

FAQ
Frequently Asked Questions
about Alabama's 2012 logging notice law

1. Where can I read a copy of the new law?

Act 2012-257 is posted online at <http://bit.ly/2012-257>

2. What is the procedure for implementing the new law in my county?

Counties are not required to have a logging notice system, but counties cannot have one that conflicts with the new law. Act 2012-257 merely authorizes counties to create a logging notice system.

A committee of the Association of County Engineers of Alabama has developed a model ordinance and supporting documents for implementing this act. While counties are not required to use the model ordinance, it is recommended because the ACCA staff believes the model ordinance includes everything counties will need.

To implement a logging notice system, a county commission must approve a logging notice ordinance, which sets out detailed rules. Any forms related to the ordinance, such as the notice form, must also be attached. Then, according to the model ordinance, the commission must by resolution appoint someone by name to serve as license inspector for the purposes of this ordinance.

3. Where does the new law apply?

It applies to any county road.

4. What if a county already has a logging notice or permit in place?

Act 2012-257 was effective July 1, 2012. On that date, any local logging permit or notice was repealed *to the extent it conflicts* with the new law. That means that any existing county policies on, for example, signs or gravel, still stand, but bonds cannot be required from timber owners with no history of violating the new law. Counties must enact an ordinance to institute a new notice requirement pursuant to the new law, and notice cannot be rejected for things beyond what the law requires.

5. Who has to give notice under the new law?

The law requires the timber owner to give notice, and it defines the term "timber owner" as:

- Any person or firm that has entered into a contract with a landowner for the purposes of severing that timber and delivering pulpwood, logs, poles, posts or wood chips to any wood yard or processing plant.
- In the case where the landowner harvests his or her own timber and delivers pulpwood, logs, poles, posts, or wood chips to any wood yard or processing plant, the landowner is the timber owner.
- The term timber owner is intended to mean the person or firm who has legal title to the timber when it enters the county road.

6. Does the ordinance apply to timber owners who are hauling through on county roads?

A county can require notice from a timber owner who is only hauling on that county's roads. This situation could occur if timber cut in one county is trucked to a mill in a second county. A checkbox has been provided on the notice form for these situations, because timber owners would not have to provide the same details about access points if they are not crossing a county's right of way.

7. What is the purpose of the “guideline” version of the notice form?

The state law limits what information can be *required* on the notice form to:

- A map or legal description of the area which identifies the location of the tract and the access point or points from a county road;
- Whether the access points are new or existing, including details about how access will be accomplished while maintaining the normal drainage features of the road;
- Expected routes upon county roads;
- Estimated acreage of the tract;
- Estimated date that access to the county roads will begin;
- Name, address and daytime telephone number of the timber owner and the contractor responsible for harvesting the timber, if not the same;
- The name and address for the liability insurance carrier of the timber owner and the contractor responsible for harvesting the timber, if not the same.

However, the model notice form requests some additional information (such as email addresses and fax numbers) to improve communication between the county and timber owner and the owner's contractors. It is *recommended* that the timber owner provide this information, but the notice cannot be deemed deficient if this additional information is not given.

8. How far in advance does a timber owner have to give notice?

It depends on the access point that the timber owner plans to use. For an existing access point, notice should be submitted two business days in advance. For a new access point, notice should be given four business days in advance.

The model ordinance defines business day as any day that the particular county's highway department is open, and that these days and hours should be posted in a location identified in the ordinance. This means that for counties where the highway department regularly works Monday through Thursday, Friday would not be considered a business day.

The model ordinance also specifies that activities governed by the ordinance cannot begin until the notice has been reviewed and a proper notice received letter has been issued by the county to the timber owner. If the initial review of a notice leads to a letter of notice deficiency, those deficiencies must be cleared up and a proper notice received letter issued before activities governed by the ordinance can begin.

9. When reviewing a notice form submitted by a timber owner, why might a notice of deficiency be issued?

The notice form does not include all the required information;

10. How does the notification process affect the ability of the county to supervise or police any other logging issues that may arise?

The new law says that the county's acceptance of notice shall in no way limit or affect the county's authority to regulate and enforce any laws governing the use of or damage to a county-maintained road or bridge or a county right of way.

11. Can a county require a timber owner to post bond?

Under the law, a bond can only be required if a timber owner has three violations in a 24-month period.

12. What is the process for appointing a license inspector to enforce this ordinance?

The law says the act may be enforced by the county license inspector. It is recommended that the county commission adopt a resolution appointing an individual by name to serve as license inspector for the purposes of this ordinance. Since the license inspector is appointed by name and not by position, the commission would have to do a new resolution to appoint a new license inspector for the purposes of this ordinance. The appointed license inspector cannot delegate this responsibility to someone else who has not been appointed license inspector for the purposes of this ordinance. A sample resolution has been provided with the model ordinance.

13. What constitutes a violation of the ordinance?

- Failure to give proper notice;
- Failure to comply with the terms of the notice.

14. Can a citation be issued on a timber owner's first violation?

No. First a warning must be issued and the timber owner given time to come into compliance.

15. When would a citation be issued?

If a warning has been issued and the timber owner has still not complied with the ordinance, then the license inspector can issue a citation. The model ordinance states that the citation must be delivered in person to the timber owner or the timber owner's representative at the site where a violation has occurred. The person to whom the citation is delivered must sign a copy of the citation acknowledging that he or she has received it. If the citation is issued to someone other than the timber owner, the license inspector shall immediately send a copy of the citation to the timber owner by fax or email and by U.S. mail.

16. How are fines calculated?

A timber owner who has received a citation shall be fined \$500 per day for each day that he or she is in violation of the ordinance. All fines collected shall be payable to the county commission and deposited into the county's road and bridge fund.

All fines are assessed from the date the citation was issued until there is satisfactory proof that the violation or violations are no longer taking place. Under the model ordinance, the county license inspector shall notify the timber owner in writing of the total fines assessed, with instructions to make full payment within 10 days. No new notice applications shall be accepted from the timber owner until all fines have been paid. All activities governed by the ordinance are prohibited until all fines are paid.

17. What if a citation is issued and the timber owner continues operations or refuses to pay a fine?

At that point, the county attorney should ask the court for an injunction, or court order, to force the timber owner to come into compliance.

18. What recourse does the county have if timber operations damage county roads, bridges or rights of way?

The notice law gives the county advance notice of timber operations so that the condition of roads, bridges and rights of way can be documented in advance. If timber operations cause damage to the roads, bridges or rights of way, the county attorney should pursue reimbursement from the timber owner – even if the timber owner complied fully with the notice law.

19. What if a small landowner hires a logger to harvest and sell his or her timber and there is damage to the county road? Who would be liable for the damage?

The person legally liable for the damage is the timber owner – whoever has legal title to the timber when it enters the county road – not the landowner. In that scenario, the logger would likely be liable.

20. Can the license inspector for this ordinance take action when other laws are broken?

No. The act limits the authority of the license inspector to enforcing this ordinance. The license inspector doesn't have general statutory authority to enforce general aspects of other violations related to county roads and bridges. For other violations, the county needs to seek cooperation from the sheriff's department.

21. What about emergencies with timber damage, such a tornado or hurricane?

Under the law, if the governor declares a state of emergency as a result of an event that damages timber within the county, the notice requirements are suspended while the governor's proclamation is in effect.

22. Does Act 2012-257 apply to any other industries?

No, it is specific to the timber industry.

23. A model ordinance and supporting documents have been provided, but can a county change them?

Yes, as long as changes comply with the limits in the law. Your county attorney should be consulted about any proposed changes.