

**MISSISSIPPI STATE CODE**  
**Title 49 - Conservation and Ecology**  
**Chapter 33 - Mississippi Forestry Activity Act**

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**Sec. 49-33-1. Short Title.**

This chapter shall be known and may be cited as the "Mississippi Agricultural and Forestry Activity Act."

SOURCES: Laws, 1994, ch. 647, Sec. 3; reenacted and amended, 1995, ch. 379, Sec. 1, eff from and after July 1, 1995

**Sec. 49-33-3. Purpose.**

The purpose of this chapter is to establish the policy of the State of Mississippi as allowing owners of property classified as forest or agricultural land and owners of timber, wood and forest products on forest land owned by another to conduct forestry or agricultural activities, or if the State of Mississippi prohibits or severely limits such forestry or agricultural activities, to compensate the owners for their loss.

SOURCES: Laws, 1994, ch. 647, Sec. 4; reenacted and amended, 1995, ch. 379, Sec. 2, eff from and after July 1, 1995

**Sec. 49-33-5. Declaration of policy.**

It is declared the policy of the State of Mississippi to conserve, protect and encourage the continued use, development and improvement of forest and agricultural land within the state for the production of agricultural products and timber, wood and forest products including nongame species. The vital and significant contributions of forestry and agricultural activities to the economy of the State of Mississippi and the use of land in the state as forest and agricultural lands are essential factors in providing for the favorable quality of life in the State of Mississippi.

SOURCES: Laws, 1994, ch. 647, Sec. 5; reenacted and amended, 1995, ch. 379, Sec. 3, eff from and after July 1, 1995

**Sec. 49-33-7. Definitions.**

For the purposes of this chapter, the following words and phrases shall have the meanings ascribed to them in this section:

(a) "Act" shall mean the Mississippi Agricultural and Forestry Activity Act.

(b) "Forest or agricultural land" means any land in the state devoted to the growing of trees or the commercial production of agricultural products or timber, wood or forest products including nongame species where the land is classified by the county as forest, agricultural or open land and being used as forest or agricultural land in the performance of forestry or agricultural activities.

(c) "Forestry activities" means any activity on forest land associated with the reforestation, growing, managing, protecting and harvesting of timber, wood and forest products including nongame species.

(d) "Agricultural activities" means any activities included under Section 27-35-50 (4) as agricultural purposes.

(e) "Inverse condemnation" means any action by the State of Mississippi that prohibits or severely limits the right of an owner to conduct forestry or agricultural activities on forest or agricultural land. Inverse condemnation shall not include an action by the state that is:

(i) A taking as defined in paragraph (l) of this section;

(ii) A result of police power to prohibit activities that are noxious in fact or are harmful to the public health and safety; or

(iii) An order issued as a result of a violation of state law; or

(iv) An action as prescribed by the Mississippi Commission on Wildlife, Fisheries and Parks as set forth in Sections 49-7-1 through 49-7-257 or concerning the closing or shortening of open seasons as set forth in Section 49-1-29 (a).

(f) "Noxious in fact" means an activity that constitutes a public nuisance under common law.

(g) "Owner" means the holder of legal or equitable title to:

(i) Forest or agricultural land or timber, wood or forest products, including the management of nongame species thereon; or

(ii) Personal property rights associated with conducting forestry or agricultural activities on forest or agricultural land.

(h) "Prohibits or severely limits" means to reduce the fair market value of forest or agricultural land (or any part or parcel thereof) or timber, wood or forest products including nongame species (or any part or parcel thereof) or personal property rights associated with conducting forestry or agricultural activities on the forest or agricultural land by more than forty percent (40%) of their value before the action.

(i) "Public health and safety" means actions by the State of Mississippi based upon its police powers. Public health and safety actions prohibiting or severely restricting forestry or agricultural activities shall be:

(i) Taken only in response to real and substantial threats to public health and safety;

(ii) Designated to significantly advance the health and safety purpose; and

(iii) No greater than necessary to achieve the health and safety purpose.

(j) "State of Mississippi" or "state" means the State of Mississippi, any county, municipality or any political subdivision thereof.

(k) "State law" means any statute, rule, regulation, ordinance, resolution or similar action by the State of Mississippi validly existing and as interpreted on the effective date of this act [Laws, 1995, Ch. 379, eff July 1, 1995]. State law shall not include:

(i) Any judicial or executive interpretation of a state law after the effective date of this act [Laws, 1995, Ch. 379, eff July 1, 1995] that prohibits or severely limits the conducting of forestry or agricultural activities that were not prohibited or severely limited before the effective date of this act [Laws, 1995, Ch. 379, eff July 1, 1995]; or

(ii) Any legislative amendment, interpretation or enactment by the state after the effective date of this act [Laws, 1995, Ch. 379, eff July 1, 1995] that prohibits or severely limits the conducting of forestry or agricultural activities (except such actions that are the result of police power to prohibit activities that are noxious in fact or are harmful to the public health and safety).

(l) "Taking" means any action by the State of Mississippi under the Fifth Amendment to the United States Constitution, the Fourteenth Amendment to the United States Constitution, or Article III, Section 17 of the Mississippi Constitution where the owner is entitled to compensation for the fair market value of the owner's property or some part thereof (or required to forfeit the property in accordance with state forfeiture laws). Taking shall include the formal exercise of the power of eminent domain, the seizure or forfeiture of property for violations of law or as evidence in criminal proceedings or the issuance of orders authorized by statute or issued by a state agency or court of law for violations of state law. Taking shall not include the repealing of any state action that lessens interference with the conduct of forestry or agricultural activities.

(m) "Personal property" means any interest acquired by deed, lease, contract or agreement in standing or severed timber, wood or forest products.

SOURCES: Laws, 1994, ch. 647, Sec. 6; reenacted and amended, 1995, ch. 379, Sec. 4, eff from and after July 1, 1995

#### **Sec. 49-33-9. Inverse Condemnation.**

(1) Right of action: Any action by the State of Mississippi that constitutes an inverse condemnation of forest or agricultural land, timber, wood or forest products, including nongame species or personal property rights associated with conducting forestry or agricultural activities, shall give the owner a cause of action under Section 11-46-1 et seq. for the payment of awards against the entity or entities causing the inverse condemnation, notwithstanding any provision of this chapter to the contrary. The owner shall have the right to file an inverse condemnation action before any court having jurisdiction over the county in which the forest or agricultural land is located. A determination that a use is noxious in fact or possesses a demonstrable harm to the public health and safety is not binding upon a court of law and a judicial review of the action shall be de novo.

(2) Subsequent repeal or rescission by the state: The entity sued in any inverse condemnation action shall have the right to repeal the action complained of in the suit before a decision becoming final. Such repeal shall entitle the owner to recover its damages arising out of the action before the repeal, and, in the discretion of the court, its costs of litigation (including reasonable attorney and expert witness fees). Subsequent repeal of the action by the state after a decision has become final shall not entitle the state to refuse payment, obtain a return of payment (if made) or result in ownership in the property by the state (absent a taking of one hundred percent (100%) of the property).

(3) Payment of awards for inverse condemnation: Payment of awards for inverse condemnation shall be made by the entity or entities as determined by the court subject to applicable limits provided in Section 11-46-15. Payment shall not result in ownership in the property by the state (absent a taking of one hundred percent (100%) of the property). If more than one (1) entity is involved, the payment shall be

made in the percentage of liability as allocated by the trier of fact in the inverse condemnation action. If any county, municipality, or political subdivision of the state whose actions constitute inverse condemnation as defined in this chapter are unable to pay the costs awarded, then the action causing the inverse condemnation shall be rescinded within sixty (60) days after the judgment of the court.

SOURCES: Laws, 1994, ch. 647, Sec. 7; reenacted and amended, 1995, ch. 379, Sec. 5, eff from and after July 1, 1995

**Sec. 49-33-11. Conditional Waivers Prohibited.**

The state shall not make a waiver of the provisions of this chapter a condition for approval of the use or continued use of real property or the issuance of any permit or other entitlement. The acceptance by an owner of any approval of use, continued use, permit or other entitlement shall not constitute a waiver of the rights of the owner to compensation for inverse condemnation.

SOURCES: Laws, 1994, ch. 647, Sec. 8; reenacted, 1995, ch. 379, Sec. 6, eff from and after July 1, 1995

**Sec. 49-33-13. Constitutional Requirements and Legal Challenges.**

This chapter shall not affect any right or remedy granted an owner under the United States or Mississippi Constitutions or the laws of the United States and the State of Mississippi. Nothing in this chapter shall be construed to preclude an owner from bringing a legal challenge and seeking remedies at law or equity arising out of any action of the State of Mississippi regardless of whether the action constituted a taking, an inverse condemnation, or resulted in a diminution in value of forty percent (40%) or less.

SOURCES: Laws, 1994, ch. 647, Sec. 9; reenacted, 1995, ch. 379, Sec. 7, eff from and after July 1, 1995

**Sec. 49-33-15. Severability.**

The provisions of this chapter are severable, and if any provision of this chapter is held invalid by a court of competent jurisdiction, the invalidity shall not affect the other provisions of this chapter that can be given effect without the invalid provision.

SOURCES: Laws, 1994, ch. 647, Sec. 10; reenacted, 1995, ch. 379, Sec. 8, eff from and after July 1, 1995

**Sec. 49-33-17. Other provisions to which chapter is subject.**

All the provisions of this chapter are subject to Sections 11-46-1 et seq., 49-2-9, 49-2-13, 49-17-17, 17-17-1, 41-67-3 and 41-67-15, Mississippi Code of 1972.

SOURCES: Laws, 1994, ch. 647, Sec. 11; reenacted, 1995, ch. 379, Sec. 9, eff from and after July 1, 1995