

House Bill 1310

By: Representative Moore of the 91st

A BILL TO BE ENTITLED
AN ACT

1 To amend Title 31 of the Official Code of Georgia Annotated, relating to health, so as to
2 provide that persons doing business in this state shall not expose individuals to chemicals
3 known to cause cancer or reproductive toxicity without first giving clear and reasonable
4 warning nor discharge such chemicals into drinking water; to provide for the content and
5 manner of the giving of such warnings; to provide for exceptions; to provide that the
6 Governor shall publish lists of such chemicals; to authorize the Attorney General and, under
7 specified conditions, district attorneys and other persons to seek injunctions and civil
8 penalties; to provide for the Safe Drinking Water and Toxic Enforcement Fund and its
9 purposes and funding; to provide a short title; to provide for related matters; to provide a
10 contingent effective date; to repeal conflicting laws; and for other purposes.

11 BE IT ENACTED BY THE GENERAL ASSEMBLY OF GEORGIA:

12 **SECTION 1.**

13 Title 31 of the Official Code of Georgia Annotated, relating to health, is amended by adding
14 a new chapter to read as follows:

H. B. 1310

15 "CHAPTER 55

16 31-55-1.

17 This chapter shall be known and may be cited as the 'Safe Drinking Water and Toxic
18 Enforcement Act of 2024.' This chapter may also be known and may be cited as the
19 'Georgia Protect 25 Act.'

20 31-55-2.

21 As used in this chapter, the term:

22 (1) 'Person' means an individual, trust, firm, joint stock company, corporation, company,
23 partnership, limited liability company, and association.

24 (2) 'Person in the course of doing business' shall not include any person employing fewer
25 than ten employees in his or her business; any city, county, or school district or any
26 department or agency thereof; the state or any department or agency thereof; the federal
27 government or any department or agency thereof; or any entity in its operation of a public
28 water system as defined in Code Section 12-5-172.

29 (3) 'Significant amount' means any detectable amount except an amount which would
30 meet the exemption test in Code Section 31-55-8 if an individual were exposed to such
31 an amount in drinking water.

32 (4) 'Source of drinking water' means either a present source of drinking water or water
33 which is identified or designated as being suitable for domestic or municipal uses.

34 (5) 'Threaten to violate' means to create a condition in which there is a substantial
35 probability that a violation will occur.

36 (6) 'Warning' within the meaning of Code Section 31-55-4 need not be provided
37 separately to each exposed individual and may be provided by general methods such as
38 labels on consumer products, inclusion of notices in mailings to water customers, posting
39 of notices, placing notices in public news media, and the like; provided, however, that the

40 warning accomplished is clear and reasonable. In order to minimize the burden on retail
41 sellers of consumer products including foods, regulations implementing Code
42 Section 31-55-4 shall to the extent practicable place the obligation to provide any
43 warning materials such as labels on the producer or packager rather than on the retail
44 seller, except where the retail seller itself is responsible for introducing a chemical known
45 to the state to cause cancer or reproductive toxicity into the consumer product in question.

46 31-55-3.

47 No person in the course of doing business shall knowingly discharge or release a chemical
48 known to the state to cause cancer or reproductive toxicity into water or onto or into land
49 where such chemical passes or probably will pass into any source of drinking water,
50 notwithstanding any other provision or authorization of law except as provided in Code
51 Section 31-55-7.

52 31-55-4.

53 No person in the course of doing business shall knowingly and intentionally expose any
54 individual to a chemical known to the state to cause cancer or reproductive toxicity without
55 first giving clear and reasonable warning to such individual except as provided in Code
56 Section 31-55-8.

57 31-55-5.

58 (a) A person who violates or threatens to violate Code Section 31-55-3 or 31-55-4 may be
59 enjoined in any court of competent jurisdiction in this state.

60 (b)(1) A person who has violated Code Section 31-55-3 or 31-55-4 shall be liable for a
61 civil penalty not to exceed \$2,500.00 per day for each violation in addition to any other
62 penalty established by law. Such civil penalty may be assessed and recovered in a civil
63 action brought in any court of competent jurisdiction in this state.

64 (2) In assessing the amount of a civil penalty for a violation of this chapter, the court
65 shall consider all of the following:

66 (A) The nature and extent of the violation;

67 (B) The number and severity of the violations;

68 (C) The economic effect of the penalty on the violator;

69 (D) Whether the violator took good faith measures to comply with this chapter at the
70 time these measures were taken;

71 (E) The willfulness of the violator's misconduct;

72 (F) The deterrent effect that the imposition of the penalty would have on both the
73 violator and the regulated community as a whole; and

74 (G) Any other factor that justice may require.

75 (c) Actions pursuant to this Code section may be brought by the Attorney General, by a
76 district attorney, or as provided in subsection (d) of this Code section.

77 (d) Actions pursuant to this Code section may be brought by a person in the public interest
78 if both of the following requirements are met:

79 (1) The private action is commenced more than 60 days from the date that the person has
80 given notice of an alleged violation of Code Section 31-55-3 or 31-55-4 that is the subject
81 of the private action to the Attorney General and the district attorney of the judicial
82 circuit in which the alleged violator is located and to the alleged violator. If the notice
83 alleges a violation of Code Section 31-55-4, the notice of the alleged violation shall
84 include a certificate of merit executed by the attorney for the noticing party or by the
85 noticing party, if the noticing party is not represented by an attorney. The certificate of
86 merit shall state that the person executing the certificate has consulted with one or more
87 persons with relevant and appropriate experience or expertise who have reviewed facts,
88 studies, or other data regarding the exposure to the listed chemical that is the subject of
89 the action, and that, based on that information, the person executing the certificate
90 believes there is a reasonable and meritorious case for the private action. Factual

91 information sufficient to establish the basis of the certificate of merit, including the
92 information identified in paragraph (2) of subsection (h) of this Code section, shall be
93 attached to the certificate of merit that is served on the Attorney General; and

94 (2) Neither the Attorney General nor the district attorney has commenced and is
95 diligently prosecuting an action against the violation.

96 (e)(1)(A) If, after reviewing the factual information sufficient to establish the basis for
97 the certificate of merit and meeting and conferring with the noticing party regarding the
98 basis for the certificate of merit, the Attorney General believes there is no merit to the
99 action, the Attorney General shall serve a letter to the noticing party and the alleged
100 violation stating the Attorney General believes there is no merit to the action.

101 (B) If the Attorney General does not serve a letter pursuant to subparagraph (A) of this
102 paragraph, this shall not be construed as an endorsement by the Attorney General of the
103 merit of the action.

104 (2) A person bringing an action in the public interest pursuant to subsection (d) of this
105 Code section and a person filing an action in which a violation of this chapter is alleged
106 shall notify the Attorney General that the action has been filed. Neither this subsection
107 nor the procedures provided in subsections (f), (g), (h), (i), (j), and (k) of this Code
108 section shall affect the requirements imposed by statute concerning whether a person
109 filing an action in which a violation of this chapter is alleged is required to comply with
110 the requirements of subsection (d) of this Code section.

111 (f)(1) A person filing an action in the public interest pursuant to subsection (d) of this
112 Code section, a private person filing an action in which a violation of this chapter is
113 alleged, or a private person settling a violation of this chapter alleged in a notice given
114 pursuant to paragraph (1) of subsection (d) of this Code section, shall, after the action or
115 violation is subject either to a settlement or to a judgment, submit to the Attorney General
116 a reporting form that includes the results of that settlement or judgment and the final
117 disposition of the case, even if dismissed. At the time of the filing of a judgment

118 pursuant to an action brought in the public interest pursuant to subsection (d) of this Code
119 section, or an action brought by a private person in which a violation of this chapter is
120 alleged, the plaintiff shall file an affidavit verifying that the report required by this
121 subsection has been accurately completed and submitted to the Attorney General.

122 (2) A person bringing an action in the public interest pursuant to subsection (d) of this
123 Code section or a private person bringing an action in which a violation of this chapter
124 is alleged shall, after the action is either subject to a settlement, with or without court
125 approval, or to a judgment, submit to the Attorney General a report that includes
126 information on any corrective action being taken as a part of the settlement or resolution
127 of the action.

128 (3) The Attorney General shall develop a reporting form that specifies the information
129 that shall be reported, including, but not limited to, for purposes of paragraph (2) of
130 subsection (e) of this Code section, the date the action was filed, the nature of the relief
131 sought, and, for purposes of this subsection, the amount of the settlement or civil penalty
132 assessed, other financial terms of the settlement, and any other information the Attorney
133 General deems appropriate.

134 (4) If there is a settlement of an action brought by a person in the public interest under
135 subsection (d) of this Code section, the plaintiff shall submit the settlement, other than
136 a voluntary dismissal in which no consideration is received from the defendant, to the
137 court for approval upon noticed motion, and the court may approve the settlement only
138 if the court makes all of the following findings:

139 (A) The warning that is required by the settlement complies with this chapter;

140 (B) The award of attorney fees is reasonable under Georgia law; and

141 (C) The penalty amount is reasonable based on the criteria set forth in paragraph (2)
142 of subsection (b) of this Code section.

143 (5) The plaintiff subject to paragraph (4) of this subsection has the burden of producing
144 evidence sufficient to sustain each required finding. The plaintiff shall serve the motion

145 and all supporting papers on the Attorney General, who may appear and participate in a
146 proceeding without intervening in the case.

147 (6) Neither this subsection nor the procedures provided in paragraph (2) of
148 subsection (e), (g), (h), (i), (j), and (k) of this Code section shall affect the requirements
149 imposed by statute concerning whether claims raised by a person or public prosecutor not
150 a party to the action are precluded by a settlement approved by the court.

151 (g) The Attorney General shall maintain a record of the information submitted pursuant
152 to subsections (e) and (f) of this Code section and shall make this information available to
153 the public.

154 (h)(1) The basis for the certificate of merit required by subsection (d) shall be
155 discoverable only to the extent that the information is relevant to the subject matter of the
156 action and not subject to the attorney-client privilege, the attorney work product privilege,
157 or any other legal privilege.

158 (2) Upon the conclusion of an action brought pursuant to subsection (d) of this Code
159 section with respect to a defendant, if the trial court determines that there was no actual
160 or threatened exposure to a listed chemical, the court may, upon the motion of that
161 alleged violator or upon the court's own motion, review the basis for the belief of the
162 person executing the certificate of merit, expressed in the certificate of merit, that an
163 exposure to a listed chemical had occurred or was threatened. The information in the
164 certificate of merit, including the identity of the persons consulted with and relied on by
165 the certifier, and the facts, studies, or other data reviewed by those persons, shall be
166 disclosed to the court in an in-camera proceeding at which the moving party shall not be
167 present. If the court finds that there was no credible factual basis for the certifier's belief
168 that an exposure to a listed chemical had occurred or was threatened, then the action shall
169 be deemed frivolous within the meaning of Code Section 9-15-14. The court shall not
170 find a factual basis credible on the basis of a legal theory of liability that is frivolous
171 within the meaning of Code Section 9-15-14.

172 (i) The Attorney General may provide the factual information submitted to establish the
173 basis of the certificate of merit on request to a district attorney within whose judicial circuit
174 the violation is alleged to have occurred or to any other state or federal government agency,
175 but, in all other respects, the Attorney General shall maintain and ensure that all recipients
176 maintain the submitted information as confidential official information to the full extent
177 authorized.

178 (j) In an action brought by the Attorney General or a district attorney pursuant to this
179 chapter, the Attorney General or district attorney may seek and recover costs and attorney's
180 fees on behalf of a party who provides a notice pursuant to subsection (d) of this Code
181 section and who renders assistance in that action.

182 (k) Any person who serves a notice of alleged violation pursuant to paragraph (1) of
183 subsection (d) of this Code section for an exposure identified in such paragraph, as
184 appropriate, shall provide to the alleged violator at the time the notice of alleged violation
185 is served a notice of special compliance procedure and proof of compliance form pursuant
186 to subsection (l) of this Code section and shall not file an action for that exposure against
187 the alleged violator, or recover from the alleged violator in a settlement any payment in lieu
188 of penalties or any reimbursement for costs and attorney fees, if all of the following
189 conditions have been met:

190 (1) The notice given pursuant to paragraph (1) of subsection (d) of this Code section was
191 served on or after the effective date of this chapter and alleges that the alleged violator
192 failed to provide clear and reasonable warning as required under Code Section 31-55-4
193 regarding one or more of the following:

194 (A) An exposure to alcoholic beverages that are consumed on the alleged violator's
195 premises to the extent onsite consumption is permitted by law;

196 (B) An exposure to a chemical known to the state to cause cancer or reproductive
197 toxicity in a food or beverage prepared and sold on the alleged violator's premises

198 primarily intended for immediate consumption on or off premises, to the extent of both
199 of the following:

200 (i) The chemical was not intentionally added; and

201 (ii) The chemical was formed by cooking or similar preparation of food or beverage
202 components necessary to render the food or beverage palatable or to avoid
203 microbiological contamination;

204 (C) An exposure to environmental tobacco smoke caused by entry of persons, other
205 than employees, on premises owned or operated by the alleged violator where smoking
206 is permitted at any location on the premises; or

207 (D) An exposure to chemicals known to the state to cause cancer or reproductive
208 toxicity in engine exhaust, to the extent the exposure occurs inside a facility owned or
209 operated by the alleged violator and primarily intended for parking noncommercial
210 vehicles;

211 (2) Within 14 days after service of the notice, the alleged violator has done all of the
212 following:

213 (A) Corrected the alleged violation;

214 (B)(i) Agreed to pay a civil penalty for the alleged violation of Code Section 31-55-4
215 in the amount of \$500.00, to be adjusted every five years pursuant to division (ii) of
216 this subparagraph, per facility or premises where the alleged violation occurred, of
217 which 75 percent shall be deposited in the Safe Drinking Water and Toxic
218 Enforcement Fund, and 25 percent shall be paid to the person that served the notice
219 as provided in Code Section 31-55-9; and

220 (ii) On April 1, 2029, and at each five-year interval thereafter, the dollar amount of
221 the civil penalty provided pursuant to this subparagraph shall be adjusted by the
222 Judicial Council of Georgia based on the change in the annual Georgia Consumer
223 Price Index for All Urban Consumers, published by the Department of Industrial
224 Relations, Division of Labor Statistics and Research, for the most recent five-year

225 period ending on December 31 of the year preceding the year in which the adjustment
226 is made, rounded to the nearest five dollars. The Judicial Council of Georgia shall
227 every five years publish the dollar amount of the adjusted civil penalty provided
228 pursuant to this subparagraph, together with the date of the next scheduled
229 adjustment; and

230 (C) Notified, in writing, the person that served the notice of the alleged violation that
231 the violation has been corrected. The written notice shall include the notice of special
232 compliance procedure and proof of compliance form specified in subsection (l) of this
233 Code section, which was provided by the person serving notice of the alleged violation
234 and which shall be completed by the alleged violator as directed in the notice; and

235 (3) The alleged violator shall deliver the civil penalty to the person that served the notice
236 of the alleged violation within 30 days of service of that notice, and the person that served
237 the notice of violation shall remit the portion of the penalty due to the Safe Drinking
238 Water and Toxic Enforcement Fund within 30 days of receipt of the funds from the
239 alleged violator.

240 (l) The Attorney General shall promulgate a form for the notice which is required to be
241 provided to an alleged violator pursuant to subsection (k) of this Code section within the
242 90 days following the effective date of this subsection. Such notice shall provide for
243 identification of the persons bringing the notice and provide a contact individual with an
244 address for mail and electronic communications with such persons; a statement of intent
245 to pursue private action if the public enforcement agencies do not commence or diligently
246 pursue an action to rectify the problem complained of; a summary of the provisions of this
247 chapter; a statement of the alleged violation; the number and duration of the alleged
248 violations; a specific identification of the product which is the subject of the complaint; the
249 carcinogen or toxin allegedly causing the exposure; the routes of such exposure; the types
250 of harm resulting from such exposure; a demand for preservation of evidence by all noticed
251 recipients to include all documents relating to the presence of the carcinogen or toxin in the

252 product; purchase and sales information for the product, which shall include, but not be
253 limited to, purchasers and suppliers, quantities sold and in inventory, the identity of the
254 manufacturers, producers, packagers, importers, suppliers, and distributors, quantity sold
255 or distributed per transaction, as well as the suppliers of the raw material, and the current
256 inventory of the product in Georgia; efforts to comply with the provisions of this chapter
257 with respect to the product, and communications with any person relating to the presence
258 or potential presence of the carcinogen or toxin in the product.

259 (m) An alleged violator may satisfy the conditions set forth in subsection (k) of this Code
260 section only one time for a violation arising from the same exposure in the same facility
261 or on the same premises.

262 (n) Nothing in subsection (k) of this Code section shall prevent the Attorney General or
263 a district attorney in whose judicial circuit a violation is alleged to have occurred from
264 filing an action pursuant to subsection (c) of this Code section against an alleged violator.
265 In any such action, the amount of any civil penalty for a violation shall be reduced to
266 reflect any payment made by the alleged violator for the same alleged violation pursuant
267 to subparagraph (B) of paragraph (2) of subsection (k) of this Code section.

268 (o) If a violation of this chapter is alleged or the application or construction of provisions
269 of this chapter is at issue in a proceeding in the Supreme Court or the Court of Appeals,
270 each party shall serve a copy of the party's brief or petition and brief on the Attorney
271 General. Service on the Attorney General shall be accomplished by serving the brief, or
272 petition and brief, at the service address designated by the Attorney General. A brief shall
273 not be accepted or filed unless the proof of service shows service on the Attorney General.
274 A party failing to comply with this subsection shall be given a reasonable opportunity to
275 cure the failure before the court imposes sanction, and, in that instance, the court shall
276 allow the Attorney General reasonable additional time to file a brief in the matter.

277 31-55-6.

278 (a) On or before January 1, 2025, the Governor shall cause to be published a list of those
279 chemicals known to the state to cause cancer or reproductive toxicity as provided in this
280 chapter, and the Attorney General shall cause such list to be revised and republished in
281 light of additional knowledge at least once per year thereafter. Such list shall include at a
282 minimum those substances listed as human or animal carcinogens by the International
283 Agency for Research on Cancer, as amended, and those substances within the scope of the
284 federal Hazard Communication Standard, 29 C.F.R. Section 1910.1200, as amended.

285 (b) A chemical is known to the state to cause cancer or reproductive toxicity within the
286 meaning of this chapter if, in the opinion of the state's qualified experts, it has been clearly
287 shown through scientifically valid testing according to generally accepted principles to
288 cause cancer or reproductive toxicity; if a body considered to be authoritative by such
289 experts has formally identified it as causing cancer or reproductive toxicity; or if an agency
290 of the state or federal government has formally required it to be labeled or identified as
291 causing cancer or reproductive toxicity.

292 (c) On or before January 1, 2025, and at least once per year thereafter, the Governor shall
293 cause to be published a separate list of those chemicals that at the time of publication are
294 required by state or federal law to have been tested for potential to cause cancer or
295 reproductive toxicity but that the state's qualified experts have not found to have been
296 adequately tested as required.

297 (d) The Governor shall identify and consult with the state's qualified experts as necessary
298 to carry out his or her duties under this Code section.

299 (e) In carrying out the duties of the Governor under this Code section, the Governor and
300 his or her designees shall not be considered to be adopting or amending a regulation within
301 the meaning of Chapter 13 of Title 50, the 'Georgia Administrative Procedure Act.'

302 31-55-7.

303 (a) Code Section 31-55-3 shall not apply to any discharge or release that takes place less
304 than 20 months subsequent to the listing of the chemical in question on the list required to
305 be published under subsection (a) of Code Section 31-55-6.

306 (b) Code Section 31-55-3 shall not apply to any discharge or release that meets both of the
307 following criteria:

308 (1) The discharge or release will not cause any significant amount of the discharged or
309 released chemical to enter any source of drinking water; and

310 (2) The discharge or release is in conformity with all other laws and with every
311 applicable regulation, permit, requirement, and order.

312 In any action brought to enforce Code Section 31-55-3, the burden of showing that a
313 discharge or release meets the criteria of this subsection shall be on the defendant.

314 31-55-8.

315 Code Section 31-55-4 shall not apply to any of the following:

316 (1) An exposure for which federal law governs warnings in a manner that preempts state
317 authority;

318 (2) An exposure that takes place less than 12 months subsequent to the listing of the
319 chemical in question on the list required to be published under subsection (a) of Code
320 Section 31-55-6; and

321 (3) An exposure for which the person responsible can show that the exposure poses no
322 significant risk assuming lifetime exposure at the level in question for substances known
323 to the state to cause cancer, and that the exposure will have no observable effect assuming
324 exposure at 1000 times the level in question for substances known to the state to cause
325 reproductive toxicity, based on evidence and standards of comparable scientific validity
326 to the evidence and standards which form the scientific basis for the listing of such
327 chemical pursuant to subsection (a) of Code Section 31-55-6. In any action brought to

328 enforce Code Section 31-55-4, the burden of showing that an exposure meets the criteria
329 of this subsection shall be on the defendant.

330 31-55-9.

331 (a) The Governor shall designate a lead agency and other agencies that may be required
332 to implement this chapter, including this Code section. Each agency so designated may
333 adopt and modify rules and regulations, standards, and permits as necessary to conform
334 with and implement this chapter and to further its purposes.

335 (b) The Safe Drinking Water and Toxic Enforcement Fund is hereby established in the
336 State Treasury. The director of the lead agency designated by the Governor to implement
337 this chapter may expend the funds in the Safe Drinking Water and Toxic Enforcement
338 Fund, upon appropriation by the General Assembly, to implement and administer this
339 chapter. The lead agency designated by the Governor under this Code section shall submit
340 a report to the Governor, Lieutenant Governor, and Speaker of the House of
341 Representatives on December 1 of each calendar year detailing the revenues and expenses
342 of such fund.

343 (c) In addition to any other money that may be deposited in the Safe Drinking Water and
344 Toxic Enforcement Fund, all of the following amounts shall be deposited in the fund:

345 (1) Seventy-five percent of all civil and criminal penalties collected pursuant to this
346 chapter; and

347 (2) Any interest earned upon the money deposited into the Safe Drinking Water and
348 Toxic Enforcement Fund.

349 (d) Twenty-five percent of all civil and criminal penalties collected pursuant to this chapter
350 shall be paid to the office of the Attorney General or the district attorney, whichever office
351 brought the action, or, in the case of an action brought by a person under subsection (d) of
352 Code Section 31-55-5, to that person.

353 31-55-10.

354 Nothing in this chapter shall alter or diminish any legal obligation otherwise required in
355 common law or by statute or regulation, and nothing in this chapter shall create or enlarge
356 any defense in any action to enforce such legal obligation. Penalties and sanctions imposed
357 under this chapter shall be in addition to any penalties or sanctions otherwise prescribed
358 by law.

359 31-55-11.

360 The Georgia Department of Economic Development shall post in a conspicuous location
361 on its public website, and include with any informational materials provided to businesses
362 relating to a business's obligations under state law, a disclaimer that states the following:
363 'The Safe Drinking Water and Toxic Enforcement Act of 2024 requires businesses to
364 provide a clear and reasonable warning before knowingly and intentionally exposing
365 anyone to chemicals that are known to the state to cause cancer or birth defects or other
366 reproductive harm. It is important to know that a product that receives certification from
367 the United States Food and Drug Administration, or another federal agency or state
368 agency, is not necessarily exempt from Georgia requirements for chemical exposure
369 warnings. Businesses should be aware of the levels of harmful chemicals in their
370 products and of applicable requirements under the Safe Drinking Water and Toxic
371 Enforcement Act of 2024.'

372 **SECTION 2.**

373 This Act shall become effective on January 1, 2025, if a constitutional amendment is adopted
374 by the electors at the 2024 General Election authorizing the creation of the Safe Drinking
375 Water and Toxic Enforcement Fund. If such constitutional amendment is not adopted at the
376 2024 General Election, then this Act shall not become effective and shall be repealed by
377 operation of law on such date.

378

SECTION 3.

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