

House Bill 398 (AS PASSED HOUSE AND SENATE)

By: Representatives Hagan of the 156th, Gaines of the 120th, Dempsey of the 13th, Camp of the 135th, Prince of the 132nd, and others

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 production and sale of
3 cottage food items with certain exemptions, requirements, and disclosures; to provide for
4 definitions; to provide for inspections; to provide for a civil penalty; to provide for
5 conforming changes; to amend Chapter 60 of Title 36 of the Official Code of Georgia
6 Annotated, relating to general provisions applicable to counties and municipal corporations,
7 so as to prohibit local regulation of cottage food items; to provide for related matters; to
8 repeal conflicting laws; and for other purposes.

9 BE IT ENACTED BY THE GENERAL ASSEMBLY OF GEORGIA:

10 **SECTION 1.**

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

"ARTICLE 19

26-2-470.

As used in this article, the term:

(1) 'Commissioner' means the Commissioner of Agriculture.

(2) 'Cottage food item' means a non-potentially hazardous food or nonalcoholic beverage intended for human consumption that is produced and, if packaged, packaged at the residential property of the producer. The term 'cottage food item' shall not include alcoholic beverages, foods containing cannabis, or raw milk.

(3) 'Cottage food operator' means a person who produces cottage food items at a residential property for sale to consumers or sellers pursuant to this article.

(4) 'Cottage food production operation' means an individual, operating out of the individual's home kitchen, who prepares, processes, packages, stores, and distributes non-potentially hazardous foods for sale directly to a person, including online and by mail order, or to any food sales establishment, as that term is defined in Code Section 26-2-21.

(5) 'Department' means the Department of Agriculture of this state.

(6) 'Home kitchen' means a kitchen primarily intended for use by the residents of a home.

(7) 'Non-potentially hazardous foods' means cottage food items that do not require temperature control for safety because they are not capable of supporting the rapid growth of pathogenic or toxigenic microorganisms or the growth and toxin production of Clostridium botulinum. The term 'non-potentially hazardous foods' includes, but is not limited to, baked goods such as loaf breads, rolls, biscuits and cakes, except those whose fillings require refrigeration or have high moisture content; jams, jellies, and preserves, except fruit butters when their commercial sterility may be affected by reduced sugar or pectin levels; uncut fruits and vegetables; dried fruits; dry herbs, seasonings, and mixtures; cereals, trail mixes, and granola; coated and uncoated nuts; vinegars and

flavored vinegars; dill pickles; confections; fudge; dry soup mixes; roasted coffee beans; dry pasta; and popcorn, popcorn balls, and cotton candy.

(8) 'Potentially hazardous foods' means cottage food items requiring temperature control for safety because they are capable of supporting the rapid growth of pathogenic or toxigenic microorganisms or the growth and toxin production of Clostridium botulinum.

(9) 'Produce' means to prepare a food item by cooking, baking, drying, mixing, cutting, dehydrating, growing, raising, or other process.

(10) 'Producer' means a person who produces a cottage food item pursuant to this article.

(11) 'Seller' means any person, except a cottage food operator, who sells a cottage food item to a consumer, including, but not limited to, an agent of the producer or a third-party vendor.

(12) 'Third-party vendor' means a retail store, grocery store, restaurant, or other similar store.

26-2-471.

(a) It shall be unlawful for any person to operate as a cottage food operator not in compliance with this article.

(b) This article shall not apply to a person who sells non-potentially hazardous foods at a bake sale affiliated with a nonprofit, charitable, or religious organization.

26-2-472.

Cottage food production operations may only sell, or offer to sell, food items directly to a person, including online and by mail order, or to retail food sales establishments, including grocery stores and restaurants. Food produced from a cottage food production operation, and in compliance with the requirements of this article, shall be considered to be from an approved source, as required of a retail food sales establishment pursuant to department regulations. Any retail food sales establishment, including any grocery store, that sells or

offers to sell cottage food products must post signage according to specifications as promulgated by the department indicating that cottage food products are not subject to commercial food regulations or inspection.

26-2-473.

(a) Except as provided in subsection (c) of this Code section, a cottage food operator or seller shall provide the following information to consumers of a cottage food item:

(1)(A) The business name, address, and telephone number of the cottage food operator;
or

(B) A cottage food operator or seller may elect, in lieu of providing an address pursuant to subparagraph (A) of this paragraph, to provide an identification number to be provided by the department upon written request; and

(2) The following statement in at least 10 point font: 'This product was produced at a residential property that is exempt from state inspection. This product may contain allergens.'

(b) Such information shall be provided:

(1) On a label affixed to the package, if the cottage food item is packaged;

(2) On a label affixed to the container, if the cottage food item is offered for sale from a bulk container;

(3) On a placard displayed at the point of sale, if the cottage food item is neither packaged nor offered for sale from a bulk container; or

(4) On the webpage on which the cottage food item is offered for sale, if the cottage food item is offered for sale on the internet.

(c)(1) If the cottage food item is sold by telephone or custom order, the seller may choose not to display the information required by subsection (a) of this Code section but shall disclose to consumers that the cottage food item:

(A) Is produced at a residential property that is exempt from state inspection; and

89 (B) May contain allergens.

90 (2) The seller shall have the information required by paragraphs (1) through (3) of
91 subsection (a) of this Code section readily available and shall provide it to consumers
92 upon request.

93 (d) In addition to the labeling requirements provided in subsections (a) and (b) of this
94 Code section, if the cottage food item is sold by a third-party vendor, the item shall be
95 displayed in a separate section of the store or in a separate display case from non-cottage
96 food items. The third-party vendor shall conspicuously label the separate section or display
97 case as containing cottage food items that are exempt from state inspection.

98 26-2-474.

99 The Commissioner shall be authorized to enforce the provisions of this article and shall
100 have the authority to adopt any rules or regulations necessary to carry out said enforcement.
101 Nothing in this article shall be construed to prevent the department from conducting an
102 investigation into a reported foodborne illness.

103 26-2-475.

104 Any person who willfully fails to comply with any provision of this article or violates any
105 rule or regulation adopted pursuant to this article shall be given a written warning. Upon
106 a second or subsequent violation, such person shall be assessed a civil penalty of not more
107 than \$75.00 per violation.

108 26-2-476.

109 (a) The department may inspect the residence of a cottage food operator to investigate a
110 consumer complaint, a report of foodborne illness, or other public health emergency.

111 (b) Such inspection shall be limited to the areas of the residence used by the cottage food
112 operator.

(c) Except in emergency situations, the department shall schedule an inspection with the cottage food operator in advance. A cottage food operator may request an administrative warrant prior to an inspection.

26-2-477.

Nothing in this article shall be construed to:

(1) Exempt a cottage food operator or seller from any applicable federal law, including, but not limited to, any federal law prohibiting the sale of certain food items in interstate commerce;

(2) Preclude the production or sale of food items otherwise allowed by federal, state, or local law;

(3) Preclude the sale of live animals or portions of live animals before slaughter for future delivery;

(4) Amend or otherwise alter any rule or regulation related to other goods and services provided where cottage food items are produced or sold;

(5) Exempt a cottage food operator or seller from any applicable tax law;

(6) Exempt a cottage food operator or seller from any applicable fishing or hunting law;
or

(7) Exempt a cottage food operator or seller from any applicable law of another state.

26-2-478.

(a) In addition to the regulation of cottage food items under this article by the department and the Commissioner, the governing authority of any county or municipality may elect to prohibit cottage food operators from selling cottage food items through third-party vendors within its jurisdiction through the adoption of an ordinance providing as much. Any such ordinance shall only be adopted at a hearing occurring at least 15 but not more than 45 days after a notice of the hearing is published within a newspaper of general circulation within

the territorial boundaries of the local government. Any such county or municipality may employ its local board of health to assist in such matters.

(b) No ordinance authorized under subsection (a) of this Code section shall become effective until the county or municipality notifies the Commissioner and the department of such ordinance prior to the effective date of the required ordinance.

(c) Neither the Commissioner, nor the department, shall be responsible or liable for any prohibition or regulation enacted by ordinance pursuant to subsection (a) of this Code section."

SECTION 2.

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

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

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

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

(C) Establishments engaged in the sale of food primarily for consumption off the premises if such sale is an authorized part of and occurs upon the site of a fair or festival which:

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

(ii) Lasts 120 hours or less;

(D) Establishments engaged in the boiling, bottling, and sale of sugar cane syrup or sorghum syrup within this state, provided that such bottles contain a label listing the producer's name and street address, all added ingredients, and the net weight or volume of the product; or

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

(F) Cottage food operators as provided for in Code Section 26-2-471; or

(G) A person selling non-potentially hazardous foods, as defined in Code Section 26-2-470, at a bake sale affiliated with a nonprofit, charitable, or religious organization."

SECTION 3.

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

"(3) 'Meat, poultry, or dairy processing plant' means: any abattoir, slaughterhouse, poultry killing or processing plant, milk depot, milk processing plant, or any other establishment for the killing, storage, dressing, manufacture, preparation, or processing of any animal, fowl, or dairy product or any by-product thereof for human consumption.

Such term shall not include cottage food operators as provided for in Code Section 26-2-471."

SECTION 4.

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. Such 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; mobile food service establishments; 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. Such 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

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

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

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

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

(iii) Lasts 120 hours or less; ~~or~~

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

(G) Cottage food operators as provided for in Code Section 26-2-471."

SECTION 5.

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

"36-60-33.

Except as authorized under and in accordance with Code Section 26-2-478, no county or municipality shall prohibit or regulate cottage food items as such term defined in Code Section 26-2-470. No county or municipality shall prohibit commercial delivery companies from delivering cottage food items."

SECTION 6.

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