

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
3 provide for definitions; to provide for legislative findings; to provide for certificates of
4 harvest; to provide for records of harvest activities and purchase transactions; to provide for
5 prohibited acts; to provide for stop sale, stop use, and removal orders; to provide for seizure
6 of berries; to provide for home or personal use of berries; to provide for penalties and
7 restitution; to provide for related matters; to provide for an effective date; to repeal
8 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

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

129 (2) When an individual knowingly engages in any of the activities prohibited in
130 paragraphs (1) through (3) of subsection (a) of this Code section and the value of the saw
131 palmetto berries exchanged, sold or offered for sale, harvested, or purchased is \$1,500.00
132 or more, such individual shall be guilty of a felony and, upon conviction thereof, shall be
133 punished by a fine equal to the greater of \$1,500.00 or the value of the saw palmetto
134 berries exchanged, sold or offered for sale, harvested, or purchased, but neither less than
135 \$1,500.00 nor more than \$5,000.00, or by imprisonment for not more than three years,
136 or both.

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

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

143 **SECTION 2.**

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

146 **SECTION 3.**

147 All laws and parts of laws in conflict with this Act are repealed.