

House Bill 790 (COMMITTEE SUBSTITUTE)

By: Representatives Williams of the 119th, Willard of the 51st, Golick of the 40th, Black of the 174th, Nimmer of the 178th, and others

A BILL TO BE ENTITLED

AN ACT

1 To amend Article 2 of Chapter 3 of Title 9 of the Official Code of Georgia Annotated,
 2 relating to specific periods of limitation, so as to provide for a four-year statute of limitations
 3 for actions involving the cutting or cutting and carrying away of timber from the property of
 4 another; to amend Part 1 of Article 1 of Chapter 6 of Title 12 of the Official Code of Georgia
 5 Annotated, relating to the State Forestry Commission, so as to provide additional
 6 enforcement authority to commission investigators; to amend Code Section 12-6-23 of the
 7 Official Code of Georgia Annotated, relating to wood load ticket required for wood removal,
 8 so as to require purchasers to provide the proper tickets to sellers of timber within 20 days;
 9 to amend Chapter 4 of Title 44 of the Official Code of Georgia Annotated, relating to real
 10 estate boundary determinations, so as to repeal provisions relating to processioning; to amend
 11 Title 51 of the Official Code of Georgia Annotated, relating to torts, so as to change
 12 provisions relating to the unauthorized cutting or cutting and carrying away of timber; to
 13 provide that a certain right of action shall not be applicable in certain cases; to provide a
 14 defense to tort liability for timber sellers who establish property boundaries; to provide for
 15 measures of damages for converted timber; to provide for related matters; to repeal
 16 conflicting laws; and for other purposes.

17 BE IT ENACTED BY THE GENERAL ASSEMBLY OF GEORGIA:

18 **SECTION 1.**

19 Article 2 of Chapter 3 of Title 9 of the Official Code of Georgia Annotated, relating to
 20 specific periods of limitation, is amended by revising Code Section 9-3-32, relating to
 21 damages for conversion or destruction, as follows:

22 "9-3-32.

23 Actions for the recovery of personal property, or for damages for the conversion or
 24 destruction of the same, shall be brought within four years after the right of action accrues,
 25 and actions involving the unauthorized cutting or cutting and carrying away of timber from

26 the property of another shall be brought within four years after the cutting or cutting and
 27 carrying away of timber."

28 **SECTION 2.**

29 Part 1 of Article 1 of Chapter 6 of Title 12 of the Official Code of Georgia Annotated,
 30 relating to the State Forestry Commission, is amended by revising Code Section 12-6-20,
 31 relating to forestry investigators, as follows:

32 "12-6-20.

33 (a) As used in this Code section, the term 'forestry laws' means laws relating to forestry
 34 or timber resources and the protection, security, conservation, or sale of such resources.

35 (a.1) The director, with the approval of the commission, may appoint investigators to
 36 enforce the forestry laws ~~and regulations~~ of this state.

37 (b) The investigators so appointed and any fire-fighting crews under their direction may
 38 enter upon any land for the purpose of preventing and suppressing fires and enforcing the
 39 fire and other forestry laws ~~and regulations~~ of this state.

40 (c) Investigators who have been so appointed ~~and who have been~~ shall be certified by the
 41 Georgia Peace Officer Standards and Training Council ~~as~~ after having successfully
 42 completed the course of training required by Chapter 8 of Title 35, the 'Georgia Peace
 43 Officer Standards and Training Act,' and thereafter shall be authorized and empowered to:

44 (1) Make summary arrests for violations of the fire and other forestry laws ~~and~~
 45 ~~regulations~~ of this state; and, in case of such arrests, the investigator shall as soon as
 46 possible deliver the arrested person or persons to the custody of the sheriff of the county
 47 wherein the offense was committed;

48 (2) Arrest persons accused of violating any law ~~or regulation~~ which such investigators
 49 are empowered to enforce by the issuance of a citation, provided that the offense is
 50 committed in the presence of the investigator or information concerning the offense
 51 constituting a basis for arrest was received by the arresting investigator from a law
 52 enforcement officer or commission firefighter or forester who observed the offense being
 53 committed. The arresting investigator may issue to the accused person a citation which
 54 shall enumerate the specific charges against such person and the date upon which such
 55 person is to appear and answer such charges. Whenever an arrest is made by the arresting
 56 investigator on the basis of information received from another law enforcement officer
 57 or commission firefighter or forester who observed the offense being committed, such
 58 citation shall list the name of each officer, firefighter, or forester and each officer,
 59 firefighter, or forester shall be present when the charges against the offender are heard;
 60 ~~and~~

61 (3) Execute search warrants and arrest warrants for criminal violations relating to the
 62 forestry laws of this state and to arrest, upon probable cause and without warrant, any
 63 person found violating any criminal law of this state; and

64 ~~(3)~~(4) Carry weapons in order to enforce the forestry laws and regulations of this state
 65 execute their enforcement authority under this Code section.

66 ~~(d) The provisions of paragraphs (1) and (2) of subsection (c) of this Code section~~
 67 ~~notwithstanding, no arrest shall be made of any person for an offense described in~~
 68 ~~subsection (e) of Code Section 12-6-90 unless on two previous occasions such person was~~
 69 ~~issued warnings by a forestry investigator, other law enforcement officer, or State Forestry~~
 70 ~~Commission firefighter for such an offense.~~

71 ~~(e)~~(d) If any person charged by citation as provided in paragraph (2) of subsection (c) of
 72 this Code section shall fail to appear in court as specified in the citation, the judge having
 73 jurisdiction of the offense may issue a warrant ordering the apprehension of such person
 74 and commanding that he or she be brought before the court to answer the charge contained
 75 within such citation and the charge of his or her failure to appear as required. Such person
 76 shall then be allowed to make a reasonable bond to appear on a given date before the
 77 court."

78 **SECTION 3.**

79 Code Section 12-6-23 of the Official Code of Georgia Annotated, relating to wood load
 80 ticket required for wood removal, is amended by revising subsection (a) as follows:

81 ~~"(a) Any person, company, corporation, or others purchasing trees or timber directly from~~
 82 ~~the landowner from lands in Georgia shall be required to, within 20 days of removal of~~
 83 ~~such timber, furnish the owner of said lands seller of timber a wood load scale ticket for~~
 84 ~~each and every load of wood removed from said property, when such load is sold by~~
 85 ~~weight, cord, or measure of board feet. A wood load scale ticket shall include, ~~but not be~~~~
 86 ~~limited to, information clearly understandable to the landowner seller as follows:~~

- 87 (1) Ticket number;
- 88 (2) Name and location of the person or company and its facility where the load of wood
 89 is received and weighed or measured;
- 90 (3) Date wood was received at ~~said~~ such facility;
- 91 (4) Tract name;
- 92 (5) County and state of origin;
- 93 (6) Dealer name (if any);
- 94 (7) Producer or logging company name;
- 95 (8) Species of wood;

96 (9) Weight or scale information. If the load is measured by weight, the gross, tare, and
 97 net weights shall be shown. If the load is measured by scale, the total volume shall be
 98 shown;

99 (10) Weight, scale, or amount of wood deducted and the deduction classification (cull,
 100 undersize, metal, knots, etc.); and

101 (11) Name of the person receiving, weighing, or scaling the wood."

102 **SECTION 4.**

103 Chapter 4 of Title 44 of the Official Code of Georgia Annotated, relating to real estate
 104 boundary determinations, is amended by repealing Article 1, relating to processioning, and
 105 designating such article as reserved.

106 **SECTION 5.**

107 Title 51 of the Official Code of Georgia Annotated, relating to torts, is amended in Code
 108 Section 51-10-6, relating to owner's right of action for damage to or theft of personal
 109 property, by adding a new subsection to read as follows:

110 "(h) The measure of damages provided for in this Code section shall not be applicable in
 111 cases involving the unauthorized cutting or cutting and carrying away of timber from the
 112 property of another. In such cases, damages shall be awarded in accordance with Code
 113 Section 51-12-50."

114 **SECTION 6.**

115 Said title is further amended in Article 1 of Chapter 11, relating to defenses to tort actions
 116 generally, by adding a new Code section to read as follows:

117 "51-11-10.

118 There shall be a rebuttable presumption that a property owner selling timber from his or
 119 her land and acting in good faith shall not be liable to adjoining landowners for any
 120 trespass or conversion of property caused by a third party timber harvester who is not
 121 subject to the control and direction of the property owner selling timber if, prior to the
 122 harvesting of such timber:

123 (1) A land surveyor possessing a certificate of registration issued by the State Board of
 124 Registration for Professional Engineers and Land Surveyors has surveyed the property
 125 from which the timber is to be harvested and plainly established and clearly marked the
 126 metes and bounds of the property such that a reasonable person would know or should
 127 have known of the existence of such markings when harvesting the timber and has
 128 provided a copy of that survey to the third-party timber harvester;

129 (2) The boundaries of the property from which timber is sold have been completely and
 130 accurately indicated using physical markers that are clearly visible such that a reasonable
 131 person would know or should have known of the existence of such physical markers; or
 132 (3) The property owner has obtained a document indicating where the boundaries are and
 133 signed by adjoining landowners indicating that they agree on the location of such
 134 boundaries and has provided a copy of such document to the third-party timber harvester;
 135 provided, however, that such document shall only create a presumption in favor of the
 136 property owner with regard to those landowners who have signed such document."

137 **SECTION 7.**

138 Said title is further amended by revising Code Section 51-12-50, relating to measure of
 139 damages for converted timber, as follows:

140 "51-12-50.

141 (a) Except as provided in Code Section 51-12-51, ~~where~~ when a plaintiff recovers for
 142 timber ~~cut or~~ cut and carried away, the measure of ~~damage:~~ damages shall be:

143 (1) Treble the fair market value of the trees cut as they stood;

144 (2) Treble the diminished fair market value of any trees incidentally harmed;

145 (3) Costs of reasonable reforestation activities related to the plaintiff's injury; and

146 (4) Attorney fees and expenses of litigation.

147 (b) ~~When the (1) Where~~ defendant is a willful trespasser, ~~is the full value of the property~~
 148 ~~at the time and place of demand or when an action is brought without deduction for his~~
 149 ~~labor or expense; the plaintiff may also recover punitive damages.~~

150 (2) ~~Where defendant is an unintentional or innocent trespasser or an innocent purchaser~~
 151 ~~from such trespasser, is the value at the time of conversion less the value he or his venter~~
 152 ~~added to the property; and~~

153 (3) ~~Where defendant is a purchaser without notice from a willful trespasser, is the value~~
 154 ~~at the time of his purchase.~~

155 (c) When the boundary lines of the property have been clearly and accurately marked, it
 156 shall be presumed that the defendant was a willful trespasser."

157 **SECTION 8.**

158 All laws and parts of laws in conflict with this Act are repealed.