

House Bill 226 (AS PASSED HOUSE AND SENATE)

By: Representatives Nix of the 69th, Burns of the 159th, Roberts of the 155th, Mosby of the 83rd, Drenner of the 85th, and others

A BILL TO BE ENTITLED
AN ACT

To amend Part 1 of Article 2 of Chapter 8 of Title 12 of the Official Code of Georgia Annotated, relating to solid waste management generally, so as to revise certain requirements related to tire transportation, storage, and disposal; to provide for definitions; to correct cross-references; to provide enforcement authority to certain officers; to require permits and vehicle decals for used tire and scrap tire carriers; to amend Code Section 12-2-2 of the Official Code of Georgia Annotated, relating to general provisions regarding the Environmental Protection Division and Environmental Advisory Council, so as to update effective date of rules and regulations for purposes of criminal law enforcement; to provide for an effective date; to repeal conflicting laws; and for other purposes.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF GEORGIA:

SECTION 1.

Part 1 of Article 2 of Chapter 8 of Title 12 of the Official Code of Georgia Annotated, relating to solid waste management generally, is amended in Code Section 12-8-22, relating to solid waste management definitions, by revising paragraphs (32) and (39) and adding two new paragraphs to read as follows:

~~"(32) 'Scrap tire carrier' means any person engaged in picking up or transporting scrap tires for the purpose of removal to a scrap tire processor, end user, or disposal facility~~
Reserved."

"(38.1) 'Tire carrier' means any person engaged in collecting or transporting tires, other than new tires.

(39) 'Tire retailer' means any person, other than a used motor vehicle parts dealer licensed in accordance with Chapter 47 of Title 43, engaged in the business of selling new replacement tires or used tires."

"(40.1) 'Used tire' means a tire which has a minimum of 2/32 inch of road tread and which is still suitable for its original purpose but is no longer new. A tire retailer shall inventory and market used tires in substantially the same fashion as a new tire and be able

27 to provide satisfactory evidence to the division that a market for the tire exists and the tire
28 is in fact being marketed as a used tire. A used tire shall not be considered solid waste."

29 **SECTION 2.**

30 Said part is further amended in Code Section 12-8-23, relating to powers and duties of the
31 board, by revising subparagraph (J) of paragraph (1) as follows:

32 "(J) Rules and regulations regulating the generation, collection, processing, and
33 disposal of scrap tires and the collection, inventory, and marketing of used tires and
34 governing the investigation and cleanup of sites where scrap tires have been disposed
35 regardless of the date when such disposal occurred; and"

36 **SECTION 3.**

37 Said part is further amended in Code Section 12-8-27.1, relating to the solid waste trust fund,
38 by revising subsection (a) as follows:

39 "(a) There shall be established the solid waste trust fund. The director shall serve as trustee
40 of the solid waste trust fund. The moneys deposited in such fund pursuant to this Code
41 section, ~~Code Section 12-8-27~~, Code Section 12-8-30.6, and Code Section 12-8-40.1 may
42 be expended by the director, with the approval of the board, for the following purposes:

43 (1) To take whatever emergency action is necessary or appropriate to assure that the
44 public health or safety is not threatened whenever there is a release or substantial threat
45 of a release of contaminants from a disposal facility;

46 (2) To take preventive or corrective actions where the release of contaminants presents
47 an actual or potential threat to human health or the environment and where the owner or
48 operator has not been identified or is unable or unwilling to perform corrective action,
49 including but not limited to closure and postclosure care of a disposal facility and
50 provisions for providing alternative water supplies;

51 (3) To take such actions as may be necessary to monitor and provide postclosure care of
52 any disposal facility, including preventive and corrective actions, without regard to the
53 identity or solvency of the owner thereof, commencing five years after the date of
54 completing closure; and

55 (4) To take such actions as may be necessary to implement the provisions of a scrap tire
56 management program in this state, particularly as may be related to the cleanup of scrap
57 tire disposal piles and facilities, regulation of ~~scrap~~ tire carriers and other handlers, and
58 disbursement of grants and loans to cities, counties, and other persons as may be
59 necessary to implement fully the provisions of this part."

60 **SECTION 4.**

Said part is further amended in Code Section 12-8-30.8, relating to penalties for solid waste management violations, by adding a new subsection to read as follows:

"(c) Any sheriff, deputy sheriff, or other peace officer or local code enforcement officer shall have the authority to enforce the provisions of subsection (c) of Code Section 12-8-40.1."

SECTION 5.

Said part is further amended by revising Code Section 12-8-40.1, relating to tire disposal restrictions, as follows:

"12-8-40.1.

(a) Effective July 1, 1990, each city, county, or solid waste management authority shall have the right to impose certain restrictions on scrap tires originating in or which may ultimately be disposed of in its area of jurisdiction. These restrictions may include but are not limited to:

(1) A ban on the disposal of scrap tires at solid waste disposal facilities within its control; and

(2) A requirement that scrap tires be recycled, shredded, chopped, or otherwise processed in an environmentally sound manner prior to disposal at solid waste disposal facilities owned or operated by the city, county, or authority.

(b) After December 31, 1994, no person may dispose of scrap tires in a solid waste landfill unless the scrap tires are shredded, chopped, or chipped in accordance with standards established by the board and:

(1) The director finds that the reuse or recycling of scrap tires is not economically feasible;

(2) The scrap tires are received from a municipal solid waste collector holding a valid solid waste collection permit under authority of this part and who transports fewer than ten scrap tires at any one time; or

(3) The scrap tires are received from a person transporting fewer than five scrap tires in combination with the person's own solid waste for disposal.

~~(c)(1) No person shall collect or transport scrap any tires, other than new tires, for the purpose of processing or disposal, process scrap tires, or purport to be in the business of collecting, transporting, or processing scrap tires unless the person: has a scrap tire carrier or processor permit issued by the division. For purposes of this paragraph, the term 'process scrap tires' means any method, system, or other treatment designed to change the physical form, size, or chemical content of scrap tires for beneficial use.~~

(A) Obtains a tire carrier permit issued by the division; and

(B) Displays on each vehicle used to collect or transport tires a decal issued by the division; provided, however, that this subparagraph shall not apply to a common carrier that collects tires exclusively from outside this state and transports them directly to a scrap tire processor or end user within this state.

(2) As a condition of holding a permit to collect ~~scrap~~ or transport tires, each permitted person shall:

(A) Report to the division in such manner and with such frequency as the division shall require the number of ~~scrap~~ tires transported and the manner of disposition;

(B) Maintain financial assurance in accordance with subsection (l) of this Code section; ~~and~~

(C) Submit such other data as is determined by the board to be reasonably necessary to protect public health and the environment; and

(D) Pay to the division a nominal fee for each decal issued.

(c.1) No person shall process scrap tires unless the person has a scrap tire processing permit issued by the division. For purposes of this subsection, the term 'process scrap tires' means any method, system, or other treatment designed to change the physical form, size, or chemical content of scrap tires for beneficial use.

(d) Subsection (c) of this Code section shall not apply to:

(1) A municipal solid waste collector holding a valid solid waste collection permit under authority of this part whose primary business is the collection of municipal solid waste;

~~(2) A private individual transporting no more than ten of the individual's own scrap tires to a scrap tire processor or end user or for proper disposal or a private individual transporting more than ten tires if such individual can provide proof of purchase with receipt for such tires;~~

(3) A company transporting the company's own ~~scrap~~ tires to a scrap tire processor or end user or for proper disposal; ~~and~~

(4) A tire retailer transporting its own used tires if such dealer can provide proof of purchase with receipt for all used tires being transported and a document verifying the origin, route, and destination of such used tires;

(5) Any person transporting tires collected as part of an organized site cleanup activity; and

~~(4)(6)~~ The United States, the State of Georgia, any county, municipality, or public authority.

(e) After July 1, 1992, any person who generates scrap tires shall:

(1) Notify the division of such activities, requesting the issuance of an identification number, which number shall be used on scrap tire shipment manifests;

(2) Have the scrap tires collected and transported by persons in compliance with subsection (c) of this Code section;

(3) Maintain receipts indicating the disposition of the scrap tires;

(4) Maintain receipts indicating the permit number and name of the ~~scrap~~ tire carrier to whom the tires were given;

(5) Maintain receipts indicating the disposal site or processing facility where the scrap tires were taken including the date of such disposal and the number of scrap tires; and

(6) Provide such other information as the board shall require and for such period of time as the board deems appropriate.

(f) No person may store more than ~~100~~ 25 scrap tires anywhere in this state. Any person storing in excess of ~~100~~ 25 scrap tires shall be deemed to be in violation of this part.

(g) Subsection (f) of this Code section shall not apply to any of the following:

(1) A solid waste disposal site permitted by the division if the permit authorizes the storage of scrap tires prior to their disposal;

(2) A tire retailer or a publicly owned vehicle maintenance facility with not more than ~~3,000~~ 1,500 scrap tires in storage;

(3) A tire retreader with not more than ~~1,500~~ 3,000 scrap tires in storage so long as the scrap tires are of the type the retreader is actively retreading;

(4) ~~An auto salvage yard~~ A licensed used motor vehicle parts dealer, a registered secondary metals recycler, or a privately owned vehicle maintenance facility that operates solely for the purpose of servicing a commercial vehicle fleet with not more than 500 scrap tires in storage; and

(5) A scrap tire processor approved by the division so long as the number of scrap tires in storage do not exceed the quantity approved by the division if all of the scrap tires are secured in a locked enclosure or are otherwise adequately secured in a manner suitable to prevent unauthorized access; provided, however, that the division may grant a waiver of the enclosure requirement if the person requesting the waiver can definitively show a significant and unique economic hardship which impairs such person's ability to continue operating his or her business.

(g.1) Subsection (f) of this Code section shall not apply to a farm with not more than 100 scrap tires in storage or in use for agricultural purposes. In addition, the division may grant waivers to allow the storage or use of more than 100 scrap tires for agricultural purposes if such storage or use does not pose a threat to human health or the environment.

(h)(1) Beginning July 1, 1992, a fee is imposed upon the retail sale of all new replacement tires in this state of \$1.00 per tire sold. The fee shall be collected by retail dealers at the time the retail dealer sells a new replacement tire to the ultimate consumer; provided, however, that a Georgia tire distributor who sells tires to retail dealers must

collect such fees from any retail dealer who does not have a valid scrap tire generator identification number issued by the division. The fee and any required reports shall be remitted not less than quarterly on such forms as may be prescribed by the division. The division is authorized to contract with the Department of Revenue to, and the Department of Revenue is authorized to, collect such fees on behalf of the division. All fees received shall be deposited into the state treasury to the account of the general fund in accordance with the provisions of Code Section 45-12-92. All moneys deposited into the solid waste trust fund shall be deemed expended and contractually obligated and shall not lapse to the general fund.

(2) In collecting, reporting, and paying the fees due under this subsection, each distributor or retailer shall be allowed the following deductions, but only if the amount due was not delinquent at the time of payment:

(A) A deduction of 3 percent of the first \$3,000.00 of the total amount of all fees reported due on such report; and

(B) A deduction of one-half of 1 percent of that portion exceeding \$3,000.00 of the total amount of all fees reported due on such report.

(3) The tire fees authorized in this subsection shall cease to be collected on June 30, 2014. The director shall make an annual report to the House Committee on Natural Resources and Environment and the Senate Natural Resources and the Environment Committee regarding the status of the activities funded by the solid waste trust fund.

(i)(1) The division may abate any threat or potential threat to public health or the environment created or which could be created by scrap tires or other scrap tire materials by removing or processing the scrap tires or other scrap tire materials. Before taking any action to abate the threat or potential threat, the division shall give any person having the care, custody, or control of the scrap tires or materials or owning the property upon which the scrap tires or materials are located notice of the division's intentions and order the responsible party to abate the threat or potential threat in a manner approved by the division. Such order shall be issued in accordance with Code Section 12-8-30.

(2) If the responsible party is unable or unwilling to comply with such order or if no person who has contributed or is contributing to the scrap tires or scrap tire materials which are to be abated can be found, the director may undertake cleanup of the site utilizing funds from the solid waste trust fund.

(3) The division or its contractors may enter upon the property of any person at such time and in such manner as deemed necessary to effectuate the necessary corrective action to protect human health and the environment.

(4) Neither the State of Georgia nor the solid waste trust fund established in Code Section 12-8-27.1 shall be liable for any loss of business, damages, or taking of property associated with the corrective action.

(5) The division may bring an action or proceeding against the property owner or the person having possession, care, custody, or control of the scrap tires or other scrap tire materials to enforce the corrective action order issued under Code Section 12-8-30 and recover any reasonable and necessary expenses incurred by the division for corrective action, including administrative and legal expenses. The division's certification of expenses shall be prima-facie evidence that the expenses are reasonable and necessary. Notwithstanding any other provision of this subsection, any generator of scrap tires who is identified as being a contributor to the materials which are the object of the abatement and who can document that he or she has fully complied with this part and all rules promulgated pursuant to this part in disposing of such scrap tires shall not be liable for any of the cost of recovery actions of the abatement.

(6) Nothing in this part shall affect the right of any municipality or county to abate or clean up scrap tires or scrap tire materials which are a threat or potential threat to human health or the environment. The division may reimburse such local governments for such actions in accordance with procedures approved by the board.

(j) Except for the purposes of scrap tire corrective actions, the provisions of this Code section do not apply to:

(1) Tires with a rim size less than 12 inches;

(2) Tires from:

(A) Any device moved exclusively by human power; or

(B) Any device used exclusively for agricultural purposes, except a farm truck; or

(3) A retreadable casing while under the control of a tire retreader or while being delivered to a retreader.

(k) The director shall be authorized to order the cessation of operation of any ~~scrap~~ tire carrier or scrap tire processor who is found not to be operating in compliance with this part or rules adopted pursuant to this part and the seizure of all property used in such unlawful operations; provided, however, that the ~~scrap~~ tire carrier or scrap tire processor shall be afforded a hearing within 48 hours before an administrative law judge of the Department of Natural Resources upon such order of the director.

(l)(1) A surety bond shall be provided to the director by a ~~scrap~~ tire carrier or scrap tire processor prior to issuance of a permit ~~for collecting or processing scrap tires~~ to ensure compliance with the provisions of this part.

(2) The bond required in this subsection shall be:

(A) Conditioned upon compliance with this part, any rules adopted pursuant to this part, and the carrier's or processor's permit; and

(B) In such amount as determined by the director necessary to ensure compliance, but in any event not to exceed ~~\$25,000.00~~ less than \$10,000.00 nor greater than \$20,000.00.

(3) Such bond shall be payable to the director and issued by an insurance company authorized to issue such bonds in this state.

(4) Upon a determination by the director that a ~~scrap~~ tire carrier or scrap tire processor has failed to meet the provisions of this part, rules promulgated pursuant to this part, or its permit, the director may, after written notice of such failure:

(A) Forfeit or draw that amount of such bond that the director determines necessary to correct the violation;

(B) Expend such amount for such purposes; and

(C) Require the replacement of that amount of such bond forfeited or drawn upon.

(5) Any moneys received by the director in accordance with paragraph (4) of this subsection shall be deposited into the solid waste trust fund established in Code Section 12-8-27.1."

SECTION 6.

Code Section 12-2-2 of the Official Code of Georgia Annotated, relating to general provisions regarding the Environmental Protection Division and Environmental Advisory Council, is amended by revising paragraph (5) of subsection (c) as follows:

"(5) Notwithstanding any other law to the contrary, for purposes of establishing criminal violations of the standards, rules, and regulations promulgated by the Board of Natural Resources as provided in this title, the term 'standards, rules, and regulations' shall mean those standards, rules, and regulations of the Board of Natural Resources in force and effect on January 1, ~~1998~~ 2013."

SECTION 7.

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

SECTION 8.

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