

456A.36 Timber buyers.

1. As used in this section, unless the context otherwise requires:

a. "Employee" means a person in service or under contract for hire, expressed or implied, oral or written, who is engaged in any phase of the enterprise or business.

b. "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 an article. However, "*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.

c. "Timber buyer" means a person engaged in the business of buying timber from the timber growers for sawing into lumber, for processing, or for 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. "*Timber buyer*" includes a person who contracts with a timber grower on a shared-profit basis to harvest timber from the timber grower's land.

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

2. A timber buyer shall file with the commission a surety bond signed by the person as principal and a corporate surety authorized to engage in the business of executing surety bonds within the state. In lieu of a corporate surety a timber buyer may, with the approval of the commission, file a bond signed by the timber buyer as principal and accompanied by a bank certificate of deposit in a form approved by the commission showing to the satisfaction of the commission that funds equal to the amount of the required bond are on deposit in a bank to be held by the bank for the period covered by the certificate. The funds shall be made payable upon demand to the director, subject to the provisions of this section, for the use and benefit of the people of the state and for the use and benefit of a timber grower from whom the timber buyer purchased and who is not paid by the timber buyer or for the use and benefit of a timber grower whose timber has been cut by the timber buyer or the timber buyer's agents, and who has not been paid.

The principal amount of the bond shall be ten percent of the total amount paid to timber growers during the preceding year, plus ten percent of the total amount due or delinquent and unpaid to timber growers at the end of the preceding year, and ten percent of the market value of growers' shares of timber harvested during the previous year. However, the total amount of the bond shall be not less than three thousand dollars and not more than fifteen thousand dollars.

The bond or surety shall not be canceled or altered except upon at least sixty days' notice in writing to the commission.

Bonds shall be in the form approved by the director, be conditioned to secure an honest cutting and accounting for timber purchased by the timber buyer, secure payment to the timber growers, and insure the timber growers against all fraudulent acts of the timber buyer in the purchase and cutting of the timber of this state.

If a timber buyer fails to pay when due an amount due a timber grower for timber purchased, or fails to pay legally determined damages for timber wrongfully cut by a timber buyer or the buyer's agent, or commits a violation of this section, an action on the bond for forfeiture may be commenced. The action is not exclusive and is in addition to other legal remedies available.

The timber grower, the owner of timber cut, or the director may bring action on the bond for payment of the amount due from proceeds of the bond in the district court of the county in which the place of business of the

timber buyer is situated or in any other lawful venue.

The attorney general, upon request of the commission, shall institute proceedings to have the bond of the timber buyer forfeited for violation of any of the provisions of this section or for noncompliance with a commission rule. A timber buyer whose bond has been forfeited shall not engage in the business of buying timber for one year after the forfeiture.

If the commission realizes more than the amount of liability from the security, after deducting expenses incurred in converting the security into money, the commission shall pay the excess to the timber buyer who furnished the security.

3. The following are violations of this section:

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

b. For a timber buyer to cut or cause to be cut or appropriate timber not purchased.

c. For a timber buyer to willfully make a false statement in connection with the bond or other information required to be given to the commission or a timber grower.

d. For a timber buyer to fail to honestly account to the timber grower or the commission for timber purchased or cut if the buyer is under a duty to do so.

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

f. For a timber buyer to transport timber without written proof of ownership or the written consent of the owner.

g. For a person to purchase timber without obtaining, prior to taking possession of the timber, written proof of the vendor's ownership of the timber or the written consent of the owner of the timber. The purchaser shall keep the written proof of ownership or consent on file for at least three months from the date the timber was released to the purchaser's possession.

4. *a.* With the written consent of the timber buyer, the commission, its agents and other employees may inspect the premises and records of the timber buyer.

b. If the timber buyer refuses admittance, or if prior to such refusal the director demonstrates the necessity for a warrant, the director may make application under oath to the district court of the county in which the premises or records are located for the issuance of a search warrant.

c. In the application the director shall state that an inspection of the premises or record designated in the application may result in evidence tending to reveal the existence of violations of the provisions of this section or rule issued by the commission pursuant to this section. The application shall describe the premises or records to be inspected, give the date of the last inspection if known, give the date and time of the proposed inspection, declare the need for such inspection, recite that notice of desire to make an inspection has been given to affected persons and that admission was refused if that be the fact, and state that the inspection has no purpose other than to carry out the purpose of the statute or rule pursuant to which inspection is to be made.

d. The court may issue a search warrant, after examination of the applicant and any witnesses, if the court is satisfied that there is probable cause to believe the existence of the allegations contained in the application.

e. In making investigations, examinations, or surveys pursuant to the authority of this subsection, the director

must execute the warrant in a reasonable manner within ten days after its date of issuance.

5. A person who engages in business as a timber buyer without filing a bond or surety with the commission or in violation of any of the provisions of this section, or a timber buyer who refuses to permit inspection of premises, books, accounts, or records as provided in this section is guilty of a serious misdemeanor.

6. The commission may promulgate rules as necessary to carry out the provisions of this section.

7. The commission may, by application to a district court, obtain an injunction restraining a person who engages in the business of timber buying in this state from engaging in the business until that person complies with this section. Upon refusal or neglect to obey the order of the court, the court may compel obedience by proceedings for contempt.

[C81, § 107.36]

C93, § 456A.36

96 Acts, ch 1073, § 1, 2