

Senate Bill 407

By: Senators Harper of the 7th, Heath of the 31st, Burke of the 11th, Harrell of the 40th, Ginn of the 47th and others

**A BILL TO BE ENTITLED  
AN ACT**

1 To amend Chapter 6 of Title 12 of the Official Code of Georgia Annotated, relating to forest  
2 resources and other plant life, so as to regulate the harvest and sale of palmetto berries; to provide for definitions; to provide for legislative findings; to provide for certificates of  
3 harvest; to provide for records of harvest activities and purchase transactions; to provide for prohibited acts; to provide for stop sale, stop use, and removal orders; to provide for seizure  
4 of berries; to provide for home or personal use of berries; to provide for penalties and  
5 restitution; to provide for related matters; to provide for an effective date; to repeal  
6 conflicting laws; and for other purposes.

9                   BE IT ENACTED BY THE GENERAL ASSEMBLY OF GEORGIA:

10                   **SECTION 1.**

11 Chapter 6 of Title 12 of the Official Code of Georgia Annotated, relating to forest resources  
12 and other plant life, is amended by adding a new article to read as follows:

13                   "ARTICLE 7

14                   12-6-250.

15                   As used in this article, the term:

16                   (1) 'Director' means the director of the State Forestry Commission.

17                   (2) 'Harvest' or 'harvesting' means the various methods or processes of gathering saw  
18                   palmetto berries for preservation, storage, use, or sale.

19                   (3) 'Landowner' means the person that owns land from which saw palmetto berries are  
20                   harvested or the person having possession, control, or use of such land that has lawful  
21                   authority to grant permission to harvest saw palmetto berries from the land.

22                   (4) 'Person' means an individual, partnership, corporation, association, or any other legal  
23                   entity.

24       (5) 'Saw palmetto berries' means the fruit of the plant species Serenoa repens, commonly  
25       known as the saw palmetto.

26       (6) 'Saw palmetto berry dealer' means a person that purchases or otherwise obtains saw  
27       palmetto berries from a seller for the purpose of selling such saw palmetto berries at retail  
28       or for the purpose of selling such saw palmetto berries to another saw palmetto berry  
29       dealer or for both such purposes. This term also includes any person that purchases saw  
30       palmetto berries directly from a landowner for the purpose of selling such saw palmetto  
31       berries at retail.

32       (7) 'Seller' means a person that exchanges or offers to exchange saw palmetto berries for  
33       money or for any other valuable consideration.

34       12-6-251.

35       The General Assembly finds that:

36       (1) The natural occurrence of saw palmetto berries constitutes a significant economic  
37       resource for landowners;

38       (2) Such landowners have been victimized by continuous and repeated trespasses onto  
39       their lands by persons engaged in harvesting saw palmetto berries and have thus been  
40       deprived of the economic benefit of such resources; and

41       (3) The repeated trespasses onto private property by certain persons engaged in the  
42       harvesting of saw palmetto berries constitute an organized and methodical deprivation  
43       of the rights of others, necessitating the addition of this article.

44       12-6-252.

45       (a) As a condition of selling saw palmetto berries to a saw palmetto berry dealer within  
46       this state, the seller shall obtain and present to the saw palmetto berry dealer a certificate  
47       of harvest. A certificate of harvest shall be a written or printed document signed by the  
48       landowner from which the saw palmetto berries were harvested granting permission for the  
49       harvest of the saw palmetto berries and shall include a harvest start date and end date,  
50       which harvest period shall not exceed one year. A certificate of harvest shall be valid for  
51       one year. In addition to the permission of the landowner to harvest saw palmetto berries,  
52       a certificate of harvest shall include:

53       (1) The name, address, and telephone number of the landowner that granted permission  
54       to harvest the saw palmetto berries;

55       (2) The name, address, and telephone number of the person authorized to harvest the saw  
56       palmetto berries; and

57       (3) The start date, end date, and location, including county, of the harvest.

58       (b) A saw palmetto berry dealer that purchases saw palmetto berries directly from a  
59       landowner or a person harvesting saw palmetto berries from another's property shall obtain  
60       a landowner's certificate of harvest. A landowner's certificate of harvest shall include:  
61           (1) The name, address, and telephone number of the landowner;  
62           (2) The start date, end date, and location, including county, of the harvest; and  
63           (3) The landowner's signature.

64       12-6-253.

65       (a) A person who participates in the procurement of palmetto berries shall maintain a  
66       legible record of all activities and purchase transactions of saw palmetto berries. Such  
67       record shall include the following information:

- 68           (1) The names and addresses of such person and of the landowner;
- 69           (2) The date or dates of harvesting;
- 70           (3) The weight, quantity, or volume and a description of the type of saw palmetto berries  
71       harvested;
- 72           (4) The amount of consideration given for the harvested saw palmetto berries and a copy  
73       of the check or voucher or documentation evidencing the electronic funds transfer given  
74       as consideration for such harvesting;
- 75           (5) A signed statement from such person that he or she has the landowner's permission  
76       to harvest saw palmetto berries; and
- 77           (6) A scanned or photocopied copy of a valid personal identification card of such person  
78       and of the landowner.

79       (b) A person required to record information as set forth in subsection (a) of this Code  
80       section shall maintain such records for not less than two years from the date of harvest.

81       12-6-254.

82       When the director or law enforcement finds that any saw palmetto berries are being  
83       harvested or offered or exposed for sale in violation of this article, the director or law  
84       enforcement may issue and enforce written or printed stop harvest, stop sale, stop use, or  
85       removal orders to the owners or custodians of such saw palmetto berries, ordering such  
86       individuals to hold the same at a designated location until a certificate of harvest or a  
87       landowner's certificate of harvest has been provided and such saw palmetto berries have  
88       been released, in writing, by the director or law enforcement, or until such saw palmetto  
89       berries have been otherwise legally disposed of by written authority. The director or law  
90       enforcement or both shall release saw palmetto berries when the requirements of this article  
91       are met.

92 12-6-255.

93 Any saw palmetto berries obtained or offered for sale in violation of this article shall be  
94 subject to seizure on the complaint of the director or law enforcement to the superior court  
95 of the county in which the saw palmetto berries are found. If the court finds the status of  
96 the saw palmetto berries to be in violation of this article, and orders condemnation of such  
97 saw palmetto berries, the saw palmetto berries shall be disposed of in any manner  
98 consistent with their quantity, the interests of the parties, and the laws of this state;  
99 provided, however, that in no instance shall the saw palmetto berries be ordered by the  
100 court to be disposed of without first giving the person claiming to own the saw palmetto  
101 berries an opportunity to apply to the court for release of the saw palmetto berries in such  
102 manner as to bring the matter into compliance with this article.

103 12-6-256.

104 This article shall not be construed so as to affect any farmer or other person that harvests  
105 or handles saw palmetto berries for home or personal use.

106 12-6-257.

107 (a) Except as otherwise provided in subsection (b) of this Code section, the following  
108 individuals shall be guilty of a misdemeanor and, upon conviction thereof, shall be  
109 punished by a fine of not more than \$1,000.00:

110 (1) A person that exchanges or offers to exchange saw palmetto berries for money or any  
111 other valuable consideration with a saw palmetto berry dealer or seller without first  
112 obtaining and presenting to the saw palmetto dealer or seller a certificate of harvest as  
113 required by subsection (a) of Code Section 12-6-252;

114 (2) A person that harvests saw palmetto berries without first obtaining a landowner's  
115 certificate of harvest as required by subsection (b) of Code Section 12-6-252; and

116 (3) A saw palmetto berry dealer or seller that purchases saw palmetto berries without  
117 first obtaining a landowner's certificate of harvest as required by subsection (b) of Code  
118 Section 12-6-252.

119 (4) A person who knowingly possesses saw palmetto berries harvested in violation of  
120 this article.

121 (b)(1) Except as otherwise provided in paragraph (2) of this subsection, when an  
122 individual knowingly engages in any of the activities prohibited in paragraphs (1) through  
123 (3) of subsection (a) of this Code section and the value of the saw palmetto berries  
124 exchanged, sold or offered for sale, harvested, or purchased is less than \$1,500.00, such  
125 individual shall be guilty of a misdemeanor and, upon conviction thereof, shall be  
126 punished by a fine equal to the value of the saw palmetto berries exchanged, sold or

offered for sale, harvested, or purchased, but not more than \$1,499.99, or by imprisonment for not more than one year, or both.

(2) When an individual knowingly engages in any of the activities prohibited in paragraphs (1) through (3) of subsection (a) of this Code section and the value of the saw palmetto berries exchanged, sold or offered for sale, harvested, or purchased is \$1,500.00 or more, such individual shall be guilty of a felony and, upon conviction thereof, shall be punished by a fine equal to the greater of \$1,500.00 or the value of the saw palmetto berries exchanged, sold or offered for sale, harvested, or purchased, but neither less than \$1,500.00 nor more than \$5,000.00, or by imprisonment for not more than three years, or both.

(c) When a person signs the statement required by paragraph (5) of subsection (a) of Code Section 12-6-253 knowing it to be false, such person shall be guilty of a felony and, upon conviction thereof, shall be punished by a fine of not less than \$1,000.00.

(d) A person convicted pursuant to this Code section may, in addition to any fines levied against such person, be ordered to make restitution to the landowner in an amount equal to the value of the saw palmetto berries unlawfully harvested."

## SECTION 2.

144 This Act shall become effective upon its approval by the Governor or upon its becoming law  
145 without such approval.

### SECTION 3.

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