

**GEORGIA
PESTICIDE USE
AND APPLICATION
ACT OF 1976**



GEORGIA DEPARTMENT OF AGRICULTURE

**Gary W. Black
Commissioner**

AGRICULTURE

ARTICLE 3

USE AND APPLICATION OF PESTICIDES

Law reviews. – For articles. "Controlling The Use of Pesticides." See 13 J. of Pub. L. 311 (1966).

RESEARCH REFERENCES

ALR. – Exterminator's tort liability for Personal injury or death directly resulting from operations. 29 ALR4th 987.

2-7-90. Short title

This article shall be cited as the "Georgia Pesticide Use and Application Act of 1976." (Ga. L. 1972, p. 849, 1; Ga. L. 1976, p. 369, 1.)

2-7-91. Purpose of article; legislative findings.

The purpose of this article is to regulate, in the public interest, the use and application of pesticides to control pests, as defined in this article. Pesticides perform a valuable role by:

(1) Controlling insects, fungi, nematodes, rodents, and other pests which ravage and destroy our supply of food and fiber, which serve as vectors of disease, and which otherwise constitute a nuisance in the environment or the home;

(2) Controlling weeds which compete in the production of food and fiber and which otherwise are unwanted elements in our environment; and

(3) Regulating plant growth to enhance both the quantity and quality of our supply of food and fiber and to facilitate its harvest.

New pesticides are continually being discovered, synthesized, or developed which are valuable for the control of pests and for use as defoliant, desiccant, plant regulator, and related purposes. However, such pesticides may be ineffective, may cause injury to man, or may cause unreasonable adverse effects on the environment if not properly used. Pesticides may injure man or animals, either by direct poisoning or by gradual accumulation of pesticide residues in the tissues. Crops or other plants may also be injured by the improper use of pesticides. The drifting or washing of pesticides into streams or lakes may cause appreciable damage to aquatic life. A pesticide applied for the purpose of killing pests

in a crop which is not itself injured by the pesticide may drift and injure other crops or nontarget organisms with which it comes in contact. Therefore, it is deemed necessary to provide for regulation of the use and application of such pesticides. (Ga. L. 1972, p. 849, § 3; Ga. L. 1976, p. 369, § 3.)

2-7-92. Definitions

As used in this article, the term:

(1) "Animal" means all vertebrate and invertebrate species, including, but not limited to, man and other mammals, birds, fish, and shellfish.

(2) "Beneficial insects" means those insects which, during their life cycles, are effective pollinators of plants, are parasites or predators of pests, or are otherwise beneficial.

(3) "Board" means the Pesticide Advisory Board.

(4) "Certified applicator" means any individual who is certified under this article to use or supervise the use of any restricted use pesticide restricted to use by certified applicators or any state restricted pesticide use restricted to use by certified applicators.

(5) "Commercial applicator" means any individual:

(A) Who is not a "private applicator," who uses or supervises the use of any restricted use pesticide restricted to use by certified applicators or any state restricted pesticide use restricted to use by certified applicators; or

(B) Who uses or supervises the use of any other pesticide for a pesticide contractor, as an employee or otherwise.

(6) "Defoliant" means any substance or mixture of substances intended for causing the leaves or foliage to drop from a plant, with or without causing abscission.

(7) "Desiccant" means any substance or mixture of substances intended for artificially accelerating the drying of plant tissue.

(8) "Environment" includes the water, air, and land, all plants and man and other animals living therein, and the interrelationships which exist among these.

(9) "Environmental Protection Agency" means the United States Environmental Protection Agency.

(10) "Equipment" means any type of ground, water, or aerial equipment or contrivance using motorized, mechanical, or pressurized power and used to apply any pesticide on land and anything that may be growing, habitating, or stored on or in such land but shall not include any pressurized hand-sized household apparatus used to apply any pesticide or any equipment or contrivance of which the person who is applying the pesticide is the source of power or energy in making such pesticide application.

(11) "FIFRA" means the Federal Insecticide, Fungicide, and Rodenticide Act, and the amendments thereto.

(12) "Fungi" means all nonchlorophyll-bearing thallophytes, that is, all nonchlorophyll-bearing plants of a lower order than mosses and liverworts, as, for example, rusts, smuts, mildews, molds, yeasts, and bacteria, except those on or in living man or other living animals and except those in or on processed food, beverages, or pharmaceuticals.

(13) "Insect" means any of the numerous small invertebrate animals generally having a body more or less obviously segmented, for the most part belonging to the class Insecta, comprising six-legged, usually winged forms, as, for example, beetles, bugs, bees, and flies, and other allied classes of arthropods whose members are wingless and usually have more than six legs, as, for example, spiders, mites, ticks, centipedes, and wood lice.

(14) "Label" means the written, printed, or graphic matter on or attached to the pesticide or device or any of its containers or wrappers.

(15) "Labeling" means the label and all other written, printed, or graphic matter:

(A) Accompanying the pesticide or device at any time; or

(B) To which reference is made on the label or in literature accompanying the pesticide or device, except for current official publications of:

(i) The Environmental Protection Agency;

(ii) The United States Department of Agriculture;

(iii) The United States Department of the Interior;

(iv) The United States Department of Health and Human Services;

(v) State experiment stations;

(vi) State agricultural colleges; and

(vii) Other similar federal or state institutions or agencies authorized by law to conduct research in the field of pesticides.

(16) "Land" means all land and water areas, including airspace, and all plants, animals, structures, buildings, contrivances, and machinery appurtenant thereto or situated thereon, fixed or mobile, including any used for transportation.

(17) "Nematode" means invertebrate animals of the phylum Nemathelminthes and class Nematoda, that is, unsegmented roundworms with elongated, fusiform, or saclike bodies covered with cuticle, and inhabiting soil, water, plants, or plant parts; they may also be called nemas or eelworms.

(18) "Permit" means a written certificate issued by the Commissioner or his authorized agent, authorizing the purchase, possession, or use of certain pesticides or pesticide uses defined in paragraphs (26) and (27) of this Code section.

(19) "Person" means any individual, partnership, association, fiduciary, corporation, or organized group of persons, whether or not incorporated.

(20) "Pest" means:

(A) Any insect, rodent, nematode, fungus, or weed; or

(B) Any other form of terrestrial or aquatic plant or animal life or virus, bacterium, or other microorganism, except viruses, bacteria, or other microorganisms on or in living man or other living animals, which the Environmental Protection Agency administrator declares to be a pest under Section 25(c)(1) of FIFRA or which the Commissioner declares to be a pest under subsection (f) of Code Section 2-7-97.

(21) "Pesticide" means:

(A) Any substance or mixture of substances intended for preventing, destroying, repelling, or mitigating any pests; and

(B) Any substance or mixture of substances intended for use as a plant regulator, defoliant, or desiccant.

(22) "Pesticide contractor" means any person who engages in the business of contracting for the application of any pesticide to the lands of another.

(23) "Plant regulator" means any substance or mixture of substances intended through physiological action for accelerating or retarding the rate of growth or rate of maturation or for otherwise altering the behavior of ornamental or crop plants or the produce thereof; the term shall not include substances to the extent that they are intended as plant nutrients, trace elements, nutritional chemicals, plant inoculants, and soil amendments.

(24) "Private applicator" means any individual who purchases, uses, or supervises the use of any restricted use pesticide restricted to use by certified applicators or any state restricted pesticide use restricted to use by certified applicators, for purposes of producing any agricultural or forestry commodity on property owned or rented by him or his employer or, if applied without compensation other than the trading of personal services between producers of agricultural and forestry commodities, on the property of another person.

(25) "Protect health and the environment" means to protect against any unreasonable adverse effects on the environment.

(26) "Restricted use pesticide" means any pesticide whose label bears one or more uses which have been classified as restricted by the administrator of the Environmental Protection Agency.

(27) "State restricted pesticide use" means any pesticide use which, when used as directed or in accordance with a widespread and commonly recognized practice, the Commissioner determines, subsequent to a hearing, to require additional restrictions for that use to protect the environment, including man, lands, beneficial insects, animals, crops, and wildlife, other than pests. (28) "Under the direct supervision of a certified applicator" means that, unless otherwise prescribed by its labeling or regulations of the Commissioner, a pesticide shall be considered to be applied under the direct supervision of a certified applicator if it is applied by a competent person acting under the instructions and control of a certified applicator who is available if and when needed, even though such certified applicator is not physically present at the time and place the pesticide is applied.

(29) "Unreasonable adverse effects on the environment" means any unreasonable risk to man or the environment, taking into account the economic, social, and environmental costs and benefits of the use of any pesticide.

(30) "Weed" means any plant which grows where not wanted.

(31) "Wildlife" means all living things that are neither human, domesticated, nor, as defined in this article, pests, including, but not limited to, mammals, birds, and aquatic life. (Ga. L. 1972, p. 849, § 4; Ga. L. 1976, p. 369, § 4.)

Code Commission Notes. –Pursuant to § 28-9-5, in 1990, "Section" was substituted for "section" in paragraph (20).

U.S. Code – The Federal Insecticide, Fungicide, and Rodenticide Act and amendment thereto, referred to in paragraph (11) of this section, was codified at 7 U.S.C. §§ 135 through 135k. However, in 1972 the Federal Insecticide, Fungicide, and Rodenticide Act was extensively amended by Pub. L. No. 92-516. The 1972 Act, as amended, provided that the provisions of the Federal Insecticide, Fungicide, and Rodenticide Act and the regulations enacted thereunder should remain in effect until superseded by the amendments made by the 1972 Act and the

regulations thereunder. See Pub. L. No. 92-516, § 4, as amended by Pub. L. No. 94-140, § 4 and Pub. L. 95-396, § 28. The 1972 Act has been codified at 7 U.S.C. §§ 136 through 136y and treated as a new subchapter 2 in the chapter of the U.S.C. in which the Federal Insecticide, and Rodenticide Act appeared. Public Law No. 92-516, § 1 provided that the short title of the 1972 Act is the Federal Environmental Pesticide Control Act of 1972.

Section 25©(1) of the Federal Insecticide, Fungicide, and Rodenticide Act, referred to in subparagraph (20)(B) of this section, is codified as 7 U.S.C. § 136w(c)(1).

2-7-93. Commissioner to administer article; appointment of Pesticide Advisory Board

This article shall be administered by the Commissioner of Agriculture of this state. In the administration of this article the Commissioner shall appoint a Pesticide Advisory Board for the purpose of advising him on all matters relating to pesticides and their use and application. (Ga. L. 1972, p. 849, § 2; Ga. L. 1976, p. 369, § 2.)

2-7-94. Delegation of duties

The functions vested in the Commissioner by this article may be delegated by him to such employees or agents of the department as the Commissioner may from time to time designate for such purposes. (Ga. L. 1972, p. 849, § 22; Ga. L. 1976, p. 369, § 24.)

2-7-95. Publication of information; instructions

The Commissioner may cooperate with educational institutions and other state or federal agencies in publishing information and conducting short courses of instruction in the areas of knowledge required by this article. (Ga. L. 1972, p. 849, § 18; Ga. L. 1976, p. 369, § 20.)

2-7-96. Cooperative agreements; grant-in-aid

The Commissioner may cooperate, receive grants-in-aid, and enter into agreements with any agency of the federal government, of this state or its subdivisions, or of another state, to obtain assistance in the implementation of this article, in order to:

(1) Secure uniformity of regulations;

(2) Cooperate in the enforcement of the federal pesticide control laws through the use of personnel and facilities of the state or the federal government or both and implement cooperative enforcement programs;

(3) Develop and administer state plans for training and for certification of certified applicators consistent with federal standards;

(4) Contract for training with other agencies for the purpose of training certified applicators;

(5) Prepare and submit state plans to meet federal certification standards, as provided for in Section 4 of FIFRA; and

(6) Regulate certified applicators. (Ga. L. 1972, p. 849, § 23; Ga. L. 1976, p. 369, § 9.)

Code Commission Notes. –Pursuant to § 28-9-5, in 1990, "Section" was substituted for "section" in paragraph (5).

U.S. Code – Section 4 of Federal Insecticide, Fungicide, and Rodenticide Act referred to in paragraph (5) of this section, is codified at 7 U.S.C. § 136b.

2-7-97. Promulgation of rules and regulations authorized; notice and hearing; restricted use pesticide classifications and state restricted pesticide uses; declaration of pests; reports to Environmental Protection Agency.

(a) The Commissioner shall administer and enforce this article. He shall have authority to issue regulations to carry out this article, after a public hearing following due notice to all interested persons, in conformance with Chapter 13 of Title 50, the "Georgia Administrative Procedure Act." Such regulations may prescribe methods to be used in the application of pesticides. When the Commissioner finds that such regulations are necessary to carry out the purpose and intent of this article, such regulations may relate to the time, place, manner, methods, materials, and amounts and concentrations in connection with the application of pesticides; they may restrict or prohibit the use of pesticides in designated areas during specified periods of time and shall encompass all reasonable factors which the Commissioner deems necessary to prevent damage or injury by drift or misapplication to:

(1) Plants, including forage plants, or adjacent or nearby lands;

(2) Wildlife in the adjoining or nearby areas;

(3) Fish and other aquatic life in waters in reasonable proximity to the area to be treated; and

(4) Humans, animals, or beneficial insects.

(b) In issuing such regulations, the Commissioner shall give consideration to pertinent research findings and recommendations of other agencies of this state or of the federal government. The Commissioner may require, by regulation, that notice of a proposed application of a pesticide be given to land owners in designated areas if he finds that such notice is necessary to carry out the purpose of this article.

(c) For the purpose of uniformity and in order to enter into cooperative agreements, the Commissioner may adopt "restrictive use pesticide" classifications as determined by the Environmental Protection Agency. In addition to those "restricted use pesticides" classified by the administrator of the Environmental Protection Agency, the Commissioner also may

determine, by regulation, after a public hearing following due notice, "state restricted pesticide uses" for the state or for designated areas within the state. If the Commissioner determines that a pesticide use, when applied in accordance with its directions for use, warnings, cautions, and for uses for which it is registered, may cause, without additional regulatory restrictions, unreasonable adverse effects on the environment, including injury to the applicator or other persons because of acute dermal or inhalation toxicity of the pesticide, the pesticide use shall be applied only by or under the direct supervision of a certified applicator or shall be subject to such other restrictions as the Commissioner may determine.

(d) Regulations adopted under this article shall not permit any pesticide use which is prohibited by FIFRA and any regulations or orders issued thereunder.

(e) Regulations adopted under this article as to certified applicators of "restricted use pesticides" as designated under FIFRA shall not be inconsistent with the requirements of FIFRA and any regulations promulgated thereunder. (f) The Commissioner, after notice and opportunity for hearing, is authorized to declare any form of plant or animal life, other than man and other than bacteria, viruses, and other microorganisms on or in living man or other living animals, which is injurious to health or the environment to be a pest.

(g) In order to comply with Section 4 of FIFRA, the Commissioner is authorized to make such reports to the Environmental Protection Agency, in such form and containing such information, as the agency may from time to time require. (Ga. L. 1972, p. 849, § 5; Ga. L. 1976, p. 369, § 5; Ga. L. 1982, p. 3, § 2.)

Code Commission Notes. –Pursuant to § 28-9-5, in 1990, "Section" was substituted for "section" in paragraph (g).

U.S. Code – Section 4 of Federal Insecticide, Fungicide, and Rodenticide Act referred to in subsection (g) of this section, is codified at 7 U.S.C. § 136b.

2-7-98. Classification of certifications and licenses; standards for certification of applicators.

(a) The Commissioner may classify or subclassify certifications or licenses to be issued under this article, as may be necessary for the effective administration and enforcement of this article. Each classification shall be subject to separate requirements, provided that no person shall be required to pay an additional license fee if such person desires to be licensed in one or all of the license classifications provided for certified commercial pesticide applicators by the Commissioner under the authority of this Code section.

(b) The Commissioner, in promulgating regulations under this article, shall prescribe standards for the certification of applicators of pesticides. Such standards may relate to the use and handling of pesticides or to the use and handling of the pesticide or class of pesticides covered by the individual's certification and shall be relative to the hazards involved.

(c) In determining standards, the Commissioner shall consider:

(1) The characteristics of the pesticide formulation, such as the acute dermal and inhalation toxicity and the persistence, mobility, and susceptibility to biological concentration;

(2) The use experience which may reflect an inherent misuse or an unexpected good safety record which does not always follow laboratory toxicological information;

(3) The relative hazards or patterns of use, such as granular soil applications, ultralow volume or dust aerial applications, or air blast sprayer applications; and

(4) The extent of the intended use.

Further, the Commissioner shall take into consideration the standards of the Environmental Protection Agency and is authorized to adopt such standards by regulation. (Ga. L. 1972, p. 849, § 6; Ga. L. 1976, p. 369, § 6.)

RESEARCH REFERENCES

A.L.R. – Right of one who acquires title to, or other interest in, real property to benefit of a license previously issued by the public, permitting use of property for a specified purpose, 131 ALR 1339.

2-7-99. Licensing requirements; applications; issuance; fees; renewal.

(a) Pesticide contractor's license.

(1) Required; additional requirement; fee. No person shall engage in the business of contracting for the application of any pesticide to the lands of another within this state at any time without a pesticide contractor's license issued by the Commissioner for each business location. In addition to the pesticide contractor's license, each business location must maintain, in full-time employment during all periods of operation, at least one certified commercial pesticide applicator. The Commissioner shall require an annual fee of \$55.00 for each pesticide contractor's license issued.

(2) Application for license; form; content. Application for a pesticide contractor's license shall be made in writing to the Commissioner on a designated form obtained from the Commissioner's office. Each application for a license shall contain information regarding the applicant's qualifications and proposed operations and shall include the following:

(A) The full name of the person applying for the license;

(B) If the applicant is a person other than an individual, the full name of each member of the firm or partnership or the names of the principal officers of the association, corporation, or group;

(C) The principal business address of the applicant in this state and elsewhere;

(D) If applicable, the name and address of an attorney in fact pursuant to the requirements of Chapter 5 of this title, the "Department of Agriculture Registration, License, and Permit Act";

(E) The model, make, horsepower, and size of any equipment used by the applicant to apply pesticides; and

(F) Any other necessary information prescribed by the Commissioner.

(3) Issuance. If the Commissioner finds the applicant qualified to engage in the business of contracting for the application of pesticides commercially, if the applicant files proof of financial responsibility as required under Code Section 2-7-103, and if the applicant applying for a license to contract for aerial application of pesticides has met all of the requirements of the Federal Aviation Administration and all aeronautic requirements of this state for operation of equipment described in the application, the Commissioner shall issue a pesticide contractor's license, with any necessary limitations; provided, however, commercial aerial applicators of crop protection products and pesticide contractors applying crop protection products to agricultural crops shall not be required to file proof of financial responsibility as required under Code Section 2-7-103. The license shall expire at the end of the calendar year of issue, unless it is revoked or suspended prior thereto by the Commissioner for cause.

(b) Certified pesticide applicator licenses.

(1) Certified private applicator's license.

(A) Required; competency. No individual shall purchase, use, or supervise the use of any pesticide as a private applicator unless he is licensed as a certified private applicator or is acting under the direct supervision of an individual who is licensed as a certified private applicator. The Commissioner shall require the applicant to demonstrate his competency to apply "restricted use pesticides" safely, effectively, and in such a manner as to prevent any unreasonable adverse effects on the environment. Such determination of competency shall be made on the basis of standards and procedures approved by the Environmental Protection Agency in the "Georgia Plan for Certification of Pesticide Applicators."

(B) Application for license; form; content. Application for a license shall be made in writing to the Commissioner on a designated form obtained from the Commissioner's office. Each application shall contain information regarding the applicant's qualifications and proposed operations and shall include the following:

(i) The name of the person applying for the license;

(ii) The complete home address and mailing address of the applicant; and

(iii) Any other information pertinent to the applicant's operation.

(C) Issuance. If the Commissioner finds the applicant qualified to use or supervise the use of "restricted use pesticides" as a private pesticide applicator, he shall issue such license, to be effective for a specified period which shall be determined by the Commissioner by regulation. There shall be no fee required for a certified private applicator's license.

(2) Certified commercial pesticide applicator's license.

(A) Required; competency. No individual shall purchase, use, or supervise the use of any pesticide as a commercial applicator unless he is licensed as a certified commercial applicator or is acting under the direct supervision of an individual who is licensed as a certified commercial applicator. No person shall commercially apply any pesticide by aerial equipment without a certified commercial pesticide applicator license. The Commissioner shall require the applicant to demonstrate his competency to apply pesticides safely, effectively, and without any unreasonable adverse effects on the environment. Such determination of competency shall be made on the basis of standards and procedures

approved by the Environmental Protection Agency in the "Georgia Plan for Certification of Pesticide Applicators."

(B) Application for license; form; content. Application for a license shall be made in writing to the Commissioner on a designated form obtained from the Commissioner's office. Each application shall contain information regarding the applicant's qualifications and proposed operations and shall include the following:

- (i) The full name of the person applying for the license;
- (ii) The principal business address of the applicant in this state and elsewhere;
- (iii) If applicable, the name and address of an attorney in fact pursuant to the requirements of Chapter 5 of this title, the "Department of Agriculture Registration, License, and Permit Act"; and
- (iv) Any other necessary information prescribed by the Commissioner.

(C) Issuance; fees; renewal. If the Commissioner finds the applicant qualified to apply pesticides in the classification or classifications he has applied for, the Commissioner shall issue a certified commercial pesticide applicator's license. Effective August 21, 1980, all new certified commercial pesticide applicator licenses shall be issued for a period of five years from the date of certification. The fee for the five-year license shall be \$90.00. Licenses shall be subject to renewal on the day following expiration, based on such recertification requirements as the Commissioner may establish by regulation, provided that all such licenses previously issued on an annual basis and expiring December 31, 1980, shall be renewable January 1, 1981, for the remaining portion of their five-year certification period. Fees for such license renewals shall be:

Expiration Date of Current Certification	<u>1982</u>	<u>1983</u>	<u>1984</u>	<u>1985</u>
February 20	\$ _____	\$11.00	\$16.00	\$21.00
April 20	_____	12.00	17.00	21.00
June 20	_____	13.00	18.00	23.00
August 20	_____	14.00	19.00	24.00
October 20	10.00	15.00	20.00	_____
December 20	10.00	15.00	20.00	_____

(Ga. L. 1972, p. 849, § 7; Ga. L. 1976, p. 369, § 7; Ga. L. 1980, p. 749, § § 1, 2; Ga. L. 1982, p. 3. § 2; Ga. L. 1990, p. 1253, § 1.)

The 1990 amendment, effective July 1, 1990, added the language beginning with "; provided, however" and ending with "Code Section 2-7-103"

at the end of the first sentence in paragraph (3) of subsection (a).

Cross references. – Licensing of restricted use pesticide dealers, § 2-7-57.

2-7-100. Reciprocal examination waiver.

The Commissioner may waive all or part of the examination requirements provided for in Code Sections 2-7-98, 2-7-99, and 2-7-111 on a reciprocal basis with any other state which

has substantially the same standards. (Ga. L. 1972, p. 849, § 14; Ga. L. 1976, p. 369, § 16)

2-7-101. Renewals of licenses, permits, or certifications; penalty for late renewals.

(a) If the application for renewal of any license, permit, or certification is not filed prior to the first day of the succeeding license period, a penalty of 50 percent shall be assessed and added to the original fee and shall be paid by the applicant before the renewal license, permit, or certification is issued.

(b) Any person holding a current valid license, permit, or certification may renew such license, permit, or certification for the next year or the next license period, subject to reexamination or such other requirements as the Commissioner may impose by regulation to ensure that applicators continue to meet the needs of changing technology and to assure a continuing level of competence and ability to use pesticides safely and properly.

(c) If a license, permit, or certification is not renewed within 60 days after the beginning of a new license period, then such licensee, permittee, or certificate holder shall be required to take another examination. (Ga. L. 1972, p. 849, § 8; Ga. L. 1976, p. 369, § 10)

2-7-102. Grounds for denial, suspension, revocation, or modification of license, permit, or certification; suspension pending hearing; suspension upon finding that holder or applicant has been convicted of trafficking in illegal drugs.

(a) Any licensed or unlicensed person shall be subject to prosecution or civil injunctive action for committing any of the following acts, each of which is declared unlawful; and additionally, if an applicant or the holder of any license, permit, or certification is found by the Commissioner to have committed any of the following acts, or is subject to a final order imposing a civil penalty pursuant to Section 14 of FIFRA, the Commissioner may suspend any such license, permit, or certification, pending inquiry, for not longer than ten days, and, after opportunity for a hearing, may deny, suspend, or revoke such license, permit, or certification, or modify any provision thereof:

(1) Made false or fraudulent claims through any media misrepresenting the effect of pesticides or methods to be utilized;

(2) Made a pesticide recommendation or use inconsistent with the labeling, the Environmental Protection Agency or Georgia state registration for that pesticide, or in violation of the Environmental Protection Agency or Georgia state restrictions on the use of that pesticide;

(3) Applied known ineffective or improper pesticides;

(4) Operated faulty or unsafe equipment;

(5) Operated in a faulty, careless, or negligent manner;

(6) Neglected or, after notice, refused to comply with this article or the rules adopted hereunder;

(7) Refused or neglected to keep and maintain the records required by this article or to make reports when and as required;

(8) Made false or fraudulent records, invoices, or reports;

(9) Contracted to apply any pesticide to the lands of another without a licensed commercial pesticide applicator in full-time employment;

(10) Used fraud or misrepresentation in making an application for or renewal of a license, permit, or certification;

(11) Refused or neglected to comply with any limitations or restrictions on or in a duly issued license, permit, or certification;

(12) Aided or abetted a licensed or an unlicensed person to evade the provisions of this article, conspired with such a licensed or an unlicensed person to evade the provisions of this article, or allowed one's license, permit, or certification to be used by another person;

(13) Made false or misleading statements, during or after an inspection, concerning any infestation or infection of pests found on land;

(14) Impersonated any federal, state, county, or city inspector or official; or

(15) Acted in the capacity of, or advertised as, a pesticide contractor or applicator without the required license issued by the Commissioner.

(b) The Commissioner may suspend any pesticide contractor's license or any certified commercial pesticide applicator's license, pending inquiry, for not longer than ten days and, after opportunity for a hearing, may deny, suspend, or revoke such license for a period not to exceed five years upon a finding by the Commissioner that:

(1) The applicant for or holder of such a license has been convicted of or has pleaded guilty to a violation of Code Section 16-13-31;

(2) The conviction occurred or the plea was entered on or after January 1, 1984;

(3) The conviction occurred or the plea was entered within the immediately preceding five years; and

(4) An aircraft was used in the commission of such violation. (Ga. L. 1972, p. 849, § 9; Ga. L. 1976, p. 369, § 11; Ga. L. 1982, p. 3, § 2; Ga. L. 1984, p. 890, § 1; Ga. L. 1985, p. 149, § 2.)

(c) The Commissioner may suspend any pesticide contractor's license or certified commercial pesticide applicator's license or refuse to grant or renew either license upon notice to the Commissioner by either a court of competent jurisdiction or the child support agency within the Department of Human Resources that:

(1) The applicant for or holder of either such license is not in compliance with an order for child support as defined in Code Section 19-6-28.1 or 19-11-9.3; and

(2) The hearings and appeals procedures provided in Code Section 19-6-28.1 or 19-11-9.3, where applicable, shall be the only such procedures required under this article.

(d) The Commissioner shall suspend any pesticide contractor's license or certified commercial pesticide applicator's license or refuse to grant or renew either license upon notice to the Commissioner by the Georgia Higher Education Assistance Corporation that:

(1) The applicant for or holder of either such license is a borrower in default who is not in satisfactory repayment status as defined in Code Section 20-3-295; and

(2) The hearings and appeals procedures provided in Code Section 20-3-295, where applicable, shall be the only such procedures required under this article.

Cross references. – Authority of Commissioner to impose penalties in lieu of other action. § 2-2-10.

Code Commission Notes. –Pursuant to § 28-9-5, in 1990, "Section" was substituted for "section" in the introductory language of subsection (a).

U.S. Code – Section 14 of Federal Insecticide, Fungicide, and Rodenticide Act referred to in the introductory paragraph of this section, is codified at 7 U.S.C. § 136/.

2-7-103. Evidence of financial responsibility required; amount of bond, insurance, or cash deposit; notice of reduction or cancellation.

(a) Required. The Commissioner shall not issue a pesticide contractor's license until the applicant has furnished evidence of financial responsibility with the Commissioner, consisting either of a surety bond, a liability insurance policy, or a cash deposit or certification thereof, protecting persons who may suffer legal damages as a result of the operation of the applicant, provided that such surety bond, liability insurance policy, or cash deposit need not apply to damages or injury to agricultural crops, plants, or land being worked upon by the applicant.

(b) Amount; notice of reduction or cancellation by surety or insurer. The amount of surety bond, liability insurance, or cash deposit provided for in this Code section shall be set by regulation. Such surety bond, liability insurance, or cash deposit shall be maintained at not less than the minimum set by regulation at all times during the license period. The Commissioner shall be notified ten days prior to any reduction made at the request of the applicant or any cancellation of such surety bond or liability insurance by the surety or insurer. The total and aggregate liability of the surety and insurer for all claims shall be limited to the face of the bond or liability insurance policy or cash deposit. The Commissioner may accept a liability insurance policy, surety bond, or cash deposit in the proper sum, which has a deductible clause in an amount not exceeding \$1,000.00 for aerial contractors and \$500.00 for all other contractors, for the total amount of liability insurance, surety bond, or cash deposit required, provided that if the applicant has not satisfied the requirement of the deductible amount in any prior legal claim, such deductible clause shall not be accepted by the Commissioner, unless such applicant furnishes the Commissioner with a surety bond, liability insurance, or cash deposit which shall satisfy the amount of the deductible as to all claims that may arise in his application of pesticides. In the event that any contractor has an unpaid and outstanding judgment against him as a result of damages caused to a second party by the misuse of pesticides, he must provide a bond in an amount acceptable to the Commissioner before he can be licensed or relicensed.

(c) Personal liability for damage. Nothing in this article shall be construed to relieve any person from liability for any damage to the person or lands of another caused by the use of pesticides, even though such use conforms to the rules and regulations of the Commissioner. (Ga. L. 1972, p. 849, § 10; Ga. L. 1976, p. 1189, § § 1, 2; Ga. L. 1976, p. 369, § 12; Ga. L. 1980, p. 749, § 3.)

JUDICIAL DECISIONS

“Legal damages” construed. – “legal damages” as referred to in subsection (a) include damages arising from the use of aircraft utilized in the application of pesticides, where the use of that aircraft leads to the injury of an employee of the insured. *Kelly v. Lloyd’s of London*, 255 Ga. 291, 336 S.E. 2d 772 (1987).

Section prevails over insurance contract. – Any terms in an insurance contract which conflict with this section are void and will be superseded by the provisions of this section. *Kelly v. Lloyd’s of London*, 255 Ga. 291, 336 S.E.2d 772 (1985).

2-7-104. Records to be kept; inspection thereof.

The Commissioner shall require licensed pesticide contractors and licensed certified commercial applicators who are not employed by or otherwise acting for a licensed pesticide contractor to maintain records with respect to applications of pesticides. Such relevant information as the Commissioner may deem necessary to be recorded and maintained may be specified by regulation. Such records shall be kept for a period of time specified by the Commissioner by regulation. The Commissioner or his authorized designee shall be permitted to inspect such records during normal business hours at the place where they are maintained. Upon request in writing, the Commissioner or his authorized designee shall be furnished with a copy of such records forthwith by the licensee. (Ga. L. 1972, p. 849, § 12; Ga. L. 1976, p. 369, § 14.)

2-7-105. Equipment inspection; requirement of repairs or other changes.

The Commissioner may provide for inspection of any equipment used for application of pesticides. He may require repairs or other changes before its further use for pesticide application. A list of requirements which equipment must meet may be adopted by regulation. (Ga. L. 1972, p. 849, § 13; Ga. L. 1976, p. 369, § 15.)

2-7-106. Transportation, storage, and disposal of pesticides and pesticide containers.

No person shall transport, store, or dispose of any pesticide or pesticide containers in such a manner as to cause injury to humans, vegetation, crops, livestock, wildlife, or beneficial insects or in such a manner as to pollute any waterway in a way harmful to any wildlife therein. The Commissioner may promulgate rules and regulations governing the storing and disposal of such pesticides or pesticide containers. In determining these standards, the Commissioner shall take into consideration any regulations issued by the United States Environmental Protection Agency and any regulations issued by the Environmental Protection Division of the Department of Natural Resources of this state. (Ga. L. 1972, p. 849, § 16; Ga. L. 1976, p. 369, § 18.)

Cross references. – Powers of Environmental Protection Division of Department of Natural

Resources regarding management of hazardous waste, § 12-8-60 et seq.

2-7-107. Inspections; search warrants; injunctions.

(a) For the purpose of carrying out this article, the Commissioner may enter upon any public or private premises, at reasonable times, in order to:

- (1) Have access for the purpose of inspecting any equipment subject to this article;

- (2) Inspect or sample lands actually or reported to be exposed to pesticides;
- (3) Inspect storage or disposal areas;
- (4) Inspect or investigate complaints of injury to humans or land;
- (5) Sample pesticides being applied or to be applied; or
- (6) Observe the use and application of any pesticide.

(b) Should the Commissioner be denied access to any land, where such access was sought for the purposes set forth in this article, he may apply to any court of competent jurisdiction for a search warrant authorizing access to such land for such purposes. Upon such application, the court may issue a search warrant for the purposes requested.

(c) The Commissioner is charged with the duty of enforcing the requirements of this article and the rules and regulations promulgated hereunder.

(d) In addition to any other remedy provided in this article, the Commissioner is authorized to bring an action to enjoin a violation of any provision of this article or any rule or regulation promulgated hereunder. In such an action it shall not be necessary for the Commissioner to allege or prove the absence of an adequate remedy at law. (Ga. L. 1972, p. 849, § 21; Ga. L. 1976, p. 369, § 23; Ga. L. 1980, p. 749, § § 4, 5.)

RESEARCH REFERENCES

Am. Jur. 2d. – 3 Am. Jur. 2d Agriculture,
§ § 44, 46.

2-7-108. Subpoena powers

The Commissioner may issue subpoenas to compel the attendance of witnesses and the production of books, documents, and records anywhere in this state in any hearing affecting the authority or privilege granted by a license, certification, or permit issued under this article. (Ga. L. 1972, p. 849, § 20; Ga. L. 1976, p. 369, § 22.)

2-7-109. Judicial review of Commissioner's actions.

Any person aggrieved by any action of the Commissioner may obtain judicial review thereof in accordance with Chapter 13 of Title 50, the "Georgia Administrative Procedure Act." (Ga. L. 1972, p. 849, § 17; Ga. L. 1976, p. 369, § 19.)

2-7-110. Report of pesticide accidents; claim of damage; notification; inspection; effect of failure to file; failure to permit observation as bar to claim.

(a) The Commissioner by regulation may require the reporting of significant pesticide accidents or incidents.

(b) Any person claiming damages from a pesticide application shall file with the Commissioner, on a form prescribed by the Commissioner, a written statement claiming that he has been damaged. This report shall be filed within 60 days after the date that

damages occur. If a growing crop is alleged to have been damaged, the report must be filed prior to the time that 25 percent of the crop has been harvested. Such statement shall contain, but shall not be limited to, the name of the person allegedly responsible for the application of the pesticide, the name of the owner or lessee of the land on which the crop is grown and for which damage is alleged to have occurred, and the date on which the alleged damage occurred. The Commissioner shall prepare a form to be furnished for use in such cases. Such form shall also contain such other requirements as the Commissioner may deem proper. Upon receipt of such statement, the Commissioner shall notify the licensee and the owner or lessee of the land or other person who may be charged with responsibility for the damages claimed and shall furnish such copies of the statement as may be requested. The Commissioner shall inspect damages whenever possible. When he determines that a complaint has sufficient merit, he shall make such information available to the person claiming damages and to the person who is alleged to have caused the damage.

(c) The filing of a report as prescribed in subsection (b) of this Code section or the failure to file such a report need not be alleged in any complaint which might be filed in a court of law; nor shall the failure to file a report be considered any bar to the maintenance of any criminal or civil action.

(d) The failure to file a report as prescribed in subsection (b) of this Code section shall not be a violation of this article. However, if the person failing to file such report is the only one injured from the use or application of a pesticide by others, the Commissioner, when in the public interest, may refuse to hold a hearing for the denial, suspension, or revocation of a license or permit issued under this article until such report is filed.

(e) Where damage is alleged to have occurred, the claimant shall permit the Commissioner and the licensee and his representatives, including the bondsman and the insurer, to observe, within reasonable hours, the lands or nontarget organism alleged to have been damaged, in order that such damage may be examined. Failure of the claimant to permit such observation and examination of the damaged lands shall automatically bar the claim against the licensee. (Ga. L. 1972, p. 849, § 11; Ga. L. 1976, p. 369, § 13.)

RESEARCH REFERENCES

C.J.S. – 3 C.J.S.. Agriculture, § 86.

A.L.R. – Products liability; fertilizers, insecticides, pesticides, fungicides, weed killers, and the like, or articles used in application thereof. 12 ALR4th 462.

2-7-111. Applicability of article to governmental entities; liability of such entities.

(a) All state agencies, municipal corporations, and other governmental agencies shall be subject to this article and rules adopted hereunder concerning the application and use of pesticides.

(b) Employees of agencies listed in subsection (a) of this Code section who use or supervise the use of restricted use pesticides restricted to use by certified applicators or state restricted pesticide uses restricted to use by certified applicators shall be subject to the requirements provided for in paragraph (2) of subsection (b) of Code Section 2-7-99, provided that the Commissioner shall issue a limited license without a fee to such public applicator who has qualified for such license. Such license shall be valid only when such applicator is acting as an applicator applying or supervising application of pesticides used by

such entities. Government research personnel shall be exempt from this licensing requirement when applying pesticides, other than restricted use pesticides restricted to use by certified applicators or state restricted pesticide uses restricted to use by certified applicators, to experimental plots only. Individuals licensed pursuant to this subsection shall be certified commercial applicators for the use of "restricted use pesticides" covered by the applicant's classification.

(c) Such governmental agencies and municipal corporations shall be subject to legal recourse by any person damaged by the application of any pesticide. Such action may be brought in the county where the damage or some part thereof occurred. (Ga. L. 1976, p. 369, § 8.)

RESEARCH REFERENCES

A.L.R – Products liability; fertilizers, insecticides, pesticides, fungicides, weed killers, and

the like, or articles used in application thereof. 12 ALR4th 462.

2-7-112. Exemptions from article.

(a) Farmers. Code Section 2-7-99, relating to licenses and requirements for their issuance, shall not apply to any farmer applying pesticides classified for general use for himself or for his farmer neighbors, provided that:

(1) He operates farm property and operates and maintains pesticide application equipment primarily for his own use;

(2) He is not regularly engaged in the business of applying pesticides for hire, amounting to a principal or regular occupation, and he does not publicly hold himself out as a pesticide contractor; and

(3) He operates his pesticide application equipment only in the vicinity of his own property and for the accommodation of his neighbors.

(b) Veterinarians. Paragraph (2) of subsection (b) of Code Section 2-7-99, relating to license and requirements for their issuance, shall not apply to a doctor of veterinary medicine applying pesticides to animals during the normal course of his veterinary practice, provided that he is not regularly engaged in the business of applying pesticides for hire, amounting to a principal or regular occupation, and does not publicly hold himself out as a pesticide contractor.

(c) Experimental research. Code Section 2-7-99, relating to licenses and requirements for their issuance, shall not apply to research personnel applying pesticides, other than restricted use pesticides restricted to use by certified applicators or state restricted pesticide uses restricted to use by certified applicators, only to bona fide experimental plots.

(d) Persons subject to Structural Pest Control Act. Persons subject to Chapter 45 of Title 43, the "Georgia Structural Pest Control Act," are exempt from this article and the regulations issued hereunder with respect to any activities which are regulated under Chapter 45 of Title 43. (Ga. L. 1972, p. 849, § 15; Ga. L. 1976, p. 369, § 17.)

2-7-113. Effect of article on certain other laws.

No provision of this article shall authorize any person to violate any of the provisions of any law or any rules or regulations adopted and promulgated thereunder, the administration

and enforcement of which is assigned to the Department of Natural Resources or any division therein or to the Coastal Marshlands Protection Committee. This article shall not be construed as repealing, preempting, modifying, or limiting the authority or functions assigned to the Department of Natural Resources or its divisions or officials or to the Coastal Marshland Protection Committee. (Ga. L. 1976, p. 369, § 25.)

2-7-113.1. Local regulation of pesticides prohibited; variances from rule or regulation of Commissioner of Agriculture.

(a) No county, municipal corporation, consolidated government, or other political subdivision of this state shall adopt or continue in effect any ordinance, rule, regulation, or resolution relating to pesticide use, sale, distribution, storage, transportation, disposal, formulation, labeling, registration, or manufacture. This provision shall in no way prohibit or impair the legal right of any county, municipal corporation, consolidated government, or other political subdivision of this state to issue business licenses or to make zoning decisions.

(b) The governing authority of any county or municipality may, by resolution, petition the Commissioner of Agriculture for a variance from a rule or regulation of the Commissioner because of special circumstances relating to the use or application of a pesticide. If such a petition is received by the Commissioner, it shall be the duty of the Commissioner to notify the President of the Senate, the Speaker of the House of Representatives, and the chairmen of the Agriculture Committee and Natural Resources Committee of the Senate and the Agriculture and Consumer Affairs Committee and the Natural Resources and Environment Committee of the House of Representatives that such petition has been received. The Commissioner shall conduct a public hearing on such petition and issue a decision on the requested variance within 60 days of the receipt of the petition. If a decision is not given within 60 days of the receipt of the petition, the variance shall automatically be granted. The Commissioner may grant a variance requested under this subsection with or without changes. (Code 1981, § 2-7-113.1, enacted by Ga. L. 1992, p. 3162, § 1.)

Effective date. – This code section became effective July 1, 1992.

2-7-114. Penalties.

Any person violating any provision of this article or any regulation adopted hereunder shall be guilty of a misdemeanor. (Ga. L. 1972, p. 849, § 19; Ga. L. 1976, p. 369, § 21.)

ARTICLE 6

LIABILITY FOR USE OF FERTILIZERS, PLANT GROWTH REGULATORS, OR PESTICIDES.

Effective date. – This article became effective July 1, 1988.

RESEARCH REFERENCES

Am. Jur. 2d. – 3 Am. Jur. 2d, Agriculture & 48.
C.J.S. – 3 C.J.S., Agriculture, && 79, 81, 86, 93.

ALR. – Exterminator's tort liability for personal injury or death resulting from operations, 29 ALR4th 987.

2-7-170. Liability resulting from use or application of fertilizer, plant growth regulator, or pesticide. Previous orders issued by Department of Agriculture and Department of Natural Resources; strict tort liability against product manufacturers.

(a) No person, firm, or corporation engaged in an agricultural, silvicultural, farming, horticultural, or similar operation, place, establishment, or facility, or any of its appurtenances, who has applied or used or arranged for the application or use of any fertilizer, plant growth regulator, or pesticide as defined in the Federal Insecticide, Fungicide, and Rodenticide Act, 7 U.S.C. 135, et seq., as amended by the Federal Environmental Pesticide Control Act of 1972, 7 U.S.C. 136, et seq., and Article 2 of this chapter, known as the "Georgia Pesticide Control Act of 1976," and Article 3 of this chapter, known as the "Georgia Pesticide Use and Application Act of 1976," shall be responsible or liable under this title, without proof of negligence or lack of due care, for any damages, response costs, or injunctive relief relating to any direct or indirect discharge or release into, or actual or threatened pollution of, the land, waters, air, or other resources of the state that is or may be associated with or resulting from such application or use, provided that:

(1) Such application or use was in a manner consistent with the labeling of such fertilizer, plant growth regulator, or pesticide and in accordance with acceptable agricultural management practices and all applicable state and federal laws and regulations at the time of such application or use;

(2) The state or federal government, or any of its agencies, had approved, recommended, or permitted the application or use and there is no finding that any conditions of such approval, recommendation, or permit were violated or that warnings or limitations regarding the application or use were ignored; and

(3) Such fertilizer, plant growth regulator, or pesticide was licensed by or registered with the state or federal government at the time of such application or use and such person, firm, or corporation knew of no special geological, hydrological, or soil type condition existing on the land which rendered such application or use likely to cause pollution. No person, firm, or corporation shall be liable based solely on ownership of the land where such application or use took place.

(b) Nothing in this article shall affect or limit any right of action of an individual against any person, firm, or corporation engaged in an agricultural or farming operation for injury to person or property resulting from such chemical application or use.

(c) All orders issued by the Department of Agriculture and the Department of Natural Resources prior to July 1, 1988, pursuant to this title and Title 12, and the liability upon which such orders are premised, if any, shall remain in effect unless the orders are otherwise revoked, amended, or modified by the Commissioner of Agriculture or the commissioner of natural resources.

(d) Nothing in this article shall be construed to prohibit any cause of action based on strict tort liability against any manufacturer of such fertilizer, plant growth regulator, or pesticide. (Code 1981, 2-7-170, enacted by Ga. L. 1988, p. 1409, 1; Ga. L. 1989, p. 502, 1; Ga. L. 1990, p. 8, 2.)

The 1989 amendments, effective April 3, 1989, deleted "and Title 12" following "under this title" near the middle of the introductory language of subsection (a).

The 1990 amendments, effective February 16, 1990, part of an Act to correct errors and omissions in the code, revised

Code Commission notes. –Pursuant to 28-9-5, in 1988 "natural resources" was substituted for "Natural Resources" at the end of subsection ©.