

# A History of the Timber Buyer's Law

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## **Timber Buyer Licensing Law: Background, New Amendment and Comments**

It all started because of the Black Walnut Tree!

Black Walnut has always been a valuable species. It became even more valuable during World War II when the wood was used to make gun stocks. Then in the 60's and 70's the demand for Walnut increased and prices skyrocketed. The export log market became unbelievable. As an example, an exceptionally large and high quality Black Walnut tree (one) brought its owner \$12,500 in the late 60's. This price was extreme, but shows the unsatisfied demand for Black Walnut and how valuable it had become. And, the same tree would have been worth a few hundred dollars just a couple of years earlier. The price of White Oak veneer also began to increase.

The veneer industry in the United States was appalled at the number of logs being exported overseas. Senate hearings were held with persons from the domestic veneer industry lobbying for a halt to the export of veneer logs. The logs should be processed here, not over there. More jobs for American workers. Eventually the domestic veneer industry developed their own overseas markets for both logs and veneer serving to keep the demand and prices high.

Unfortunately, the value of Black Walnut and later White Oak came to the attention of some who were already operating outside the law such as those involved in car theft, burglary, prostitution, extortion, etc. Enter these people into the business. They were not really in the timber buying business per se because, most of the time, they did not buy it. They used fraud or simply took the trees without paying for them. An example of this type of activity was very aptly pointed out in an article titled "Timber Theft: A Solvable Crime" by ICO Lt. David Windsor in the spring issue of the Woodland Steward. (*Article*) 2.

Keep in mind that there were few timber sale contracts used by buyers. There were many, many gentlemen agreements, many "choice tree" contracts. District Forester Larry Lichtsinn remembers seeing a timber sale contract written on the back of a match book cover. "Buyers" used fake business cards so you never knew who you were dealing with. They also dealt mostly in cash. Trees were not looked upon as having much value because, in many instances, they stood in the way of clearing a field for agriculture. Landowners were not aware that they owned valuable trees.

Another important fact to remember is that for most timber buyers the stealing of trees was talked about once in awhile but was not a real concern. It became of great concern to Pike Lumber Company when in 1976, they had a number of Walnut trees stolen from their property.

Other companies had problems with the thieves. But in general, buyers did not know a problem existed. In fact, I (the author) was a timber buyer for the then Weston Paper Company and do not remember timber theft as being an important issue. The average buyer had no way of knowing the seriousness of the situation.

An article from that time period by an unknown author sums the situation up this way: "In the case of high quality trees every thing was ripe for picking. The timber growers (owner of the woodland) for the most part had no concept of their timber's value. Trees were either beautiful to look at, or so much junk to be cleared when they could afford it;

but few timber growers realized that trees had high potential value, or that they could be scientifically managed to produce repeated crops of forest products and that such management could yield a good return based on needed management investment.

“When the first rash of Walnut thefts occurred (approximately 1963), timber growers were unprepared to act and act intelligently in recovering their losses or in knowing how to protect themselves from such losses.

“At the same time our law enforcement agencies knew absolutely nothing of how to cope with this problem. Even when cases with substantial evidence were brought to trial it could reasonably be expected that the case would be thrown out on technicalities, or if convicted, the thief would receive a ‘slap on the wrist’ and let go (authors note: many times the local prosecutors would not even consider filing charges, it was a civil matter). The courts basically failed to recognize either the increased value of quality timber or the impact of this type of thievery on our hardwood resource.”

“Industry shared in the blame because whether domestic or export a ready market was always available for all logs regardless of how they were obtained. As time went on, many reputable industries and individual buyers made a real effort to screen the source of logs delivered to them and this slowed some of the thieves down or made them work harder to peddle their stolen goods.

Much of the ‘hue and cry’ has been: ‘Pass a New Law’.”

This increased criminal activity resulting from the high export veneer prices and the inherent problems and misunderstandings in the business caused substantial public concern. As a result, the General Assembly considered a number of proposals that were, at the very least reactionary. For example, one bill would have made it unlawful to cut ANY Black Walnut tree 24 inches or larger in diameter regardless of quality. Another bill would have set a penalty of five times the stumpage value of the tree or trees cut and/or damaged and an added fine of a maximum of 12 months in the county jail.

These legislative proposals came to the attention of personnel in the hardwood lumber industry, specifically the Indiana Hardwood Lumbermen’s Association (IHLA), and the Indiana Farm Bureau along with Purdue Extension. To say that these proposals caused substantial concern would be a gross understatement. Many of the proposals would have caused severe hardship for the forest products industry and Indiana timber growers.

Thankfully, IHLA sponsored a bill that countered the reactionary legislation and helped make timber buyers more professional and accountable. The answer was a timber buyer licensing law modeled almost word-for-word after Illinois’ law.

The “Timber Buyers Licensing,” IC 25-36.5, was sponsored by IHLA and passed by the 1972 General Assembly. The purpose of the law is to reduce the amount of timber theft and fraudulent timber buying practices occurring in the state. “A new article concerning occupational licensing; creates regulatory scheme to register timber buyers administered by the Department of Natural Resources (DNR).”

The Division of Forestry was given the responsibility of administering the law within the DNR.

Even though the Timber Buyers Licensing Law was sorely need, DNR and the Division of Forestry were not in favor of the law. .

Robert Koenig, the first timber licensing forester, remembers that “We (DNR or the Division of Forestry) did not in any way try to influence the passage of this law. In fact, we were not in favor of the law because there was no way to financially support it.” Nevertheless, the law passed and “A secretary, from our clerical staff, was assigned to help me administer the program and I was appointed to administer the licensing program by John Datena. It was not until later that we were able to hire a licensing secretary.” Timeline for Timber Buyer Licensing Foresters or as they used to be called “timber licensing forester”: Robert Koenig 7/72-12/80; Jack Nelson 1/81-3/91; Burt Hamrick 4/91-9/96; Gary Gretter 10/96-present.

The Timber Buyers Licensing Law requires all buyers of standing timber and their agents to be

licensed with the Department of Natural Resources, Division of Forestry. Licensed Timber Buyers must also be bonded. The bond is used to pay the timber grower for timber contracted and cut by a buyer, but not paid for or for timber wrongfully cut and not paid for.

The DNR and the Division of Forestry saw the law as not only a way to stop timber theft but also as an opportunity to obtain better management of the approximately 3.5 million acres owned by an estimated 100,000 private landowners. A “Department Policy on Enforcement of the Indiana Timber Buyers Law” from the Director DNR, contained an extensive background section explaining the difficulty of working directly with private landowners because “Too many different people to deal with” and “rapidly changing ownership”. It goes on to say that by working through the relatively few timber buyers, who represent the stable hardwood lumber industry, better resource management could be obtained. That the industry is the basis for all our timber markets and responsible for the return owners get on their woodland investment. That industry has “a vested interest in keeping our forest resources growing and producing, and they are beginning to help our professionals convince the private landholder that he should do a good job managing the forest resource he owns.” “We, of the department, wish to encourage our Hardwood Lumber Industries in their interest in our forest resources, and their continued support of our own efforts.” “It is far easier for our professionals to work directly with 1,000 timber buyers and have them helping us spread the word on good forest management, than it is to work with over 100,000 landowners who constantly have to be re-educated because of ownership change.” “Therefore, we want the following policy of enforcement used to gain the maximum cooperation from our hardwood lumber industry with the minimum amount of antagonism.” The policy goes on to state the criteria to be used in gathering evidence and that “no one is to be arrested without permission from the Director of our department through the Division of Forestry.” The policy further lists the steps to be followed before an arrest can be made. (It should be noted that this spirit extended only to persons buying without a license-the goal was to get persons licensed-and did not in any way encourage law enforcement to “go easy” on thieves.)

The spirit of cooperation was furthered by the Divisions’ decision to hold 12 meetings around the state which would explain the reasons for the law and who should be licensed. Help in setting up the meetings came from District Foresters, Larry Frye of the American Walnut-Fine Hardwoods Association, Don McGuire of the Division of Forestry, Purdue Extension and IHLA. Dean Baker, of Pike Lumber Company, remembers the meeting in Plymouth and that there were few objections raised in the meeting. According to Bob

Koenig, meetings did not always go as well as they did in Plymouth. Some individuals were quite vocal. They did not believe we needed a law. Explaining that Farm Bureau, IHLA (in many cases their own association) and Purdue Extension were responsible for the law, not the Division of Forestry, certainly helped. For the most part the meetings did help to close the communications gap.

Another way the Division accomplished their goal of working with buyers was the publication of the monthly Licensed Timber Buyers Bulletin. With the new address list of timber buyers came the opportunity for better communication. The bulletin was the publication used and the first publication was February of 1973. Articles of interest to buyers were published including information about forest management and responsible harvesting practices and articles encouraging buyers to use these practices. The bulletin also includes a "for sale" and "wanted" section. Another very important part of the bulletin was the listing of timber for sale including private, state, US Forest Service and other government lands. Prior to the publication of the bulletin there was no monthly publication that listed these sales. It cannot be overemphasized how well this bulletin serves as a means of communication for the Division of Forestry and how important this bulletin is to timber buyers. The publication of the bulletin offered a real challenge to Bob Koenig. Articles and timber sales were sent in on a monthly basis. Timber sales were listed by county in alphabetical order. This meant that in almost all cases the sales could not be typed until the deadline had passed. And since there was not sufficient Clerical staff in central office, the sales, which were a combination of long hand and typewritten were taken to District #4 (Greencastle). The secretary, Mrs. Simmons, typed the bulletin in preparation for putting it through the duplicating machine (mimeograph). After duplication, Bob would take all copies home and put the pages in piles on the dining room table and with my wife's help "walk around the dining room table putting each individual bulletin together."

An additional publication of interest both to landowners and timber buyers is the Annual List of Buyers. Buyers are listed by county along with their agents. The list also includes address and phone numbers. The list has been published every year except 1978 when questions were raised regarding the "Right To Privacy Law." It was necessary for each buyer to sign a form granting the Division of Forestry the right to list their names, addresses and phone numbers.

Attesting to the success of the "maximum cooperation and minimum antagonism" policy can be best summed up in a letter dated January 15, 1982 from Robert E. Hollowell Jr. of Pierson-Hollowell Co., Inc. "We believe that the timber licensing law has been a great success in improving landowner-buyer relationships, and in providing information and education contacts for Indiana's important hardwood using industries, their many log suppliers, and the basic supplier, the forest landowner.

It should be noted that Mr. Hollowell, a member of IHLA, played an important role in getting the original "timber licensing law" introduced and passed.

Administration of the law was the responsibility of the Division of Forestry. With help from the Attorney General's office application forms, bond forms, information sheets, standards developed for the administration of the law, and all other pertinent information pertaining to the law were developed. Some of these "Important Items" were: "Reasons for Revocation of License; Reasons for Ineligibility of License; Reasons for Arrest; reasons for an Administrative Hearing."

Some history on administration: Initially, all the necessary forms, information sheets and standards were written out long hand and then typed. Carbon paper was almost always used. The typed sheets were then duplicated using the standard duplicating machine. "Upon the issuance of a license, a Kardex card, form F-666-16, will be filled out. A white copy for each licensed buyer and one green copy for each of his card carrying employees are kept on file at the Indianapolis office of the Division of Forestry." The Kardex file was updated annually until 1986 and is still in the Indianapolis office. In a memo dated October 24, 1979 "Resubmittal of request for new or expanded ADP Program for licensed timber buyers (original request made 2-19-76): This type of data will benefit the Division of Forestry by giving us the capability to instantly produce an up to date list of licensed buyers without spending hundreds of hours hand compiling such a listing. For our annual listing this should save at least 100 man hours work at \$3.25 per hour (secretarial) means a minimal savings of \$352.00 per year." The memo goes on to say "At present, we have no formal source document developed for submitting this data to Data Processing.

The Data Point system was initiated sometime in the early 80's which really "streamlined" the process. As time went on, other computer programs such as D-base were initiated which gave the operator more immediate access to information. One area that especially changed was sending out the annual renewal forms. Initially, the labels for the 500-600 buyers were manually typed out and blank forms sent out. As computer programs evolved, not only were labels easily accessible but renewal forms were preprinted for both licensees and agents requiring only a notarized signature and annual timber purchase information.

The most recent change took place in 1998 with the installation of Microsoft Access. Not only does it give immediate access to information it also allows the operator to print licenses doing away with special printing costs and expensive certificate paper. And the license application is now available on our web site.

Initially, special license forms were purchased. The license forms had an alphanumeric code. The first license in the first year (1973) was A001. In 1974, the first license issued was B001, etc.

A file folder was assigned to each licensee and a permanent file number was used. "The contents of the folder shall be: The application form, F-666-2(one copy), the bond form, F-666-3(one copy), with attached power of attorney, a Xerox or photocopy of the check or money order received from the buyer, a Xerox copy of CD submitted (if any), and a Xerox copy of the license certificate (F-666-5) issued." File folders are still updated annually and complement the information in the computer. Note on the form numbers F-666: The form number was evidently picked at random by other than the Division of Forestry office. No one will take credit for the number assignment. The number "666, being the devil's number" has prompted a number of comments, especially from the Amish community. At least one Amish person refused to get a license because it was necessary to fill out the "devil's form." Another person sent in the application and other appropriate forms with the form numbers clipped off. (The form numbers were changed in 2001)

Administrative changes were necessary every time an amendment added or deleted an administrative procedure. The forms have been changed too many times to mention. One

item on the application form that caused some concern in 1982 was the statement “I further certify that neither I nor any of the agents I am seeking to register herein have ever been convicted of a felony, etc.” That item is still required today. Another item on the application form that caused some concern in 1994 was the requirement for a social security number. The requirement to give a social security number is now “optional.” The administrative changes can be envisioned by studying the various amendments.

Timber Buyers were now officially listed in The Indiana Code Title 25 “Professions and Occupations.” Timber Buyers are listed between Speech Pathologists and Audiologists and Transient Merchants. As an official Profession and Occupation certain regulations must be promulgated and the 1972 act created those regulations. The law contained one chapter and 14 sections. The following shows the sections by title:

- 25-36.5-1-1 Definitions
- 1-2 Applications for License
- 1-3 Bonding
- 1-4 violations of the Law
- Other Provisions
- 1-5 Aggrieved person
- 1-6 Issuance of registration certificates
- 1-7 Fee; use by department
- 1-8 Inspection of premises, records, etc
- 1-9 Rules and regulations
- 1-10 Violations
- 1-11 Denial of registration for default
- 1-12 Revocation of license; proceedings
- 1-13 Injunction; contempt proceedings
- 1-14 Judicial review

\*\*\**Contrasting the original law with the present law:* The present law contains 18 sections with a number of subsections. The following shows the sections by title:

- 25-36.5-1-1 Definitions
- 1-2 Applications for registration; contents; filing; prior registration
- 1-3 Bond or certificate of deposit; requisites; cancellation; forfeiture proceedings
- 1-3.1 Notice of violation of chapter or rules
- 1-3.2 Adjudicative processing against timber buyer or cutter
- 1-3.3 Bond or security forfeiture proceeds; overage and shortage; effect
- 1-3.5 Cessation of business; requirements for return of deposit
- 1-4 Violations
- 1-4.9 Refusal to issue timber buyer registration certificate; grounds
- 1-5 Repealed
- 1-6 Issuance of registration certificates; renewal
- 1-7 Fee; use by department
- 1-8 Inspection of premises, records, etc.

- 1-9 Rules and regulations
- 1-10 Violations
- 1-11 Denial of registration for default
- 1-12 Revocation of license; proceedings
- 1-13 Injunction; contempt proceedings
- 1-13.5 Civil penalties
- 1-14 Judicial review
- 1-15 Agents; license; requirements
- 1-16 Denial, suspension or revocation of license or registration; grounds; hearing
- 1-17 Repealed
- 1-18 Criminal history of applicants for registration certificate or license

*Summary of changes in the law due to amendments 4.*

#### AMENDMENTS AND SIGNIFICANT EVENTS:

1975 Amended section 1 by adding the term “agent” to the definitions

Added section 15 which says (a) no person may act as an agent unless registered (b) when an agent card will be issued and instruction for submitting an application (c) fee \$3.00 (d) the responsibility of an agent to the department and to timber growers.

Added section 16 which explains the circumstances under which the director may revoke or suspend or refuse to issue a license; a statement that the above will take place with proper notice and hearing.

**Added section 17. “A person who cuts or causes to be cut any timber which he has not previously purchased shall, in lieu of the normal penalties of this chapter, pay the owner of the cut or appropriated timber three (3) times the stumpage value of the timber.”** It is important to note that the addition of this section meant that any person who wrongfully cut or appropriated timber, no matter what the circumstances, must pay the wronged timber grower three times (treble damages) the stumpage value. (Stumpage value is the value of the trees standing in the woods). In other words, it meant strict liability for the person who took the trees. This strict liability section was repeatedly tested in court and was almost without exception never overturned until several years after its repeal in 1993. ( Administrative Law Judge decision and upheld by Natural Resource Commission to award less than triple stumpage citing repealed language in the law which states the landowner “may” seek “...triple stumpage...” see amendment 1993.

In one case which went to the court of appeals, Reuss v. Wright (abbreviated), Reuss, a landowner, brought suit for trespass against an unregistered timber buyer, Wright, who cut timber from his property without permission. Wright entered into an agreement with Schwab, who owned land adjacent to Reuss, to harvest timber. Schwab orally informed Wright of the boundary of their property. Schwab did not walk the boundary line with Wright nor did Wright talk with the

neighbors or check the legal description. Wright began cutting but was stopped when it was discovered that Reuss, the adjacent landowner, owned a portion of the woods in which the logging had taken place.

Wright appealed, among other issues, the treble damages decision of the Circuit Court. Two of the issues Wright raised on appeal were 1. "...the defendant (Wright) must have intended to have deprived the true owner of the value of the cut timber in order for punitive damages to be recovered." and that "...one acting in good faith is not liable in treble damages." Wright contends in part "...all the elements of the criminal offense must be established before the alternate sanction of treble damages is available." The Court of Appeals summarized the issue before the court as "...whether IC 25-36.5-1-17 requires an intent on the part of the person who cuts timber without having previously purchased it or whether IC 25-36.5-1-17 is a strict liability statute." The Court of Appeals "...found IC 25-36.5-1-17 does not provide for a defense of mistake of fact or require an intent on the part of the person who cut the timber." The Court adds "...such treble damages statute provides civil penalty, not criminal penalty, to insure that timber buyers will exercise care in cutting of timber and ... it is not necessary, for application of the statute, to find intent on part of the person who cuts the timber." The Court of Appeals affirmed the judgement of treble damages.

In another case which went to the court of appeals, *Marling v. Beeman* (abbreviated), landowners brought suit for trespass against a timber company which cut timber on their land, after purchasing the timber from a third party who misrepresented themselves as owner of the property. It is interesting to note that the language in the court document uses the words "attempted to purchase" even though the timber company had actually paid the person who misrepresented themselves as the owner of the property. The timber company presented to the Court of Appeals, among other issues, the issue of whether the jury's award of treble damages is contrary to the law. *Beeman* also cites *Lyttle v Baxter* in his appeal (see case *Lyttle v Baxter* below).

The Court of Appeals held that the: "(1) timber company was liable for treble damages under statute imposing such damages on persons cutting timber 'previously purchased' as the timber was not 'previously purchased' from its owner within meaning of the statute, and (2) statute imposing treble damages on person who cuts timber which has not been 'previously purchased' from owner of the timber does not allow for defense of mistake of fact, and does not require an intent element on part of person who cut the timber." They went on to add "...The Timber company could have easily determined the ownership of the land and timber by reviewing the relevant documents on file at the county recorder's office. Without taking such simple action, the Timber Company acted at its own peril in felling the timber. The award of treble damages was appropriate."

*Lyttle v. Baxter* (abbreviated) is an exceptional case in which treble damages were not awarded, albeit it took the Superior Court to vacate the lower courts' decision. In this case, *Baxter* entered into a timber sale contract with the landowners. The contract was not recorded. Before any timber was cut, and before the contract expired, the landowners sold the land to *Lyttle*. *Lyttle* knew nothing of the contract. *Baxter* cut trees on the property without knowing that the land had been

sold. The issue was whether Baxter had “previously” purchased the timber within the meaning of the statute. Baxter argued that he “purchased” the rights from the previous landowners and therefore IC25-36.5-1-17 did not apply. The trial court disagreed and awarded treble damages in favor of Lyttle. The Court of Appeals affirmed applying Wright v. Reuss and held that the award of treble damages was proper because the statute does not provide for the defense of mistake of fact. It is interesting to note that “Judge Sullivan dissented on the issue of treble damages... and the statute is clear in that it precludes treble damages if the timber has been previously purchased.” The Superior Court agreed with Judge Sullivan and vacated the Court of Appeals opinion as to treble damages. The court held that the statute did not apply because Baxter had previously purchased the timber from the landowner.

1976 Publication of the bulletin “Timber Theft, A Serious Problem”, F-68 October 1976, by Purdue Extension. Timber theft was still a serious problem even with passage of the law and continued to be a problem into the late 80’s. Timber theft cases were so numerous that it prompted Purdue Extension to publish F-68 as part of a statewide “Timber Theft Alert”. The bulletin was prepared by the Indiana Tree Farm committee of the Indiana Hardwood Lumbermen’s Association, in cooperation with American Walnut-Fine Hardwoods Association, Cooperative Extension Service, Indiana Division of Forestry, Indiana Farm Bureau, Purdue University Department of Forestry and Natural Resources, United States Forest Service, and United States Soil Conservation Service.

A number of interesting points were explained in the bulletin which helps better define the situation at that time.

The use of the term “a serious problem...how can you help” serves as a reminder of just how difficult it was to catch timber thieves and get a conviction.

Some of the Highlights of the bulletin are as follows: “Who are the victims of timber thieves? Obviously the person whose timber is stolen because of the complete loss to the victim and also because the “fair market value” of the timber cannot be written off against the federal income tax. We are all victims because theft discourages landowners from growing timber thus reducing timber supply and drives up the price of wood products.

Foresters report that numerous landowners have sold their timber before it was economically mature because they were afraid it would be stolen.

“Why is timber theft a problem?” The value of trees has increased dramatically.

In the last 20 years Walnut has increased over 730% and White Oak 300%. Many landowners are not aware that they own very valuable trees (describes a valuable tree). Although most of the thievery occurs in isolated areas, thieves have been known to take trees from the front lawns of homes and neighbors generally don’t pay much attention to what is going on. Thieves are generally well equipped. High quality logs find ready markets. Logs may be hauled hundreds of miles. The logs may pass through several dealers before they reach the final processor. In addition, individual logs are hard to identify unless the owner has marked them. Law enforcement officials report that most thefts are not discovered until several days after they occur, the logs have been sold and may be on their way to an exporter before an investigation can begin. Your help is needed.

“How can you help?” Locate and maintain a record of your valuable trees (example). Mark your trees with paint (special instructions) or use a special phosphorescent paint (address of supplier). Join your neighbors in a cooperative protection effort. Show your neighbors the location of your valuable trees. Keep each other posted. Take turns patrolling the area. Inform each other of upcoming timber sales. Make certain that your property boundaries are clearly marked. Many timber “thefts” result from misunderstandings over the location of boundaries. If a theft occurs you should: (a) Record the date, time, (etc.) The best evidence to convict a thief is eyewitness testimony (b) Report the theft to the State Police as soon as possible. The State Police will call upon a cooperating member of the Indiana Hardwood Lumbermen’s Association. The description and circumstances will be phoned to the Division of Forestry. The description will then be sent to all mills and log buyers including other states.

It is interesting to note that the brochure suggests calling the State Police and not the IDNR Law Enforcement Division (Conservation Officers) or even the County Sheriff. The question of “who to call” was an evolution just like most of the processes involved with the Timber Buyer Licensing law. At least one Conservation Officer expressed great disapproval over the fact that the State Police were the ones that the bulletin said to contact. Especially since both the Division of Forestry and Enforcement were in DNR and had been working on cases together. One reason certainly could have been that there were no District Posts in DNR Law Enforcement at that time. The State Police Posts were the obvious choice because they had the capability of answering the phone 24 hours a day. And, in reporting thefts, time is of the essence. As the number of thefts continued and IDNR Law Enforcement communications improved, it became more evident that this was the law enforcement agency to call (see Timber Violations Task Force). They fully realized, as no other agency could, the seriousness of the situation and, since they worked so closely with the Division of Forestry, they also realized just how valuable the stolen trees were. Even in the midst of a lot of publicity concerning a rash of thefts occurring in the late 80’s, the value of trees was not realized. In this time period, a Conservation Officer remembers when he mentioned to another enforcement agency that he was investigating a timber theft and the question to him was “how come you are going after some guys for cutting firewood?”

Thefts were so numerous that law enforcement officers needed assistance in obtaining evidence at the timber theft sites. Since persons in the hardwood lumber industry were “experts” at tree identification and characteristics, members of the Indiana Hardwood Lumbermen’s Association were asked to furnish a list of persons who would assist enforcement officers. Here are some of the highlights of the letter: “Although existing laws cover this crime, they have not been effective. A law is only as good as the enforcement behind it. Since the law enforcement agencies are kept busy with the more serious crimes, the burden of enforcement falls on those concerned. In this case that is you, the industry. To this end your

cooperation is enlisted in a timber theft reporting service.” “The program can only be effective if good descriptions of the logs are available.” “Also, we will need individuals who would be willing to come out on weekends and evenings. Please include their home address and phone number.”

The number of persons who volunteered to assist law enforcement was impressive. All the counties had at least one cooperator and most counties had multiple cooperators.

The service worked like this. Once a theft is reported to the state police, they will call a cooperator to assist in developing a description of logs (A special two page form was provided to the cooperator). The description and circumstances of the theft will be sent to the Indiana Division of forestry. This information will then be sent to all mills and log buyers who may be contacted by the thieves.

The “timber theft alert” program was a great help to law enforcement officers and certainly let timber thieves know that it will be harder to get away with their thefts in the future.

Unfortunately, history shows that the thefts continued.

- 1977 Amends section 10 which deals with the penalty for buying without a license, for violation of any of the provisions of this law or for refusing to permit inspection of records. Changes were primarily cleaning up the language of the section. Example: Changed “any” person to “a” person and instead of the definition of a Class B misdemeanor, simply stating “commits a Class B misdemeanor. It is significant to note that section 10 (1) which originally read “... or in violation of any of the provisions of this chapter;” was amended to read “... or in violation of this chapter;” obviously meaning the same thing. This is important to note because of the significant change in penalty which became effective July 1, 2001. The original intent of the 2001 amendment was to make it a Class D felony for a second violation of buying without a license or refusal to allow inspection of records. Considerable discussion took place regarding this amendment and general consensus was that the felony penalty only applied to the second offense of the two above mentioned violations. However it appears to be quite clear, looking at the original writing, that the felony penalty applies to all second violations of the law.
- 1981 Amends section 7 by raising the application fee or renewal fee for a registration certificate to operate as a timber buyer from twenty-five dollars to fifty dollars and the fee for a certificate that a registration has been issued from five dollars to ten dollars. Specifically, “...the application for a registration certificate to operate as a timber buyer, or a renewal thereof, shall be accompanied by a filing fee of fifty dollars. The fee to be paid for a certificate that a registration certificate has been issued and security filed is ten dollars.” Amends section 15 by increasing the minimum fee for an agent’s card from three dollars to five dollars.
- 1982 Amends section 2 by changing the wording on when a buyer must be licensed. The original law reads “...on or after the effective date of this chapter.” The amendment reads “...on or after July 28, 1972.”
- 1983 A major change in the law. Background: The law had been in effect for over 10 years and it became apparent that the definitions in the law were inadequate causing much confusion. There were two kinds of cards, a timber buyer’s card and

agent card. A person could have multiple cards and be an agent for more than one company and /or have multiple companies with multiple cards. In memos dated 5/5/82 and 1/12/83 comments from John Datena and Jack Nelson clarify the situation: "... to restrict persons from being agents for one timber person at a time." "Develop a new section which prevents any person to possess one or more timber buyer's license and/or one or more agent's registration all at the same time." "One of the problems this creates is when a violation of the licensing law occurs and such violation is allegedly caused by the person holding multiple licenses and or agent's registrations, the timber grower is at a loss to know who or what to either file charges against or sue or try to make a settlement with." Adding, "...By virtue of the law the licensee is responsible for all the actions of all his agents. If a person has two or more agent's cards from different licensees, one licensee may be sued for the action of its agent who actually committed a violation of the law while serving another licensee. The old saying 'no man can serve two masters' really fits in this instance." In addition, a bond increase was necessary due to the significant increase in value of timber since 1972.

The amendment increased the principal amount of the timber buyer's surety bond or certificate of deposit from \$500 to \$2,000 and increased the maximum amount from \$10,000 to \$20,000, clarifies the definitions and relationship of timber buyers and agents, and restricts persons to being agents for one timber buyer at a time. The amendment was partially effective September 1, 1983 and partially effective January 1, 1984.

It is interesting to note some of the deletions and changes. The amending of section 1 which included the removal of the word and definition of "employee," and redefining "agent" as "an individual who represents a timber buyer in effecting or attempting to effect purchase of timber." The amending of section 4 clarifies the actions of an agent and the circumstances of an individual to qualify that an agent's license shall be granted. Specifically: "It is unlawful for any individual to act as an agent unless he has an agent's license under this chapter and unless he has in his possession the agent's card that verifies his license." This amendment did away with the timber buyer's card which had caused a great deal of confusion. Added was "...to qualified individuals...;" "...under that timber buyers registration certificate.;" "...each timber buyer shall designate a qualified individual to be licensed as its principal agent at no additional charge.;" "... an agent can represent only one buyer but upon surrendering his agent card and license the person may become an agent for another timber buyer.;" "a timber buyer may not be licensed as an agent unless he is an individual representing himself ; and " a timber buyer may not effect or attempt to effect a purchase except through an agent."

1987 IC 4-22-1 was amended to IC 4-21.5-3. The amendment changed the way a hearing was to be held and amended other administrative rules and procedures. The timber buyers law was amended by changing the number as above.

1988 Significant changes were made in the law. A few changes reflect the 1987 amendment that changed certain administrative rules and procedures. Adds, "buying' means acquiring an interest in property by the payment of a price, value, or other consideration." Changes some of the text in section 3 regarding surety bonds and certificates of deposit, adds "cash" as acceptable surety and essentially

changes the term “bond” to “security”. Adds that the surety or person in possession of the security is entitled to notification of a proceeding to forfeit the bond. And if a final agency action is entered against the bond, the amount of the security identified in the order shall be delivered to the department.

The Attorney General office was taken out of the proceedings process. “Fee or renewal” for a license was added. The price of a license was increased from \$50 to \$80 for a registration certificate and \$10 to \$20 for the registration certificate itself. The words “filing fee” were deleted.

Section 15, dealing with agents was again amended to more specifically define the actions of an agent. Specifically, “an individual who acts as the agent of a timber buyer must have an agent’s license and carry the agent’s card that verifies the license.” Also further clarification of activities performed under the buyers certificate, revocation of an agent’s license by the department, and how a buyer effects termination of an agent. Adds, “A person who acts as an agent without a license commits a Class B misdemeanor.

- 1989 The formation of a Indiana Timber Violations Task Force. The task force was convened by the head of the DNR Law Enforcement Division, Lt. Colonel Ohmit. A rash of timber thefts along with the arrest of one thief clearly pointed out the need for such an organization. (Jack Nelson reports that encroachments on state forests was a serious problem and peaked at about this same time. The encroachments included theft, property line trees cut, adjacent landowners selling state forest trees and adjacent property owners cutting trees for their own use.) The Timber Licensing Forester, Jack Nelson, was appointed to the task force along with Officers David Windsor, Michael Crider, Tom Williams, Kent Hutchins and chairman of the task force Major Steve Skinner. Many of these officers were working on separate cases, but it became evident that many of the cases overlapped or were of a similar nature. The purpose of the task force was to
1. Research and investigate present ongoing timber thefts and other related violations, plus attempt to coordinate all available information to bring these violations to successful conclusions.
  2. To make recommendations to improve investigative techniques and a statewide system for other agencies to report such violations to a DNR central depository.

*(Windsor “hat” article) 10.*

Essentially, DNR Law Enforcement was taking over the role of focal point for all violations just as the State Police had done in 1976. The last meeting recorded is June, 1991. \*\*\* *Letters from task force to other enforcement agencies 6.*

It should be noted that the number of actual thefts, as documented in the 70’s and 80’s decreased significantly. Much credit for this decrease should go to the task force. Jack Nelson reports that it was not unusual for him to receive 2 calls per week concerning timber theft. Burt Hamrick, who became the “Licensing Forester” in 1991, remembers that the number of thefts had decreased dramatically: “The reason for this is a lot of work that Bob (Koenig) and Jack (Nelson) did and the timber theft task force. They really worked heavy before I got involved and they had great cooperation from enforcement. They zeroed in on certain groups. The bad boys were taken out.”

1991 Section 17, dealing with triple damages, was amended to broaden the burden of paying triple damages **to include** a "...representative of the person who cuts or causes to be cut..." any timber not previously purchased. "Person", who might share the burden, includes "...any individual, corporation or partnership that is a timber buyer; timber cutter; landowner; adjacent landowner; consultant who receives a fee for services related to timber; or a land surveyor..."

1993 Major changes were made and additionally, major changes were studied and proposed. Two separate amendments were passed. The first simply added the term "limited liability company" to the definition of "person" and required that the managers and members need to be listed on the application. The second amendment, SB 375, included several important changes in the law. This amendment authorizes the director of the department of natural resources to impose civil penalties on persons who violate the law concerning timber buyers. Establishes certain limits on those civil penalties: specifically, a maximum fine of \$10,000 for buying timber without a license and \$1,000 fine for other violations. Requires that an administrative action (adjudicative proceeding) for the forfeiture of a timber buyer's bond be initiated and pursued to the action's conclusion before an action for forfeiture of the bond may be initiated in court. Establishes that a proceeding for forfeiture of a timber buyer's bond under IC 4-21.5 is the exclusive remedy under the law for the forfeiture of the bond. Repealed section 17, which read "A person who cuts or causes to be cut any timber which he has not previously purchased shall, ...pay the owner of the cut or appropriated timber three (3) times the stumpage value of the timber." Essentially making three (3) times the stumpage value strict liability. Section 3 was amended to replace section 17 and it is important to note the change in (f). "The complaint served under IC 4-21.5-3-8 to commence a proceeding under this section **may** seek the following: (1) Damages in compensation for damage actually resulting from the wrongful activities of a timber buyer or timber cutter. (2) Damages equal to three (3) times the stumpage value of any timber that is wrongfully cut or appropriated without payment." The addition of "may" has been variously interpreted as removing the strict liability of three times the stumpage value. The addition of (1) "...damages..." gave indications that damages could be sought regardless of (2). The addition eventually caused a lengthy and sometimes heated discussion for almost two years before it was solved. The discussion will be addressed in "1995-97". Also added to section 3 was "...the liability on the surety (security) bond is limited to the value of the timber wrongfully cut." Establishes a procedure for the return to a timber buyer of a deposit of cash or a certificate of deposit that the timber buyer submitted to the department of natural resources in place of a surety bond (60 day delay). Requires the department of natural resources to request and obtain the release of a limited criminal history from the state police department on each person who applies to the department for the issuance of a timber buyer registration certificate or a timber buyer agent's license. Authorizes the director of the department of natural resources to refuse to issue a timber buyer registration certificate to an applicant that has: (1) been convicted of a felony; (2) violated the law regulating timber buyers; or (3) violated an administrative rule concerning timber buyers.

The significance of SB 375 is pointed out in a Memo dated April 20, 1993 from attorney Steve Lucas, Chief Administrative Law Judge for the Natural Resources Commission, read in part "...with enactment of SB 375, a need is presented for rule adoption to assist in the administration of the timber buyer licensing chapter. SB 375 assigns to the Division of Forestry and the NRC (*definition*)<sup>7</sup>. important responsibilities and opportunities with respect to the licensing of timber buyers and their agents and relative to complaints against timber buyers by timber growers." The rule adopted was 310 IAC 23. The addition of this rule has simplified and streamlined the filing of complaints against persons who violate the timber buyer licensing law. (\*\**evolution of the hearings process*)*Below*

310 IAC 23 added two major changes that should be noted. One change more clearly defines "Engaged in the business of buying timber ...means either of the following: (1) The exertion of control over the sale of timber as demonstrated by any of the following occurrences: (A) The purchase of timber directly or through an agent from a timber grower. (B) the selection of which or how much timber is cut. This clause does not include a person employed by a timber grower to provide technical expertise concerning timber valuation or management. (C) The selection of a person to act as a feller, skidder, or hauler. (D) The direction of timber to a particular market. (2) Negotiation with a timber grower for the right to purchase timber." A task force of individuals formed to study legislation were instrumental in writing this superb definition.

The second change involved the addition of the Mediation process to assist in resolving administrative cases.

The settlement rate on complaints of wrongful cutting filed in the Division of Hearings is extremely high. And, almost all landowners express appreciation for the results they have obtained from Indiana's hearings process. Of course, complete satisfaction of all claimants is not possible in any legal system. (remove #8)

(*Evolution of the hearings process*) It is not necessary to explore the evolution of the hearing s process in detail. It is important to note that the hearings process constantly evolved from 1972 through the late 80's. A general discussion of this evolution is important because it points out that the system was somewhat complicated at that time compared to the "streamlined" system that resulted from SB 375 and the promulgation of 310 IAC 23 Timber Buyers and Agents in 1993. "The rules which govern timber buyers, timber cutters and timber growers."

The original law stated that "the owner of the timber or the Director may bring action on the bond for payment of the amount due him from proceeds of the bond in the circuit court of the county in which the place of business of the registrant is situated or in any other lawful venue." The law further states that "The department shall give ten (10) days written notice to the timber buyers of a violation of this chapter for which forfeiture of the bond is sought..." and "...that an action may be commenced at any time after the ten (10) day period..." and "... that he (the buyer) makes a request in writing to appear and be heard within the ten days after receipt

of the notice as provided above.” In a memo dated 9/16/81 from the Hearings Commissioner of DNR to the Attorney General “...it is impossible for me to comply with all sections of this statute”, referring to the above timetable.” The law went on to say “Upon such a request ... the department shall schedule a hearing ... the hearing may be presided over by the Director or any hearing officer he may designate.”

The law was not clear as to where the landowner could initiate a complaint. It appeared that a landowner could file in all kinds of places. And that is what happened. In filing their cases, some landowners filed with the circuit court and others with the DNR. Or, some landowner’s attorneys did both. Some filed with one court and some another. And there were many inconsistencies between counties. Adding to the picture was the question of who will be the hearing officer. A hearing officer could be the Director of the Division of Forestry or someone he appointed or a commission member might be a hearing officer, keeping in mind that there were very few cases at this time. The Director of the Division of Forestry did what was necessary to hear complaints. He might hear a case regarding a timber encroachment on a state forest and decide how much the perpetrator had to pay. Or, he might revoke a license at a hearing. As the number of cases increased and became more legalistic, the DNR Attorney acting as the Hearings Commissioner began to hear more cases. In addition, attorneys were being hired by a few of the Divisions and shared some of the case load. Steve Lucas, Chief Administrative Law Judge and Director of the Division of Hearings explains what happened next. “In the late 80’s the Natural Resources Commission selected its first Administrative Law Judge (or ALJ) pursuant to new legislation intended to separate the NRC hearing functions from the DNR. The Commission’s ALJs hear a variety of cases, mostly but not all of which involve the DNR, including those for the timber buyer licensing law. Legislators, the industry, farming organizations, and other interested persons agreed an administrative process within the NRC would be the best and give more consistency and less confusion. Rules were adopted to assist with the process, and these are now found mostly at 312 IAC 3-1 and 312 IAC 14.”

Because of the blitz of proposed legislation, a task force of persons from Indiana Farm Bureau, Indiana Forestry and Woodland Owners Association, Indiana Hardwood Lumbermen’s Association, Indiana Forest Industry Council and the Indiana Association of Consulting Foresters was formed to study the legislation and come to a consensus on what could be supported without serious harm to the forest products industry and the timber growers of Indiana. One heated discussion centered around the requirement that consultant foresters should be considered timber buyers and therefore, should be required to purchase a timber buyers certificate. Eventually, this was not supported. Another point that was made abundantly clear was the need for enforcing the laws that were already “on the books.” The same suggestion made in a memo to the division of forestry in 1982.

1995 Prior to 1995 the Timber Buyer Licensing Law was not used to resolve disputes between landowners and timber buyers over alleged property damage from logging

operations unless there was also an allegation that the timber buyer had not paid for the timber. In 1995 this changed. A landowner brought a complaint before the Division of Hearings alleging property damage. The Administrative Judge heard the case and ruled in favor of the timber company. Notwithstanding this fact, the timber company felt that the relevant statutes and regulations as currently written do not authorize such proceedings unless there is a dispute between the landowner and the timber buyer involving payment for timber.

As noted above, long and sometimes heated discussions took place for a number of months. The discussion involved several members of IHLA and various attorneys. In December of 1996, a meeting was held with IHLA members and Division of Forestry personnel. It was agreed that the Division of Hearings would proceed with new rules that include the full process of public hearings and approval before the Natural Resources Commission.

1997 The recodified rules became effective July 1, 1997. For initiation of a proceeding, Rule 6.0 reads, "Proceedings for Timber Wrongfully Cut or for which Full Compensation is not received by a Timber Grower". 6-1. (a) "The division director or a timber grower may file a complaint only if there is reason to believe that: (1) "...no payment has been made. (2) "...the timber buyer or timber cutter has cut timber or acquired timber from the timber grower without payment having been made to the timber grower ..." Establishing the fact that there must be wrongful cutting before a complaint can be initiated.

Other important changes included the addition of "Division Director" as "referring to the director of the division of Forestry. The division director is also sometimes referred to as the state forester." The amendment also removed the Mediation process from the rule.

2001 Another major change to the law occurred this year as the result of a meeting initiated by Rep. Robert Cherry (R, Dist. 53). The meeting included Rep. William Friend (R, Dist. 23) and persons from Farm Bureau, IHLA, Legislative Services, and the Divisions of Enforcement and Forestry. IHLA sponsored HB 1341. It and SB 154 (authors J. Lewis-D, Dist. 45 and H. Wheeler-R, Dist. 17; co-authored by A. Craycraft-D, Dist. 26 and B. Skillman-R, Dist. 44; House sponsors Rep. M. Lytle-D, Dist. 69 and R. Cherry- R, Dist. 53) **became effective July 1, 2001**. The purpose of the bill is to stiffen the penalty for violations of the Timber Buyers Licensing Law.

2001 Two major changes were made in the law. Section 3 (h) was added. It relieves a timber grower from having to post a bond or other surety requirement with the court as a prerequisite to the issuance of the preliminary injunction or restraining order unless the timber grower has contracted with that timber cutter or timber buyer.

Section 10 was changed. "A person who: (1) engages in business as a timber buyer without securing a registration or in violation of this chapter; or (2) refuses to permit inspection of the person's premises, books, accounts, or records as provided in this chapter commits a Class A (from a B) misdemeanor. However, the offense is a

Class D felony if the person has a prior unrelated conviction for an offense under this section.

## VISION

Gary Gretter, Timber Buyer Licensing Forester, administrator of the law for the Division of Forestry.

The new amendment to the Timber Buyers Licensing Law will result in increased protection for Indiana's timber growers. From the standpoint of administration, the more serious penalties will do the following:

1. Help to eliminate the few individuals who operate without a timber buyer's license (For problems caused by unlicensed buyers see article "Timber Buyer Licensing Ruling Increases Landowner Liability" P. \_\_\_\_).
2. Heighten the awareness of the serious nature of violations against the Timber Buyers Licensing Law. Buying without a license and theft by unlicensed buyers has some times been ignored by law enforcement officials, judges and prosecutors.
3. The Felony conviction will result in greater control over licensing previously unlicensed buyers and those licensed buyers and agents who have violated the law. The law states that "The director may revoke or suspend or refuse to issue any license or agent's registration under that license if the applicant or holder of the license has: (1) been convicted of a felony."
4. Help to eliminate the few individuals who operate without a sufficient bond amount.
5. Help to eliminate buyers who fail to pay for timber per their agreement or fail to pay for timber cut, but not purchased.
6. Help to eliminate fraud in connection with the purchase of timber.
7. Increase cooperation in inspecting records by authorized department personnel. Sawmills and loggers have been very cooperative, but we have had a few isolated cases of refusal to inspect records.
8. The fee for a timber buyers license will be increased in the near future.
9. The minimum bond required (\$2,000) will be increased in the near future.
10. Reconvene the Timber Theft Task Force.
11. The formation of a board composed of DNR Law Enforcement, Division of Forestry and, primarily, members of IHLA to investigate and impose sanctions (such as refusal to buy logs) on such companies or individuals who are buying timber without a license or who have been involved in wrongful cutting activities. Similar to the Timber Theft Alert in the 70's.