

CHAPTER 237

AN ACT concerning the licensure of tree experts and tree care operators and the registration of certain employers, supplementing Title 45 of the Revised Statutes, and repealing P.L.1940, c.100 and sections 7 and 8 of P.L.1996, c.20.

BE IT ENACTED by the Senate and General Assembly of the State of New Jersey:

C.45:15C-11 Short title.

1. This act shall be known and may be cited as the "Tree Experts and Tree Care Operators Licensing Act."

C.45:15C-12 Definitions relative to licensing of tree experts, care operators.

2. For the purposes of this act:

"Board" means the New Jersey Board of Tree Experts established pursuant to section 3 of this act.

"Licensed tree care operator" means a person licensed to provide tree care operator services in the State pursuant to subsection b. of section 7 of this act.

"Licensed tree expert" means a person licensed to provide tree expert services in this State pursuant to subsection a. of section 7 of this act.

"Tree care operator services" means and includes tree pruning, repairing, brush cutting or removal, tree removal, and stump grinding or removal.

"Tree care services" means tree care operator services and tree expert services as established by this act.

"Tree expert services" means and includes tree pruning, repairing, brush cutting or removal, tree removal, stump grinding or removal, tree establishment, fertilization, cabling and bracing, lightning protection, consulting, diagnosis, and treatment of tree problems or diseases, tree management during site planning and development, tree assessment and risk management, and application of pesticides or any other form of tree maintenance.

C.45:15C-13 New Jersey Board of Tree Experts.

3. There is established in the Department of Environmental Protection the New Jersey Board of Tree Experts. The board shall consist of nine members, including the Commissioner of the Department of Environmental Protection or the commissioner's designee, who shall serve ex officio, and eight members, appointed by the Governor with the advise and consent of the Senate as follows: five shall be licensed tree experts, two shall be licensed tree care operators, and one shall possess knowledge of arboriculture or forestry, including urban forestry. However, of the public members first appointed, three of the five licensed tree expert memberships shall be appointed from the members of the board of tree experts established by P.L.1940, c.100 (C.45:15-1 et seq.), participating on the board on the date of enactment of this act, and the remaining tree experts first appointed shall be certified, on or before the date of enactment of this act, pursuant to the provisions of P.L.1940, c.100 (C.45:15C-1 et seq.). The initial members of the board, including the tree care operators first appointed, need not be licensed until 180 days following the promulgation of initial regulations by the board to carry out the provisions of this act. Thereafter, the members of the board subsequently appointed shall be licensed before appointment. The three members of the board of tree experts shall be appointed for a term of three years, and one of the initial tree care operators shall be appointed for a term of three years; the remaining two initial tree experts and the remaining initial tree care operator shall be appointed for a term of two years; and the initial member possessing knowledge of arboriculture or forestry shall be appointed

for a term of one year. Thereafter, all members appointed shall serve for terms of three years or until their successors are appointed and qualified. Vacancies shall be filled for the unexpired terms only.

C.45:15C-14 Board, officers, meetings, compensation.

4. The board shall annually elect from among its members a chairman and a vice-chairman. The board shall meet at least four times per year and may hold additional meetings as necessary to discharge its duties. A majority of the total authorized membership of the board may exercise any of the powers of the board at any meeting. The members of the board shall serve without compensation, but the board may, within the limits of funds appropriated or otherwise made available to it, reimburse members for actual expenses necessarily incurred in the discharge of their official duties, according to rules and regulations promulgated by the Commissioner of the Department of Environmental Protection.

C.45:15C-15 Duties of board.

5. The board shall:
- a. Review the qualifications of an applicant for licensure under the act;
 - b. Establish standards for examinations for licensure;
 - c. Issue and renew licenses and assess fees therefor;
 - d. Establish standards by regulation, which shall include, but not be limited to, the appropriate standards of the American National Standards Institute (ANSI), and any related standards and best management practices;
 - e. Suspend or revoke licenses or registrations for violations of the act;
 - f. Maintain a registry of licensees;
 - g. Adopt a canon of professional ethics;
 - h. Adopt such regulations as may be necessary to effectuate the purposes of the act;
 - i. Establish fees by regulation for examinations, applications for licensure, and license renewals. The fees shall be sufficient to defray expenses incurred by the board in the performance of its duties under the act;
 - j. Conduct such worksite inspections as may be necessary to enforce the provisions of this act; and
 - k. Maintain a registry of businesses engaged in tree care services, and charge a fee therefor.

C.45:15C-16 Development, designation of examinations to determine qualification.

6. The board shall develop an examination or designate examinations to evaluate the knowledge, ability, and fitness of applicants to perform as tree experts or tree care operators, respectively, and shall administer the examinations at least semi-annually at times and places to be determined by the board. The board shall provide for adequate written notice of the time and place of the examinations. An applicant who fails an examination may not retake the examination earlier than three months following the initial examination. There shall be no limitation on the number of times an examination may be taken. All licenses shall be issued on a biennial basis. A person may seek renewal of a license upon submission of a renewal application and the payment of a renewal fee established by the board. If a license expires without being renewed, the license may be renewed within one year of expiration upon the payment of a prorated fee. The determination of the board as to an applicant's qualifications for any examination shall constitute final agency action.

C.45:15C-17 Licensure required for tree expert, tree care operator.

7. a. No person shall present himself to the public as a licensed tree expert or use the designation "L.T.E.," without licensure by the board. A person shall not be eligible for licensure pursuant to this subsection until the final promulgation of initial regulations by the board to carry out the provisions of this act. A candidate for licensure shall:

- (1) be at least 18 years of age;
- (2) be of good moral character;
- (3) (a) be a graduate from a four year college with a degree in forestry, arboriculture, ornamental horticulture, natural resources, or any other curriculum approved by the board; or
(b) have completed two years of college and passed courses approved by the board, and have been continuously employed in the practice of arboriculture for a period of at least three years preceding the date of his application for licensure; or
(c) be continuously employed in the practice of arboriculture for at least five years immediately preceding the date of application for licensure; and
(4) except as provided in subsection c. of this section, have passed an examination established or designated by the board.

b. No person shall present himself to the public as a licensed tree care operator or use the designation "L.T.C.O.," without licensure by the board. A person shall not be eligible for licensure pursuant to this subsection until the final promulgation of initial regulations by the board to carry out the provisions of this act. A candidate for licensure shall:

- (1) be at least 18 years of age;
- (2) be of good moral character;
- (3) (a) be a graduate from a four year college with a degree in arboriculture or an equivalent major field of study, and have been continuously employed in the practice of arboriculture for a period of at least one year preceding the date of his application for licensure; or
(b) be a graduate from a two year college with a degree in arboriculture or an equivalent major field of study, and have been continuously employed in the practice of arboriculture for a period of at least two years preceding the date of his application for licensure; or
(c) be continuously employed in the practice of arboriculture for at least three years preceding the date of his application for licensure; and
(4) except as provided in subsection c. of this section, have passed an examination established by the board.

c. Notwithstanding the provisions of subsections a. and b., for 360 days after the date regulations are promulgated pursuant to the provisions of this act:

- (1) any person of good moral character who has received certification as a tree expert pursuant to P.L.1940, c.100 (C.45:15C-1 et seq.) before the date of its repeal may, if in good standing with the board, acquire a license as a tree expert without sitting for an examination pursuant to subsection a. of this section pursuant to regulations established by the board; and
(2) any person of good moral character who has documented to the satisfaction of the board that he has been engaged in the practice of arboriculture for seven years preceding the effective date of this act may acquire a license as a tree care operator without sitting for an examination pursuant to subsection b. of this section, pursuant to regulations established by the board.

Licenses issued pursuant to this subsection shall be renewed biennially.

d. Persons licensed under this act shall receive a certificate evidencing their licensure.

e. Any person licensed as a tree care operator may subsequently apply for licensure as a tree expert upon meeting the qualifications for licensure.

C.45:15C-18 Form for application; maintenance of records.

8. a. Applications for licenses as a tree expert or a tree care operator shall be on forms prescribed and furnished by the board and shall contain statements under oath showing the applicant's education or other qualification for licensure. The application shall be accompanied by an application fee as established by the board by regulation. No license shall be issued in the name of a corporation, firm, partnership, or other form of business organization.

b. The board shall maintain a record of all individual applicants for licensure and all licensees, including the person's name, age, education, and other qualifications, the person's place of residence, the location in which the person is employed, and a record of the person's fulfillment of any continuing education requirements established by this act.

c. The board may, in its discretion, grant a tree expert license or a tree care operator license to any person who is not a resident of this State and who is the lawful holder of a substantially equivalent license or certification issued by another jurisdiction, as determined by the board.

C.45:15C-19 Continuing education requirement.

9. a. Every licensed tree expert and licensed tree care operator shall complete, as a condition for biennial license renewal, no less than 32 credits of continuing education in courses of study approved by the board. Each hour of instruction shall be equivalent to one credit. The board may waive requirements for continuing education on an individual basis for reasons of hardship such as illness or disability or other good cause. Evidence of the fulfillment of this requirement shall be submitted to the board in a form and manner established by the board.

b. The board shall review the content of courses of study offered by colleges, universities, and other institutions or organizations for the awarding of degrees or credits in subjects related to arboriculture and make the list available to the public. The board shall establish and maintain minimum requirements for courses to meet continuing education requirements by establishing a list of approved subjects and courses of study.

C.45:15C-20 Compliance with laws and regulations in rendering professional services.

10. In rendering professional services, a licensed tree expert or licensed tree care operator shall comply in all respects with the applicable laws and regulations pertaining to tree expert or tree care operator services and shall have the duty to make every reasonable effort to protect the safety, health, property, and welfare of the public. This shall include ensuring the safe operation of all equipment used in the performance of tree expert or tree care operator services, under guidelines established by the Department of Environmental Protection or by the board.

C.45:15C-21 Refusal to issue, renew, suspension, revocation of license.

11. The board may refuse to issue or renew or may suspend or revoke a license or may refuse to admit a person to an examination for licensure, after notice and hearing, upon a finding that an applicant or licensee:

a. Has obtained a license or authorization to sit for an examination through fraud, deception, or misrepresentation;

- b. Has conducted work, or allowed work to be conducted under his supervision, in a manner not in compliance with standards approved by the board;
- c. Has engaged in the use of dishonesty, fraud, deception, misrepresentation, false promise, or false pretense in the course of his business;
- d. Has engaged in gross negligence or gross incompetence;
- e. Has engaged in repeated acts of negligence or incompetence;
- f. Has engaged in occupational misconduct, as determined by the board;
- g. Has been convicted of any crime involving moral turpitude, any crime relating adversely to the activities regulated by the board, or any crime of the first, second, third, or fourth degree;
- h. Has had his authority to engage in the activities regulated by the board revoked or suspended by any other state, agency, or authority;
- i. Has failed to comply with the provisions of this act or any regulation promulgated pursuant thereto, including canons of ethics established by the board;
- j. Is incapable, for medical or any other good cause, of discharging the functions of a licensee in a manner consistent with the health, safety, and welfare of the public;
- k. Has engaged in any form of false or misleading advertising or promotional activities, including, but not limited to, holding himself out to be a licensed tree expert, an arborist, licensed tree care operator, a tree surgeon, a tree care business, or any similar designation, or using the abbreviation "L.T.E." or "L.T.C.O." without being licensed as a tree expert or a tree care operator as provided for in this act; or
- l. Has failed to maintain records required by the board.

C.45:15C-22 Biennial registration; required information.

12. Every business engaged in providing tree expert or tree care operator services shall register biennially with the board as a condition of doing business in this State and shall provide the following information:

- a. The name and residence of the owner or owners of the tree care business;
- b. The principal address of the tree care business, and any branch office or subsidiary of the business;
- c. The names and addresses of every licensed tree expert or licensed tree care operator employed by the business and the location of each such licensee, if at a branch office other than the business' main office;
- d. Proof of general liability insurance or a letter of credit of a type and amount required by the board by regulation;
- e. Proof of workers' compensation insurance coverage required pursuant to chapter 15 of Title 34 of the Revised Statutes;
- f. Proof that at least one employee of the tree care business, located at the principal office of the tree care business shall be licensed either as a tree expert or tree care operator, and at least one employee of the tree care business, located at each branch office of the tree care business shall be licensed either as a tree expert or tree care operator; and
- g. Any other information required by the board.

C.45:15C-23 Instruction, training for employees.

13. Every tree care business shall provide instruction and training for its employees in the proper use, inspection and maintenance of tools and equipment and shall require that safe working practices are observed in accordance with the appropriate standards of the American National Standards Institute (ANSI), as well as any additional standards designated by the

board by regulation. Every tree care business shall submit documentation of its training program for employees to the board annually, which shall include a model tree safety program checklist, proof of general liability insurance coverage or a letter of credit in an amount established by the board, and proof of workers' compensation insurance.

C.45:15C-24 Revocation, suspension of registration.

14. The board may revoke or suspend a registration of any tree care business, after notice and hearing, that the business:

- a. Has failed to demonstrate that the employer, or at least one employee in each principal office and branch location who is responsible for the supervision of workers in the performance of tree expert or tree care operator services, is in possession of a tree expert license or a tree care operator license;
 - b. Has failed to ensure the safe operation of all equipment used in the performance of tree expert or tree care operator services;
 - c. Has allowed work to be conducted in a manner not in compliance with standards approved by the board;
 - d. Has failed to provide instruction and training for its employees, as required by this act;
 - e. Has engaged in the use of dishonesty, fraud, deception, misrepresentation, false promise, or false pretense in the course of his business;
 - f. Has been found guilty of gross negligence or incompetence;
 - g. Has had the authority to engage in tree expert or tree care operator services revoked or suspended by any other state, agency, or authority;
 - h. Has failed to comply with the provisions of this act or any regulation promulgated pursuant thereto;
 - i. Has engaged in any form of false or misleading advertising or promotional activities;
- or
- j. Has failed to maintain records required by the board.

C.45:15C-25 Cooperation with DEP, board.

15. In the performance of tree expert or tree care operator services, a licensed tree expert or licensed tree care operator and every tree care business shall cooperate fully with the Department of Environmental Protection and the board in an investigation or adjudication of an alleged violation of this law or any regulations promulgated pursuant thereto, and upon request, shall provide copies of any documents that shall be requested in connection therewith.

C.45:15C-26 Investigation of unlawful activity.

16. Whenever it shall appear to the board or the Department of Environmental Protection that a person has engaged in, or is engaging in, any unlawful activity under the provisions of this act, the person may be required to file, on a form prescribed by regulation, a statement in writing under oath as to the facts and circumstances concerning the rendering of any service or other violation of this act. The board or the department may examine any person in connection with any act or practice subject to the act, inspect any premises upon which any violation is alleged to have taken place or premises that constitute the licensee's place of business, and examine any record, book, document, account or paper maintained by or for any licensee in the conduct of his business.

C.45:15C-27 Notice, hearing prior to suspension, revocation of license.

17. Suspension or revocation of a license by the board shall take place only following notice and a hearing, sent to the licensee at least 20 days prior to the hearing. No license shall be revoked or suspended until the conclusion of any hearing. The board shall render its judgment no later than 20 days following the conclusion of the hearing.

C.45:15C-28 Additional fines.

18. In addition to suspension or revocation of a license, the board may levy a fine, not to exceed \$1,000 for a first violation and not to exceed \$2,500 for a second or subsequent violation of this act. If the violation is of a continuing nature, each day during which it continues shall constitute an additional, separate, and distinct offense. The civil penalty shall be issued for and recovered by and in the name of the board, and shall be collected by summary proceeding pursuant to the "Penalty Enforcement Law of 1999," P.L.1999, c.274 (C.2A:58-10 et seq.), including reimbursement for the cost of investigation.

C.45:15C-29 Injunction prohibiting act, practice.

19. Whenever it shall appear to the board or the Department of Environmental Protection that a violation of this act has occurred, is occurring, or will occur, the Attorney General, in addition to any other proceeding authorized by law, may seek and obtain in a summary proceeding in the Superior Court an injunction prohibiting the act or practice. The court may assess a civil penalty in accordance with the provisions of this act, but the court shall not suspend or revoke any license issued by the board.

C.45:15C-30 Appeal.

20. Any person aggrieved by an order or finding by the board or the commissioner may appeal the order or finding to the Superior Court.

C.45:15C-31 Inapplicability of act.

21. The provisions of this act shall not apply to:

a. Any public utility or any employee of a public utility while engaged in the actual performance of his duties as an employee;

b. Any employer under contract with a public utility who is engaged in tree trimming or any other utility vegetation management practice for purpose of line clearance, or any employee of the employer while engaged in the actual performance of duties in regard to tree trimming or other utility vegetation management practice or for the installation of underground facilities or associated site construction;

c. Any forestry activities that are conducted under the forest management and stewardship programs approved by the State Forester, provided that tree climbing is not performed, nor are aerial lifts, cranes, or rope and rigging operations used;

d. Landscape construction activities, including those performed by, or under the direction of, a landscape architect, or ground based landscape maintenance activities such as pruning, fertilization, insect and disease control, planting, transplanting and all other forms of ground based landscape maintenance, in compliance with the sections of the American National Standards Institute practice standards set forth by the board by regulation, with applicable safety standards and regulations promulgated by the federal Occupational Safety and Health Administration, and with any pesticide regulations promulgated by the Department of Environmental Protection. For the purposes of this subsection, ground based

landscape maintenance means operations that do not involve climbing, the use of aerial lifts, cranes, rope and rigging operations, or the removal of trees over 6 inch D.B.H;

e. Any person or employer that does not offer tree care services for hire;

f. Any trees being removed pursuant to an approved site plan or subdivision approval, provided that the tree removal activities are performed in compliance with the sections of the American National Standards Institute practice standards set forth by the board by regulation, with applicable safety standards and regulations promulgated by the federal Occupational Safety and Health Administration, and with applicable safety standards of the American National Standards Institute as designated by the board by regulation; and

g. Any employee of a municipality or county while engaged in the actual performance of his duties as an employee.

C.45:15C-32 Deposit, use of fees and penalties.

22. All fees and penalties collected pursuant to this act shall be deposited with the board, and their use shall be authorized by the board for the purposes of carrying out the provisions of this act.

Repealer.

23. The following are repealed:

P.L.1940, c.100 (C.45:15C-1 et seq.); and

Sections 7 and 8 of P.L.1996, c.20 (C.45:15C-2.1 and -7.1).

24. This act shall take effect immediately, except for section 23, which shall take effect upon the final promulgation of initial regulations by the board necessary to carry out the provisions of this act.

Approved January 16, 2010.