

House Bill 512 (AS PASSED HOUSE AND SENATE)

By: Representatives Watson of the 172nd, Holmes of the 129th, McCall of the 33rd, Mathis of the 144th, Dickey of the 140th, and others

A BILL TO BE ENTITLED
AN ACT

1 To amend Title 2 of the Official Code of Georgia Annotated, relating to agriculture, so as to
2 provide for an Agricultural Commodity Commission for Propane; to provide for definitions;
3 to provide for composition and powers and terms of office of the commission; to provide for
4 representation of the commission by the Attorney General of Georgia; to provide for funds
5 to be held in trust; to provide for bonding of those handling trust funds; to provide for
6 liability of members and employees of the commission; to provide for marketing orders and
7 hearings regarding same; to provide for referenda and items included in the referenda
8 regarding the effectiveness of marketing orders; to render unlawful certain activities
9 regarding performance noncompliance or violations of marketing orders; to provide for civil
10 penalties and injunctive relief; to authorize promulgation of regulations; to provide for
11 nonapplicability of article to the Agricultural Commodity Commission for Propane; to
12 authorize the Commissioner to promulgate and adopt rules and regulations relating to
13 fertilizers, liming materials, and soil amendments derived from industrial by-products; to
14 revise the definition of fertilizer; to provide for related matters; to repeal conflicting laws;
15 and for other purposes.

16 BE IT ENACTED BY THE GENERAL ASSEMBLY OF GEORGIA:

17 **SECTION 1.**

18 Chapter 8 of Title 2 of the Official Code of Georgia Annotated, relating to agricultural
19 commodities promotion, is amended by adding a new article to read as follows:

20 "ARTICLE 6

21 2-8-200.

22 As used in this article, the term:

23 (1) 'Commission' means the Agricultural Commodity Commission for Propane created
24 under this article.

25 (2) 'Dealer' means any person to whom the office of the Commissioner of Insurance
 26 issues a liquid propane license. The term shall not include any person who offers for
 27 retail sale propane in containers of less than 50 pounds water capacity and whose
 28 business does not involve the filling or transportation of such containers.

29 (3) 'Distributor' means any person engaged in the business of selling propane to a dealer
 30 in the state.

31 (4) 'Marketing order' means an order issued pursuant to this article establishing an
 32 assessment for financing the programs established under this article.

33 (5) 'Person' means an individual, sole proprietorship, partnership, limited partnership,
 34 firm, corporation, limited liability company, association, or any other business entity, or
 35 any combination thereof.

36 2-8-201.

37 The Agricultural Commodity Commission for Propane is hereby created. The commission
 38 shall be organized and constituted, have corporate existence, possess powers and duties,
 39 and be governed and controlled as provided in this article.

40 2-8-202.

41 (a) The commission shall be composed of:

42 (1) Three members elected by the House Committee on Agriculture and Consumer
 43 Affairs with a quorum present and a majority of those present concurring, each of whom
 44 shall be a dealer or distributor and shall not be a member of the General Assembly;

45 (2) Three members elected by the Senate Agriculture and Consumer Affairs Committee
 46 with a quorum present and a majority of those present concurring, each of whom shall be
 47 a dealer or distributor and shall not be a member of the General Assembly; and

48 (3) One member elected by a majority of the members of the commission as specified
 49 in paragraphs (1) and (2) of this subsection, who shall be a dealer or distributor and shall
 50 not be a member of the General Assembly.

51 (b) Vacancies in the membership of the commission shall be filled in the same manner as
 52 that of the original election of such members. Any person selected to fill a vacancy shall
 53 serve for the remainder of the unexpired term.

54 (c) There shall be no compensation or reimbursement of expenses for members of the
 55 commission.

56 (d) It shall be the duty of the commission to certify to the Secretary of State the
 57 membership of the commission and each change in membership as the same occurs.

58 (e) The commission shall name its chairperson and determine a quorum for the transaction
 59 of business.

60 2-8-203.

61 (a) The commission is authorized to appoint advisory boards, special committees, and
62 individuals, including technical and clerical personnel, to advise, aid, and assist the
63 commission in the performance of its duties. Compensation for such services shall be fixed
64 by the commission and shall be paid from the funds of the commission.

65 (b) The Attorney General shall represent the commission in legal matters and shall be the
66 attorney for the commission. If the Attorney General determines that outside legal counsel
67 is necessary or desirable in connection with any legal matter of the commission, he or she
68 shall so inform the commission and, upon approval of the commission, shall employ such
69 outside counsel. Compensation for such outside counsel shall be agreed upon between
70 such counsel and the Attorney General, subject to the approval of the commission. Such
71 compensation shall be paid from the funds of the commission. Neither Code
72 Section 16-10-9 nor any other law shall prohibit or be applicable to the employment of
73 such counsel.

74 (c) The commission is authorized to accept donations, gifts, and other property and to use
75 the same for commission purposes.

76 (d) The commission is authorized to acquire, lease as lessee, purchase, hold, own, and use
77 any franchise or real or personal property, whether tangible or intangible, or any interest
78 therein and, whenever the same is no longer required for purposes of the commission, to
79 sell, lease as lessor, transfer, or dispose thereof or exchange the same for other property or
80 rights which are useful for its purposes.

81 2-8-204.

82 The commission shall be a public corporation and an instrumentality of the State of
83 Georgia. By that name, style, and title, the commission may contract and be contracted
84 with, implead and be impleaded, and complain and defend in all courts. The commission
85 shall assume the duties and exercise the authority provided in this article without further
86 formality than that provided in this article. Each member of the commission shall be a
87 public officer and shall take an oath of office to faithfully perform his or her duties. Such
88 oath shall be administered by the Governor or some other person qualified to administer
89 oaths.

90 2-8-205.

91 The commission is authorized, and it shall be its duty to receive, collect, and disburse the
92 funds of the commission.

93 2-8-206.

94 Funds received by the commission under this article shall be held in trust for the
95 commission. Such funds shall be deposited, accounted for, and disbursed in the same
96 manner as that of the funds of this state but shall not be required to be deposited in the state
97 treasury and appropriated therefrom. It is the express intent and purpose of this article to
98 authorize the receipt, collection, and disbursement by the commission of such funds as trust
99 funds of the commission without complying with the requirement applicable to funds
100 collected for the use and benefit of the state.

101 2-8-207.

102 Any persons who handle funds under this article shall be bonded with good and sufficient
103 surety in an amount determined by the commission for the accounting of such funds. All
104 checks, drafts, and negotiable instruments which are drawn on or payable from the funds
105 of the commission shall be signed by the chairperson of the commission.

106 2-8-208.

107 The members and employees of the commission shall not be held individually responsible
108 to any dealer or distributor or to any other person for errors in judgment, mistakes, or other
109 acts as principal, agent, person, or employee, except for their own individual acts of
110 dishonesty or crime. No such member, person, or employee shall be held individually
111 responsible for any act or omission of any other member of the commission. The liability
112 of the members of the commission shall be several and not joint, and no member shall be
113 liable for the default of any other member.

114 2-8-209.

115 (a) The commission is authorized to issue, administer, and enforce marketing orders.

116 (b)(1) Whenever the commission has reason to believe that the issuance of a marketing
117 order will tend to effectuate the declared policy of this article with respect to propane, it
118 shall give due notice of and an opportunity for a public hearing thereon.

119 (2) Notice of any hearing called for such purpose shall be given by the commission by
120 publishing a notice of such hearing for a period of not less than five days in a newspaper
121 of general circulation published in the City of Atlanta and in such other newspapers as
122 the commission may prescribe. No such public hearing shall be held prior to five days
123 after the last day of such period of publication. The commission shall also mail a copy
124 or communicate electronically such notice of hearing and a copy of such proposed
125 marketing order or proposed amendments to all dealers and distributors of propane whose
126 names and addresses are on file with the commission. Such notice of hearing shall in all

127 respects comply with the requirements of Chapter 13 of Title 50, the 'Georgia
 128 Administrative Procedure Act.'

129 (3) The hearing shall be public, and all testimony shall be received under oath. A full
 130 and complete record of the proceedings at such hearing shall be made and maintained on
 131 file in the office of the commission. The hearing shall, in all respects, be conducted in
 132 accordance with Chapter 13 of Title 50, the 'Georgia Administrative Procedure Act.' The
 133 hearing may be conducted by the commission or by a member of the commission, as may
 134 be designated by the commission in each instance, but no decision shall be made based
 135 on hearings conducted other than by the commission itself, at which a majority of the
 136 members thereof are present, until the members of the commission have been afforded
 137 an opportunity to review the hearing record. When the commission conducts hearings,
 138 its recommendation shall be based on the findings reached after a review of the record
 139 of such hearings.

140 2-8-210.

141 If, upon the basis of the record of testimony and documentary evidence received at the
 142 hearing as provided for in Code Section 2-8-209 and the facts officially noticed therein
 143 from official publications or institutions of recognized standing, the commission
 144 determines that the issuance of a marketing order will tend to effectuate the intent and
 145 purpose of this article, it may recommend the promulgation of a marketing order with
 146 respect to the matters specified in the hearing notice and supported by the record; such
 147 order shall account for provisions to promote propane education, training, safety
 148 compliance, equipment replacement for low-income customers, marketing, advertising,
 149 promotion, and customer rebates to encourage energy-efficient appliance and equipment
 150 purchases by residential, commercial, industrial, motor fuel or agricultural consumers. No
 151 funds collected pursuant to this article shall be used in any manner for lobbying or for
 152 influencing state or federal legislation. No more than 10 percent of the funds collected and
 153 no less than the actual administrative expense pursuant to this article shall be used for
 154 administrative expenses relating to the expenditure of the funds. The commission may
 155 advance costs of conducting referenda pursuant to this article and reimburse those costs
 156 from the assessment funds.

157 2-8-211.

158 (a)(1) No marketing order issued pursuant to this article shall be made effective by the
 159 commission until a referendum thereon is held.

160 (2) The commission shall determine:

161 (A) The amount of the proposed assessment established by the marketing order;

- 162 (B) The time and place of the referendum;
- 163 (C) Procedures for conducting the referendum and the counting of votes;
- 164 (D) The proposed effective date for the imposition of the assessment established by the
 165 marketing order, which shall be no be less than 90 days from the date the referendum
 166 ballot is required to be returned to the commission in order to be considered on the
 167 question presented; and
- 168 (E) Any other matters pertaining to the referendum.
- 169 (b) The amount of the proposed assessment established by the marketing order shall be
 170 stated on the referendum ballot. The amount may not exceed four-tenths of one cent for
 171 each gallon of propane sold in this state by distributors to dealers.
- 172 (c) All dealers may vote in the referendum. Each dealer shall have one vote. Any dispute
 173 over eligibility to vote or any other matter relating to the referendum shall be resolved by
 174 the commission. The commission shall make reasonable efforts to provide all dealers with
 175 notice of the referendum and an opportunity to vote.
- 176 (d) A proposed assessment shall become effective if more than 50 percent of the eligible
 177 dealers in the state vote and more than 50 percent of the eligible votes cast by the dealers
 178 are cast in favor of the assessment. If the assessment is approved by the referendum, then
 179 the commission shall notify the department of the amount and the effective date of the
 180 assessment. The department shall notify all dealers of the assessment.
- 181 (e)(1) Each distributor, as the owner of propane at the time of odorization, or at the time
 182 of import of odorized propane, shall make the assessment based on the volume of
 183 odorized propane sold in this state and placed in commerce in this state.
- 184 (2) Each distributor shall collect the assessment from the dealer to whom the sale is made
 185 and shall remit to the commission the sum of the amount of the assessment multiplied by
 186 the number of gallons of propane sold to any dealer during the assessment period.
- 187 (f) A distributor shall keep records of the number of gallons of propane sold to dealers.
 188 All documents or records regarding purchases and sales shall be made available to the
 189 commission upon its written request for the purpose of determining the distributor's
 190 compliance with the provisions of this article. The commission shall keep the records
 191 confidential and shall not disclose the records except to its accountants, attorneys, or
 192 financial advisors without a court order directing it to do so.
- 193 2-8-212.
- 194 A dealer can opt out of this article only once per year between September 1 and
 195 September 30. Any dealer who opts out of this article in accordance with this subsection
 196 shall not be eligible to receive the benefit of any marketing order for a period of one year

197 following the date of his or her request to opt out under this Code section and shall not be
198 entitled to the payment of any interest by the commission on the amount refunded.

199 2-8-213.

200 A referendum shall be held once every five years to vote on the continuation of the
201 commission. For the results to be valid, at least 50 percent of the eligible dealers in this
202 state must vote, and if more than 50 percent of the dealers voting vote in favor of
203 continuing the commission, then the commission will continue for another five years.

204 2-8-214.

205 (a) Any assessment established in accordance with this article shall constitute a personal
206 debt of every person so assessed and shall be due and payable to the commission when
207 payment is called for by the commission. If such person fails to pay any such assessment,
208 the commission may file an action against such person in a court of competent jurisdiction
209 for the collection thereof.

210 (b) In the event that any person duly assessed pursuant to this article fails to pay to the
211 commission the amount so assessed, the commission shall be authorized to add to such
212 unpaid assessment an amount not exceeding 10 percent of such unpaid assessment to
213 defray the cost of enforcing the collection of the unpaid assessment.

214 (c) The provisions of this Code section shall be cumulative, and any other remedies may
215 be pursued concurrently until satisfaction is obtained. Any penalty recovered shall become
216 a part of the principal assessment levied and shall be for the use of the commission.

217 2-8-215.

218 (a) Any person who violates any provision of this article or any marketing order duly
219 issued and effective under this article shall be civilly liable to the commission for a penalty
220 in an amount not to exceed \$500.00 for each and every violation thereof, the amount of
221 such penalty to be fixed by the commission after notice and hearing as provided by
222 Chapter 13 of Title 50, the 'Georgia Administrative Procedure Act,' for contested cases and
223 recoverable by a civil action brought in the name of the commission. Any moneys
224 recovered pursuant to this Code section shall be applied for the use of the commission.

225 2-8-216.

226 (a) The Attorney General of this state shall, upon complaint by the commission, or may,
227 after examining the complaint and the evidence and believing that a violation has occurred,
228 bring an action in the superior court in the name of the commission for civil penalties or

229 for injunctive relief, including the specific performance of any marketing order duly issued
230 by the commission under this article.

231 (b) If there is an application for a preliminary injunction, a hearing of any order to show
232 cause why such injunction should not be issued, or a hearing of any motion for a
233 preliminary injunction suggesting that, or if the court finds in any such action that a
234 defendant therein is violating or has violated any provision of this article or of any
235 marketing order duly issued by the commission under this article, then the court shall
236 enjoin the defendant from committing further violations and may compel specific
237 performance of any obligation imposed by a marketing order issued by the commission
238 under this article. It shall not be necessary in such event to allege or prove lack of an
239 adequate remedy at law.

240 (c) In any action brought by the Attorney General to enforce any of the provisions of this
241 article or of any marketing order issued by the commission and effective under this article
242 or of any rule or regulation issued by the commission pursuant to any marketing order, a
243 judgment in favor of the commission may provide that the defendant pay the commission
244 the costs it incurred in the prosecution of such action.

245 2-8-217.

246 (a) The commission on its own motion or upon the complaint of any interested party may
247 refer to the Attorney General of this state or to any prosecuting attorney of this state any
248 charges of a violation of any provision of this article or of any marketing order or any rule
249 or regulation issued by the commission and effective under this article for the institution
250 of legal proceedings thereupon or, if the commission deems it necessary or advisable,
251 immediately call an administrative hearing, pursuant to the provisions of Chapter 13 of
252 Title 50, the 'Georgia Administrative Procedure Act,' governing contested cases, to
253 consider the charges set forth in such verified complaint.

254 (b) In case the matter is referred directly by the commission to the Attorney General or any
255 prosecuting attorney, it shall be the duty of such officer, if after examination of the
256 complaint and the evidence he or she believes that a violation has occurred, to bring an
257 appropriate action or actions in a court or courts of competent jurisdiction.

258 (c) After an administrative hearing, if the commission finds that a violation has occurred,
259 it shall enter its findings and notify the parties to such complaint. In its discretion, the
260 commission shall either refer the matter to the Attorney General for the institution of legal
261 proceedings or notify such parties to cease and desist from further violation. Upon the
262 refusal or failure of such parties to comply or if the commission finds that the facts or
263 circumstances warrant immediate prosecution, the commission shall file a complaint with
264 the Attorney General or with any prosecuting attorney of this state, requesting that such

265 officer commence any or all actions authorized in this article against such respondent or
 266 respondents in a court of competent jurisdiction.

267 2-8-218.

268 (a) Any person who willfully renders or furnishes a false or fraudulent report, statement,
 269 or record required pursuant to this article or any marketing order effective under this article
 270 shall be guilty of a misdemeanor.

271 (b) Any person who violates any provision of this article or any provision of any
 272 marketing order duly issued by the commission under this article shall be guilty of a
 273 misdemeanor.

274 (c) The penalties and remedies prescribed in this article with respect to any violation
 275 mentioned shall be concurrent and alternative. Neither singly nor combined shall such
 276 penalties and remedies be exclusive; rather, either singly or combined, such penalties and
 277 remedies shall be cumulative with any and all other civil, criminal, or alternative rights,
 278 remedies, forfeitures, or penalties provided or allowed by law with respect to any such
 279 violation.

280 2-8-219.

281 The department shall promulgate rules for the administration and enforcement of this
 282 article. The promulgation, adoption, and amendment of rules and regulations by the
 283 commission shall be subject to the requirements of Chapter 13 of Title 50, the 'Georgia
 284 Administrative Procedure Act'."

285 **SECTION 2.**

286 Said chapter is further amended by revising Code Section 2-8-10, relating to nonapplicability
 287 of article to Agricultural Commodity Commission for Peanuts, Agricultural Commodity
 288 Commission for Equines, or Agricultural Commodity Commission for Georgia Grown
 289 Products, as follows:

290 "2-8-10.

291 This article shall not apply to the Agricultural Commodity Commission for Peanuts
 292 provided for in Article 3 of this chapter, except as provided in Code Section 2-8-13; nor
 293 shall this article apply to the Agricultural Commodity Commission for Equines provided
 294 for in Article 5 of this chapter; nor shall this article apply to the Agricultural Commodity
 295 Commission for Georgia Grown Products provided for in Article 4 of this chapter; nor shall
 296 this article apply to the Agricultural Commodity Commission for Propane provided for in
 297 Article 6 of this chapter."

298 **SECTION 3.**

299 Chapter 12 of Title 2 of the Official Code of Georgia Annotated, relating to fertilizers, liming
300 materials, and soil amendments, is amended in Code Section 2-12-2, relating to definitions
301 regarding fertilizers, by revising paragraph (8) as follows:

302 "(8) 'Fertilizer' means any substance containing one or more recognized plant nutrients
303 which is used for its plant nutrient content and which is designed for use or claimed to
304 have value in promoting plant growth, except unmanipulated animal and vegetable
305 manures, marl, lime, limestone, wood ashes, boiler ashes produced by the pulp and paper
306 industry, and other products exempted by regulation by the Commissioner, but does not
307 include any material for which the distributor compensates, by any means, the property
308 owner or property custodian which is receiving the material."

309 **SECTION 4.**

310 Said chapter is further amended by revising Code Section 2-12-15, relating to adoption and
311 enforcement of rules and regulations regarding fertilizers generally, as follows:

312 "2-12-15.

313 For the enforcement and implementation of this article, the Commissioner is authorized to
314 prescribe and adopt, according to the provisions of Chapter 13 of Title 50, the 'Georgia
315 Administrative Procedure Act,' and enforce such reasonable rules and regulations relating
316 to the distribution of fertilizers as the Commissioner finds necessary to carry into effect the
317 full intent and meaning of this article and to ensure ethical practices in the sale, delivery,
318 and return of fertilizer. The Commissioner is also authorized to promulgate and adopt rules
319 and regulations relative to fertilizers derived from industrial by-products which may
320 include, but not be limited to, application rates, proper conditions for application,
321 application record keeping and retention, development and use of site-specific nutrient
322 management plans, and storage and containment in or on lands where fertilizers are
323 applied. The Commissioner is further authorized to share such information and consult
324 with other agencies such as, but not limited to, the Environmental Protection Division of
325 the Department of Natural Resources and the United States Department of Agriculture's
326 Natural Resources Conservation Service."

327 **SECTION 5.**

328 Said chapter is further amended by revising Code Section 2-12-49, relating to rules and
329 regulations regarding liming materials, as follows:

330 "2-12-49.

331 The Commissioner, after reasonable notice and hearing, is authorized to promulgate and
332 ~~enforce~~ adopt rules and regulations for the administration of this article. The

333 Commissioner is also authorized to promulgate and adopt rules and regulations relative to
334 liming materials derived from industrial by-products which may include, but not be limited
335 to, application rates, proper conditions for application, application record keeping and
336 retention, development and use of site-specific nutrient management plans, and storage and
337 containment in or on lands where liming materials are applied. The Commissioner is
338 further authorized to share such information and consult with other agencies such as, but
339 not limited to, the Environmental Protection Division of the Department of Natural
340 Resources and the United States Department of Agriculture's Natural Resources
341 Conservation Service."

342 **SECTION 6.**

343 Said chapter is further amended by revising Code Section 2-12-80, relating to rules and
344 regulations regarding soil amendments, as follows:

345 "2-12-80.

346 The Commissioner is authorized to promulgate and adopt such rules and regulations as may
347 be necessary to enforce this article. Such regulations may relate to, but shall not be limited
348 to, methods of inspection and examination, designation of ingredients, and identity of
349 products. The Commissioner is also authorized to promulgate and adopt rules and
350 regulations relative to soil amendments derived from industrial by-products which may
351 include, but not be limited to, application rates, proper conditions for application,
352 application record keeping and retention, development and use of site-specific nutrient
353 management plans, and storage and containment in or on lands where soil amendments are
354 applied. The Commissioner is further authorized to share such information and consult
355 with other agencies such as, but not limited to, the Environmental Protection Division of
356 the Department of Natural Resources and the United States Department of Agriculture's
357 Natural Resources Conservation Service."

358 **SECTION 7.**

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

361 **SECTION 8.**

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