

House Bill 1057 (AS PASSED HOUSE AND SENATE)

By: Representatives Rhodes of the 120th, Fleming of the 121st, Erwin of the 28th, and Frye of the 118th

A BILL TO BE ENTITLED
AN ACT

1 To amend Chapter 12 of Title 2 of the Official Code of Georgia Annotated, relating to
2 fertilizers, liming materials, and soil amendments, so as to prohibit domestic septage in
3 fertilizer, liming materials, and soil amendments; to remove authorization for promulgation
4 of rules and regulations regarding fertilizers and liming materials derived from industrial
5 products; to provide for penalties; to revise a definition; to provide for a tonnage fee and
6 semiannual reports; to authorize promulgation of rules and regulations and sharing of
7 information and consultation with other agencies; to provide for related matters; to repeal
8 conflicting laws; and for other purposes.

9 BE IT ENACTED BY THE GENERAL ASSEMBLY OF GEORGIA:

SECTION 1.

10 Chapter 12 of Title 2 of the Official Code of Georgia Annotated, relating to fertilizers, liming
11 materials, and soil amendments, is amended by revising Code Section 2-12-11, relating to
12 distribution of adulterated fertilizer prohibited and when adulterated, as follows:

13 "2-12-11.

14 No person shall distribute an adulterated fertilizer product. A fertilizer shall be deemed to
15 be adulterated if:

16 (1) It contains any deleterious or harmful ingredient in sufficient amount to render it
17 injurious to beneficial plant, animal, human, or aquatic life or to soil or water when
18 applied in accordance with directions for use on the label or if adequate warning
19 statements or directions for use which may be necessary to protect plant, animal, human,
20 or aquatic life or soil or water are not shown upon the label;

21 (2) Its composition falls below or differs from that which it is purported to possess by
22 its labeling; ~~or~~

23 (3) It contains unwanted crop seed or weed seed; or

24 (4) It contains domestic septage as such term is defined in 40 CFR 503.9.."

26 **SECTION 2.**

27 Said chapter is further amended by revising Code Section 2-12-15, relating to adoption,
 28 enforcement, and promulgation of rules and regulations generally and sharing of information,
 29 as follows:

30 "2-12-15.

31 For the enforcement and implementation of this article, the Commissioner is authorized to
 32 prescribe and adopt, according to the provisions of Chapter 13 of Title 50, the 'Georgia
 33 Administrative Procedure Act,' and enforce such reasonable rules and regulations relating
 34 to the distribution of fertilizers as the Commissioner finds necessary to carry into effect the
 35 full intent and meaning of this article and to ensure ethical practices in the sale, delivery,
 36 and return of fertilizer. ~~The Commissioner is also authorized to promulgate and adopt rules
 37 and regulations relative to fertilizers derived from industrial by-products which may
 38 include, but not be limited to, application rates, proper conditions for application,
 39 application record keeping and retention, development and use of site-specific nutrient
 40 management plans, and storage and containment in or on lands where fertilizers are
 41 applied.~~ The Commissioner is further authorized to share such information and consult
 42 with other agencies such as, but not limited to, the Environmental Protection Division of
 43 the Department of Natural Resources and the United States Department of Agriculture's
 44 Natural Resources Conservation Service."

45 **SECTION 3.**

46 Said chapter is further amended by revising Code Section 2-12-20, relating to notice of
 47 violations, administrative hearing, penalty for violation, and prosecution, as follows:

48 "2-12-20.

49 (a) If it shall appear from the examination of any fertilizer that any of the provisions of this
 50 article or the rules and regulations issued pursuant to this article have been violated, the
 51 Commissioner shall cause notice of the violations to be given to the licensee, distributor,
 52 or processor from whom such sample was taken. Any person so notified shall be given
 53 opportunity to be heard in accordance with Chapter 13 of Title 50, the 'Georgia
 54 Administrative Procedure Act.' If it appears after such hearing, either in the presence or
 55 absence of the person so notified, that any of the provisions of this article or the rules and
 56 regulations issued pursuant to this article have been violated, the Commissioner may certify
 57 the facts to the proper prosecuting attorney.

58 (b) Except as otherwise provided in this Code section, Any any person violating any of the
 59 provisions provision of this article or regulation adopted pursuant to this article shall be
 60 guilty of a misdemeanor.

61 (c) Nothing in this article shall be construed as requiring the Commissioner to report cases
 62 for prosecution or for the institution of seizure proceedings as a result of minor violations
 63 of this article when he or she believes that the public interest will be best served by a
 64 suitable notice of warning in writing or other methods.

65 (d) It shall be the duty of each prosecuting attorney to whom any violation is reported to
 66 cause appropriate proceedings to be instituted and prosecuted in a court of competent
 67 jurisdiction without delay.

68 (e) Any person who distributes fertilizer in this state which contains domestic septage as
 69 such term is defined in 40 CFR 503.9 shall be guilty of a misdemeanor for the first offense.
 70 For the second or any subsequent offense, any person who distributes fertilizer in this state
 71 which contains domestic septage as such term is defined in 40 CFR 503.9 shall be guilty
 72 of a misdemeanor of a high and aggravated nature and, upon conviction, shall be punished
 73 as provided in Code Section 17-10-4. Each such violation shall constitute a separate
 74 offense.

75 (f) Any person who distributes a fertilizer in this state which contains domestic septage as
 76 such term is defined in 40 CFR 503.9 shall be liable for a civil penalty of not more than
 77 \$25,000.00 per violation. For the second or any subsequent offense, any person who
 78 distributes a fertilizer in this state which contains domestic septage as such term is defined
 79 in 40 CFR 503.9 shall be liable for a civil penalty of not more than \$50,000.00 per
 80 violation."

81 **SECTION 4.**

82 Said chapter is further amended by revising Code Section 2-12-47, relating to sale of
 83 noncomplying or toxic material prohibited, as follows:

84 "2-12-47.

85 (a) No agricultural liming material shall be sold or offered for sale in this state unless it
 86 complies with the provisions of this article and rules and regulations adopted pursuant to
 87 this article.

88 (b) No agricultural liming material shall be sold or offered for sale in this state which
 89 contains toxic materials in quantities determined by the Commissioner which may be
 90 injurious to plants or animals.

91 (c) No agricultural liming material which contains domestic septage as such term is
 92 defined in 40 CFR 503.9 shall be sold or offered for sale in this state."

93 **SECTION 5.**

94 Said chapter is further amended by revising Code Section 2-12-49, relating to rules and
 95 regulations and sharing of information, as follows:

96 "2-12-49.

97 The Commissioner, after reasonable notice and hearing, is authorized to promulgate and
 98 adopt rules and regulations for the administration of this article. ~~The Commissioner is also~~
 99 ~~authorized to promulgate and adopt rules and regulations relative to liming materials~~
 100 ~~derived from industrial by-products which may include, but not be limited to, application~~
 101 ~~rates, proper conditions for application, application record keeping and retention,~~
 102 ~~development and use of site-specific nutrient management plans, and storage and~~
 103 ~~containment in or on lands where liming materials are applied.~~ The Commissioner is
 104 further authorized to share such information and consult with other agencies such as, but
 105 not limited to, the Environmental Protection Division of the Department of Natural
 106 Resources and the United States Department of Agriculture's Natural Resources
 107 Conservation Service."

108

SECTION 6.

109 Said chapter is further amended by revising Code Section 2-12-50, relating to notice and
 110 prosecution of violations, hearings, and penalty, as follows:

111 "2-12-50.

112 (a) If it appears to the Commissioner or the Commissioner's agents that this article or the
 113 rules and regulations issued under this article have been violated, the Commissioner shall
 114 cause notice of the violation to be given to the licensee, distributor, or person responsible;
 115 and the persons notified shall be given an opportunity to be heard in accordance with
 116 Chapter 13 of Title 50, the 'Georgia Administrative Procedure Act.' If it appears after such
 117 hearing that any of the provisions of this article or the rules and regulations issued pursuant
 118 to this article have been violated, the Commissioner may certify the facts to the court
 119 having jurisdiction for prosecution as a misdemeanor or other appropriate action.

120 (b) Except as otherwise provided in this Code section, Any any person violating any
 121 provision of this article or regulation adopted pursuant to this article shall be guilty of a
 122 misdemeanor.

123 (c) Nothing in this article shall be construed as requiring the Commissioner to report a
 124 violation of this article for prosecution or for the institution of seizure proceedings when
 125 the Commissioner believes that the public interest will best be served by other methods.

126 (d) Any person who sells or offers for sale an agricultural liming material in this state
 127 which contains domestic septage as such term is defined in 40 CFR 503.9 shall be guilty
 128 of a misdemeanor for the first offense. For the second or any subsequent offense, any
 129 person who sells or offers for sale an agricultural liming material in this state which
 130 contains domestic septage as such term is defined in 40 CFR 503.9 shall be guilty of a

131 misdemeanor of a high and aggravated nature and, upon conviction, shall be punished as
 132 provided in Code Section 17-10-4. Each such violation shall constitute a separate offense.
 133 (e) Any person who sells or offers for sale an agricultural liming material in this state
 134 which contains domestic septage as such term is defined in 40 CFR 503.9 shall be liable
 135 for a civil penalty of not more than \$25,000.00 per violation. For the second or any
 136 subsequent offense, any person who sells or offers for sale an agricultural liming material
 137 in this state which contains domestic septage as such term is defined in 40 CFR 503.9 shall
 138 be liable for a civil penalty of not more than \$50,000.00 per violation."

139 **SECTION 7.**

140 Said chapter is further amended in Code Section 2-12-71, relating to soil amendment
 141 definitions, by revising paragraph (1) as follows:

142 "(1) 'Adulterated' means any soil amendment:

143 (A) Which contains any deleterious or harmful agent in sufficient quantity to be
 144 injurious to beneficial plants, animals, or aquatic life when applied in accordance with
 145 the directions for use shown on the label;

146 (B) Whose composition differs substantially from that offered in support of registration
 147 or shown on the label; or

148 (C) Which contains noxious weed seed; or

149 (D) Which contains domestic septage as such term is defined in 40 CFR 503.9."

150 **SECTION 8.**

151 Said chapter is further amended by revising Code Section 2-12-75, relating to semiannual
 152 reports to be filed and failure to file or false filing as ground for registration revocation, as
 153 follows:

154 "2-12-75.

155 ~~Each registrant shall keep accurate records of his sales and shall file semiannual reports~~
 156 ~~covering the periods January 1 through June 30 and July 1 through December 31. Such~~
 157 ~~reports shall be due within 30 days from the date of the close of each such period. If the~~
 158 ~~report is not filed within the 30 day period or is false in any respect, the Commissioner may~~
 159 ~~revoke the registration~~

160 (a) Any person who distributes a soil amendment to another person in this state must pay
 161 the Commissioner an inspection fee; provided, however, that sales or exchanges between
 162 registrants and sales of containers of ten pounds or less shall be exempt from such fee. The
 163 Commissioner shall establish the per ton inspection fee at an amount not to exceed 30¢ per
 164 ton, which amount shall equal or exceed annual costs anticipated to be incurred by the
 165 department in administering the soil amendment inspection program.

166 (b) Each registrant must keep accurate records of the registrant's sales and must file
 167 semiannual reports covering the periods of January 1 through June 30 and July 1 through
 168 December 31. Each semiannual report must be accompanied by full payment of the
 169 inspection fee set forth in subsection (a) of this Code section. Each semiannual report must
 170 be submitted to the department within 30 days following the end of the applicable filing
 171 period. If the tonnage report is not timely filed or is false in any respect, then the
 172 Commissioner may revoke the registration or assess a penalty in the amount of the greater
 173 of ten percent of the amount due or \$10.00."

174 **SECTION 9.**

175 Said chapter is further amended by revising Code Section 2-12-80, relating to promulgation
 176 and adoption of rules and regulations and sharing of information, as follows:

177 "2-12-80.

178 The Commissioner is authorized to:

179 (1) ~~promulgate~~ Promulgate and adopt:

180 (A) ~~such~~ Such rules and regulations as may be necessary to enforce this article. Such
 181 regulations may relate to, but shall not be limited to, methods of inspection and
 182 examination, designation of ingredients, and identity of products; ~~and.~~ ~~The~~
 183 ~~Commissioner is also authorized to promulgate and adopt~~

184 (B) ~~rules~~ Rules and regulations relative to soil amendments derived from industrial
 185 by-products which may include, but not be limited to, application rates, proper
 186 conditions for application, application record keeping and retention, development and
 187 use of site-specific nutrient management plans, and storage and containment in or on
 188 lands where soil amendments are applied, but shall exclude forest products, slates,
 189 clays, shells, gypsum, and lime; ~~The Commissioner is further authorized to provided,~~
 190 however, that pursuant to Code Section 2-1-6, no local government shall be prohibited
 191 or impaired from adopting or enforcing any zoning ordinance, including the adoption
 192 of buffers and setbacks; and

193 (2) ~~share~~ Share such information and consult with other agencies such as, but not limited
 194 to, the Environmental Protection Division of the Department of Natural Resources and
 195 the United States Department of Agriculture's Natural Resources Conservation Service."

196 **SECTION 10.**

197 Said chapter is further amended by revising Code Section 2-12-83, relating to penalties, as
 198 follows:

199 "2-12-83.

200 (a) Except as otherwise provided in this Code section, Any any person violating any of the
201 provisions provision of this article or the regulations regulation adopted under this article
202 shall be guilty of a misdemeanor.

203 (b) Any person who distributes or applies a soil amendment which contains domestic
204 septage as such term is defined in 40 CFR 503.9 shall be guilty of a misdemeanor for the
205 first offense. For the second or any subsequent offense, any person who distributes or
206 applies a soil amendment which contains domestic septage as such term is defined in 40
207 CFR 503.9 shall be guilty of a misdemeanor of a high and aggravated nature and, upon
208 conviction, shall be punished as provided in Code Section 17-10-4. Each such violation
209 shall constitute a separate offense.

210 (c) Any person who distributes or applies a soil amendment which contains domestic
211 septage as such term is defined in 40 CFR 503.9 shall be liable for a civil penalty of not
212 more than \$25,000.00 per violation. For the second or any subsequent offense, any person
213 who distributes or applies a soil amendment which contains domestic septage as such term
214 is defined in 40 CFR 503.9 shall be liable for a civil penalty of not more than \$50,000.00
215 per violation."

216 **SECTION 11.**

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