

Appendix A

IC 25-36.5

ARTICLE 36.5. TIMBER BUYERS

IC 25-36.5-1

Chapter 1. Regulation of Timber Buyers by Department of Natural Resources

IC 25-36.5-1-1

Definitions

Sec. 1. As used in this chapter:

"Person" means an individual, partnership, firm, association, business trust, limited liability company, or corporation.

"Timber" means trees, standing or felled, and logs which can be used for sawing or processing into lumber for building or structural purposes or for the manufacture of any article. "Timber" does not include firewood, Christmas trees, fruit or ornamental trees, or wood products not used or to be used for building, structural, manufacturing, or processing purposes.

"Timber buyer" means a person engaged in the business of buying timber from timber growers for sawing into lumber, processing, or resale, but does not include a person who occasionally purchases timber for sawing or processing for his own use and not for resale.

"Timber grower" means the owner, tenant, or operator of land in this state who has an interest in, or is entitled to receive any part of the proceeds from, the sale of timber grown in this state and includes persons exercising lawful authority to sell timber for a timber grower.

"Department" means the department of natural resources.

"Director" means the director of the department of natural resources.

"Agent" means an individual who represents a timber buyer in effecting or attempting to effect purchases of timber.

"Buying" means acquiring an interest in property by the payment of a price, value, or other consideration.

(Formerly: Acts 1972, P.L.190, SEC.1; Acts 1975, P.L.274, SEC.1.)

As amended by P.L.253-1983, SEC.1; P.L.158-1988, SEC.1; P.L.8-1993, SEC.397.

IC 25-36.5-1-2

Application for registration; contents; filing; prior registration

Sec. 2. (a) On and after July 28, 1972, no person shall engage in the business of timber buying in the state of Indiana without a registration certificate issued by the department. Application for Indiana registration to engage in the business of timber buying shall be filed with the department. Such application shall set forth the name of the applicant, its principal officers if the applicant is a corporation, its managers and members if the applicant is a limited liability company, or the partners if the applicant is a partnership, the location of any principal office or place of business of the applicant, the counties in this state from which the applicant proposes to engage in the business of timber buying and such additional information as the department by regulation may require.

(b) The application shall set forth the aggregate dollar amount paid to timber growers for timber purchased in this state during the applicant's last completed fiscal or calendar year. In the event the applicant has been engaged as a timber buyer for less than one (1) year, his application shall set forth the dollar amount paid to timber growers for the number of completed months during which the applicant has been so engaged. If the applicant has not been previously engaged in buying timber in this state, the application shall set forth the estimated aggregate dollar amount to be paid by the applicant to timber growers for timber to be purchased from them during the next succeeding year.

(c) The registrations of any persons registered as timber buyers under any prior law in this state shall remain valid until the expiration date of that certificate, unless suspended or revoked. After the expiration of such registrations, all persons engaged in the business of timber buying must be registered under this chapter.

(Formerly: Acts 1972, P.L.190, SEC.1.) As amended by Acts 1982, P.L.154, SEC.128; P.L.8-1993, SEC.398.

IC 25-36.5-1-3

Bond or certificate of deposit; requisites; cancellation; forfeiture proceedings; preliminary injunction or restraining order

Sec. 3. (a) Every person registered as a timber buyer shall file with the department an effective surety bond issued by a corporate surety authorized to engage in the business of executing surety bonds in Indiana.

(b) Instead of the bond required by subsection (a), the department may accept security in cash or a certificate of deposit under terms established by rule.

(c) The security required under subsection (a) or (b) shall be made payable upon demand to the director, subject to this chapter, for the use and benefit of the people of Indiana and for the use and benefit of any timber grower from whom the applicant purchased and who is not paid by the applicant or for the use and benefit of any timber grower whose timber has been cut by the applicant or registrant or his agents, and who has not been paid therefor.

(d) The security required under subsection (a) or (b) shall be in the principal amount of two thousand dollars (\$2,000) for an applicant who paid timber growers five thousand dollars (\$5,000) or less for timber during the immediate preceding year, and an additional one hundred dollars (\$100) for each additional one thousand dollars (\$1,000) or fraction thereof paid to timber growers for timber purchased during the preceding year, but shall not be more than twenty thousand dollars (\$20,000). In the case of an applicant not previously engaged in business as a timber buyer, the amount of such bond shall be based on the estimated dollar amount to be paid by such timber buyer to timber growers for timber purchased during the next succeeding year, as set forth in the application.

(e) The security required under subsection (a) or (b) shall not be cancelled or altered during the period for which the certificate to the applicant was issued except upon at least sixty (60) days notice in writing to the department.

(f) Security shall be in such form, contain such terms and conditions as may be approved from time to time by the director, be conditioned to secure an honest cutting and accounting for timber purchased by the registrant, secure payment to the timber growers, and insure the timber growers against all fraudulent acts of the registrant in the purchase and cutting of the timber of this state.

(g) If a timber buyer fails to pay when due any amount due a timber grower for timber purchased, or fails to pay legally determined damages for timber wrongfully cut by a timber buyer or his agent, or commits any violation of this chapter, an adjudicative proceeding on the bond for forfeiture may be commenced, and notice of the proceeding shall be provided, under IC 4-21.5-3-6. A surety or person in possession of the security provided under subsection (a) or (b) is entitled to notification of the proceeding. If a final agency action is entered by the department under this subsection against the timber buyer, the surety or other person in possession of the security shall deliver the amount of the security identified in the order. A proceeding for forfeiture of a timber buyer's bond under IC 4-21.5 is the exclusive remedy under law for the forfeiture of the bond.

(h) An owner of property seeking a preliminary injunction or restraining order against a person, corporation, or other entity to prevent or stop the wrongful cutting of timber on the owner's property is relieved of the requirement to post a bond or other security with the court as a prerequisite to the issuance of the preliminary injunction or restraining order. However, this subsection does not apply to a property owner who seeks a preliminary injunction or restraining order to prevent or stop alleged wrongful cutting by a timber cutter or timber buyer with whom the property owner had contracted for the cutting or sale of timber.

(Formerly: Acts 1972, P.L.190, SEC.1.) As amended by P.L.253-1983, SEC.2; P.L.158-1988, SEC.2; P.L.220-1993, SEC.1; P.L.98-2001, SEC.3.

IC 25-36.5-1-3.1

Notice of violation of chapter or rules

Sec. 3.1. The department may under IC 4-21.5-3-6 issue a notice of violation against a person who has violated this chapter or the rules adopted under this chapter. The notice of violation shall be issued to the registrant and the registrant's sureties stating in general terms:

- (1) the nature of the violation; and
- (2) that a proceeding seeking forfeiture of the bond may be commenced twenty (20) days after service of the notice on the registrant if at the end of that period the violation still remains and neither the registrant nor the surety has asked for judicial review of the notice.

As added by P.L.220-1993, SEC.2.

IC 25-36.5-1-3.2

Adjudicative proceeding against timber buyer or cutter

Sec. 3.2. (a) This section refers to an adjudicative proceeding against:

- (1) a timber buyer; or

(2) a person who cuts timber but is not a timber buyer (referred to as a "timber cutter" in this section).

(b) The department may under IC 4-21.5-3-8 commence a proceeding against a timber buyer or a timber cutter if there is reason to believe that:

(1) the timber buyer or timber cutter has acquired timber from a timber grower under a written contract for the sale of the timber without payment having been made to the timber grower as specified in the contract; or

(2) if:

(A) there is no written contract for the sale of the timber; or

(B) there is a written contract for the sale of the timber but the contract does not set forth the purchase price for the timber;

the timber buyer or timber cutter has cut timber or acquired timber from the timber grower without payment having been made to the timber grower equal to the value of the timber as determined under IC 26-1-2.

(c) A proceeding may be commenced under this section at the request of a timber grower.

(d) The necessary parties to a proceeding initiated under this section are:

(1) the timber grower; and

(2) the timber buyer or timber cutter.

(e) After the commencement of a proceeding under this section through the service of a complaint under IC 4-21.5-3-8, a party to the proceeding may move for the joinder of any of the following persons having a relationship to the site or subject of the complaint:

(1) The surety of the timber buyer.

(2) A timber buyer.

(3) A timber cutter.

(4) A landowner.

(5) An owner of land adjacent to the land from which the timber was cut.

(6) A consultant receiving a fee for services related to the timber.

(7) A land surveyor performing a minimum standard detail survey in Indiana under the requirements of the Indiana Society of Professional Land Surveyors and Indiana Land Association.

(8) The department of natural resources, if the department has a relationship to the site or subject of the complaint as a landowner or owner of adjacent land.

(f) The complaint served under IC 4-21.5-3-8 to commence a proceeding under this section may seek the following:

(1) Damages in compensation for damage actually resulting from the wrongful activities of a timber buyer or timber cutter.

(2) Damages equal to three (3) times the stumpage value of any timber that is wrongfully cut or appropriated without payment.

(g) Notwithstanding subsection (f), the liability on the surety bond of a timber cutter is limited to the value of any timber wrongfully cut or appropriated.

- (h) A proceeding under this section is governed by IC 4-21.5. Before a hearing is convened in the proceeding, a prehearing conference shall be conducted to provide the parties with an opportunity for settlement, including an opportunity for mediation.
- (i) In determining the site for a hearing in a proceeding under this section, the administrative law judge shall consider the convenience of the parties.
- (j) A final agency action in a proceeding under this section must address all issues of damage and responsibility and, after the completion of the opportunity for judicial review, may be enforced in a civil proceeding as a judgment.

As added by P.L.220-1993, SEC.3.

IC 25-36.5-1-3.3

Bond or security forfeiture proceeds; overage and shortage; effect

Sec. 3.3. (a) If the amount realized by the department from a bond or security forfeited under section 3(g) of this chapter, after deducting expenses incurred by the department in converting the bond or security into money, is greater than the amount of the liability of the timber buyer as determined under this chapter, the department shall pay the excess to the timber buyer who furnished the bond or security.

(b) If the amount realized by the department from a bond or security forfeited under section 3(g) of this chapter, after deducting expenses incurred by the department in converting the bond or security into money, is less than the amount of liability of the timber buyer as determined under this chapter, the timber buyer's registration may be revoked.

As added by P.L.220-1993, SEC.4.

IC 25-36.5-1-3.5

Cessation of business; requirements for return of deposit

Sec. 3.5. (a) A timber buyer who intends to cease doing business as a timber buyer in Indiana and who seeks the return of a deposit of cash or a certificate of deposit that the timber buyer submitted to the department under section 3(b) of this chapter must submit the following to the department:

- (1) A written request for the return of the cash or certificate of deposit.
 - (2) An affidavit meeting the requirements set forth in subsection (b).
- (b) To obtain the return of a deposit of cash or a certificate of deposit under this section, a timber buyer must execute an affidavit stating under the penalty for perjury set forth in IC 35-44-2-1 that the timber buyer:
- (1) has ceased doing business as a timber buyer in Indiana;
 - (2) will not resume business as a timber buyer in Indiana after the date of the affidavit without filing a surety bond or submitting a new deposit of cash or certificate of deposit to the department;
 - (3) has not purchased, taken, or cut any timber for which the timber grower has not been paid; and
 - (4) is not a party to an executory contract for the purchase of

timber under which the timber buyer has one (1) or more duties that have not been performed.

(c) Upon receiving a written request described in subsection (a)(1) and an affidavit meeting the requirements of subsection (b), the department shall publish a notice of the request in at least one (1) publication commonly read by persons active in forestry in Indiana.

The notice must do the following:

(1) Identify the timber buyer requesting the release of the cash or certificate of deposit.

(2) Indicate the date of the request.

(3) State that the cash or certificate of deposit will be released to the timber buyer on a particular date, which must be at least sixty (60) days after the date of publication of the notice, unless the department is informed of a reason why the cash or certificate of deposit should not be released.

(d) On the date set forth under subsection (c)(3) in the notice given by the department, the department shall return the cash or certificate of deposit to the timber buyer unless the department has obtained information indicating that a statement set forth in the timber buyer's affidavit is false.

As added by P.L.220-1993, SEC.5.

IC 25-36.5-1-4

Violations

Sec. 4. It shall be unlawful and a violation of this chapter.

(a) For any timber buyer to fail to pay, as agreed, for any timber purchased.

(b) For any timber buyer to cut or cause to be cut or appropriate any timber not purchased.

(c) For a timber buyer to willfully make any false statement in connection with the application, bond or other information required to be given to the department or a timber grower.

(d) To fail to honestly account to the timber grower or the department for timber purchased or cut if the buyer is under a duty to do so, and

(e) For a timber buyer to commit any fraudulent act in connection with the purchase or cutting of timber.

(Formerly: Acts 1972, P.L.190, SEC.1.)

IC 25-36.5-1-4.9

Refusal to issue timber buyer registration certificate; grounds

Sec. 4.9. The director may refuse to issue a timber buyer registration certificate to an applicant that has:

(1) been convicted of a felony;

(2) violated a provision of this chapter; or

(3) violated a rule adopted by the department under this chapter.

As added by P.L.220-1993, SEC.6.

IC 25-36.5-1-5 Repealed

(Repealed by P.L.220-1993, SEC.10.)

IC 25-36.5-1-6

Issuance of registration certificates; renewal

Sec. 6. (a) If:

(1) the department is satisfied that the applicant has fulfilled the

requirements of this chapter for the issuance of a registration certificate;

(2) the bond and sureties or bank certificate of deposit filed by the applicant under section 3 of this chapter is approved; and

(3) the director does not refuse to issue the registration certificate to the applicant under section 4.9 of this chapter; the department shall issue a registration certificate to the applicant.

(b) The registrations issued shall be valid for a calendar year and may be renewed annually. A copy of the registration certificate issued by the department shall be posted in the principal office of the registrant in this state.

(c) Upon request for a certificate and payment of the fee, the department shall issue to the registrant a certificate that a certificate of registration has been granted and a bond filed as required by this chapter.

(Formerly: Acts 1972, P.L.190, SEC.1.) As amended by P.L.220-1993, SEC.7.

IC 25-36.5-1-7

Fees; use by department

Sec. 7. The application fee or renewal fee for a registration certificate to operate as a timber buyer, is one hundred five dollars (\$105). The fee for a certificate stating that a registration certificate has been issued and security filed is twenty dollars (\$20). All fees collected by the department accrue to the use of the department for its administrative purposes.

(Formerly: Acts 1972, P.L.190, SEC.1.) As amended by Acts 1981, P.L.230, SEC.1; P.L.158-1988, SEC.3; P.L.186-2003, SEC.79.

IC 25-36.5-1-8

Inspection of premises, records, and papers

Sec. 8. The department may inspect the premises used by any timber buyer in the conduct of his business at any reasonable time and the books, accounts, records and papers of every such timber buyer shall at all times during business hours be subject to inspection by the department.

(Formerly: Acts 1972, P.L.190, SEC.1.)

IC 25-36.5-1-9

Rules and regulations

Sec. 9. The department may make such rules and regulations as may be necessary to carry out the provisions of this chapter.

(Formerly: Acts 1972, P.L.190, SEC.1.)

IC 25-36.5-1-10

Violations

Sec. 10. A person who:

(1) engages in business as a timber buyer without securing a registration or in violation of this chapter; or

(2) refuses to permit inspection of the person's premises, books, accounts, or records as provided in this chapter;

commits a Class A misdemeanor. However, the offense is a Class D felony if the person has a prior unrelated conviction for an offense under this section.

(Formerly: Acts 1972, P.L.190, SEC.1.) As amended by Acts 1978,

P.L.2, SEC.2563; P.L.98-2001, SEC.4.

IC 25-36.5-1-11

Denial of registration for default

Sec. 11. No certificate of registration shall be issued to any person who is in default to the people of the State of Indiana for moneys due under this chapter.

(Formerly: Acts 1972, P.L.190, SEC.1.)

IC 25-36.5-1-12

Revocation of license; proceedings

Sec. 12. The department may, after notice and a hearing, revoke the registration certificate or license of any person who violates any of the provisions of this chapter. All proceedings under this chapter to revoke a license shall be conducted in the manner prescribed by IC 4-21.5-3.

(Formerly: Acts 1972, P.L.190, SEC.1.) As amended by P.L.253-1983, SEC.3; P.L.7-1987, SEC.132.

IC 25-36.5-1-13

Injunction; contempt proceedings

Sec. 13. The department may, by application to any circuit court or to a judge thereof, obtain an injunction restraining any person who engages in the business of timber buying in this state without a certificate of registration (either because his certificate has been revoked or because of a failure to obtain a certificate of registration in the first instance) from engaging in such business until such person complies with this chapter and qualifies for and obtains a certificate of registration. Upon refusal or neglect to obey the order of the court or judge, said court or judge may compel obedience thereof by proceedings for contempt.

(Formerly: Acts 1972, P.L.190, SEC.1.)

IC 25-36.5-1-13.5

Civil penalties

Sec. 13.5. In addition to the other penalties prescribed by this chapter, the director may, under IC 4-21.5, impose a civil penalty on a person who violates this chapter. A civil penalty imposed under this section may not exceed the following limits:

- (1) For engaging in business as a timber buyer without securing a registration certificate under this chapter, ten thousand dollars (\$10,000).
- (2) For acting as the agent of a timber buyer without holding an agent's license under this chapter, ten thousand dollars (\$10,000).
- (3) For other violations of this chapter, one thousand dollars (\$1,000).

As added by P.L.220-1993, SEC.8.

IC 25-36.5-1-14

Judicial review

Sec. 14. All final administrative decisions under this chapter shall be subject to judicial review under IC 4-21.5-5.

(Formerly: Acts 1972, P.L.190, SEC.1.) As amended by P.L.7-1987, SEC.133.

IC 25-36.5-1-15

Agents; license; requirements; revocation; termination of agency relationship; misdemeanor

Sec. 15. (a) An individual who acts as the agent of a timber buyer must have an agent's license and carry the agent's card that verifies the license.

(b) An agent's license may be granted only:

(1) to qualified individuals;

(2) at the written application of the timber buyer who the agent is to represent; and

(3) under that timber buyer's registration certificate.

(c) The application for an agent's license must contain the agent's full name, address, and other information as required by the department on forms supplied by the department. Each timber buyer is responsible for all of the agent's activities performed while acting under the timber buyer's registration certificate as they pertain to this chapter.

(d) An application fee of ten dollars (\$10) for each agent shall be charged for the license and agent's card. However, each timber buyer shall designate a qualified individual to be licensed as its principal agent at no additional charge.

(e) An agent's license may be revoked by the department under IC 4-21.5 if the agent does not comply with this section.

(f) An agent may have a license to represent only one (1) timber buyer; however, upon surrendering the agent's card and license under one (1) timber buyer, an individual may be licensed as an agent of another timber buyer.

(g) A timber buyer may not be licensed as an agent except as the principal agent of that timber buyer.

(h) A timber buyer may not effect or attempt to effect a purchase except through an agent.

(i) A timber buyer may terminate an agency relationship by notifying in writing the agent and the department. Termination of an agency relationship revokes the agent's license.

(j) A person who acts as an agent without a license commits a Class B misdemeanor.

(Formerly: Acts 1975, P.L.274, SEC.2.) As amended by Acts 1981, P.L.230, SEC.2; P.L.253-1983, SEC.4; P.L.158-1988, SEC.4; P.L.186-2003, SEC.80.

IC 25-36.5-1-16

Denial, suspension, or revocation of license or registration; grounds; hearing

Sec. 16. The director may revoke or suspend or refuse to issue any license or agent's registration under that license if the applicant or holder of that license has:

(1) been convicted of a felony;

(2) violated any provision of this chapter; or

(3) violated any rule or regulation of the department promulgated under this chapter.

Revocation or suspension of a license or an agent's registration shall be determined by the director after an administrative hearing as provided in section 12 of this chapter.

(Formerly: Acts 1975, P.L.274, SEC.3.)

IC 25-36.5-1-17 Repealed

(Repealed by P.L.220-1993, SEC.10.)

IC 25-36.5-1-18

Criminal history of applicants for registration certificate or license

Sec. 18. (a) The definitions set forth in IC 10-13-3 apply throughout this section.

(b) The department shall under IC 10-13-3-27(b) request and obtain the release of a limited criminal history from the state police department on each person who applies to the department under this chapter for the issuance of either of the following:

(1) A timber buyer registration certificate.

(2) A timber buyer agent's license.

As added by P.L.220-1993, SEC.9. Amended by P.L.2-2003, SEC.68.