

House Bill 1615

By: Representative Watson of the 172nd

A BILL TO BE ENTITLED
AN ACT

1 To amend Chapter 2 of Title 26 of the Official Code of Georgia Annotated, relating to
2 standards, labeling, and adulteration of food, so as to authorize the operation, licensure,
3 inspection, labeling requirements, enforcement, and regulation of home kitchen operations;
4 to provide for definitions; to authorize collection of license fees; to provide for conforming
5 changes; to amend Chapter 60 of Title 36 of the Official Code of Georgia Annotated, relating
6 to general provisions applicable to counties and municipal corporations, so as to prohibit
7 county and municipality prohibition and regulation of home kitchen operations; to provide
8 for related matters; to repeal conflicting laws; and for other purposes.

9 BE IT ENACTED BY THE GENERAL ASSEMBLY OF GEORGIA:

10 PART I

11 SECTION 1-1.

12 Chapter 2 of Title 26 of the Official Code of Georgia Annotated, relating to standards,
13 labeling, and adulteration of food, is amended by adding a new article to read as follows:

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14 ARTICLE 1715 "26-2-450.16 As used in this article, the term:17 (1) 'Commissioner' means the Commissioner of Agriculture.18 (2) 'Department' means the Department of Agriculture.19 (3) 'Home kitchen operation' means an enterprise in a domestic residence that stores,
20 handles, prepares, and packages food for sale directly to consumers and that is controlled
21 and operated by a resident of the residence.22 (4) 'Ready-to-eat food' means food that is pre-made, pre-packaged, and in a form that is
23 edible and safe to eat without washing, cooking, or additional preparation and that may
24 receive preparation by the consumer for palatability or aesthetic, epicurean, gastronomic,
25 or culinary purposes.26 26-2-451.27 (a) It shall be unlawful for any person to operate a home kitchen operation without having
28 first obtained a valid home kitchen operation license issued by the Commissioner. Such
29 license shall be valid for one year or until suspended or revoked and shall not be
30 transferable with respect to person or location.31 (b) The Commissioner may charge a license fee not to exceed \$400.00.32 26-2-452.33 (a) A home kitchen operation may sell food. A home kitchen operation shall sell
34 individually portioned food only if it is ready-to-eat food. Said sales may be made in
35 person or remotely via telephone, email, or website, including through a third-party's
36 website or mobile application. Food from a home kitchen operation may be delivered to

37 consumers by the operator or an employee or agent of the home kitchen operation, or by
38 a third-party delivery service.

39 (b) A home kitchen operation shall not operate as a food service establishment as that term
40 is defined in Code Section 26-2-370.

41 (c) A home kitchen operation shall not produce, prepare, or package any:

42 (1) Alcoholic beverage;

43 (2) Milk or milk product;

44 (3) Food items containing raw shellfish;

45 (4) Low-acid canned food or acidified food that requires a scheduled process under
46 applicable federal, state, or local law; or

47 (5) Food that would require a hazard analysis and critical control point (HACCP) plan
48 if the home kitchen were subject to retail food sale regulations.

49 26-2-453.

50 Any product sold by a home kitchen operation shall bear a label, conspicuously placed,
51 containing the following information in a color that contrasts to the background color of
52 the label:

53 (1) The business name and home address of the home kitchen operation;

54 (2) The common name of the food product;

55 (3) The ingredients in descending order of predominance by weight;

56 (4) The net weight or volume of the product;

57 (5) Allergen labeling as specified by federal Food and Drug Administration labeling
58 requirements;

59 (6) If a nutritional claim is made, appropriate nutritional information as specified by
60 federal Food and Drug Administration labeling requirements; and

61 (7) In Times New Roman or Arial font, in at least 10-point type, the statement: 'MADE
62 IN A HOME KITCHEN OPERATION.'

63 26-2-454.

64 (a) The Commissioner shall enforce this article and rules, regulations, and standards
65 adopted and promulgated under this article.

66 (b) The authority to promulgate regulations establishing reasonable food safety directives
67 for home kitchen operations and for the efficient enforcement of this article is vested in the
68 Commissioner. Such rules shall:

69 (1) Be reasonably necessary to ensure food safety and reasonably feasible for an ordinary
70 home kitchen to accommodate;

71 (2) Not require a home kitchen operation to have or use facilities or equipment that are
72 abnormal for a private home;

73 (3) Not prevent or restrict a person who lives in the home or a guest from accessing or
74 being present in the licensed area while food for the home kitchen operation is being sold,
75 stored, handled, prepared, or packaged, so long as such person is supervised by the
76 licensed operator and not known to have symptoms of acute gastrointestinal illness or to
77 be infected with a disease that is transmissible through food; and

78 (4) If food safety training is required, the Commissioner shall ensure that the training
79 content and any required examinations are available in languages other than English that
80 are commonly spoken by Georgia residents as their primary language.

81 (c) Hearings authorized or required by this article shall be conducted by the department
82 or such officer, agent, or employee as the department may designate for the purpose.

83 26-2-455.

84 (a) The department may conduct an inspection of each home kitchen operation:

85 (1) Prior to issuing a home kitchen operation license;

86 (2) For the investigation of a credible consumer complaint; or

87 (3) For the investigation of a foodborne disease outbreak, or other public health
88 emergency.

89 (b) Such inspection shall be limited to the areas of the residence used for home kitchen
90 operation.

91 (c) Except in emergency situations, the department shall schedule an inspection with the
92 home kitchen operator in advance.

93 (d) The department and any duly authorized representative are authorized to enter upon
94 and inspect the premises of any home kitchen operation to carry out the provisions of this
95 Code section."

96 **SECTION 1-2.**

97 Said chapter is further amended in Article 2, relating to adulteration and misbranding of food,
98 by revising paragraph (5) of subsection (a) of Code Section 26-2-21, relating to definitions,
99 as follows:

100 "(5) 'Food sales establishment' means retail and wholesale grocery stores; retail seafood
101 stores and places of business; food processing plants, except those food processing plants
102 which are currently required to obtain a license from the Commissioner under any other
103 provision of law; bakeries; confectioneries; fruit, nuts, and vegetable stores or roadside
104 stands; wholesale sandwich and salad manufacturers, including vending machines and
105 operations connected therewith; and places of business and similar establishments,
106 mobile or permanent, engaged in the sale of food primarily for consumption off the
107 premises. Within a food sales establishment, there may be a food service component, not
108 separately operated, which may serve customers on site. This food service component
109 shall be considered as part of the food sales establishment. This term shall not include:

110 (A) The food sales component of any food service establishment defined in Code
111 Section 26-2-370;

112 (B) Food service establishments as defined in Code Section 26-2-370;

- 113 (C) Establishments engaged in the sale of food primarily for consumption off the
114 premises if such sale is an authorized part of and occurs upon the site of a fair or
115 festival which:
- 116 (i) Is sponsored by a political subdivision of this state; and
 - 117 (ii) Lasts 120 hours or less;
- 118 (D) Establishments engaged in the boiling, bottling, and sale of sugar cane syrup or
119 sorghum syrup within this state, provided that such bottles contain a label listing the
120 producer's name and street address, all added ingredients, and the net weight or volume
121 of the product; ~~or~~
- 122 (E) Nonprofit food sales and food service provided under a permit issued pursuant to
123 Article 14 of this chapter; or
- 124 (F) Home kitchen operations as defined in Code Section 26-2-450."

125 **SECTION 1-3.**

126 Said chapter is further amended in Article 2, relating to adulteration and misbranding of food,
127 by revising Code Section 26-2-22, relating to prohibited acts, as follows:

128 "26-2-22.

129 The following acts and the causing thereof within this state are prohibited:

- 130 (1) The manufacture, sale or delivery, holding, storage, or offering for sale of any food
131 that is adulterated or misbranded;
- 132 (2) The adulteration or misbranding of any food;
- 133 (3) The receipt in commerce of any food that is adulterated or misbranded and the
134 delivery or proffered delivery thereof for pay or otherwise;
- 135 (4) The sale, delivery for sale, holding for sale, or offering for sale of any article in
136 violation of Code Section 26-2-37;
- 137 (5) The dissemination of any false advertisement;

- 138 (5.1) The failure to comply with testing, reporting, or record-keeping requirements
139 provided by or pursuant to Code Section 26-2-27.1;
- 140 (6) The refusal to permit entry or inspection, or to permit the taking of a sample, as
141 authorized by Code Section 26-2-36;
- 142 (7) The giving of a guaranty or undertaking, which guaranty or undertaking is false,
143 except by a person who relied on a guaranty or undertaking to the same effect signed by,
144 and containing the name and address of, the person residing in the State of Georgia from
145 whom he or she received in good faith the food;
- 146 (8) The removal or disposal of a detained or embargoed article in violation of Code
147 Section 26-2-38;
- 148 (9) The alteration, mutilation, destruction, obliteration, or removal of the whole or any
149 part of the labeling of or the doing of any other act with respect to a food, if such act is
150 done while such article is held for sale and results in such article being adulterated or
151 misbranded;
- 152 (10) Forging, counterfeiting, simulating, or falsely representing, or without proper
153 authority using any mark, stamp, tag, label, or other identification device authorized or
154 required by regulations promulgated pursuant to this article; ~~and~~
- 155 (11) The operation of a food sales establishment in violation of Code Section 26-2-25;
156 and
- 157 (12) The operation of a home kitchen operation in violation of Article 17 of this chapter."

158 **SECTION 1-4.**

159 Said chapter is further amended in Article 2, relating to adulteration and misbranding of food,
160 by revising Code Section 26-2-33, relating to enforcement of article by Commissioner; and
161 employment of personnel, as follows:

162 "26-2-33.

163 (a) The Commissioner is charged with the duty of enforcing this article and rules,
164 regulations, and standards adopted and promulgated under this article in home kitchen
165 operations as defined in Code Section 26-2-450 and in establishments that have the
166 majority of square footage of building floor space used for the operation of food sales as
167 defined in Code Section 26-2-21. The measurement of square footage shall consider
168 indoor and outdoor dining areas as part of food service as defined in Code Section
169 26-2-370. The Commissioner shall employ the necessary personnel and shall fix their
170 compensation and prescribe their duties. Duly authorized representatives are authorized
171 to enter upon and inspect the premises of any food sales establishment.

172 (b) Notwithstanding any other provision of this article, food service establishments as
173 defined in Code Section 26-2-370 shall be inspected and regulated under Article 13 of this
174 chapter and shall not be subject to inspection or enforcement under this article."

175 **SECTION 1-5.**

176 Said chapter is further amended in Article 6, relating to meat, poultry, and dairy processing
177 plants, by revising paragraph (3) of Code Section 26-2-200, relating to definitions, as
178 follows:

179 "(3) 'Meat, poultry, or dairy processing plant' means: any abattoir, slaughterhouse,
180 poultry killing or processing plant, milk depot, milk processing plant, or any other
181 establishment for the killing, storage, dressing, manufacture, preparation, or processing
182 of any animal, fowl, or dairy product or any by-product thereof for human consumption.
183 This term shall not include home kitchen operations as defined in Code Section
184 26-2-450."

SECTION 1-6.

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Said chapter is further amended in Article 13, relating to food service establishments, by revising paragraph (2) of Code Section 26-2-370, relating to definitions, as follows:

"(2) 'Food service establishment' means establishments for the preparation and serving of meals, lunches, short orders, sandwiches, frozen desserts, or other edible products either for carry out or service within the establishment. This term includes restaurants; coffee shops; cafeterias; short order cafes; luncheonettes; taverns; lunchrooms; places which retail sandwiches or salads; soda fountains; institutions, both public and private; food carts; itinerant restaurants; industrial cafeterias; catering establishments; and similar facilities by whatever name called. Within a food service establishment, there may be a food sales component, not separately operated. This food sales component shall be considered as part of the food service establishment. This term shall not include:

(A) A food sales establishment, as defined in Code Section 26-2-21, except as otherwise stated in this paragraph;

(B) The food service component of any food sales establishment defined in Code Section 26-2-21;

(C) Any outdoor recreation activity sponsored by the state, a county, a municipality, or any department or entity thereof, any outdoor or indoor (other than school cafeteria food service) public school function, or any outdoor private school function;

(D) Any organization which is operating on its own property or on the property of a party that has provided written consent for the use of such property for such purpose and which is exempt from taxes under paragraph (1) of subsection (a) of Code Section 48-7-25 or under Section 501(d) or paragraphs (1) through (8) or paragraph (10) of Section 501(c) of the Internal Revenue Code for the purpose of operating a house or other residential structures where seriously ill or injured children and their families are provided temporary accommodations in proximity to their

211 treatment hospitals and where food is prepared, served, transported, or stored by
212 volunteer personnel;

213 (E) Establishments for the preparation and serving of meals, lunches, short orders,
214 sandwiches, frozen desserts, or other edible products if such preparation or serving is
215 an authorized part of and occurs upon the site of an event which:

216 (i) Is sponsored by a political subdivision of this state;

217 (ii) Is held on the property of such sponsor or on the property of a party that has
218 provided written consent for use of such property for such event; and

219 (iii) Lasts 120 hours or less; or

220 (F) Nonprofit food sales and food service provided under a permit issued pursuant to
221 Article 14 of this chapter; or

222 (G) Home kitchen operations as defined in Code Section 26-2-450."

223 **PART II**

224 **SECTION 2-1.**

225 Chapter 60 of Title 36 of the Official Code of Georgia Annotated, relating to general
226 provisions applicable to counties and municipal corporations, is amended by adding a new
227 Code section to read as follows:

228 "36-60-30.

229 No county or municipality shall prohibit or regulate home kitchen operations as defined in
230 Code Section 26-2-450. No county or municipality shall prohibit commercial delivery
231 companies from delivering products produced in a home kitchen operation."

232 **PART III**

233 **SECTION 3-1.**

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