

[First Reprint]

ASSEMBLY, No. 2872

STATE OF NEW JERSEY
213th LEGISLATURE

INTRODUCED MAY 22, 2008

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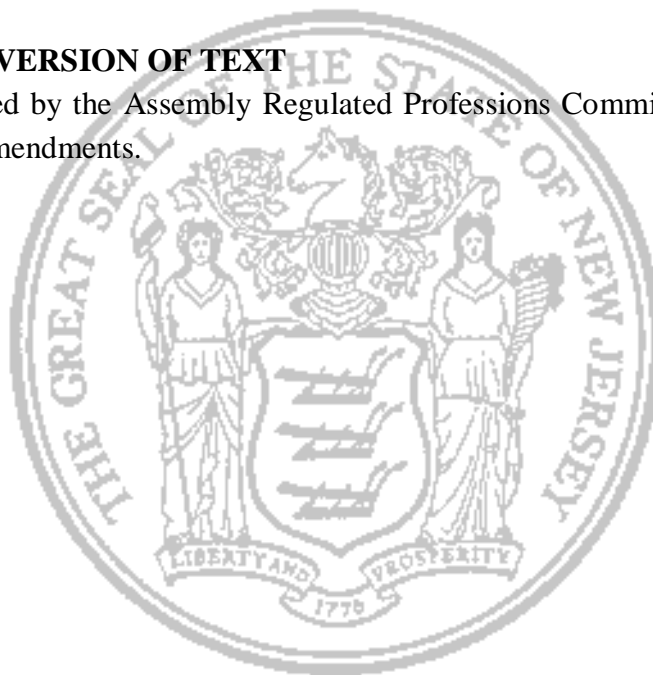
District 38 (Bergen)

SYNOPSIS

"Tree Experts and Tree Care Operators Licensing Act."

CURRENT VERSION OF TEXT

As reported by the Assembly Regulated Professions Committee on June 5, 2008, with amendments.



(Sponsorship Updated As Of: 6/6/2008)

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

5
6 **BE IT ENACTED** by the Senate and General Assembly of the State
7 of New Jersey:

8
9 1. This act shall be known and may be cited as the "Tree
10 Experts and Tree Care Operators Licensing Act."

11
12 2. For the purposes of this act:

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

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

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

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

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

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

33
34 3. There is established in the Department of Environmental
35 Protection the New Jersey Board of Tree Experts. The board shall
36 consist of nine members, including the Commissioner of the
37 Department of Environmental Protection or the commissioner's
38 designee, who shall serve ex officio, and eight members, appointed
39 by the Governor with the advise and consent of the Senate as
40 follows: five shall be licensed tree experts, two shall be licensed
41 tree care operators, and one shall possess knowledge of
42 arboriculture or forestry, including urban forestry. However, of the
43 public members first appointed, three of the five licensed tree
44 expert memberships shall be appointed from the members of the

EXPLANATION – Matter enclosed in bold-faced brackets [thus] in the above bill is not enacted and is intended to be omitted in the law.

Matter underlined thus is new matter.

Matter enclosed in superscript numerals has been adopted as follows:

¹Assembly ARP committee amendments adopted June 5, 2008.

1 board of tree experts established by P.L.1940, c.100 (C.45:15-1 et
2 seq.), participating on the board on the date of enactment of this act,
3 and the remaining tree experts first appointed shall be certified, on
4 or before the date of enactment of this act, pursuant to the
5 provisions of P.L.1940, c.100 (C. 45:15C-1 et seq.). The initial
6 members of the board, including the tree care operators first
7 appointed, need not be licensed until 180 days following the
8 promulgation of initial regulations by the board to carry out the
9 provisions of this act. Thereafter, the members of the board
10 subsequently appointed shall be licensed before appointment. The
11 three members of the board of tree experts shall be appointed for a
12 term of three years, and one of the initial tree care operators shall be
13 appointed for a term of three years; the remaining two initial tree
14 experts and the remaining initial tree care operator shall be
15 appointed for a term of two years; and the initial member
16 possessing knowledge of arboriculture or forestry shall be
17 appointed for a term of one year. Thereafter, all members
18 appointed shall serve for terms of three years or until their
19 successors are appointed and qualified. Vacancies shall be filled
20 for the unexpired terms only.

21

22 4. The board shall annually elect from among its members a
23 chairman and a vice-chairman. The board shall meet at least four
24 times per year and may hold additional meetings as necessary to
25 discharge its duties. A majority of the total authorized membership
26 of the board may exercise any of the powers of the board at any
27 meeting. The members of the board shall serve without
28 compensation, but the board may, within the limits of funds
29 appropriated or otherwise made available to it, reimburse members
30 for actual expenses necessarily incurred in the discharge of their
31 official duties.

32

33 5. The board shall:

34 a. Review the qualifications of an applicant for licensure under
35 the act;

36 b. Establish standards for examinations for licensure;

37 c. Issue and renew licenses and assess fees therefor;

38 d. Establish standards by regulation, which shall include, but
39 not be limited to, the appropriate standards of the American
40 National Standards Institute (ANSI), and any related standards and
41 best management practices;

42 e. Suspend or revoke licenses or registrations for violations of
43 the act;

44 f. Maintain a registry of licensees;

45 g. Adopt a canon of professional ethics;

46 h. Adopt such regulations as may be necessary to effectuate the
47 purposes of the act;

1 i. Establish fees by regulation for examinations, applications
2 for licensure, and license renewals. The fees shall be sufficient to
3 defray expenses incurred by the board in the performance of its
4 duties under the act;

5 j. Conduct such worksite inspections as may be necessary to
6 enforce the provisions of this act; and

7 k. Maintain a registry of businesses engaged in tree care
8 services, and charge a fee therefor.

9
10 6. The board shall develop an examination or designate
11 examinations to evaluate the knowledge, ability, and fitness of
12 applicants to perform as tree experts or tree care operators,
13 respectively, and shall administer the examinations at least semi-
14 annually at times and places to be determined by the board. The
15 board shall provide for adequate written notice of the time and
16 place of the examinations. An applicant who fails an examination
17 may not retake the examination earlier than three months following
18 the initial examination. There shall be no limitation on the number
19 of times an examination may be taken. All licenses shall be issued
20 on a biennial basis. A person may seek renewal of a license upon
21 submission of a renewal application and the payment of a renewal
22 fee established by the board. If a license expires without being
23 renewed, the license may be renewed within one year of expiration
24 upon the payment of a prorated fee. The determination of the board
25 as to an applicant's qualifications for any examination shall
26 constitute final agency action.

27
28 7. a. No person shall present himself to the public as a licensed
29 tree expert or use the designation "L.T.E.," without licensure by the
30 board. A person shall not be eligible for licensure pursuant to this
31 subsection until the final promulgation of initial regulations by the
32 board to carry out the provisions of this act. A candidate for
33 licensure shall:

34 (1) be at least 18 years of age;

35 (2) be of good moral character;

36 (3) (a) be a graduate from a four year college with a degree in
37 forestry, arboriculture, ornamental horticulture, natural resources,
38 or any other curriculum approved by the board; or

39 (b) have completed two years of college and passed courses
40 approved by the board, and have been continuously employed in the
41 practice of arboriculture for a period of at least three years
42 preceding the date of his application for licensure; or

43 (c) be continuously employed in the practice of arboriculture for
44 at least five years immediately preceding the date of application for
45 licensure; and

46 (4) except as provided in subsection c. of this section, have
47 passed an examination established or designated by the board.

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

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

24 c. Notwithstanding the provisions of subsections a. and b., for
25 360 days after the date regulations are promulgated pursuant to the
26 provisions of this act:

- 27 (1) any person of good moral character who has received
28 certification as a tree expert pursuant to P.L.1940, c.100 (C.
29 45:15C-1 et seq.) before the date of its repeal may, if in good
30 standing with the board, acquire a license as a tree expert without
31 sitting for an examination pursuant to subsection a. of this section
32 pursuant to regulations established by the board; and
33 (2) any person of good moral character who has documented to
34 the satisfaction of the board that he has been engaged in the practice
35 of arboriculture for seven years preceding the effective date of this
36 act may acquire a license as a tree care operator without sitting for
37 an examination pursuant to subsection b. of this section, pursuant to
38 regulations established by the board.

39 Licenses issued pursuant to this subsection shall be renewed
40 biennially.

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

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

46
47 8. a. Applications for licenses as a tree expert or a tree care
48 operator shall be on forms prescribed and furnished by the board

1 and shall contain statements under oath showing the applicant's
2 education or other qualification for licensure. The application shall
3 be accompanied by an application fee as established by the board by
4 regulation. No license shall be issued in the name of a corporation,
5 firm, partnership, or other form of business organization.

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

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

17

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

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

34

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

44

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

- 1 a. Has obtained a license or authorization to sit for an
- 2 examination through fraud, deception, or misrepresentation;
- 3 b. Has conducted work, or allowed work to be conducted under
- 4 his supervision, in a manner not in compliance with standards
- 5 approved by the board;
- 6 c. Has engaged in the use of dishonesty, fraud, deception,
- 7 misrepresentation, false promise, or false pretense in the course of
- 8 his business;
- 9 d. Has engaged in gross negligence or gross incompetence;
- 10 e. Has engaged in repeated acts of negligence or incompetence;
- 11 f. Has engaged in occupational misconduct, as determined by
- 12 the board;
- 13 g. Has been convicted of any crime involving moral turpitude,
- 14 any crime relating adversely to the activities regulated by the board,
- 15 or any crime of the first, second, third, or fourth degree;
- 16 h. Has had his authority to engage in the activities regulated by
- 17 the board revoked or suspended by any other state, agency, or
- 18 authority;
- 19 i. Has failed to comply with the provisions of this act or any
- 20 regulation promulgated pursuant thereto, including canons of ethics
- 21 established by the board;
- 22 j. Is incapable, for medical or any other good cause, of
- 23 discharging the functions of a licensee in a manner consistent with
- 24 the health, safety, and welfare of the public;
- 25 k. Has engaged in any form of false or misleading advertising
- 26 or promotional activities, including, but not limited to, holding
- 27 himself out to be a licensed tree expert, an arborist, licensed tree
- 28 care operator, a tree surgeon, a tree care business, or any similar
- 29 designation, or using the abbreviation "L.T.E." or "L.T.C.O."
- 30 without being licensed as a tree expert or a tree care operator as
- 31 provided for in this act; or
- 32 l. Has failed to maintain records required by the board.
- 33
- 34 12. Every business engaged in providing tree expert or tree care
- 35 operator services shall register biennially with the board as a
- 36 condition of doing business in this State and shall provide the
- 37 following information:
- 38 a. The name and residence of the owner or owners of the tree
- 39 care business;
- 40 b. The principal address of the tree care business, and any
- 41 branch office or subsidiary of the business;
- 42 c. The names and addresses of every licensed tree expert or
- 43 licensed tree care operator employed by the business and the
- 44 location of each such licensee, if at a branch office other than the
- 45 business' main office;
- 46 d. Proof of general liability insurance or a letter of credit of a
- 47 type and amount required by the board by regulation;

1 e. Proof of workers' compensation insurance coverage required
2 pursuant to chapter 15 of Title 34 of the Revised Statutes;

3 f. Proof that at least one employee of the tree care business,
4 located at the principal office of the tree care business shall be
5 licensed either as a tree expert or tree care operator, and at least one
6 employee of the tree care business, located at each branch office of
7 the tree care business shall be licensed either as a tree expert or tree
8 care operator; and

9 g. Any other information required by the board.

10

11 13. Every tree care business shall provide instruction and
12 training for its employees in the proper use, inspection and
13 maintenance of tools and equipment and shall require that safe
14 working practices are observed in accordance with the appropriate
15 standards of the American National Standards Institute (ANSI), as
16 well as any additional standards designated by the board by
17 regulation. Every tree care business shall submit documentation of
18 its training program for employees to the board annually, which
19 shall include a model tree safety program checklist, proof of general
20 liability insurance coverage or a letter of credit in an amount
21 established by the board, and proof of workers' compensation
22 insurance.

23

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

26 a. Has failed to demonstrate that the employer, or at least one
27 employee in each principal office and branch location who is
28 responsible for the supervision of workers in the performance of
29 tree expert or tree care operator services, is in possession of a tree
30 expert license or a tree care operator license;

31 b. Has failed to ensure the safe operation of all equipment used
32 in the performance of tree expert or tree care operator services;

33 c. Has allowed work to be conducted in a manner not in
34 compliance with standards approved by the board;

35 d. Has failed to provide instruction and training for its
36 employees, as required by this act;

37 e. Has engaged in the use of dishonesty, fraud, deception,
38 misrepresentation, false promise, or false pretense in the course of
39 his business;

40 f. Has been found guilty of gross negligence or incompetence;

41 g. Has had the authority to engage in tree expert or tree care
42 operator services revoked or suspended by any other state, agency,
43 or authority;

44 h. Has failed to comply with the provisions of this act or any
45 regulation promulgated pursuant thereto;

46 i. Has engaged in any form of false or misleading advertising
47 or promotional activities; or

48 j. Has failed to maintain records required by the board.

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

9
10 16. Whenever it shall appear to the board or the Department of
11 Environmental Protection that a person has engaged in, or is
12 engaging in, any unlawful activity under the provisions of this act,
13 the person may be required to file, on a form prescribed by
14 regulation, a statement in writing under oath as to the facts and
15 circumstances concerning the rendering of any service or other
16 violation of this act. The board or the department may examine any
17 person in connection with any act or practice subject to the act,
18 inspect any premises upon which any violation is alleged to have
19 taken place or premises that constitute the licensee's place of
20 business, and examine any record, book, document, account or
21 paper maintained by or for any licensee in the conduct of his
22 business.

23
24 17. Suspension or revocation of a license by the board shall take
25 place only following notice and a hearing, sent to the licensee at
26 least 20 days prior to the hearing. No license shall be revoked or
27 suspended until the conclusion of any hearing. The board shall
28 render its judgment no later than 20 days following the conclusion
29 of the hearing.

30
31 18. In addition to suspension or revocation of a license, the
32 board may levy a fine, not to exceed \$1,000 for a first violation and
33 not to exceed \$2,500 for a second or subsequent violation of this
34 act. If the violation is of a continuing nature, each day during
35 which it continues shall constitute an additional, separate, and
36 distinct offense. The civil penalty shall be issued for and recovered
37 by and in the name of the board, and shall be collected by summary
38 proceeding pursuant to the "Penalty Enforcement Law of 1999,"
39 P.L.1999, c.274 (C.2A:58:10 et seq.), including reimbursement for
40 the cost of investigation.

41
42 19. Whenever it shall appear to the board or the Department of
43 Environmental Protection that a violation of this act has occurred, is
44 occurring, or will occur, the Attorney General, in addition to any
45 other proceeding authorized by law, may seek and obtain in a
46 summary proceeding in the Superior Court an injunction prohibiting
47 the act or practice. The court may assess a civil penalty in

1 accordance with the provisions of this act, but the court shall not
2 suspend or revoke any license issued by the board.

3

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

7

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

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

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

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

22 d. Landscape construction activities, including those performed
23 by, or under the direction of, a landscape architect, or ground based
24 landscape maintenance activities such as pruning, fertilization,
25 insect and disease control, planting, transplanting and all other
26 forms of ground based landscape maintenance, in compliance with
27 the sections of the American National Standards Institute ¹[Practice
28 Standards] practice standards¹ set forth by the board by regulation,
29 with applicable safety standards and regulations promulgated by the
30 federal Occupational Safety and Health Administration, and with
31 any pesticide regulations promulgated by the Department of
32 Environmental Protection. For the purposes of this subsection,
33 ground based landscape maintenance means operations that do not
34 involve climbing, the use of aerial lifts, cranes, rope and rigging
35 operations, or the removal of trees over 6 inch D.B.H;

36 e. Any person or employer that does not offer tree care services
37 for hire; ¹[and]¹

38 f. Any trees being removed pursuant to an approved site plan
39 or subdivision approval ¹, provided that the tree removal activities
40 are performed in compliance with the sections of the American
41 National Standards Institute practice standards set forth by the
42 board by regulation, with applicable safety standards and
43 regulations promulgated by the federal Occupational Safety and
44 Health Administration, and with applicable safety standards of the
45 American National Standards Institute as designated by the board
46 by regulation; and

1 g. Any employee of a municipality or county while engaged in
2 the actual performance of his duties as an employee¹.

3

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

7

8 23. The following are repealed:

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

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

11

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