

By: Senator(s) Harvey

To: Forestry

SENATE BILL NO. 2418  
(As Passed the Senate)

1 AN ACT TO AMEND SECTION 95-5-10, MISSISSIPPI CODE OF 1972, TO  
2 CLARIFY DAMAGES FOR CUTTING OF TIMBER WITHOUT THE OWNER'S CONSENT;  
3 TO AMEND SECTION 95-5-29, MISSISSIPPI CODE OF 1972, TO REVISE THE  
4 STATUTE OF LIMITATIONS FOR SEEKING RELIEF UNDER SECTION 95-5-10,  
5 MISSISSIPPI CODE OF 1972; AND FOR RELATED PURPOSES. BE IT  
6 ENACTED BY THE LEGISLATURE OF THE STATE OF MISSISSIPPI:

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

10 95-5-10. (1) If any person shall cut down, deaden, destroy  
11 or take away any tree without the consent of the owner of such  
12 tree, such person shall pay to the owner of such tree a sum equal  
13 to double the fair market value of the tree cut down, deadened,  
14 destroyed or taken away, together with the reasonable cost of  
15 reforestation, which cost shall not exceed Two Hundred Fifty  
16 Dollars (\$250.00) per acre. The liability for the damages  
17 established in this subsection shall be absolute and unconditional  
18 and the fact that a person cut down, deadened, destroyed or took  
19 away any tree in good faith or by honest mistake shall not be an  
20 exception or defense to liability. To establish a right of the  
21 owner prima facie to recover under the provisions of this  
22 subsection, the owner shall only be required to show that such  
23 timber belonged to such owner, and that such timber was cut down,  
24 deadened, destroyed or taken away by the defendant, his agents or  
25 employees, without the consent of such owner. If relief is  
26 granted under this section, the remedy provided for in this  
27 section shall be the exclusive remedy for the cutting down,  
28 deadening, destroying or taking away of trees and shall be in lieu

29 of any other compensatory, punitive or exemplary damages for the  
30 cutting down, deadening, destroying or taking away of trees but  
31 shall not limit actions or awards for other damages caused by a  
32 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 SECTION 2. Section 95-5-29, Mississippi Code of 1972, is  
55 amended as follows:

56 95-5-29. An action for remedies and penalties provided by  
57 Section 95-5-10 may be prosecuted in any court of competent  
58 jurisdiction within twenty-four (24) months from the time the  
59 injury was committed and not after. All other actions for any  
60 specific penalty given by this chapter may be prosecuted in any  
61 court of competent jurisdiction within twelve (12) months from the  
62 time the injury was committed, and not after. \* \* \* A recovery of  
63 any penalty herein given shall not be a bar to any action for  
64 further damages, or to any criminal prosecution for any \* \* \*  
65 offense as herein enumerated. A party, if he so elect, may, under

66 any of the provisions of this chapter, claim less than the penalty  
67 given.

68 SECTION 3. This act shall take effect and be in force from  
69 and after its passage.