



TCIA Supports Licensing Laws Based on Best Business, Safety and Tree Care Practices

As professionals, arborists help ensure that America's heritage is cared for in the best way possible and that the nation's existing tree canopy is preserved. As tree care companies employing these professionals, companies must abide by best business practices, as well as best safety and arboriculture practices, in order to ensure that consumers are protected and trees receive the best care.

Unfortunately, the few existing state licensing laws across the nation that focus on an individual exam that tests knowledge of general arboriculture practices do not ensure professional expertise in the field and do little or nothing to protect the consumer from hiring an inexperienced arborist or an unethical company. Having one arborist who can pass a test does not provide reliable evidence that the employer complies with best business, safety and arboriculture practices.

Depending on the state, the arborist exam, once passed, is often valid indefinitely – as long as the licensee continues to pay a fee to renew that license each year. Standards of tree care practice change over the decades, yet there is generally no requirement that licensed arborists engage in ongoing professional development. Laws also vary as to how many arborists in the firm have to be licensed. In Maryland, only one person in the company needs to have a license. In Rhode Island, one licensed person is required per job site.

Of course, since the regulations are usually looked upon as revenue generators by the state, they are rarely enforced, since that would cost money. Most states are interested in collecting fees, and even laws that are passed with the best of intentions tend to see expensive enforcement measures erode when state budgets get tight. It is easy and inexpensive to offer a test three times a year. It is much more costly and difficult to investigate complaints, hold hearings and take action.

The fact that one person in a firm or 20 percent of the people in a firm can pass a test that asks technical questions does not guarantee that a company upholds high ethical or even arboricultural standards. Our experience in examining state licensing laws that are based on individual certifications or licenses shows that companies – and not just individual arborists – should be licensed.

It is the responsibility of the company to ensure that all the people in its employ maintain best business practices. In our experience, we see that the companies that follow best business practices also tend to follow best arboricultural practices. Those companies that skirt the law, cheat consumers and fail to follow standard business ethics also tend to be the least likely to uphold high standards of tree care practice – or provide safe working conditions for their employees.

We believe it is possible for commercial tree care companies to maintain higher ethical standards and higher standards of tree care practice through a series of requirements that businesses must follow, rather than through non-existent enforcement in the field.

Obviously, any and all of the items below are subject to discussion. What is absolutely clear, however, is that too many states suffer from a low standard in commercial arboriculture – from the perspective of the trees, the safety of employees, and to the detriment of consumer protection. A license that contains no continuing education – nor a requirement for best business practices or enforcement – is a license that offers false assurances to consumers.

DRAFT LEGISLATION

This Act may be cited as the Tree Expert Company Licensing Act.

The practice of arboriculture affects the public health, safety and welfare and is subject to regulation and control in the public interest. It is a matter of public interest and concern that the tree expert profession merits and receives the confidence of the public and that only qualified companies be permitted to use the title of “Licensed Tree Expert Company” in the State.

Legislation to create the Tree Expert Company Licensing Act provides for the licensure of tree expert companies by the Department of [Agriculture, Forestry, or Natural Resources, depending upon on the state]. It establishes the Tree Expert Licensing Board, and it sets forth powers and duties of the Department and the Board, licensure requirements, grounds for discipline, penalties for violation of the Act, and administrative procedure. It includes provisions concerning exemption from the Act.

The intent of the Act is that it will be supported by fees that it generates after an initial appropriation. Entities that wish to hold themselves out as a “Licensed Tree Expert Company” in the State will have to comply with the requirements of this Act and pay the fees imposed by this Act. The Department shall by rule set fees as provided in this act. The amount of the fees shall not exceed the cost of the implementing, reviewing, or administrative processing of the particular activity or process. The initial fees shall be set according the following schedule:

A nonrefundable licensure fee not to exceed \$[amount set by state].

An annual renewal fee not to exceed \$[amount set by state].

A fee for reactivation of an inactive license not to exceed \$[amount set by state].

A fee not to exceed \$[amount set by state] for a duplicate license to replace a license that has been lost, destroyed, stolen, or mutilated

Disposition of funds

The Department shall establish by rule a schedule of fees for the administration and maintenance of this Act. Such fees shall be nonrefundable. All of the fees and fines collected under this Act shall be deposited into the Tree Expert Company Licensing Fund, which is hereby created as a special fund in the State treasury. The moneys deposited into the Tree Expert Company Licensing Fund shall be used by the Department, as appropriate, for the ordinary and contingent expenses of the Department. Moneys in the Tree Expert Company Licensing Fund may be invested and reinvested, with all earnings received from these investments being deposited into that Fund and used for the same purposes as the fees and fines deposited in that Fund.

Definitions

A “Licensed Tree Expert Company” is defined as an entity that has received a license displaying the firm’s qualifications to practice.

A tree expert company is an any sole proprietor, partnership, corporation, business trust, limited liability company, or other legal entity engages in the “Practice of Arboriculture” or providing “Arboricultural Services” for profit.

The “Practice of Arboriculture” or “Arboriculture Services” means any service, including, but not limited to, a written or oral report, a recommendation, an opinion, or a consultation done for compensation relating to the improvement of the condition of shade, ornamental, palm, or fruit trees by fertilizing, pruning, trimming, bracing, or other methods of improving, diagnosing, or protecting such trees from tree pests, or diagnosing or protecting such trees from tree diseases and abiotic agents, or curing or repairing any damage to such trees, including, but not limited to, pruning, removal, preservation, repair, cabling and bracing, lightning protection, root pruning, root excavation, tree assessments, tree maintenance and care, trimming, cutting, sawing, or removal of trees that have been damaged to such an extent as to cause or threaten injury to life or property.

“Arboriculture” or “Arboriculture services” also means service performed in connection with post-storm cleanup of damage from storm events that involves substantial work hours. A post-storm cleanup service includes, but is not limited to, storm damage resulting in downed, damaged, or uprooted trees, or parts of trees, of substantial size and weight in excess of 50 pounds that threaten the structural integrity of residential or commercial structures; involve any type of power lines; impede traffic on streets, driveways, and other vehicular access roads; require extensive use of compression or chain saws; and involve any related skilled service.

An entity shall be construed to be engaged in the “Practice of Arboriculture” if by verbal claim, sign, advertisement, letterhead, card, or any other means represents itself as able to perform or does perform any arboriculture services or work recognized as arboriculture.

Exemptions

This Act does not apply to any of the following:

- (1) Any department, bureau, or agency of the United States of America, the State of (xxxxx), or any county, municipality, or political subdivision in this State or any official representative of a department, bureau, or agency of the United States of America, the State of (xxxxx), or any county, municipality, or political subdivision in this State in the pursuit of his or her official duties.
- (2) Any person with reference to trees on his or her own premises.
- (3) Any public utility, including its authorized employees and agents, when engaged in tree trimming or tree removal for the purpose of line clearance and in order to ensure the continuity of utility service to the public or on the public utility's own property.
- (4) Any person or entity engaged in commercial logging or timber harvesting operations.
- (5) Any person or entity engaged in landscape tree maintenance, defined as maintenance performed when standing on the ground or when performed on trees less than 20 feet in height.
- (6) Any licensed landscape architect.
- (7) Any company engaged in the installation of underground facilities or any associated site construction.
- (8) Any company engaged in nursery activities.

Qualifications

The Department may examine an applicant for license as a tree expert company and pass upon the competence of the applicant. It shall issue a "Tree Expert Company" license to any applicant that:

- (1) Pays the fee provided in this Act.
- (2) Provides evidence of payroll tax deductions (Form 940) for the previous year, unless the company is commencing operations.
- (3) Provides Federal Employer Identification Number (FEIN) if company is an LLC or S-
- (4) Provides a CEO letter certifying that company follows accepted bookkeeping and record retention procedures according to IRS recommendations.
- (5) Carries and shows proof of liability and property damage insurance in the form and amount required by the Department at the time it issues the license. The licensee shall maintain the insurance protection for the period the license is in effect.
- (6) Carries and shows proof of workers' compensation coverage and proper classification of employees as applicable to state law.
- (7) Provides written estimates to customers that disclose all terms and conditions.
- (8) Submits a signed statement that the applicant will comply with current industry standards, including, but not limited to, ANSI Z-133-1 safety and A-300 arboriculture series and any other related best management practices adopted by rule by the department.
- (9) Provides written estimates to customers that specify work will follow A300 standards.
- (10) Holds all current and proper business licenses.
- (11) Provides proof that pesticide applicators have valid commercial pesticide applicators license.
- (12) Shows continual employment of at least one Certified Treecare Safety Professional for companies with 10 or more full-time production employees. Companies with more

than 30 full-time production employees shall maintain a minimum Certified Treecare Safety Professional ratio of one to every 30 production employees.

(13) Shows continual employment of at least one state or international Certified Arborist per 10 full-time production employees.

(14) The Department may establish further requirements for licensure by rule.

(15) Provides written certification to the Department annually that items 1-14 of this section have been maintained.

(16) If a company is and continually maintains national accreditation through the Tree Care Industry Association, items 1-14 will be deemed to be maintained and no further proof will be required.

Any company licensed under this Act that fails to maintain compliance shall have its license suspended or revoked by the department. A company may not hold itself out as a “Licensed Tree Expert Company” unless the company has been issued a license pursuant to this act.

Licensure is required

Beginning six months after the adoption of final administrative rules under this Act, no individual or entity may practice, offer to practice, attempt to practice, or hold himself, herself, or itself out to practice the profession of tree expert without being licensed under this Act.

An individual or entity that holds himself or itself out as a “tree expert company” in this State without being licensed for that purpose is guilty of a Class B misdemeanor, if an individual, and a petty offense, if an entity, and subject to fines of \$[amount set by state] for a first offense, \$[amount set by state] for a second offense, and \$[amount set by state] for a third or subsequent offense.

Licensure requirements

Every person applying to the Department for licensure must do so in writing on forms prescribed by the Department and pay a required nonrefundable fee of \$100. An applicant must indicate if the license is sought for a sole proprietor or an entity. The application shall include without limitation the name, principal place of business, address, e-mail and telephone number of the applicant.

Every licensee under this Act must maintain a current address with the Department. It shall be the responsibility of the licensee to notify the Department in writing of any change of address.

Each entity licensed under this Act shall affix the license number to all contracts and bids and shall affix the license number and the licensee’s name, as it appears on the license, on all commercial vehicles used as part of his or her business as a tree expert. A license issued under this Act must be displayed in a conspicuous place in the licensee’s principal office or place of business.

Powers and duties of the Department

The Department shall adopt rules necessary for the administration and enforcement of this Act, including rules concerning standards and criteria for licensure and for the payment of applicable fees. The Department must consult the Board concerning these rules. Notice of proposed rulemaking shall be transmitted to the Board and the Department shall review the Board's response and any recommendations made therein. The Department shall notify the Board in writing of the explanation for any deviations from the Board's recommendations and response.

The Department may, at any time, seek the advice and the expert knowledge of the Board on any matter relating to the administration of this Act.

The Department has the authority and power to investigate any and all unlicensed activities.

Tree Expert Company Licensing Board

There is created with this Act the Tree Expert Company Licensing Board, which shall be appointed by the Director and comprised of persons who are residents of this State and who shall serve in an advisory capacity to the Director. The Board shall consist of five members, of whom three shall be commercial tree experts or arborists who have been engaged in practice as tree experts or arborists for at least 10 years, two of whom shall be a representative of a State or municipal forestry or park department. All members shall be licensed under this Act, except for those members who are exempt. Those members initially appointed shall meet the requirements for licensure and obtain or be in the employ of a licensed tree expert company within 12 months after the adoption of final administrative rules under this Act.

Members of the Board shall serve three-year terms and until their successors are appointed and qualified, except that of the members of the Board first appointed. One member who is a representative of a State or municipal forestry or park department shall be appointed to serve for one year, one commercial tree expert or arborist member shall be appointed to serve for two years, one commercial tree expert or arborist member shall be appointed to serve for three years, one commercial tree expert or arborist member shall be appointed to serve for four years, and one member who is a representative of a State or municipal forestry or park department shall be appointed to serve for five years. No member may serve more than two complete terms.

Members of the Board shall be immune from suit in any action based on any disciplinary proceedings or other acts performed in good faith as members of the Board, unless the conduct that gave rise to the suit was willful or wanton misconduct.

If a vacancy on the Board occurs for any reason resulting in an unexpired term, within 90 days after the vacancy first occurs, the Director shall fill the vacancy in like manner for the unexpired balance of the term only. The Board shall meet annually to elect one member as chairperson and one member as vice-chairperson from their number. No officer may be elected more than two times in succession to the same office.

Board members shall receive reimbursement for actual, necessary, and authorized expenses incurred in attending the meetings of the Board.

Expired license

Any entity that has permitted its license to expire may have the license restored by applying to the Department, filing proof acceptable to the Department regarding fitness to have the license restored, which may include sworn evidence certifying to active practice in another jurisdiction satisfactory to the Department, and paying the required restoration fee. If the person has not maintained an active practice in another jurisdiction satisfactory to the Department, the Board shall determine, by an evaluation program established by rule, the person's fitness to resume active status.

Refusal, revocation and suspension

The Department may refuse to issue, renew, or may revoke, suspend, place on probation, reprimand, or take other disciplinary action as the Department considers appropriate, including the issuance of fines with regard to any license for any one or more of the following causes:

- (1) Violation of this Act or any rule adopted under this Act.
- (2) Conviction of any crime under the laws of an U.S. jurisdiction that is a felony or a misdemeanor an essential element of which is dishonesty or that directly relates to the practice of the profession.
- (3) Making any misrepresentation for the purpose of obtaining a license.
- (4) Professional incompetence or gross negligence in the practice of the tree expert profession.
- (5) Gross malpractice, prima facie evidence of which may be a conviction or judgment of malpractice in any court of competent jurisdiction.
- (6) Aiding or assisting another person in violating any provision of this Act or any rule adopted under this Act.
- (7) Failing, within 60 days, to provide information in response to a written request made by the Department that has been sent by certified or licensed mail to the licensee's last known address.
- (8) Engaging in dishonorable, unethical, or unprofessional conduct of a character likely to deceive, defraud, or harm the public.
- (9) Habitual or excessive use of or addiction to alcohol, narcotics, stimulants, or any other chemical agent or drug that results in the inability to practice with reasonable judgment, skill, or safety.
- (10) Discipline by another U.S. jurisdiction or foreign nation, if at least one of the grounds for the discipline is the same or substantially equivalent to those set forth in this Section.
- (11) Directly or indirectly giving to or receiving from any person, firm, corporation, partnership, or association any fee, commission, rebate, or other form of compensation for any professional service not actually rendered.
- (12) A finding that licensure has been applied for or obtained by fraudulent means.
- (13) Practicing, attempting to practice, or advertising under a name other than the full name as shown on the license or any other legally authorized name.
- (14) Gross and willful overcharging for professional services, including filing false

statements for collection of fees or moneys for which services are not rendered.

(15) Failure to file a tax return or to pay any final assessment of tax, penalty, or interest, as required by any tax Act administered by the Department of Revenue, until such time as the requirements of any such tax Act are satisfied.

(16) Failure to continue to meet the requirements of this Act.

(17) Material misstatement in furnishing information to the Department or to any other State agency.

(18) Advertising in any manner that is false, misleading, or deceptive.

Promulgation of rules of ethics

The Department may promulgate rules of ethics and temporarily suspend for a period not to exceed two years the license of any licensed tree expert company that violates the rules of ethics. This power of suspension is in addition to, and not in limitation of, the power to revoke or suspend provided in other sections.

Hearing prior to revocation

A license may not be revoked or suspended until after the licensee has a hearing before the Department. The Department may investigate the actions or qualifications of any applicant or person holding or claiming to hold a license. The Department shall, before suspending or revoking, placing on probation, reprimanding, or taking any other disciplinary action, at least 30 days before the date set for the hearing, notify the applicant or licensee in writing of the nature of the charges and that a hearing will be held on the date designated. The written notice may be served by personal delivery or certified or licensed mail to the applicant or licensee at the address of his or her last notification to the Department. The Department shall direct the applicant or licensee to file a written answer with the Department, under oath, within 20 days after the service of the notice, and inform the person that if he or she fails to file an answer, his or her license may be revoked, suspended, placed on probation, reprimanded, or the Department may take any other additional disciplinary action, including the issuance of fines as the Department may consider necessary, without a hearing. At the time and place fixed in the notice, the Board shall proceed to hear the charges and the parties or their counsel. All parties shall be afforded an opportunity to present any statements, testimony, evidence, and arguments as may be pertinent to the charges or to their defense. The Board may continue the hearing from time to time. The nonappearance of the licensee after the required notice has been given does not prevent holding the hearing.

Findings and recommendations

At the conclusion of a hearing, the Board shall present to the Director a written report of its findings of fact, conclusions of law, and recommendations. The report shall contain a finding as to whether the licensee violated this Act or failed to comply with the conditions required in this Act. The Board shall specify the nature of the violation or failure to comply and shall make its recommendations to the Director. The report of findings of fact, conclusions of law, and recommendations of the Board shall be the basis for the Department's order for refusal or for the granting of the license of licensure. If the Director disagrees with the recommendations of the Board, the Director may issue an order in contravention of the Board recommendations. The Director shall provide a

written report to the Board on any disagreement and shall specify the reasons for the action in the final order. These findings are not admissible in evidence against the person in a criminal prosecution for violation of this Act, but the hearing and findings shall not serve as a bar to criminal prosecution for violation of this Act.

Rehearing

At the conclusion of a hearing, a copy of the Board's report shall be served upon the accused, either personally or as provided in this Act for the service of the notice. Within 20 days after such service, the applicant or licensee may present to the Department a motion in writing for a rehearing which shall specify the particular grounds for rehearing. If no motion for a rehearing is filed, then upon the expiration of the time specified for filing such a motion or if a motion for rehearing is denied, then upon the denial, the Director may enter any order in accordance with recommendations of the Board, except as otherwise provided in this Act. Whenever the Director is not satisfied that substantial justice has been done, he or she may order a rehearing by the same or another special board. At the expiration of the time specified for filing a motion for a rehearing the Director has the right to take the action recommended by the Board.

Reinstatement of revoked license

At any time after the suspension or revocation of any license of licensure, the Department may restore it to the licensee upon the written recommendation of the Board, unless after an investigation and hearing, the Board determines that restoration is not in the public interest.

Prohibited conduct

A company may not solicit, advertise, or represent the company to the public as a licensed tree expert company or assume to practice as a tree expert without a current valid license. A company may not use the title or abbreviation "L.T.E.C." or any other words, letters, or abbreviations tending to indicate that the company is a licensed tree expert company without a current valid license.

Upon the revocation or suspension of any license of licensure, the licensee shall immediately surrender the license to the Department. If the licensee fails to do so, the Department has the right to seize the license.