



Timber Security Law – What does it mean?



Georgia Forestry
Commission

2014



Overview – of Timber Sales in Georgia

- ✓ 91% of Timberland in Georgia is privately owned – 22.4 million acres (of our 24.7 million acre forest)
 - ✓ “Timberland” means the timber is available for harvest without constraints
 - ✓ The most acreage of any state!
- ✓ Many western states (including Alaska) have more acres in forest, but most is government owned or protected from timber harvesting
- ✓ Approximately 7,500 unique timber sales occur annually
 - ✓ 750,000 – 1 million acres / year have some harvesting
- ✓ 12 year average = \$564 million / year (Dept of revenue)

Most of Georgia's timberland is privately owned .The MOST in the Country!

We don't really know how many timber sales occur in Georgia each year but it has been estimated at 7,500. Forest Inventory Data, however, does indicate the number of acres that have some type of harvesting. In recent years this has varied from $\frac{3}{4}$ of a million to a million acres annually.

The value is significant and ad valorem taxes on timber harvested has averaged \$564 million / year

Most timber transactions occur with no problems, but as in any enterprise there are a few bad actors



House Bill 790 - History

Georgia Forestry Association established a Timber Security Task Force (2011) which examined the issue and pushed toward establishing the House Study committee legislation in 2013

Bill Guthrie (Weyerhaeuser) Chaired task force

Steve McWilliams, President, GFA

Georgia House of Representatives Study Committee

explored the issue – summer and fall 2013 and provided report of recommendations :

Rep Wendell Willard 51st, Chair

Rep Chuck Williams 119th

Rep Ellis Black 174th

Rep Chad Nimmer 178th

Mitch Ralston, Sheriff, Gordon County

Sandy Sparks, President, Sparks Lumber Company, Ellijay

With Georgia leading the nation in many forestry aspects, forestry professionals recognized the need for a clear path for landowner complaints and resolution when timber transaction complaints arise. Many local law enforcement agencies viewed these a civil matters and almost all cases went without any type of criminal investigation. Georgia Forestry Association sensed this need which led to the formation of the Timber Security task force. This group looked at the problems, how other states (that have effective timber theft resolution programs) are handling, and eventually brought the issue to legislators.

Through GFA s encouragement, the House introduced a bill in 2013 that formed a study committee on the issue and this group (chaired by Wendell Willard of the 51st district) met multiple times over the period from summer through fall. This group included legislators that had previously been concerned with timber issues and property lines (Ellis Black) as well as one legislator who was previously a Tree Farmer of the Year in Georgia (Chuck Williams). Rep Chad Nimmer is also a forest landowner and well versed in timber sales. The study committee also included Sheriff Mitch Ralston (Gordon County Sheriff) to insure the law enforcement sector was represented and Sandy Sparks (Sparks Lumber Company) to insure the wood using industry was represented.



House Bill 790 - History

Georgia House of Representatives introduced Bill 790:

- | | |
|---|---|
| (1) <i>Williams, Chuck 119th</i> | (2) <i>Willard, Wendell 51st</i> |
| (3) <i>Golick, Rich 40th</i> | (4) <i>Black, Ellis 174th</i> |
| (5) <i>Nimmer, Chad 178th</i> | (6) <i>Smith, Lynn 70th</i> |

- ✓ Passed both branches of the legislature with only 2 dissenting votes
- ✓ Governor signed into law

The work done by the study committee led to the crafting of House Bill 790 (introduced in January 2014)

The legislation was sponsored by these representatives with Rep Chuck Williams as the key sponsor. It passed overwhelmingly in both the senate and the house and the minor changes in the Senate were adopted by the house.

Governor Deal signed this into law late April 2014

Members of the Georgia Sheriffs Association reviewed and approved of the bill



House Bill 790 - Highlights

GFC Investigators - Enforce Forestry Laws

Relating to the Protection, Security, Conservation, or Sale of Forest/Timber Resources

- GFC Investigators shall be POST certified Peace Officers
- GFC Law Enforcement Has Primarily dealt with arson
- Four Full Time Investigators
- No additional funding provided...



We will cover a few key highlights briefly with the next couple of slides and then revisit the major ones to provide more details of each.

GFC already has a limited number of POST certified Investigators who have to date only had authority to pursue arson cases. These authorities have now been expanded to include forestry laws which certainly include timber transactions.

Forestry Laws is defined as relating to forestry or timber resources and the protection, security, conservation, or sale of such resources.

It should be noted that Georgia already has vigorous laws as they pertain to theft, fraud, deception, conspiracy, and other actions and timber theft may involve these plus other statutes in some cases. This means that these existing laws haven't changed so they are enforceable retroactively (for the 4 year statute of limitations the GFC can now investigate).



House Bill 790 - Highlights

Civil Penalties for Unauthorized Harvest the Victim may Recover:

- Three Times the Fair Market Value
- Three Times the Diminished Value of Damaged Trees
- Reasonable Reforestation Costs
- Attorney and Litigation Fees



If Willful, Victim may also recover Punitive Damages

Four Year Statute of Limitations to recover damages from an unauthorized timber cutting

The previous timber trespass statute only allowed for actual stumpage value to be recovered, unless it could be proven the action was intentional, which allowed for additional values. This was vague so statute was amended to include three times the fair market value, plus three times the value of damaged trees, reasonable reforestation costs, and attorney/litigation fees.

Changes in the statute were made for several reasons, but primarily to deter timber trespass and to ensure victims are compensated properly.

Additionally, Punitive Damages may be awarded if the trespass was determined to have been willful.

Punitive Damages Laymen s Terms - *Monetary compensation awarded to an injured party that goes beyond that which is necessary to compensate the individual for losses and that is intended to punish the wrongdoer.*

HB 790 mandates there is a 4-year statute of limitations for the unauthorized cutting and removal of timber situations. This is to balance the rights of a landowner who may not visit their property legally, with a timber harvester/buyer who should not be held accountable for decades old acts.



House Bill 790 - Highlights

A Scale Ticket must be provided for each load and **payment within 20 days of harvest** - for per unit sales (payment was already required under O.C.G.A 16-9-58)

- Scale Ticket has always been required, but there was no timeframe associated.

Unintended Harvest Protection for Landowners – provision to reduce liability if property lines are clearly marked, a survey is conducted, or the adjacent landowner agrees to lines...

(not a requirement for a harvest though)

Georgia has had a scale ticket law for many years that indicates for landowners that sell on a per unit basis, the buyer must provide a copy of the scale ticket for every load harvested. The problem was there was no deadline attached to the statute. HB 790 closes this loop hole by requiring the ticket to be issued (for per unit harvests) within 20 days. There is an existing statute (known as the ag chattels law) that says when any ag product including timber, is harvested on a unit basis and there is a written contract, payment must be made within 20 days. The scale ticket timeline mimics this same timeline.

There are provisions for limiting the liability for landowners selling timber if a timber harvest crosses their property line onto their neighbor. It basically says that if the boundary line is clearly marked, there is a survey, or if the adjacent landowner agrees with the location of the boundary line, it limits the liability of the landowner. Please note that this in no way **REQUIRES** the land to be surveyed nor does it **REQUIRE** a certain method of designating or marking the boundary. The GFC hopes that every landowner provides their own due-diligence in determining accurate boundary locations and clearly marking them prior to a harvest.



House Bill 790 – unauthorized cutting

The new law includes multiple provisions,

Some are criminal while others are civil

Boundary line disputes – cutting over the property line, or perhaps landowners disagree where line is:

- Often civil and settled either out of court or via tort
- Not criminal in most cases
- If the property line is in dispute, that must be resolved prior to any criminal action. Most likely with a survey or civil action.
- HB 790 is clear – if you cut trees without permission, you are entitled to treble damages.
- Reduced Landowner Liability for landowners during the harvest of their timber.

Parts of the new law imply criminal investigations which could lead to arrest and prosecution, while other sections imply situations that will likely be resolved in civil actions. Boundary line issues can fall into many categories with almost each situation being unique.

The law is now clear if trees are harvested without legal authorization, irregardless of intentions, the owner is entitled to three times the stumpage value.

The law also offers some degree of liability protection for landowners that clearly mark their boundaries, have a survey, or adjacent landowners agree upon the property lines. The law indicates that the lines should be marked Such that a reasonable person would know or should have known of the existence of such markings when harvesting the timber . An agreed-upon line must be a written agreement and has to be provided to the harvester.



House Bill 790 – unauthorized cutting

Boundary line disputes – continued

- GFC does not anticipate criminal charges in most cases, but could investigate if circumstances indicate the need
- Path to civil resolutions may include hiring a surveyor, obtaining stump cruise and value for timber removed and either negotiating a value or letting a court decide



For many situations involving boundary line disputes, especially when it is apparent that a survey was needed and the parties negotiate a settlement or take action in civil actions to resolve, we don't anticipate GFC Law Enforcement involvement.

Each circumstance is different so this doesn't mean we would never be involved in these types of discrepancies.



Per unit sales

§ 12-6-23 – landowners **SHALL** receive an accurate scale ticket for **EVERY LOAD** harvested when timber is sold by weight

- ✓ This scale ticket must be provided to the seller within 20 days – HB790
- ✓ The information on the ticket must be accurate (including landowner and tract name)
- ✓ Not providing the ticket within the timeline or providing inaccurate information is a misdemeanor for each load

§ 16-9-58 – mandates **payment of ag products within 20 days** of receipt or by date of written contract

- ✓ If value exceeds \$500, this is a felony

For timber sold on a per-unit basis, we've had a scale ticket law on the books for several decades, and the new HB 790 doesn't change this except putting the 20-day deadline to issue it to the seller (same as with payment as the ag chattels law mandates).

The information shall be accurate to the best knowledge of the producer and shall not be knowingly mis-represented.

If the scale ticket is not provided or if it is knowingly inaccurate, this is a misdemeanor

If the timber harvested is not paid for within 20 days or by the date specified in a written contract, it is a criminal offense and if the value exceeds \$500, it is a felony



House Bill 790 – Scale Ticket law (§ 12-6-23)

Info that must be included on the scale ticket:

1. Ticket number
2. Name and location of the person or company and its facility where the load of wood is received and weighed or measured
3. Date wood was received at said facility
- 4. Tract name**
5. County and state of origin
6. Dealer name (if any)
7. Producer or logging company name
8. Species of wood

The information that must be included on the scale ticket

None of this information has changed, but we want to emphasize that the information the logger / timber buyer / truck driver provides the receiving mill should be accurate.

Knowingly providing wrong information could result in misdemeanor charges

This includes providing an accurate tract name _In the past some timber harvesters did not always have a correct tract name on all of the scale tickets for various reasons.



House Bill 790 – Scale Ticket law (§ 12-6-23)

Info that must be included on the scale ticket: (cont)

9. Weight or scale information. If the load is measured by weight, the gross, tare, and net weights shall be shown. If the load is measured by scale, the total volume shall be shown
10. Weight, scale, or amount of wood deducted and the deduction classification (cull, undersize, metal, knots, etc.)
11. Name of the person receiving, weighing, or scaling the wood.

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This includes providing an accurate tract name -



House Bill 790 – Scale Ticket law (§ 12-6-23)

A scale ticket is NOT required for:

- (1) The sale of wood for firewood only;
- (2) Any landowner harvesting and processing his own timber;
- (3) Bulk or lump sum sales wherein the landowner and the purchaser agree on a total price for all of said timber purchased.



According to the law, a scale ticket is not required for these situations



Common Sales – The Contract

Contract – We don't know how many sales use a written contract? No way to positively determine this figure statewide

§ 51-12-51 – says there should be written permission from rightful owner to harvest trees



There is a state statute that says there must be written permission from the owner before anyone can harvest trees. This wouldn't necessarily be a contract but should in most cases.

Existing laws that could apply...

§ 16-8-1 through § 16-8-9 - If action was intentional, could be considered **Theft**

§ 16-9-61 - If products were **mis-represented** to others

§ 16-9-1 & 2 - **Forgery** may apply

§ 16-9-50 - **Deceptive business practices** may apply



Here are additional statutes that might apply to some instances within a timber transaction case.



Other Implications for Timber Theft



Were (full) county ad valorem taxes paid?

✓ §48-5-7.5- mandates payment be made within certain timelines

Were income taxes paid?

✓ Federal statutes

Were 2 or more persons conspiring to commit dishonest act?

✓ Federal statutes

Did timber cross state lines?

✓ Federal statutes



Lump sum- ad-valorem taxes paid to counties immediately (within a couple of weeks)

Unit sale-taxes paid within 45 days of end of quarter that timber is harvested
PT-283 on file at tax office

Timber theft steals from counties and the State as well as L.O.

If income wasn't reported on federal taxes, this is a crime

If 2 or more conspire, this could invoke federal statutes as well as if the timber involved crossing state lines.

Perhaps the biggest implication of timber theft is the lack of income for the landowner which can result in lack of reinvestment to plant trees back.



Georgia's timber economy...

\$28.9 Billion in economic impact

135,000+ jobs

Provide clean air & water, protect and enhance soils,
home for wildlife, recreation for humans

For most landowners, timber sales represent the
majority of income for their investment.

All Georgian's benefit from healthy, sustainably
managed forests. HB790 helps protect this resource!

Timber and Forestry is an enormous economic driver in our state for jobs and bottom line gross revenues.

Our forests provide many traditional and non-traditional benefits.

For most landowners, the sale of timber is by far the biggest income-producing activity for these working forests. This income is critical to maintain these forests in healthy, viable condition. Some landowners may sell timber only once in their lifetime and may represent a substantial loss of total household wealth. Their forest could have been an investment that was planned for a college education or retirement.

Healthy forests benefit society and HB 790 helps us protect this resource.



Timber Transaction Complaints...

- ✓ Victims can call local GFC Office

- ✓ Any GFC employee can log in initial complaint with description of what is reported and parties involved (and contact information)

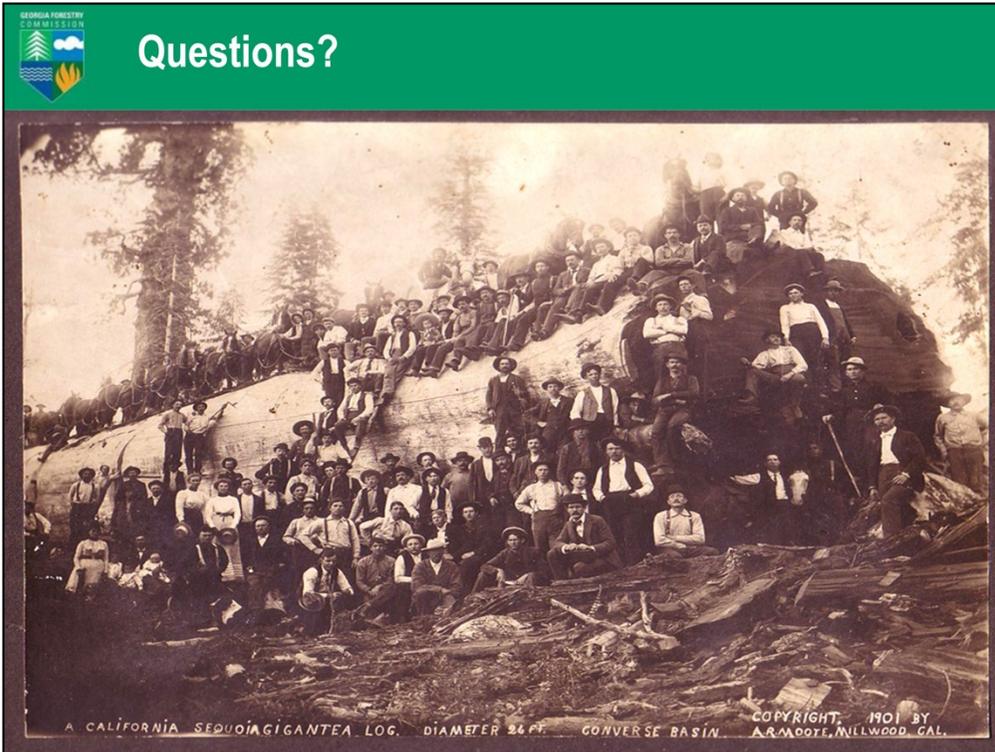
- ✓ GFC Law Enforcement will follow up and determine course of action

If anyone has a timber transaction complaint, here are the steps which begin by contacting your local GFC office. With over 100 offices in the state, there is one near everyone.

This initial notice results in a GFC employee logging in information which includes a narrative of what is reported, major players involved and their contact information

GFC law enforcement will follow up and determine a course of action. Our intention is to investigate possible criminal activities.

For any active GFC investigation, the local sheriff will be notified.



Questions?

Questions?

26 ft diameter Giant Sequoia log (California)