

By: Representatives Eaton, Stringer, Warren, To: Agriculture
Robinson (84th), Saucier, Vince, Bozeman,
Wallace, Straughter

HOUSE BILL NO. 826

1 AN ACT TO AMEND SECTIONS 95-5-10 AND 95-5-29, MISSISSIPPI
2 CODE OF 1972, TO INCREASE THE TIME FOR RECOVERY OF DAMAGES FOR
3 CUTTING TREES WITHOUT THE CONSENT OF THE OWNER; AND FOR RELATED
4 PURPOSES.

5 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MISSISSIPPI:

6 SECTION 1. Section 95-5-10, Mississippi Code of 1972, is
7 amended as follows:

8 95-5-10. (1) If any person shall cut down, deaden, destroy
9 or take away any tree without the consent of the owner of such
10 tree, such person shall pay to the owner of such tree a sum equal
11 to double the fair market value of the tree cut down, deadened,
12 destroyed or taken away, together with the reasonable cost of
13 reforestation, which cost shall not exceed Two Hundred Fifty
14 Dollars (\$250.00) per acre. The liability for the damages
15 established in this subsection shall be absolute and unconditional
16 and the fact that a person cut down, deadened, destroyed or took
17 away any tree in good faith or by honest mistake shall not be an
18 exception or defense to liability. To establish a right of the
19 owner prima facie to recover under the provisions of this
20 subsection, the owner shall only be required to show that such
21 timber belonged to such owner, and that such timber was cut down,
22 deadened, destroyed or taken away by the defendant, his agents or
23 employees, without the consent of such owner. Except for recovery
24 of the fair market value of any tree cut down, deadened, destroyed
25 or taken away brought within thirty-six (36) months from the time
26 the injury was committed if no other relief is otherwise awarded
27 under this section, the remedy provided for in this section shall

28 be the exclusive remedy for the cutting down, deadening,
29 destroying or taking away of trees and shall be in lieu of any
30 other compensatory, punitive or exemplary damages for the cutting
31 down, deadening, destroying or taking away of trees but shall not
32 limit actions or awards for other damages caused by a person.

33 (2) If the cutting down, deadening, destruction or taking
34 away of a tree without the consent of the owner of such tree be
35 done willfully, or in reckless disregard for the rights of the
36 owner of such tree, then in addition to the damages provided for
37 in subsection (1) of this section, the person cutting down,
38 deadening, destroying or taking away such tree shall pay to the
39 owner as a penalty Fifty-five Dollars (\$55.00) for every tree so
40 cut down, deadened, destroyed or taken away if such tree is seven
41 (7) inches or more in diameter at a height of eighteen (18) inches
42 above ground level, or Ten Dollars (\$10.00) for every such tree so
43 cut down, deadened, destroyed or taken away if such tree is less
44 than seven (7) inches in diameter at a height of eighteen (18)
45 inches above ground level, as established by a preponderance of
46 the evidence. To establish the right of the owner prima facie, to
47 recover under the provisions of this subsection, it shall be
48 required of the owner to show that the defendant or his agents or
49 employees, acting under the command or consent of their principal,
50 willfully and knowingly, in conscious disregard for the rights of
51 the owner, cut down, deadened, destroyed or took away such trees.

52 (3) All reasonable expert witness fees and attorney's fees
53 shall be assessed as court costs in the discretion of the court.

54 (4) Nothing in this section shall be construed to limit the
55 right of the owner of any tree that was cut down, deadened,
56 destroyed or taken away without his consent to recover the fair
57 market value of such tree within thirty-six (36) months thereafter
58 if no relief is otherwise awarded under this section.

59 SECTION 2. Section 95-5-29, Mississippi Code of 1972, is
60 amended as follows:

61 95-5-29. An action for the penalties provided by Section
62 95-5-10 may be prosecuted in any court of competent jurisdiction
63 within twenty-four (24) months from the time the injury was
64 committed and not after; all other actions for any specific

65 penalty given by this chapter may be prosecuted in any court of
66 competent jurisdiction within twelve (12) months from the time the
67 injury was committed, and not after; and a recovery of any penalty
68 herein given shall not be a bar to any action for further damages,
69 or to any criminal prosecution for any such offense as herein
70 enumerated. A party, if he so elect, may, under any of the
71 provisions of this chapter, claim less than the penalty given.

72 SECTION 3. This act shall take effect and be in force from
73 and after July 1, 1999.