

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

HOUSE BILL NO. 826  
(As Passed the House)

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.