

The Senate Judiciary Committee offered the following substitute to HB 790:

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:

SECTION 1.

18 Article 2 of Chapter 3 of Title 9 of the Official Code of Georgia Annotated, relating to
19 specific periods of limitation, is amended by revising Code Section 9-3-32, relating to
20 damages for conversion or destruction, as follows:
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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, 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 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 the investigator observes violating any criminal law of this state while carrying
 64 out his or her duties, provided that such person shall immediately be delivered to the
 65 sheriff of the county where the violation occurred; and

66 ~~(3)(4) Carry weapons in order to enforce the forestry laws and regulations of this state~~
 67 ~~execute their enforcement authority under this Code section.~~

68 ~~(d)(1) The provisions of paragraphs (1) and (2) of subsection (c) of this Code section~~
 69 ~~notwithstanding, no arrest shall be made of any person for an offense described in~~
 70 ~~subsection (e) of Code Section 12-6-90 unless on two previous occasions such person~~
 71 ~~was issued warnings by a forestry investigator, other law enforcement officer, or State~~
 72 ~~Forestry Commission firefighter for such an offense. Upon initiating any investigation~~
 73 ~~regarding the potential theft or conversion of timber, the investigator shall promptly~~
 74 ~~notify the sheriff or other law enforcement agency exercising jurisdiction within the~~
 75 ~~county or municipality in which the investigator is conducting such investigation. No~~
 76 ~~investigator shall request any other state law enforcement agency to render assistance in~~
 77 ~~any investigation relating to the theft or conversion of timber without the consent of the~~
 78 ~~sheriff or other law enforcement agency exercising jurisdiction within the county or~~
 79 ~~municipality in which the investigation is conducted.~~

80 (2) The director may, and in the case of a request by the Governor shall, authorize and
 81 direct investigators to cooperate with and render assistance to any law enforcement
 82 agency of this state or of any political subdivision of this state in any criminal case, in the
 83 prevention or detection of violations of any law, or in the apprehension or arrest of any
 84 person who violates the criminal laws of this state, any other state, or the United States,
 85 upon a request by the sheriff or chief law enforcement officer of any political subdivision
 86 of this state or by the Governor.

87 (3) Nothing in this Code section shall repeal, supersede, alter, affect, or otherwise usurp
 88 the power of any other law enforcement officer of this state or of any political subdivision
 89 of this state.

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

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SECTION 3.

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

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

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(1) Ticket number;

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(2) Name and location of the person or company and its facility where the load of wood is received and weighed or measured;

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(3) Date wood was received at ~~said~~ such facility;

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(4) Tract name;

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(5) County and state of origin;

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(6) Dealer name (if any);

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(7) Producer or logging company name;

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(8) Species of wood;

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

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

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

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SECTION 4.

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

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SECTION 5.

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

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“(h) The measure of damages provided for in this Code section shall not be applicable in cases involving the unauthorized cutting or cutting and carrying away of timber from the

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131 property of another. In such cases, damages shall be awarded in accordance with Code
 132 Section 51-12-50."

133 **SECTION 6.**

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

136 "51-11-10.

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

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

148 (2) The boundaries of the property from which timber is sold have been completely and
 149 accurately indicated using physical markers that are clearly visible such that a reasonable
 150 person would know or should have known of the existence of such physical markers; or

151 (3) The property owner has obtained a document indicating where the boundaries are and
 152 signed by adjoining landowners indicating that they agree on the location of such
 153 boundaries and has provided a copy of such document to the third-party timber harvester;
 154 provided, however, that such document shall only create a presumption in favor of the
 155 property owner with regard to those landowners who have signed such document."

156 **SECTION 7.**

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

159 "51-12-50.

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

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

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

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

165 (4) Attorney fees and expenses of litigation.

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

169 ~~(2) Where defendant is an unintentional or innocent trespasser or an innocent purchaser~~
170 ~~from such trespasser, is the value at the time of conversion less the value he or his vender~~
171 ~~added to the property; and~~

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

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

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SECTION 8.

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