

Reprinted 4/10

MAR 23 1979

HOUSE FILE 717

Place On Calendar

By COMMITTEE ON NATURAL RESOURCES

(Formerly Study Bill 203)

Passed House, Date 4-6-79 (p. 1417) Passed Senate, Date _____
Vote: Ayes 86 Nays 5 Vote: Ayes _____ Nays _____
Approved _____

A BILL FOR

- 1 An Act relating to timber buyers and providing penalties.
- 2 BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF IOWA:
- 3
- 4
- 5
- 6
- 7
- 8
- 9
- 10
- 11
- 12
- 13
- 14
- 15

717

HOUSE FILE 717

H-3756

- 1 Amend House File 717 as follows:
- 2 1. Page 3, by inserting after line 27 the
- 3 following new paragraph:
- 4 "g. For a person to purchase timber without
- 5 obtaining, prior to taking possession of the timber,
- 6 written proof of the vendor's ownership of the
- 7 timber or the written consent of the owner of the
- 8 timber. The purchaser shall keep the written proof
- 9 of ownership or consent on file for at least three
- 10 months from the date the timber was released to
- 11 the purchaser's possession."

H-3756 FILED Adopted 4/6 (p. 1416) BY WELSH of Dubuque
APRIL 5, 1979

1 Section 1. Chapter one hundred seven (107), Code 1979,
2 is amended by adding the following new section:

3 NEW SECTION. TIMBER BUYERS.

4 1. As used in this Act, unless the context otherwise
5 requires:

6 a. "Timber" means trees, standing or felled, and logs
7 which can be used for sawing or processing into lumber for
8 building or structural purposes or for the manufacture of
9 an article. However, "timber" does not include firewood,
10 Christmas trees, fruit or ornamental trees or wood products
11 not used or to be used for building, structural, manufactur-
12 ing or processing purposes.

13 b. "Timber buyer" means a person engaged in the business
14 of buying timber from the timber growers for sawing into
15 lumber, for processing or for resale, but does not include
16 a person who occasionally purchases timber for sawing or pro-
17 cessing for the person's own use and not for resale.

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

23 d. "Employee" means a person in service or under contract
24 for hire, expressed or implied, oral or written, who is en-
25 gaged in any phase of the enterprise or business.

26 2. A timber buyer shall file with the commission a surety
27 bond signed by the person as principal and a corporate surety
28 authorized to engage in the business of executing surety bonds
29 within the state. In lieu of a corporate surety a timber
30 buyer may, with the approval of the commission, file a bond
31 signed by the timber buyer as principal and accompanied by
32 a bank certificate of deposit in a form approved by the
33 commission showing to the satisfaction of the commission that
34 funds equal to the amount of the required bond are on deposit
35 in a bank to be held by the bank for the period covered by

1 the certificate. The funds shall be made payable upon demand
2 to the director, subject to the provisions of this Act, for
3 the use and benefit of the people of the state and for the
4 use and benefit of a timber grower from whom the timber buyer
5 purchased and who is not paid by the timber buyer or for the
6 use and benefit of a timber grower whose timber has been cut
7 by the timber buyer or the timber buyer's agents, and who
8 has not been paid.

9 The bond shall be in the principal amount of five hundred
10 dollars for a timber buyer who paid timber growers five
11 thousand dollars or less for timber during the preceding year,
12 and an additional one hundred dollars for each additional
13 one thousand dollars or fraction thereof paid to timber growers
14 for timber purchased during the preceding year, but shall
15 not be more than ten thousand dollars. In the case of a
16 timber buyer not previously engaged in business as a timber
17 buyer, the amount of the bond shall be based on the estimated
18 dollar amount to be paid by the timber buyer to timber growers
19 for timber purchased during the next succeeding year.

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

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

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

35 The timber grower, the owner of timber cut or the director

1 may bring action on the bond for payment of the amount due
2 from proceeds of the bond in the district court of the coun-
3 ty in which the place of business of the timber buyer is si-
4 tuated or in any other lawful venue.

5 The attorney general, upon request of the commission, shall
6 institute proceedings to have the bond of the timber buyer
7 forfeited for violation of any of the provisions of this Act
8 or for noncompliance with a commission rule.

9 If the commission realizes more than the amount of li-
10 ability from the security, after deducting expenses incurred
11 in converting the security into money, the commission shall
12 pay the excess to the timber buyer who furnished the security.

13 3. The following are violations of this Act:

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

16 b. For a timber buyer to cut or cause to be cut or ap-
17 propriate timber not purchased.

18 c. For a timber buyer to willfully make a false state-
19 ment in connection with the bond or other information required
20 to be given to the commission or a timber grower.

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

24 e. For a timber buyer to commit a fraudulent act in con-
25 nection with the purchase or cutting of timber.

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

3756
28 4. Upon receiving a complaint that a timber buyer has
29 violated this Act, the commission may inspect the premises
30 used by a timber buyer in the conduct of the buyer's business
31 at any reasonable time and the books, accounts, records and
32 papers of a timber buyer shall at all times during business
33 hours be subject to inspection by the commission.

34 5. A person who engages in business as a timber buyer
35 without filing a bond or surety with the commission or in

1 violation of any of the provisions of this Act, or a timber
2 buyer who refuses to permit inspection of premises, books,
3 accounts or records as provided in this Act is guilty of a
4 serious misdemeanor.

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

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

13 Sec. 2. This Act is effective January first following
14 its enactment.

15 EXPLANATION

16 This bill provides for the bonding of timber buyers. The
17 program is administered by the Iowa state conservation
18 commission. Each timber buyer is required to file a bond
19 or certificate of deposit with the commission. The amount
20 of the bond is determined by the amount of business done by
21 the timber buyer. A timber grower or owner may take action
22 against the bond for damages. Certain fraudulent acts by
23 timber buyers are prohibited. The timber buyer is subject
24 to proceedings for revocation of the bond, injunctions, and
25 a criminal penalty of a serious misdemeanor.

26
27
28
29
30
31
32
33
34
35

Sen. Natural Resources 4/11

HOUSE FILE 717

Amend per 5655 to Pass 4/3 (p. 1291)

By COMMITTEE ON NATURAL RESOURCES

(As Amended and Passed by the House)

Passed House, Date 4-26/80 (p. 2185) Passed Senate, Date 4/14/80 (p. 1420)

Vote: Ayes 84 Nays 0 Vote: Ayes 48 Nays 0

Approved May 17 1980

A BILL FOR

1 An Act relating to timber buyers and providing penalties.

2 BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF IOWA:

3

4

5

6

7

8

9

10

11

12

13

14

15

16

17

18

19

20

21

22

23

24

25

_____ House Amendments

1 Section 1. Chapter one hundred seven (107), Code 1979,
2 is amended by adding the following new section:

3 NEW SECTION. TIMBER BUYERS.

4 1. As used in this Act, unless the context otherwise
5 requires:

6 a. "Timber" means trees, standing or felled, and logs
7 which can be used for sawing or processing into lumber for
8 building or structural purposes or for the manufacture of
9 an article. However, "timber" does not include firewood,
10 Christmas trees, fruit or ornamental trees or wood products
11 not used or to be used for building, structural, manufactur-
12 ing or processing purposes.

13 b. "Timber buyer" means a person engaged in the business
14 of buying timber from the timber growers for sawing into
15 lumber, for processing or for resale, but does not include
16 a person who occasionally purchases timber for sawing or pro-
17 cessing for the person's own use and not for resale.

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

23 d. "Employee" means a person in service or under contract
24 for hire, expressed or implied, oral or written, who is en-
25 gaged in any phase of the enterprise or business.

26 2. A timber buyer shall file with the commission a surety
27 bond signed by the person as principal and a corporate surety
28 authorized to engage in the business of executing surety bonds
29 within the state. In lieu of a corporate surety a timber
30 buyer may, with the approval of the commission, file a bond
31 signed by the timber buyer as principal and accompanied by
32 a bank certificate of deposit in a form approved by the
33 commission showing to the satisfaction of the commission that
34 funds equal to the amount of the required bond are on deposit
35 in a bank to be held by the bank for the period covered by

1 the certificate. The funds shall be made payable upon demand
2 to the director, subject to the provisions of this Act, for
3 the use and benefit of the people of the state and for the
4 use and benefit of a timber grower from whom the timber buyer
5 purchased and who is not paid by the timber buyer or for the
6 use and benefit of a timber grower whose timber has been cut
7 by the timber buyer or the timber buyer's agents, and who
8 has not been paid.

9 The bond shall be in the principal amount of five hundred
10 dollars for a timber buyer who paid timber growers five
11 thousand dollars or less for timber during the preceding year,
12 and an additional one hundred dollars for each additional
13 one thousand dollars or fraction thereof paid to timber growers
14 for timber purchased during the preceding year, but shall
15 not be more than ten thousand dollars. In the case of a
16 timber buyer not previously engaged in business as a timber
17 buyer, the amount of the bond shall be based on the estimated
18 dollar amount to be paid by the timber buyer to timber growers
19 for timber purchased during the next succeeding year.

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

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

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

35 The timber grower, the owner of timber cut or the director

1 may bring action on the bond for payment of the amount due
2 from proceeds of the bond in the district court of the coun-
3 ty in which the place of business of the timber buyer is si-
4 tuated or in any other lawful venue.

5 The attorney general, upon request of the commission, shall
6 institute proceedings to have the bond of the timber buyer
7 forfeited for violation of any of the provisions of this Act
5655>8 or for noncompliance with a commission rule.

9 If the commission realizes more than the amount of li-
10 ability from the security, after deducting expenses incurred
11 in converting the security into money, the commission shall
12 pay the excess to the timber buyer who furnished the security.

13 3. The following are violations of this Act:

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

16 b. For a timber buyer to cut or cause to be cut or ap-
17 propriate timber not purchased.

18 c. For a timber buyer to willfully make a false state-
19 ment in connection with the bond or other information required
20 to be given to the commission or a timber grower.

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

24 e. For a timber buyer to commit a fraudulent act in con-
25 nection with the purchase or cutting of timber.

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

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

5785 35 4. Upon receiving a complaint that a timber buyer has

1 violated this Act, the commission may inspect the premises
2 used by a timber buyer in the conduct of the buyer's business
3 at any reasonable time and the books, accounts, records and
4 papers of a timber buyer shall at all times during business
5 hours be subject to inspection by the commission.

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

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

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

20 Sec. 2. This Act is effective January first following
21 its enactment.

22
23
24
25
26
27
28
29
30
31
32
33
34
35

HOUSE FILE 717

S-5655

1 Amend House File 717 as amended, passed and
2 reprinted by the House as follows:
3 1. Page 3, line 8, by inserting after the word
4 "rule." the words "A timber buyer whose bond has been
5 forfeited shall not engage in the business of buying
6 timber for one year after the forfeiture."

S-5655 FILED
APRIL 3, 1980

BY COMMITTEE ON NATURAL RESOURCES
ELIZABETH MILLER, CHAIRPERSON

Adopted 4/11/80 (p. 1420)

HOUSE FILE 717

S-5725

1 Amend House File 717 as amended, passed and
2 reprinted by the House as follows:
3 1. Page 3, by striking line 35 through page 4,
4 line 5, and inserting in lieu thereof the following:
5 "4. a. With the written consent of timber buyer,
6 the commission, its agents and other employees may
7 inspect the premises and records of the timber buyer.
8 b. If the timber buyer refuses admittance, or
9 if prior to such refusal the director demonstrates
10 the necessity for a warrant, the director may make
11 application under oath to the district court of the
12 county in which the premises or records are located
13 for the issuance of a search warrant.
14 c. In the application the director shall state
15 that an inspection of the premises or record designated
16 in the application may result in evidence tending
17 to reveal the existence of violations of the provisions
18 of this Act or rule issued by the commission pursuant
19 to this Act. The application shall describe the
20 premises or records to be inspected, give the date
21 of the last inspection if known, give the date and
22 time of the proposed inspection, declare the need
23 for such inspection, recite that notice of desire
24 to make an inspection has been given to affected
25 persons and that admission was refused if that be
26 the fact, and state that the inspection has no purpose
27 other than to carry out the purpose of the statute
28 or rule pursuant to which inspection is to be made.
29 d. The court may issue a search warrant, after
30 examination of the applicant and any witnesses, if
31 the court is satisfied that there is probable cause
32 to believe the existence of the allegations contained
33 in the application.
34 e. In making investigations, examinations or
35 surveys pursuant to the authority of this subsection,
36 the director must execute the warrant in a reasonable
37 manner within ten days after its date of issuance."

S-5725 FILED
APRIL 14, 1980

BY DALE TIEDEN

ADOPTED *(p. 1420)*

SENATE AMENDMENT TO
HOUSE FILE 717

H-6094

1 Amend House File 717 as amended, passed and
2 reprinted by the House as follows:

3 1. Page 3, line 8, by inserting after the word
4 "rule." the words "A timber buyer whose bond has been
5 forfeited shall not engage in the business of buying
6 timber for one year after the forfeiture."

7 2. Page 3, by striking line 35 through page 4,
8 line 5, and inserting in lieu thereof the following:

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

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

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

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

38 e. In making investigations, examinations or
39 surveys pursuant to the authority of this subsection,
40 the director must execute the warrant in a reasonable
41 manner within ten days after its date of issuance."

H-6094 FILED APRIL 16, 1980

RECEIVED FROM THE SENATE

Have concurred 4/26 (p. 2134)

HOUSE FILE 717

AN ACT

RELATING TO TIMBER BUYERS AND PROVIDING PENALTIES.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF IOWA:

Section 1. Chapter one hundred seven (107), Code 1979, is amended by adding the following new section:

NEW SECTION. TIMBER BUYERS.

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

a. "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.

b. "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.

c. "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.

d. "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.

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 Act, 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 bond shall be in the principal amount of five hundred dollars for a timber buyer who paid timber growers five thousand dollars or less for timber during the preceding year, and an additional one hundred dollars for each additional one thousand dollars or fraction thereof paid to timber growers for timber purchased during the preceding year, but shall not be more than ten thousand dollars. In the case of a timber buyer not previously engaged in business as a timber buyer, the amount of the bond shall be based on the estimated dollar amount to be paid by the timber buyer to timber growers for timber purchased during the next succeeding year.

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 Act,

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 Act 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 Act:

- 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 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 Act or rule issued by the commission pursuant to this Act. 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 Act, or a timber buyer who refuses to permit inspection of premises, books, accounts or records as provided in this Act is guilty of a serious misdemeanor.

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

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 Act. Upon refusal or neglect to obey the order of the court, the court may compel obedience by proceedings for contempt.

Sec. 2. This Act is effective January first following its enactment.

WILLIAM H. HARBOR
Speaker of the House

TERRY E. BRANSTAD
President of the Senate

I hereby certify that this bill originated in the House and is known as House File 717, Sixty-eighth General Assembly.

BRUCE GRAHAM
Assistant Chief Clerk of the House

Approved May 17, 1980

ROBERT D. RAY
Governor

H.F. 717