

Senate proposal of amendment

H. 355

An act relating to licensing and regulating foresters

The Senate proposes to the House to amend the bill by striking out all after the enacting clause and inserting in lieu thereof the following:

Sec. 1. 3 V.S.A. § 122 is amended to read:

§ 122. OFFICE OF PROFESSIONAL REGULATION

An Office of Professional Regulation is created within the Office of the Secretary of State. The Office shall have a director who shall be appointed by the Secretary of State and shall be an exempt employee. The following boards or professions are attached to the Office of Professional Regulation:

* * *

(35) ~~[Repealed.]~~ Foresters

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Sec. 2. 26 V.S.A. chapter 95 is added to read:

CHAPTER 95. FORESTERS

Subchapter 1. General Provisions

§ 4901. PURPOSE AND EFFECT

In order to implement State policy and safeguard the public welfare, a person shall not engage in the practice of forestry unless currently licensed under this chapter.

§ 4902. DEFINITIONS

As used in this chapter:

(1) “Director” means the Director of the Office of Professional Regulation.

(2) “Disciplinary action” means any action taken against a licensee for unprofessional conduct.

(3) “Forester” means a person who is licensed to practice forestry under this chapter.

(4)(A) “Forestry” means the science, art, and practice of creating, managing, using, and conserving forests and associated resources to meet desired goals, needs, and values, including timber management, wildlife management, biodiversity management, and watershed management. Forestry science consists of those biological, physical, quantitative, managerial, and social sciences that are applied to forest management. Forestry services

include investigations, consultations, timber inventory, and appraisal, development of forest management plans, and responsible supervision of forest management or other forestry activities on public or private lands.

(B) "Forestry" does not include services for the physical implementation of cutting, hauling, handling, or processing of forest products or for the physical implementation of silvicultural treatments and practices.

(5) "License" means a current authorization granted by the Director permitting the practice of forestry pursuant to this chapter.

(6) "SAF" means the Society of American Foresters.

§ 4903. PROHIBITIONS; OFFENSES

(a) It shall be a violation of this chapter for any person, including any corporation, association, or individual, to:

(1) sell or fraudulently obtain or furnish any forestry degree, diploma, certificate of registration, license, or any other related document or record or to aid or abet in so doing;

(2) practice forestry under cover of any degree, diploma, registration, license, or related document or record illegally or fraudulently obtained, or signed or issued unlawfully or under fraudulent representation;

(3) practice forestry unless licensed to do so under the provisions of this chapter;

(4) represent himself or herself as being licensed in this State to practice forestry or use in connection with a name any words, letters, signs, or figures that imply that a person is a forester when not licensed under this chapter; or

(5) practice forestry during the time a license issued under this chapter is suspended or revoked.

(b) Any person violating this section shall be subject to the penalties provided in 3 V.S.A. § 127.

(c) When considering a violation of this chapter, the Director shall recognize that, in appropriate circumstances, loggers and log buyers may make investigations, consultations, timber inventories, and appraisals and may responsibly conduct harvesting activities on private land.

§ 4904. EXEMPTIONS

The following shall not require a license under this chapter:

(1) An individual, college or university, family, family trust, or business from practicing forestry on his, her, or its own lands, provided that a business may only practice forestry on an aggregate of not more than 400 acres of its own lands.

(2) The practice of any other occupation or profession by a person duly licensed or otherwise authorized under the laws of this State.

(3)(A) An individual from carrying out forest practices when acting under the general supervision of a forester or acting as an expert consultant on work related to forestry, such as forest certification audits or the study of hydrology or wildlife biology.

(B) As used in subdivision (A) of this subdivision (3), “general supervision” means the forester need not be on-site when the individual performs the work described in subdivision (A), but shall maintain continued involvement in and accept professional responsibility for that work.

(4) Unlicensed professional activities within or relating to forests, if such activities do not involve the application of forestry principles or judgment and do not require forestry education, training, and experience to ensure competent performance.

Subchapter 2. Administration

§ 4911. DUTIES OF THE DIRECTOR

(a) The Director shall:

(1) provide general information to applicants for licensure as foresters;

(2) receive applications for licensure and provide licenses to applicants qualified under this chapter;

(3) provide standards and approve education programs for applicants and for the benefit of foresters who are reentering practice following a lapse of five or more years;

(4) administer fees as established by law;

(5) refer all disciplinary matters to an administrative law officer;

(6) renew, revoke, and reinstate licenses as ordered by an administrative law officer; and

(7) explain appeal procedures to licensed foresters and to applicants, and complaint procedures to the public.

(b) The Director may adopt rules necessary to perform his or her duties under this section.

§ 4912. ADVISOR APPOINTEES

(a)(1) The Secretary of State shall appoint three foresters for five-year staggered terms to serve at the Secretary’s pleasure as advisors in matters relating to forestry. One of the initial appointments shall be for less than a five-year term.

(2) An appointee shall have not less than ten years' experience as a forester immediately preceding appointment; shall be licensed as a forester in Vermont; and shall be actively engaged in the practice of forestry in this State during incumbency.

(b) The Director shall seek the advice of the forestry advisor appointees in carrying out the provisions of this chapter.

Subchapter 3. Licenses

§ 4921. QUALIFICATIONS FOR LICENSURE

Applicants for licensure shall qualify under one of the following paths to licensure:

(1) Possession of a bachelor's degree, or higher, in forestry from a program approved by the Director, satisfactory completion of two years of the SAF Certified Forester experience requirements, and passage of the SAF Certified Forester examination, which may include a State portion if required by the Director by rule.

(2) Possession of a bachelor's degree, or higher, in a forestry-related field from a program approved by the Director, satisfactory completion of three years of the SAF Certified Forester experience requirements, and passage of the SAF Certified Forester examination, which may include a State portion if required by the Director by rule.

(3) Possession of an associate degree in forestry from a program approved by the Director, satisfactory completion of four years of the SAF Certified Forester experience requirements, and passage of the SAF Certified Forester examination, which may include a State portion if required by the Director by rule.

(4) Possession of a valid registration or license to engage in the practice of forestry issued by the appropriate regulatory authority of a state, territory, or possession of the United States, or the District of Columbia, based on requirements and qualifications shown by the application to be equal to or greater than the requirements of this chapter. Such an applicant may be examined on forestry matters peculiar to Vermont and may be granted a license at the discretion of the Director.

§ 4922. APPLICATIONS FOR LICENSURE

Applications for licensure shall be on forms provided by the Director. Each application shall contain a statement under oath showing the applicant's education, forestry experience, and other pertinent information required by the Director. Applications shall be accompanied by the required fee.

§ 4923. ISSUANCE OF LICENSES

The Director shall issue a license, upon payment of the fees prescribed in this chapter, to any applicant who has satisfactorily met all the requirements of this chapter.

§ 4924. RENEWALS

(a) Licenses shall be renewed every two years upon payment of the renewal fee.

(b) Biennially, the Director shall provide notice to each licensee of license expiration and renewal requirements. Upon receipt of the completed form and the renewal fee, the Director shall issue a new license.

(c) As a condition of renewal, the Director shall require that a licensee establish that he or she has completed continuing education, as approved by the Director, of 24 hours for each two-year renewal period.

(d) The Director may reinstate the license of an individual whose license has expired upon payment of the required fee and reinstatement penalty, provided the individual has satisfied all the requirements for renewal, including continuing education.

§ 4925. LICENSE AND RENEWAL FEES

Applicants and persons regulated under this chapter shall pay those fees set forth in 3 V.S.A. § 125(b).

§ 4926. UNPROFESSIONAL CONDUCT

(a) The Director may deny an application for licensure or relicensure; revoke or suspend any license to practice forestry issued under this chapter; or discipline or in other ways condition the practice of a licensee upon due notice and opportunity for hearing in compliance with the provisions of 3 V.S.A. chapter 25 if the person engages in the following conduct or the conduct set forth in 3 V.S.A. § 129a:

(1) has made or caused to be made a false, fraudulent, or forged statement or representation in procuring or attempting to procure registration or renew a license to practice forestry;

(2) whether or not committed in this State, has been convicted of a crime related to the practice of forestry or a felony that evinces an unfitness to practice forestry;

(3) is unable to practice forestry competently by reason of any cause;

(4) has willfully or repeatedly violated any of the provisions of this chapter;

(5) is habitually intemperate or is addicted to the use of habit-forming drugs capable of impairing the exercise of professional judgment;

(6) engages in conduct of a character likely to deceive, defraud, or harm the public; or

(7) aiding, abetting, encouraging, or negligently causing a substantial violation of the statutes or rules of the Vermont Department of Forests, Parks and Recreation.

(b) Any person or institution aggrieved by any action of the Director under this section may appeal as provided in 3 V.S.A. § 130a.

(c) A person shall not be liable in a civil action for damages resulting from the good faith reporting of information to the Director about incompetent, unprofessional, or unlawful conduct of a forester.

Sec. 3. TRANSITIONAL PROVISIONS; ADVISOR APPOINTEES; LICENSING OF CURRENT FORESTERS

(a) Advisor appointees. Notwithstanding the provision of 26 V.S.A. § 4912 in Sec. 2 of this act that requires an advisor appointee to be a licensed forester in Vermont, an initial advisor appointee may be in the process of applying for licensure as a forester in this State if he or she otherwise is eligible for licensure as a forester under this act.

(b) Licensing of current foresters.

(1) The Director of the Office of Professional Regulation shall establish a procedure whereby:

(A) an individual who can demonstrate a record of full-time forestry practice for at least eight of the ten years immediately preceding the effective date of Sec. 2 of this act may become licensed as a forester:

(i) without examination, if he or she possesses one of the degrees described in 26 V.S.A. § 4921(1)–(3) (qualifications for licensure) in Sec. 2 of this act; or

(ii) without possessing a degree described in 26 V.S.A. § 4921(1)–(3) in Sec. 2 of this act, if he or she passes the Society of American Foresters (SAF) Certified Forester Examination, which may include a State portion if required by the Director by rule; or

(B) an individual may become licensed as a forester without examination or possession of one of the degrees described in 26 V.S.A. § 4921(1)–(3) in Sec. 2 of this act, if he or she is determined by the Director, after due consultation with the advisor appointees, to have demonstrated through a peer-review process and production of such documentation as the Director may require, that he or she possesses both significant experience and

forestry competencies commensurate to those of an individual eligible for licensure pursuant to Sec. 2 of this act.

(2) In addition to the ability of an individual to become licensed as a forester under the provisions of subdivision (1) of this subsection, an individual shall be eligible for expedited licensure if he or she is an SAF Certified Forester, active and in good standing.

(3) Any person licensed under this section shall thereafter be eligible for license renewal pursuant to 26 V.S.A. § 4924.

(4) The ability of a person to become licensed under the provisions of this section shall expire on January 1, 2019.

Sec. 4. EFFECTIVE DATES

This act shall take effect on passage, except that Secs. 1 (amending 3 V.S.A. § 122) and 2 (adding 26 V.S.A. chapter 95) shall take effect on July 1, 2016.