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COMMITTEE AMENDMENT ADOPTED

March 22, 2022

**S. 1095**

Introduced by Senators Climer, Massey, Verdin, Kimbrell, M. Johnson, McElveen and Fanning

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Read the first time February 22, 2022.

**A** **BILL**

TO AMEND ARTICLE 1, CHAPTER 119, TITLE 59 OF THE 1976 CODE, RELATING TO CLEMSON UNIVERSITY’S ORGANIZATION, POWERS, PROPERTY, INCOME AND THE LIKE, TO PROVIDE THAT ALL OF THE REGULATIONS PROMULGATED BY THE DIVISION OF REGULATORY AND PUBLIC SERVICE PROGRAMS MUST BE PROMULGATED IN ACCORDANCE WITH THE ADMINISTRATIVE PROCEDURES ACT; AND TO AMEND SECTIONS 46-1-140, 46-9-50, 46-10-30, 46-13-30, 46-23-90, 46-25-40, 46-25-45, 46-26-160, 46-35-10, 46-37-20, AND 46-37-25 TO CONFORM TO THE REQUIREMENT THAT ALL REGULATIONS PROMULGATED BY THE DIVISION OF REGULATORY AND PUBLIC SERVICE PROGRAMS MUST BE PROMULGATED IN ACCORDANCE WITH THE ADMINISTRATIVE PROCEDURES ACT.

Amend Title To Conform

Be it enacted by the General Assembly of the State of South Carolina:

SECTION 1. Article 1, Chapter 119, Title 59 of the 1976 Code is amended by adding:

“Section 59-119-170. (A) All new regulations and amendments to existing regulations promulgated by the Division of Regulatory and Public Service Programs at Clemson University must be promulgated in accordance with the provisions contained in Article 1, Chapter 23, Title 1.

(B) The provisions contained in Section 1-23-120(H) do not apply to regulations promulgated pursuant to subsection (A).”

(C) The division may promulgate emergency regulations pursuant to Section 1-23-130 if warranted under the circumstances. However, notwithstanding the provisions contained in Section 1-23-130(C), emergency regulations filed pursuant to this section will expire in one hundred and eighty days unless the filed emergency regulation expires while the General Assembly is not in session. If the filed emergency regulation expires while the General Assembly is not in session, then the division may refile the emergency regulation. A refiled emergency regulation expires ninety days after the date upon which it was refiled. An emergency regulation that has been refiled once may not be refiled again.”

SECTION 2. Section 46-1-140 of the 1976 Code is amended to read:

“Section 46-1-140. (A) Any irrigation system which is designed or used for the applications of fertilizer, pesticide, or chemicals must be equipped with an anti-syphon device adequate to protect against contamination of the water supply. The minimum acceptable anti-syphon device shall include a check valve, vacuum breaker, and low pressure drain on the irrigation supply line between the irrigation pump and the point of injection of fertilizer, pesticide, or chemicals. The vacuum breaker must be upstream from the check valve. The low pressure drain must be upstream from the vacuum breaker. The injection pump must be tied to the irrigation pump either mechanically or electrically so that the injection pump shall stop operating if the irrigation pump fails to function.

(B) Any person who uses an irrigation system for the application of fertilizer, pesticide, or chemicals which is not equipped with an anti-syphon device as required by this section is subject to a civil penalty of not more than five hundred dollars. Each day's violation is subject to an additional fine.

(C) The Division of Regulatory and Public Service Programs at Clemson University shall promulgate regulations with the advice of the Department of Health and Environmental Control as it considers necessary to implement this section and is also charged with enforcing this section. The provisions of this section do not apply to residential yard use. The regulations promulgated pursuant to this section shall be promulgated in accordance with the provisions contained in Article 1, Chapter 23, Title 1 and Section 59-119-170(C).”

SECTION 3. Section 46-9-50 of the 1976 Code is amended to read:

“Section 46-9-50. (A) The commission shall delegate the duties provided in this chapter and other applicable chapters of this title to the director who may administer and enforce the provisions and promulgate related regulations.

(B) The director is the final decision authority in approving releases or the introduction of genetically engineered organisms for agricultural use in this State. The director may hold public hearings at appropriate geographical locations, after thirty days’ public notice in at least one newspaper of general circulation within the area. In making a final decision the director may rely on the findings of federal or state agencies involved.

(C) The director may promulgate regulations in accordance with Article 1, Chapter 23, Title 1 and Section 59-119-170(C) designating plant pests. ~~In the designation he may rely upon prior determinations by federal authorities and in effect in Title 7, Code of Federal Regulations. If prior determinations have not been made, the director shall comply with the Administrative Procedures Act.~~”

SECTION 4. Section 46-10-30 of the 1976 Code is amended to read:

“Section 46-10-30. The commission shall administer the provisions of this chapter. The commission may assign functions provided for in this chapter to any unit of the commission and delegate any authority provided for in this chapter to any officer or employee thereof, to be exercised under its general supervision. The commission shall promulgate such rules and regulations in accordance with Article 1, Chapter 23, Title 1 and Section 59-119-170(C) as are necessary for the efficient execution of the provisions in this chapter.”

SECTION 5. Section 46-13-30 of the 1976 Code is amended to read:

“Section 46-13-30. ~~A.~~ (A) The Commission shall delegate the duties provided in this chapter to the ~~Director~~ director, and the ~~Director~~ director is authorized after due notice and opportunity for a hearing to:

(1) ~~To~~ declare as a pest any form of plant or animal life (except virus, bacteria, or other microorganisms on or in living man or other living animals) which is injurious to man, desirable animals, desirable plants, and land; ~~and~~

(2) ~~To~~ determine which pesticides are highly toxic to man and shall, in making this determination, be guided by the federal definition of highly toxic, as defined in Title 40, Code of Federal Regulations 162.8 as issued or hereafter amended;

(3) ~~To~~ determine which pesticides, and the quantities of substances contained in pesticides, which are injurious to the environment, and shall be guided by the Environmental Protection Agency regulations in this determination; and

(4) ~~To prescribe~~ promulgate regulations in accordance with Article 1, Chapter 23, Title 1 requiring any pesticide to be colored or discolored if he determines that such requirement is feasible and is necessary for the protection of health and the environment.

~~B.~~(B) The ~~Director~~ director is responsible, after due notice and a public hearing, to ~~make appropriate~~ promulgate regulations in accordance with Article 1, Chapter 23, Title 1 and Section 59-119-170(C) for carrying out the provisions of this chapter including, but not limited to, regulations providing for:

(1) ~~The~~ the collection, examination, and reporting of samples of pesticides or devices;

(2) ~~The~~ the safe handling, storage, display, and distribution of pesticides and their containers;

(3) ~~Restricting~~ restricting or prohibiting the use of certain types of containers or packages for specific pesticides. These restrictions may apply to type of construction, strength, and size to alleviate danger of spillage, breakage, or misuse and shall be guided by federal regulations concerning pesticide containers;

(4) ~~Labeling~~ labeling requirements of all pesticides required to be registered under provisions of this chapter;

(5) ~~The~~ the labeling of devices; and

(6) ~~Adopting~~ adopting lists of restricted use pesticides for the State or for designated areas ~~areas~~ within the State if it is determined that such pesticides may require regulations restricting or prohibiting their distribution or use. The regulations may include the time and conditions of distribution or use of such restricted use pesticides~~;~~ provided~~,~~ that all persons may be required to maintain records as to the use of all~~,~~ restricted use pesticides. The ~~Director~~ director shall be guided by the Environmental Protection Agency regulations in adopting these lists.

~~C.~~(C) In ~~issuing such~~ promulgating regulations, consideration shall be given to pertinent research findings and recommendations of other agencies of this State, the federal government, or other reliable sources and may by regulation require that notice of a proposed application of a restricted use pesticide be given to landowners adjoining the property to be treated or in the immediate vicinity thereof, if he finds that such notice is necessary to carry out the purpose of this chapter.

~~D.~~(D) For the purpose of uniformity of requirements between the states and the federal government, and to avoid confusion endangering the environment, the ~~Director~~ director may, after a public hearing, ~~adopt~~ promulgate regulations in accordance with Article 1, Chapter 23, Title 1 and Section 59-119-170(C) in conformity with the primary pesticide standards, particularly as to labeling, registration requirements, and restricted use pesticides as established by the Environmental Protection Agency or other federal or state agencies.

~~E.~~(E) The ~~Director~~ director may issue experimental use permits under the terms and conditions established by Section 5, Public Law 92‑516.

~~F.~~(F) The ~~Director~~ director may provide for registration of pesticides formulated for distribution and use within the State to meet special local needs, pursuant to the terms and conditions specified in Section 24, Public Law 92‑516.”

SECTION 6. Section 46-23-90 of the 1976 Code is amended to read:

“Section 46-23-90. The commission shall delegate the duties provided in this chapter and other applicable chapters of this title to the director, who may administer and enforce the provisions and promulgate related regulations in accordance with Article 1, Chapter 23, Title 1 and Section 59-119-170(C). ~~The director is the final decision authority in the designation and management of noxious weeds in the State. The director may hold public hearings at appropriate geographical locations after providing thirty days public notice in at least one newspaper of general circulation in the area. In making final decisions, the director may rely on the findings of any federal or state agencies involved.~~”

SECTION 7. A. Section 46-25-40 of the 1976 Code is amended to read:

“Section 46-25-40. The commission may ~~establish such rules and~~ promulgate regulations ~~in regard to~~ in accordance with Article 1, Chapter 23, Title 1 and Section 59-119-170(C) regarding the inspection, analysis, distribution, and sale of commercial fertilizer, agricultural lime, and soil amendments as shall not be inconsistent with the provisions of this chapter and as in its judgment will best carry out the requirements thereof.”

B. Section 46-25-45 of the 1976 Code is amended to read:

“Section 46-25-45. The commission shall delegate the duties provided in this chapter to the director, who may administer and enforce this chapter and promulgate related regulations. Regulations promulgated by the director shall be promulgated in accordance with Article 1, Chapter 23, Title 1 and Section 59-119-170(C).”

SECTION 8. Section 46-26-160 of the 1976 Code is amended to read:

“Section 46-26-160. The commission may ~~establish rules and~~ promulgate regulations in accordance with Article 1, Chapter 23, Title 1 and Section 59-119-170(C) ~~regard to~~ regarding the inspection, analysis, distribution, and sale of agricultural liming material, landplaster, or both, that are not inconsistent with the provisions of this chapter and as in its judgment will best carry out its requirements.”

SECTION 9. Section 46-35-10 of the 1976 Code is amended to read:

“Section 46-35-10. (A) Neglected or abandoned apple, grape, kiwi, nectarine, peach, pear, or plum orchards which, because of their infestation with pests, or because of other conditions, constitute a menace to the fruitgrowing industry of the State, or which are host plants of or provide a favorable and likely harbor for pests, are public nuisances and it is unlawful to maintain them. All remedies which are or may be given for the prevention or abatement of nuisances apply to the orchards. Whenever the State Crop Pest Commission determines by inspection that there exists a condition which constitutes a nuisance on any property within its jurisdiction, it shall report the property to the circuit solicitor, naming the pests or other conditions which in its opinion are dangerous to the fruitgrowing industry and if its findings justify it, state in the report that the removal or destruction of the neglected or abandoned orchard trees are the best means for elimination of the menace.

(B) The State Crop Pest Commission through its designee, the Division of Regulatory and Public Service Programs, may promulgate regulations in accordance with Article 1, Chapter 23, Title 1 and Section 59-119-170(C) to implement the provisions of this chapter.”

SECTION 10. A. Section 46-37-20 of the 1976 Code is amended to read:

“Section 46-37-20. The commission may deal with any disease of bees which requires prevention, control, or eradication and may promulgate and enforce regulations necessary to control, eradicate, or prevent the introduction, spread, or dissemination of any and all diseases of bees. Regulations promulgated by the commission shall be promulgated in accordance with Article 1, Chapter 23, Title 1 and Section 59-119-170(C).”

B. Section 46-37-25 of the 1976 Code is amended to read:

“Section 46-37-25. The commission shall delegate the duties provided in this chapter to the director who may administer and enforce all provisions of this chapter and promulgate regulations necessary to implement this chapter. Regulations promulgated by the director shall be promulgated in accordance with Article 1, Chapter 23, Title 1 and Section 59-119-170(C).”

SECTION 11. This act takes effect upon approval by the Governor.

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