House Bill 966 (AS PASSED HOUSE AND SENATE)
By: Representatives Burchett of the 176th, Corbett of the 174th, Pirkle of the 155th, McCall of the 33rd, Ridley of the 6th, and others

A BILL TO BE ENTITLED
AN ACT

To amend Chapter 6 of Title 12 of the Official Code of Georgia Annotated, relating to forest 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 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 of berries; to provide for home or personal use of berries; to provide for penalties and restitution; to provide for related matters; 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.

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

"ARTICLE 7

12-6-250.

As used in this article, the term:

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

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

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

(4) 'Person' means an individual, partnership, corporation, association, or any other legal entity.
(5) 'Saw palmetto berries' means the fruit of the plant species Serenoa repens, commonly known as the saw palmetto.

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

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

12-6-251.

The General Assembly finds that:

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

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

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

12-6-252.

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

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

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

(3) The start date, end date, and location, including county, of the harvest.
(b) A saw palmetto berry dealer that purchases saw palmetto berries directly from a landowner or a person harvesting saw palmetto berries from another’s property shall obtain a landowner's certificate of harvest. A landowner's certificate of harvest shall include:

1. The name, address, and telephone number of the landowner;
2. The start date, end date, and location, including county, of the harvest; and
3. The landowner's signature.

12-6-253.

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

1. The names and addresses of such person and of the landowner;
2. The date or dates of harvesting;
3. The weight, quantity, or volume and a description of the type of saw palmetto berries harvested;
4. The amount of consideration given for the harvested saw palmetto berries and a copy of the check or voucher or documentation evidencing the electronic funds transfer given as consideration for such harvesting;
5. A signed statement from such person that he or she has the landowner’s permission to harvest saw palmetto berries; and
6. A scanned or photocopied copy of a valid personal identification card of such person and of the landowner.

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

12-6-254.

When the director or law enforcement finds that any saw palmetto berries are being harvested or offered or exposed for sale in violation of this article, the director or law enforcement may issue and enforce written or printed stop harvest, stop sale, stop use, or removal orders to the owners or custodians of such saw palmetto berries, ordering such individuals to hold the same at a designated location until a certificate of harvest or a landowner's certificate of harvest has been provided and such saw palmetto berries have been released, in writing, by the director or law enforcement, or until such saw palmetto berries have been otherwise legally disposed of by written authority. The director or law enforcement or both shall release saw palmetto berries when the requirements of this article are met.
12-6-255. Any saw palmetto berries obtained or offered for sale in violation of this article shall be subject to seizure on the complaint of the director or law enforcement to the superior court of the county in which the saw palmetto berries are found. If the court finds the status of the saw palmetto berries to be in violation of this article, and orders condemnation of such saw palmetto berries, the saw palmetto berries shall be disposed of in any manner consistent with their quantity, the interests of the parties, and the laws of this state; provided, however, that in no instance shall the saw palmetto berries be ordered by the court to be disposed of without first giving the person claiming to own the saw palmetto berries an opportunity to apply to the court for release of the saw palmetto berries in such manner as to bring the matter into compliance with this article.

12-6-256. This article shall not be construed so as to affect any landowner that harvests or handles saw palmetto berries for home or personal use.

12-6-257. (a) Except as otherwise provided in subsection (b) of this Code section, the following individuals shall be guilty of a misdemeanor and, upon conviction thereof, shall be punished by a fine of not more than $500.00:

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

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

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

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

(b)(1) Except as otherwise provided in paragraph (2) of this subsection, 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 less than $1,500.00, such individual shall be guilty of a misdemeanor and, upon conviction thereof, shall be punished by a fine not less than the value of the saw palmetto berries exchanged, sold or
offered for sale, harvested, or purchased, but no more than $1,000.00, or confinement for up to 12 months in jail, 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 not less than 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 who knowingly provides false information in executing the statement required by paragraph (5) of subsection (a) of Code Section 12-6-253, the person commits the offense of false swearing within the meaning of Code Section 16-10-71. Such person shall be punished by a fine of not more than $1,000.00 or by imprisonment for not less than one nor more than five years, or both.

(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.

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

SECTION 3.

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