protection, management and replacement of trees, wood lots and timber tracts and the establishment and preservation of urban forests, under an agreement that the parties obtaining such assistance shall pay the field and traveling expenses of the person employed in preparing such plans. *The State Forester also shall assist landowners and law-enforcement agencies with regard to reported cases of timber theft.*

B. Records of the Department composed of confidential commercial or financial information supplied by individuals or business entities to the Department in the course of an investigation of timber theft are excluded from the mandatory disclosure provisions of the Virginia Freedom of Information Act (§ 2.2-3700 et seq.).

§ 55-332. Procedure for determination of damage.

A. The owner of the land on which ~~such a~~ trespass prohibited by the provisions of § 55-331 was committed shall have the right, within ~~30~~ 90 days after the discovery of such trespass and the identity of the trespasser, to notify the trespasser and to appoint an experienced timber estimator to determine the amount of damages. For the purposes of determining damages, the value of the timber cut shall be calculated by first determining the value of the timber on the stump. Within 30 days after receiving notice of the alleged trespass and of the appointment of such estimator, the alleged trespasser, if he does not deny the fact of trespass, shall appoint an experienced timber estimator to participate with the one already so appointed in the estimation of damages. If the two estimators cannot agree, they shall select a third person, experienced and disinterested, and the decision thereafter made shall be final and conclusive and not subject to appeal. The estimation of damages and the rendition of statement must be effected within 30 days from the receipt of notice of appointment, by the trespasser, of an estimator.

If the alleged trespasser fails to appoint an estimator within the prescribed time, or to notify, within such time, that the allegation of the fact of trespass is disputed, the estimator appointed by the injured party may make an estimate; and collection or recovery may be had accordingly.

B. Any person who (i) severs or removes any timber from the land of another without legal right or permission or (ii) authorizes or directs the severing or removal of timber or trees from the land of another without legal right or permission shall be liable to pay to the rightful owner of the timber three times the value of the timber on the stump and shall pay to the rightful owner of the property the reforestation costs incurred not to exceed \$450 per acre, the costs of ascertaining the value of the timber, any directly associated legal costs, and reasonable attorney fees incurred by the owner of the timber as a result of the trespass.

§ 55-334.2. Larceny of timber; failure to remit payment to owner; penalty.

A. Any person who buys timber directly from the owner of the land on which the timber is grown shall make payment in full to the owner by the date specified in the written timber sales agreement or, if there is no such written agreement, within 60 days from the date that the buyer removes the timber from the property.

B. Any person who, without the consent of the seller, fails to make payment in full within the time period established by subsection A is guilty of timber theft, which is punishable as a Class 1 misdemeanor, and shall be ordered to pay restitution equal to three times the value of the timber established in the timber sale agreement, whether written or oral, in addition to any penalties imposed by the court.

C. No person shall be prosecuted under this section if he remits payment in full within the time period established by subsection A or D to a person he believes in good faith to be the rightful owner of the timber.

D. An owner of land who does not receive payment in full within the time period established in subsection A may notify the timber buyer in writing of his demand for payment at such buyer's last known address by certified mail or by personal delivery. The timber buyer's failure to make payment in full within 10 days after such mailing or personal delivery shall constitute prima facie evidence of such buyer's intent to violate the provisions of subsection A. However, no person who remits payment in full within 10 days after such demand for payment shall be prosecuted for violating the provisions of subsection A, notwithstanding his failure to remit payment in full within the time period established in subsection A.

§ 55-334.3. Load tickets required for certain sales of timber; penalty.

A. Whenever a timber buyer acquires timber and the load is sold by weight, cord, or measure of board feet, such buyer shall, upon request of the owner of the land from which the timber is removed, furnish such landowner within 30 days of the request or 30 days from the date that the timber is removed, whichever is later, a true and accurate accounting of each load removed from the property related to the sale.

Such accounting shall include all supporting documentation, such as load tickets or settlement statements provided to the timber buyer by the facility receiving, weighing, scaling, or measuring the trees, timber, or wood, and shall contain, at a minimum, (i) the name of the facility receiving, weighing, scaling, or measuring the trees, timber, or wood; (ii) the date the trees, timber, or wood was received at the facility; (iii) the name of the producer or logging company; (iv) the type of wood; (v) the type of product; (vi) the weight or scale information, including the total volume if the load is measured by scale, or the gross and tare, or net weights, if the load is measured by weight; and (vii) the weight, scale, or amount of wood deducted and the deduction classification.

B. No load ticket or settlement report shall be required to include price or market value information unless the timber sales agreement, whether written or oral, stipulates that the landowner is to be paid based on a share of the value of the timber removed.

C. Any person who fails to provide the information required by this section, or who knowingly provides false information, is guilty of a Class 3 misdemeanor.

2. That the provisions of this act may result in a net increase in periods of imprisonment or commitment. Pursuant to § 30-19.1:4 of the Code of Virginia, the estimated amount of the necessary appropriation is \$0 for periods of imprisonment in state adult correctional facilities and cannot be determined for periods of commitment to the custody of the Department of Juvenile Justice.