



# Ohio Legislative Service Commission

## Bill Analysis

Amanda George

### H.B. 515

130th General Assembly  
(As Introduced)

**Reps.** McGregor, Duffey, Phillips, DeVitis

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## BILL SUMMARY

### Contract for harvesting timber

- Requires a landowner or timber grower, if different from the landowner, (hereafter, landowner) and a timber buyer to enter into a written contract that includes specified terms and conditions, including a document identifying the boundaries of the property where timber will be harvested, a description of the timber to be harvested, and the price of the timber and payment terms.
- Authorizes a landowner that enters into a contract with a timber buyer to provide written notice of the contract to each adjacent landowner, and states that if a landowner provides notice, the landowner generally is not liable in a civil action by an adjacent landowner related to the harvesting of timber.

### Regulation of timber buyers

- Establishes requirements with which a timber buyer must comply to harvest timber.
- Authorizes the Chief of the Division of Forestry by rule to require a timber buyer to be registered with or licensed by the Division and to file with the Division a surety bond or another form of security authorized by the Division.

### Enforcement

- Prohibits a person from recklessly taking or harvesting timber without the consent of the landowner or outside the boundaries specified in a written contract, and establishes criminal penalties for such violations based on the value of the timber and the number of violations.

- States that if a court orders restitution for violations involving timber theft, economic loss includes any incidental damage to a victim's property, and establishes what restitution may include.
- Prohibits other specified actions, including harvesting timber without a written contract that complies with the bill, and establishes a criminal penalty for violation.
- Provides for restitution if criminal theft, as prohibited under continuing law, is committed that involves illegally harvested timber, and establishes what restitution may include.
- Requires the Chief to establish within the Division an Office of State Forestry Criminal Investigation consisting of forest officers assigned to it by the Chief to assist law enforcement agencies with investigations of alleged instances of timber theft.
- Authorizes the Chief to appoint forest officers to be timber theft officers, and requires the Chief to instruct and supervise such officers and establish policies and procedures governing timber theft investigations.
- Authorizes a law enforcement agency to request the Office to assist in the investigation of alleged timber theft.
- Requires the Office, if a landowner suspects that the landowner's timber has been illegally harvested and notifies the Office, to refer the suspected violation to the prosecuting attorney of the applicable county.
- Authorizes a prosecuting attorney to request the Attorney General to prosecute a person for a violation of one of the bill's prohibitions and the Chief to request the Attorney General to do so if the prosecuting attorney does not request the Attorney General to prosecute and does not initiate prosecution within 21 days after receiving notice of the alleged violation.
- Authorizes the Attorney General, at the request of a prosecuting attorney or the Chief, to bring an action enjoining a timber buyer or any entity that the timber buyer owns from buying timber in Ohio if the timber buyer violates one of the bill's prohibitions on a second or subsequent occurrence.
- Extends the authority of a forest officer to enter on private and public lands to include investigations relating to violations of criminal theft involving timber.



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## CONTENT AND OPERATION

### Contract for harvesting timber

The bill requires a landowner or timber grower, if different from the landowner, (hereafter, landowner) and a timber buyer to enter into a written contract that includes all of the following:

(1) The name or names of the owner of the property where timber is to be harvested if the owner is not the timber grower;

(2) A document showing the boundaries of each tract of land from which timber is to be harvested. If the area on the tract from which timber is to be harvested is less than the entire tract, the document must indicate the more limited area. The document must be a copy of one of the following methods and in the following order of preference:

--A property survey conducted by a registered surveyor filed with the applicable county auditor or county engineer;

--A property survey conducted by a registered surveyor accurately depicting the tract that has not been filed with the applicable county auditor or county engineer;

--A plat map that accurately displays the boundaries of the area of the land where timber is authorized to be harvested and of the landowner's property;

--An aerial photograph that accurately displays those boundaries; or

--A topographical map that accurately displays those boundaries.



The contract must require the landowner to obtain a copy of the deed to the property for purposes of providing evidence of the property boundary and the right of the landowner to enter into the contract.

(3) A provision requiring that the boundary of the area of the land where timber is authorized to be harvested under the contract be physically marked by the landowner or by arrangement of the landowner;

(4) A provision requiring the landowner to certify that the territorial boundary of the area of land where timber is authorized to be harvested that is identified in the contract does not encroach on property that is not owned by the landowner and does not include timber that the landowner is not authorized to sell;

(5) A description of the timber that includes the type, description, category, dimensions, and number of trees to be harvested;

(6) The price or method of determining the price of the timber and the payment terms;

(7) The dates when the timber will be harvested, which must commence not less than one week after the signing of the contract unless the timber is being harvested as a result of storm damage resulting in an emergency;

(8) A provision stating that the timber buyer is responsible for acts and omissions related to the harvesting of timber by an agent, employee, or subcontractor of the timber buyer; and

(9) A provision stating that the landowner may provide written notice to each adjacent landowner in accordance with the bill's provisions requiring such notification (see below).<sup>1</sup>

Under the bill, "timber" means trees, standing or felled, and logs that can be used for sawing or processing into lumber for building or structural purposes or for the manufacture of any article.<sup>2</sup> A landowner is a person who owns the property where timber is to be harvested.<sup>3</sup> A timber grower is the owner, tenant, or manager of land in Ohio who has an interest in, or is entitled to receive any part of the proceeds from, the sale of timber grown on that land and includes a person exercising lawful authority to

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<sup>1</sup> R.C. 1503.313.

<sup>2</sup> R.C. 1503.311(D).

<sup>3</sup> R.C. 1503.311(B).



sell timber for such an owner, tenant, or manager.<sup>4</sup> A timber buyer is 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 the person's own use and not for resale.<sup>5</sup> An agent is an individual who represents a timber buyer in effecting or attempting to effect the purchase of timber.<sup>6</sup>

### **Adjacent landowner notification**

Under the bill, a landowner that enters into a contract with a timber buyer to harvest timber on the landowner's property may, but is not be required to, provide written notice to each adjacent landowner of the contract to have timber harvested. The landowner must provide the notice prior to the commencement of the timber harvest. If notice is provided, it must be provided by certified mail and sent to each adjacent landowner at the address indicated on the tax duplicate for that parcel, inform each adjacent landowner of the contract's existence, and include a description of the territorial boundary of the area of land on the property where timber is proposed to be harvested.

If a landowner provides notice and the identification of the boundaries is accurate and correct, both of the following apply:

(1) The landowner is not liable in any civil action by an adjacent landowner related to the removal of timber from the adjacent landowner's land by the timber buyer who is harvesting timber from the landowner's land pursuant to the contract. The provision of the notice is an affirmative defense to such a civil action.

(2) The landowner cannot be required to enter into negotiations or arbitration for compensation of a landowner on whose land timber was improperly harvested.<sup>7</sup>

## **Regulation of timber buyers**

### **Responsibilities and duties**

The bill establishes requirements with which a timber buyer and any agent of the timber buyer must comply before and during the timber harvest. A timber buyer and any agent must do all of the following:

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<sup>4</sup> R.C. 1503.311(F).

<sup>5</sup> R.C. 1503.311(E).

<sup>6</sup> R.C. 1503.311(A).

<sup>7</sup> R.C. 1503.314.



(1) Employ best management practices for all work that is related to the harvesting of timber under the contract, including minimizing damage to land and the environment, if the Chief of the Division of Forestry establishes best management practices in rules adopted under the bill (see below), or, if such rules are not adopted, employ best efforts to minimize damage to land and the environment.

(2) Maintain records of the work that is related to the timber harvest for six years after the work is completed. The timber buyer or agent must make all such records available for inspection by a forest officer or another law enforcement officer for the purpose of assisting in any investigations regarding alleged thefts of timber. The records must include all of the following:

--A copy of the contract signed by the landowner and the timber buyer;

--A copy of all correspondence, including electronic mail, memoranda, letters, and notes, between the landowner and the timber buyer;

--A copy of all receipts or records of transactions between the landowner and the timber buyer; and

--Documentation of each load of logs removed from the property that includes the description and dimension of each log, the total number of logs, and the recipient of the load. A copy of the documentation must be provided to the landowner and the recipient of the logs.

(3) Prior to the commencement of timber harvesting activities, post a sign prominently and in a conspicuous location on the property where timber harvesting will take place. The sign must include the name of, and contact information for, the timber buyer and the estimated date on which timber harvesting will begin.

(4) Prior to the commencement of timber harvesting activities, obtain GPS coordinates of relevant property corners, monuments, and boundaries if the area from which timber will be harvested is less than 100 feet from the property boundary, and use the coordinates to determine property lines and the perimeter of the harvest area unless the landowner and the adjacent landowners give written consent to proceed without GPS coordinates.<sup>8</sup>

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<sup>8</sup> R.C. 1503.315(A).

The bill authorizes the Chief, by rules adopted in accordance with the Administrative Procedure Act, to establish best management practices for the harvesting of timber on public and private lands.<sup>9</sup>

### **Registration or licensure**

The bill authorizes the Chief, by rules adopted in accordance with the Administrative Procedure Act, to require a timber buyer to be registered with or licensed by the Division of Forestry and to file with the Division a surety bond or another form of security authorized by the Division in an amount that the Division designates.<sup>10</sup>

### **Enforcement**

#### **Prohibitions and criminal penalties**

The bill prohibits a person, without privilege to do so, from recklessly taking or harvesting timber of another without the express or implied consent of the landowner or outside the boundaries specified in a written contract with a landowner.<sup>11</sup> A violator is guilty of one of the following based on the value of the property involved in the violation and the number of violations:

<b>Value of property</b>	<b>Number of violations</b>	<b>Degree of offense</b>
Less than \$1,000	First and second violations	First degree misdemeanor
	Third and subsequent violations	Fifth degree felony
\$1,000 to \$7,499	First and second violations	Fifth degree felony
	Third and subsequent violations	Fourth degree felony
\$7,500 to \$149,999	First and second violations	Fourth degree felony
	Third and subsequent violations	Third degree felony
\$150,000 to \$749,999	First and second violations	Third degree felony
	Third and subsequent violations	Second degree felony

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<sup>9</sup> R.C. 1503.312(G).

<sup>10</sup> R.C. 1503.312(F).

<sup>11</sup> R.C. 1503.316.

Value of property	Number of violations	Degree of offense
\$750,000 to \$1,499,999	First and second violations	Second degree felony
	Third and subsequent violations	First degree felony
\$1,500,000 or more	First and all subsequent violations	First degree felony <sup>12</sup>

The bill states that in addition to the above penalties, if a court orders restitution for such a violation, economic loss includes any incidental damage to the victim's property. Restitution may include reasonable costs of reforestation activities related to the injury sustained by the victim and reasonable costs of remediating incidental damage to the victim's property.<sup>13</sup> Under the bill, the value of timber is the greater of either the replacement value or the fair market value of the timber that was illegally harvested. Replacement value is the cost of purchasing, delivering, and planting a young tree with a caliper of between three and five inches of a similar type and variety as the illegally harvested tree.<sup>14</sup>

The bill additionally prohibits anyone from doing any of the following:

(1) Harvesting timber without a written contract that contains all of the provisions required by the bill;

(2) Knowingly making a false statement in such a written contract; or

(3) Recklessly failing to comply with the responsibilities and duties governing timber buyers and agents established by the bill as discussed above.<sup>15</sup>

A violation of any of those prohibitions is a fourth degree misdemeanor on a first offense and a first degree misdemeanor on each subsequent offense.<sup>16</sup>

The bill states that the above provisions regarding criminal penalties do not preclude prosecution for a violation of any other Ohio law. One or more acts, or series

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<sup>12</sup> R.C. 1503.99(D).

<sup>13</sup> R.C. 1503.99(E).

<sup>14</sup> R.C. 2913.61(D)(3).

<sup>15</sup> R.C. 1503.315(B).

<sup>16</sup> R.C. 1503.99(C).

of acts, or a course of behavior that can be prosecuted under the Division of Forestry Law or another Ohio law may be prosecuted under either or both laws.<sup>17</sup>

The bill modifies the continuing criminal theft statute in regard to timber that has been illegally harvested. Under the bill, if a person commits criminal theft, a court orders restitution, and the stolen property is timber that has been illegally harvested, economic loss includes any incidental damage to the victim's property. Restitution may include reasonable costs of reforestation activities related to the injury sustained by the victim and reasonable costs of remediating incidental damage to the victim's property. The value of timber is the greater of either the replacement value or the fair market value of the illegally harvested timber as discussed above.<sup>18</sup>

Currently, under criminal theft, a person, with purpose to deprive the owner of property or services, cannot knowingly obtain or exert control over either the property or services in any of the following ways: (1) without the consent of the owner or person authorized to give consent, (2) beyond the scope of the express or implied consent of the owner or person authorized to give consent, (3) by deception, (4) by threat, or (5) by intimidation. A person who violates the above prohibition is guilty of theft.<sup>19</sup> The criminal penalties for committing theft are based on the value of the stolen property or services.<sup>20</sup>

### **Office of State Forestry Criminal Investigation and timber theft foresters**

The bill requires the Chief to establish within the Division an Office of State Forestry Criminal Investigation to assist law enforcement agencies, upon request, with investigations of alleged instances of timber theft and conduct other duties as discussed below. It consists of forest officers assigned to it by the Chief. The Chief must ensure that forest officers assigned to the Office receive training that the Chief determines to be appropriate.<sup>21</sup>

Under the bill, the Chief may appoint one or more forest officers to be timber theft foresters whose jurisdiction extends over territory that the Chief determines, subject to the approval of the Director of Natural Resources. A timber theft forester must serve in that position for one year from the date of appointment or until the

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<sup>17</sup> R.C. 1503.99(F).

<sup>18</sup> R.C. 2913.02(B)(12) and 2913.61(D)(3).

<sup>19</sup> R.C. 2913.02(A) and (B)(1).

<sup>20</sup> R.C. 2913.02(B)(2).

<sup>21</sup> R.C. 1503.312(E) and 1503.317.



forester's successor is appointed. The Chief may remove a timber theft forester from that position at any time. A timber theft forester is responsible for investigating alleged timber thefts on private and public lands in Ohio as assigned by the Chief and is not personally liable for any required or authorized act while acting within the scope of the forester's duties as a forester.<sup>22</sup>

Under the bill, the Chief must do all of the following:

- (1) Supervise appointed timber theft foresters;
- (2) Instruct timber theft foresters in their duties;
- (3) Establish policies and procedures governing timber theft investigations; and
- (4) Establish the qualifications and training that are required in order for a forest officer to be appointed a timber theft forester.<sup>23</sup>

### **Enforcement actions**

Under the bill, a law enforcement agency may request the Office to assist in the investigation of alleged instances of timber theft and other violations of the Division of Forestry Law.<sup>24</sup> The bill then states that if a landowner suspects that the landowner's timber has been illegally harvested or that any other violation of that Law has occurred and notifies the Office, the Office must refer the suspected violation to the prosecuting attorney of the applicable county. The referral must be accompanied by a notice that the Office, upon request, will assist in the investigation of the suspected violation.<sup>25</sup>

The prosecuting attorney of the applicable county may request the Attorney General to prosecute a person for a violation of one of the bill's prohibitions. If the prosecuting attorney does not request the Attorney General to prosecute the alleged violation and does not initiate prosecution within 21 days after receiving notice of the alleged violation, the Chief may request the Attorney General to prosecute it. The Attorney General, at the request of the prosecuting attorney of the applicable county or the Chief, or the prosecuting attorney may bring an action enjoining a timber buyer or

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<sup>22</sup> R.C. 1513.312(A), (C), and (D).

<sup>23</sup> R.C. 1513.312(B).

<sup>24</sup> R.C. 1503.317(B).

<sup>25</sup> R.C. 1503.317(C).



any entity that the timber buyer owns from buying timber in Ohio if the timber buyer violates one of the bill's prohibitions on a second or subsequent occurrence.<sup>26</sup>

Additionally, the bill relocates from the Department of Agriculture Law to the Division of Forestry Law the existing prohibition against recklessly cutting down, destroying, girdling, or otherwise injuring a vine, bush, shrub, sapling, tree, or crop standing or growing on the land of another or on public land. It also makes necessary conforming changes.<sup>27</sup>

Continuing law states that anyone violating that prohibition is liable in treble damages for the injury caused. The bill adds that damages may include reasonable costs of reforestation activities related to the injury sustained by the plaintiff, reasonable costs of remediating incidental damages to the plaintiff's property, and costs of litigation, including, but not limited to, investigation costs and attorney fees. If the injury involves timber, its value is the greater of either the replacement value or the fair market value of the timber as discussed above.<sup>28</sup>

Finally, the bill extends the authority of a forest officer to enter on private and public lands to include investigations relating to violations of criminal theft involving timber.<sup>29</sup>

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## HISTORY

ACTION	DATE
Introduced	04-08-14

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<sup>26</sup> R.C. 1503.318.

<sup>27</sup> R.C. 901.99 and 1503.28(A).

<sup>28</sup> R.C. 1503.28(B).

<sup>29</sup> R.C. 1503.29(B)(3).

