

## O.C.G.A. § 26-2-20

Current through the 2022 Regular Session of the General Assembly.

***Official Code of Georgia Annotated > TITLE 26 Food, Drugs, and Cosmetics (Chs. 1 — 5) > CHAPTER 2 Standards, Labeling, and Adulteration of Food (Arts. 1 — 18) > Article 2 Adulteration and Misbranding of Food (§§ 26-2-20 — 26-2-41)***

### **26-2-20. Short title.**

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This article may be cited as the “Georgia Food Act.”

### **History**

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Ga. L. 1956, p. 195, § 1.

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## O.C.G.A. § 26-2-21

Current through the 2022 Regular Session of the General Assembly.

**Official Code of Georgia Annotated > TITLE 26 Food, Drugs, and Cosmetics (Chs. 1 — 5) > CHAPTER 2 Standards, Labeling, and Adulteration of Food (Arts. 1 — 18) > Article 2 Adulteration and Misbranding of Food (§§ 26-2-20 — 26-2-41)**

### 26-2-21. Definitions.

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- (a) As used in this article, the term:
- (1) “Commissioner” means the Commissioner of Agriculture.
  - (2) “Contaminated with filth” applies to any food not securely protected from dust, dirt, and, as far as may be necessary, by all reasonable means, from all foreign or injurious contamination.
  - (3) “Federal act” means the Federal Food, Drug, and Cosmetic Act (Title 21 U.S.C. Section 301, et seq., 52 Stat. Section 1040, et seq.).
  - (4) “Food” means:
    - (A) Articles used for food or drink for human consumption;
    - (B) Chewing gum; and
    - (C) Articles used for components of any such articles.
  - (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. This 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.
  - (6) “Immediate container” does not include package liners.

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- (7)** “Label” means a display of written, printed, or graphic matter upon the immediate container of any article; and a requirement made by or under the authority of this article that any word, statement, or other information appear on the label shall not be considered to be complied with unless each such word, statement, or other information also appears on the outside wrapper or container, if there is any, of the retail package of such article, or is easily legible through the outside container or wrapper.
- (8)** “Labeling” means all labels and other written, printed, or graphic matter upon an article or any of its containers or wrappers or accompanying such article.
- (9)** “Official compendium” means the official United States Pharmacopoeia, official Homeopathic Pharmacopoeia of the United States, official National Formulary, or any supplement to any of them.
- (10)** “Person” means an individual, partnership, corporation, or association or any combination thereof.
- (b)** The provisions of this article regarding the selling of food shall be considered to include the manufacture, production, packaging, offer, exposure, possession, and holding of any such articles and the supplying or applying of any such articles in the conduct of any food establishment.

## History

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Ga. L. 1956, p. 195, § 2; Ga. L. 1971, p. 66, § 1; Ga. L. 1992, p. 1174, § 1; Ga. L. 1998, p. 1220, § 1; Ga. L. 2000, p. 1558, § 1; Ga. L. 2012, p. 1072, § 1/SB 300; Ga. L. 2020, p. 808, § 1/SB 345.

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## O.C.G.A. § 26-2-22

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### **26-2-22. Prohibited acts.**

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

- (1) The manufacture, sale or delivery, holding, storage, or offering for sale of any food that is adulterated or misbranded;
- (2) The adulteration or misbranding of any food;
- (3) The receipt in commerce of any food that is adulterated or misbranded and the delivery or proffered delivery thereof for pay or otherwise;
- (4) The sale, delivery for sale, holding for sale, or offering for sale of any article in violation of Code Section 26-2-37;
- (5) The dissemination of any false advertisement;
- (5.1) The failure to comply with testing, reporting, or record-keeping requirements provided by or pursuant to Code Section 26-2-27.1;
- (6) The refusal to permit entry or inspection, or to permit the taking of a sample, as authorized by Code Section 26-2-36;
- (7) The giving of a guaranty or undertaking, which guaranty or undertaking is false, except by a person who relied on a guaranty or undertaking to the same effect signed by, and containing the name and address of, the person residing in the State of Georgia from whom he received in good faith the food;
- (8) The removal or disposal of a detained or embargoed article in violation of Code Section 26-2-38;
- (9) The alteration, mutilation, destruction, obliteration, or removal of the whole or any part of the labeling of or the doing of any other act with respect to a food, if such act is done while such article is held for sale and results in such article being adulterated or misbranded;
- (10) Forging, counterfeiting, simulating, or falsely representing, or without proper authority using any mark, stamp, tag, label, or other identification device authorized or required by regulations promulgated pursuant to this article; and
- (11) The operation of a food sales establishment in violation of Code Section 26-2-25.

### **History**

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Ga. L. 1956, p. 195, § 3; Ga. L. 1971, p. 66, § 2; Ga. L. 1984, p. 22, § 26; Ga. L. 1985, p. 149, § 26; Ga. L. 2009, p. 441, § 1/SB 80.

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## O.C.G.A. § 26-2-23

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### **26-2-23. Injunctions for violations of Code Section 26-2-22.**

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In addition to the remedies provided for in this article, the Commissioner is authorized to apply to the superior court of the appropriate county for an injunction. Such court shall have jurisdiction, upon hearing and for cause shown, to grant a temporary or permanent injunction restraining any person from violating Code Section 26-2-22, notwithstanding the existence of an adequate remedy at law.

### **History**

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Ga. L. 1956, p. 195, § 4.

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## O.C.G.A. § 26-2-24

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### **26-2-24. Penalty for violation of Code Section 26-2-22; exceptions.**

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Any person who violates Code Section 26-2-22 shall be guilty of a misdemeanor, provided that:

- (1)** No person shall be subject to the penalties provided in this article for having violated paragraph (1) or (3) of Code Section 26-2-22 if he or she establishes a guaranty or undertaking signed by, and containing the name and address of, the person residing in this state from whom he or she received in good faith the article, to the effect that such article is not adulterated or misbranded within the meaning of this article and designating this article;
- (2)** No publisher, radiobroadcast licensee, or agency or medium for the dissemination of an advertisement, except the manufacturer, packer, distributor, or seller of the article to which a false advertisement relates, shall be liable under this Code section by reason of the dissemination by him or her of such false advertisement unless he or she has refused, on the request of the Commissioner, to furnish the Commissioner the name and post office address of the manufacturer, packer, distributor, seller, or advertising agency who caused him or her to disseminate such advertisement; and
- (3)** If the removal or disposal of a detained or embargoed article creates a significant eminent threat or danger to human health, any person who violates paragraph (8) of Code Section 26-2-22 by removing or disposing of such detained or embargoed article and introducing or attempting to introduce said article into commerce for the purpose of human consumption or processing for human consumption in violation of Code Section 26-2-38 shall be guilty of a felony and, upon conviction, shall be punished by imprisonment for not less than one nor more than two years.

### **History**

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Ga. L. 1956, p. 195, § 5; Ga. L. 1998, p. 189, § 1.

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# O.C.G.A. § 26-2-25

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## **26-2-25. Licensing of food sales establishments; revocation; notice and hearing; transferability; posting of license; fees; rules and regulations.**

(a) It shall be unlawful for any person to operate a food sales establishment without having first obtained a license from the Commissioner. No license issued under this article shall be suspended or revoked except for health and sanitation reasons or violations of this article and until the licensee to be affected shall be provided with reasonable notice thereof and an opportunity for hearing, as provided under Chapter 13 of Title 50, the “Georgia Administrative Procedure Act.” Licenses issued under this article shall be renewed annually and shall not be transferable with respect to persons or location. Each food sales establishment licensed pursuant to this Code section shall post such license on the premises in an open and conspicuous manner so as to be visible to the public. Neither the state nor any county, municipality, or consolidated government shall issue or renew any business or occupation license or permit for any food sales establishment until the establishment complies with the requirements of this article.

(b) The Commissioner shall charge the following fees for the licenses issued pursuant to subsection (a) of this Code section. The fee structure shall be based on the level of risk, procedural effort, and inspection time needed for each food sales establishment:

- (1) Tier 5 ..... \$300.00
- (2) Tier 4 ..... 250.00
- (3) Tier 3 ..... 200.00
- (4) Tier 2 ..... 150.00
- (5) Tier 1 ..... 100.00

(c) The Department of Agriculture shall establish rules and regulations by which to assign each food sales establishment to a proper tier and to collect the fees provided for in this Code section.

## **History**

Ga. L. 1971, p. 66, § 3; Ga. L. 2002, p. 815, § 1; Ga. L. 2010, p. 9, § 1-57/HB 1055.

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## O.C.G.A. § 26-2-26

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### **26-2-26. When food deemed adulterated.**

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A food shall be deemed to be adulterated if:

- (1) It bears or contains any poisonous or deleterious substance which may render it injurious to health; but, in case the substance is not an added substance, such food shall not be considered adulterated under this paragraph if the quantity of such substance in such food does not ordinarily render it injurious to health;
- (2) It bears or contains any added poisonous or added deleterious substance which is unsafe within the meaning of Code Section 26-2-27. In regard to pesticide residues, a food shall be deemed to be adulterated and unsafe if it bears a pesticide residue in excess of a tolerance established by the United States Environmental Protection Agency under the Federal Food, Drug, and Cosmetic Act or if it bears a residue of a pesticide for which no tolerance has been established or is currently in effect for that food, if such residue appears at a level which is readily quantifiable by methods of assay for pesticide residues employed by the Commissioner on the date of the assay;
- (3) It consists in whole or in part of a diseased or contaminated, filthy, putrid, or decomposed substance or if it is otherwise unfit for food;
- (4) It has been produced, prepared, packed, or held under unsanitary conditions whereby it may have become contaminated with filth or whereby it may have been rendered diseased, unwholesome, or injurious to health;
- (5) It is the product of a diseased animal or an animal that has died otherwise than by slaughter or an animal that has been fed upon the uncooked offal from a slaughterhouse;
- (6) Its container is composed in whole or in part of any poisonous or deleterious substance which may render the contents injurious to health;
- (7) Any valuable constituent has been in whole or in part omitted or abstracted therefrom;
- (8) Any substance has been substituted wholly or in part therefor;
- (9) Damage or inferiority has been concealed in any manner;
- (10) Any substance has been added thereto or mixed or packed therewith so as to increase its bulk or weight or reduce its quality or strength or make it appear better or of greater value than it is;
- (11) It is confectionary and it bears or contains any alcohol or nonnutritive article or substance except harmless coloring, harmless flavoring, harmless resinous glaze not in excess of four-tenths of 1 percent, harmless natural wax not in excess of four-tenths of 1 percent, harmless natural gum, and pectin, provided that this paragraph shall not apply to any confection containing less than one-half of 1 percent by volume of alcohol derived solely from the use of flavoring extracts or to any chewing gum by reason of its containing harmless nonnutritive masticatory substances; or
- (12) It bears or contains a coal-tar color other than one from a batch which has been certified under authority of the federal act.

## History

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Ga. L. 1956, p. 195, § 10; Ga. L. 1990, p. 8, § 26; Ga. L. 1990, p. 318, § 1.

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### **26-2-27. Poisonous or deleterious substances in food; exception for required substances.**

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(a) Any poisonous or deleterious substance added to any food, except where such substance is required in the production thereof or cannot be avoided by good manufacturing practice, shall be deemed to be unsafe for purposes of the application of paragraph (2) of Code Section 26-2-26.

(b) When a poisonous or deleterious substance is required in the production of food or cannot be avoided by good manufacturing process, the Commissioner shall promulgate regulations limiting the quantity therein or thereon to such extent as the Commissioner finds necessary for the protection of public health; and any quantity exceeding the limits so fixed shall also be deemed to be unsafe for purposes of the application of paragraph (2) of Code Section 26-2-26. While such a regulation is in effect limiting the quantity of any such substance in the case of any food, such food shall not, by reason of bearing or containing any added amount of such substance, be considered to be adulterated within the meaning of paragraph (1) of Code Section 26-2-26.

(c) In determining the quantity of added poisonous or deleterious substances to be tolerated in or on different articles of food, the Commissioner shall take into account the extent to which the use of such substance is required or cannot be avoided in the production of each such article and the other ways in which the consumer may be affected by the same or other poisonous or deleterious substances.

### **History**

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Ga. L. 1956, p. 195, § 13.

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## O.C.G.A. § 26-2-27.1

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### **26-2-27.1. Testing of specimens from food processing centers; consistency in standards; cost; retention of records from testing; exemption.**

(a) As used in this Code section, the term “food processing plant” means a commercial operation that manufactures food for human consumption and does not provide food directly to a consumer from that location. Such term shall not include a commercial operation that produces raw agricultural commodities and whose end product remains a raw agricultural product.

(b)

(1)

(A) In order to protect the public health, safety, and welfare and ensure compliance with this article, the Commissioner shall by rule or regulation establish requirements for regular testing of samples or specimens of foods and ingredients by food processing plants for the presence of poisonous or deleterious substances or other contaminants rendering such foods or ingredients injurious to health. Such rules or regulations shall identify the specific classes or types of food processing plants, foods, ingredients, and poisonous or deleterious substances or other contaminants that shall be subject to such testing requirements and the frequency with which such tests shall be performed by food processing plants.

(B) The Commissioner shall also promulgate rules and regulations establishing minimum standards and requirements for a written food safety plan, such as a hazard analysis critical control point plan, that may be submitted by an operator of a food processing plant to document and describe the procedures used at such plant to prevent the presence of hazards such as poisonous or deleterious substances or other contaminants that would render finished foods or finished ingredients as manufactured at such plant injurious to health, including preventive controls, monitoring to ensure the effectiveness of such controls, and records of corrective actions, including actions taken in response to the presence of known hazards. If an operator of a food processing plant, in its discretion, submits to the department a written food safety plan for such plant and such plan conforms to rules and regulations promulgated for purposes of this subparagraph, then such food processing plant shall comply with the requirements of such written food safety plan, including, but not limited to, any test regimen provided by such plan, in lieu of complying with a test regimen established by rules or regulations promulgated by the Commissioner pursuant to subparagraph (A) of this paragraph.

(C)

(i) The Commissioner shall impose a civil penalty for a violation of this subsection.

(ii) The department shall adopt rules and regulations establishing a schedule of civil penalties that shall be imposed under this subsection. Civil penalties imposed pursuant to this subsection shall not exceed \$5,000.00 for each violation; provided, however, that a food processing plant that knowingly fails to comply with the provisions of subparagraph (B) of this paragraph shall be punished by the imposition of a \$7,500.00 civil penalty. In addition to such civil penalty, within

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30 days of the determination by the Commissioner that such violation has occurred, such food processing plant shall submit to the Commissioner a written plan pursuant to subparagraph (B) of this paragraph.

**(iii)** For purposes of this subsection, each day a violation continues after the period established for compliance by the Commissioner shall be considered a separate violation.

**(iv)** When a civil penalty is imposed under this subsection, such penalty shall be subject to review in the manner prescribed by Article 1 of Chapter 13 of Title 50, known as the "Georgia Administrative Procedure Act."

**(2)** In addition to any regular tests required pursuant to paragraph (1) of this subsection, the Commissioner may order any food processing plant to have samples or specimens of its foods and ingredients tested for the presence of any poisonous or deleterious substances or other contaminants whenever in his or her determination there are reasonable grounds to suspect that such foods or ingredients may be injurious to health.

**(c)** Any food processing plant subject to any testing requirements pursuant to this Code section shall cause such required tests to be performed in accordance with testing standards and procedures established by rules and regulations of the Commissioner. Testing standards and procedures established by the Commissioner under this paragraph shall be consistent with standards presented in the federal Food and Drug Administration's Bacterial Analytical Manual and standards developed by the Association of Analytical Communities International, International Organization for Standardization, or another internationally recognized certification body.

**(d)** A food processing plant shall be responsible for the cost of any testing required pursuant to this Code section and may conduct such testing either internally or via a third party, provided that subsection (c) of this Code section applies in either case.

**(e)**

**(1)** Whenever any person or firm that operates a food processing plant in this state obtains information from testing of samples or specimens of finished foods or finished food ingredients as manufactured at such food processing plant which, based on a confirmed positive test result, indicates the presence of a substance that would cause a manufactured food bearing or containing the same to be adulterated within the meaning of paragraph (1) of Code Section 26-2-26, such person or firm shall report such test result to the department within 24 hours after obtaining such information.

**(2)** Any person who knowingly fails to make the report required by paragraph (1) of this subsection shall be guilty of a misdemeanor. The punishment provided for in this subsection shall be supplemental to any other applicable provisions of law.

**(f)** Records of the results of any tests required pursuant to this Code section shall be kept by a food processing plant and made available to the department for inspection for a period of not less than two years from the date the results were reported by the laboratory. Any person who knowingly violates this subsection shall be guilty of a misdemeanor. The punishment provided for in this subsection shall be supplemental to any other applicable provisions of law.

**(g)** This Code section shall not apply to any food processing plant operating under a federal grant of inspection from the United States Department of Agriculture Food Safety and Inspection Service.

**(h)** Any person who knowingly introduces into commerce finished foods or finished food ingredients as manufactured at a food processing plant knowing that it contains a substance that would cause a manufactured food bearing or containing the same to be adulterated within the meaning of paragraph (1) of Code Section 26-2-26 shall be guilty of a felony, and, upon conviction, shall be punished by imprisonment for not less than one nor more than 20 years, a fine not to exceed \$20,000.00, or both. The punishment provided for in this subsection shall be supplemental to any other applicable provisions of law.

## History

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Code 1981, § 26-2-27.1, enacted by Ga. L. 2009, p. 441, § 2/SB 80; Ga. L. 2010, p. 465, §§ 2, 3, 4/HB 883.

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## O.C.G.A. § 26-2-28

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### **26-2-28. When food deemed misbranded.**

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A food shall be deemed to be misbranded if:

- (1) Its labeling is false or misleading in any particular;
- (2) It is offered for sale under the name of another food;
- (3) It is an imitation of another food for which a definition and standard of identity have been prescribed by regulations as provided by Code Section 26-2-35; or if it is an imitation of another food that is not subject to paragraph (7) of this Code section, unless its label bears, in type of uniform size and prominence, the word "imitation" and, immediately thereafter, the name of the food imitated;
- (4) Its container is so made, formed, or filled as to be misleading;
- (5)

(A) In package form, unless it bears a label containing:

- (i) The name and place of business of the manufacturer, packer, or distributor; and
- (ii) An accurate statement of the quantity of the contents in terms of weight, measure, or numerical count.

However, under division (ii) of subparagraph (A) of this paragraph, reasonable variations shall be permitted, and exemptions as to small packages shall be established by regulations prescribed by the Commissioner; and a food shall not be deemed misbranded because of omission of the information required by division (i) of subparagraph (A) of this paragraph where such omission is authorized in writing by the Commissioner.

(B) The Commissioner may authorize the omission from the label of packaged food of the name and place of business of the manufacturer, packer, or distributor upon a showing of undue hardship because of the size of the package, the material of which the package is made, or the disproportionate cost of compliance. Before authorizing such omission, the Commissioner shall require the filing of a certificate of territorial responsibility in a form prescribed by him. Failure to maintain on file with the Commissioner a correct current statement of territorial responsibility in accordance with the Commissioner's requirements shall terminate any such authorization previously granted;

- (6) Any word, statement, or other information required by or under authority of this article to appear on the label or labeling is not prominently placed thereon with such conspicuousness, as compared with other words, statements, designs, or devices in the labeling, and in such terms as to render it likely to be read and understood by the ordinary individual under customary conditions of purchase and use;
- (7) It purports to be or is represented as a food for which a definition and standard of identity has been prescribed by regulations as provided by Code Section 26-2-35, unless:
  - (A) It conforms to such definition and standard; and

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- (B)** Its label bears the name of the food specified in the definition and standard and, insofar as may be required by such regulations, the common names of optional ingredients, other than spices, flavoring, and coloring, present in such food;
- (8)** It purports to be or is represented as:
- (A)** A food for which a standard of quality has been prescribed by regulations as provided by Code Section 26-2-35 and its quality falls below such standard, unless its label bears, in such manner and form as such regulations specify, a statement that it falls below such standard; or
- (B)** A food for which a standard or standards of fill of container have been prescribed by regulation as provided by Code Section 26-2-35, and it falls below the standard of fill of container applicable thereto, unless its label bears, in such manner and form as such regulations specify, a statement that it falls below such standard;
- (9)**
- (A)** It is not subject to paragraph (7) of this Code section, unless it bears labeling clearly giving:
- (i)** The common or usual name of the food, if any such name exists; and
- (ii)** In case it is fabricated from two or more ingredients, the common or usual name of each such ingredient; except that spices, flavorings, and colorings, other than those sold as such, may be designated as spices, flavorings, and colorings without naming each;
- (B)** To the extent that compliance with the requirements of division (ii) of subparagraph (A) of this paragraph is impractical or results in deception or unfair competition, exemptions shall be established by regulations promulgated by the Commissioner;
- (C)** The requirements of division (ii) of subparagraph (A) of this paragraph shall not apply to any carbonated beverage, the ingredients of which have been fully and correctly disclosed, to the extent prescribed by division (ii) of subparagraph (A) of this paragraph, to the Commissioner in an affidavit;
- (10)** It purports to be or is represented for special dietary uses, unless its label bears such information concerning its vitamin, mineral, and other dietary properties as the Commissioner determines to be, and by regulations prescribes, as necessary in order fully to inform purchasers as to its value for such uses;
- (11)** It bears or contains any artificial flavoring, artificial coloring, or chemical preservative, unless it bears labeling stating that fact, provided that, to the extent that compliance with the requirements of this paragraph is impracticable, exemptions shall be established by regulations promulgated by the Commissioner; or
- (12)** It is a product intended as an ingredient of another food and when used according to the directions of the purveyor will result in the final food product being adulterated or misbranded.

## History

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Ga. L. 1956, p. 195, § 11; Ga. L. 1966, p. 180, § 1; Ga. L. 1982, p. 3, § 26.

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## O.C.G.A. § 26-2-29

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### **26-2-29. Misleading advertisements; certain practices declared misleading.**

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- (a) An advertisement of a food shall be deemed to be false if it is misleading in any particular.
- (b) By way of illustration only and without limiting the scope of subsection (a) of this Code section, the following practices employed in the advertisement of a food are declared to be misleading:
- (1) Causing actual confusion or actual misunderstanding as to the source, sponsorship, approval, or certification of food;
  - (2) Using deceptive representations or designations of geographic origin in connection with food;
  - (3) Representing that food has sponsorship, approval, characteristics, ingredients, uses, benefits, or quantities that it does not have or that a person has a sponsorship, approval, status, affiliation, or connection that he does not have;
  - (4) Representing that food is of a particular standard, quality, or grade if it is not; or
  - (5) Making false or misleading statements concerning the food of another.

### **History**

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Ga. L. 1956, p. 195, § 14; Ga. L. 1989, p. 260, § 1.

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## O.C.G.A. § 26-2-30

Current through the 2022 Regular Session of the General Assembly.

*Official Code of Georgia Annotated > TITLE 26 Food, Drugs, and Cosmetics (Chs. 1 — 5) > CHAPTER 2 Standards, Labeling, and Adulteration of Food (Arts. 1 — 18) > Article 2 Adulteration and Misbranding of Food (§§ 26-2-20 — 26-2-41)*

### **26-2-30. Factors to be taken into account in determining whether labels or advertisements are misleading.**

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If an article is alleged to be misbranded because the labeling is misleading or if an advertisement is alleged to be false because it is misleading, then, in determining whether the labeling or advertisement is misleading, there shall be taken into account, among other things, not only representations made or suggested by statements, words, designs, devices, sound, or any combination thereof, but also the extent to which the labeling or advertisement fails to reveal facts material in the light of such representations or material with respect to consequences which may result from the use of the article to which the labeling or advertisement relates under the conditions of use prescribed in the labeling or advertisement thereof or under such conditions of use as are customary or usual.

### **History**

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Ga. L. 1956, p. 195, § 2.

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## O.C.G.A. § 26-2-30.1

Current through the 2022 Regular Session of the General Assembly.

***Official Code of Georgia Annotated > TITLE 26 Food, Drugs, and Cosmetics (Chs. 1 — 5) > CHAPTER 2 Standards, Labeling, and Adulteration of Food (Arts. 1 — 18) > Article 2 Adulteration and Misbranding of Food (§§ 26-2-20 — 26-2-41)***

### **26-2-30.1. Beef produced without antibiotics or growth hormones; “Georgia lean” beef.**

---

- (a) The Commissioner of Agriculture is authorized to promulgate and adopt rules and regulations for the labeling of beef and for the purpose of certifying beef as having been produced without feeding, injecting, or implanting antibiotics or growth hormones in the animal from which such beef was produced.
- (b) The Commissioner of Agriculture is authorized to promulgate and adopt rules and regulations and to establish standards for the labeling and certification of beef as “Georgia lean.”

### **History**

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Code 1981, § 26-2-30.1, enacted by Ga. L. 1986, p. 1089, § 1.

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## O.C.G.A. § 26-2-31

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### **26-2-31. [Reserved] Repacking of flour, grits, hominy, and cornmeal; exceptions.**

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#### **History**

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Ga. L. 1889, p. 170, § 1; Ga. L. 1890-91, p. 236, § 1; Civil Code 1895, § 1622; Penal Code 1895, §§ 550, 551; Civil Code 1910, § 1865; Penal Code 1910, §§ 562, 563; Code 1933, §§ 42-318, 42-9902; Ga. L. 1958, p. 652, § 1; repealed by Ga. L. 1999, p. 642, § 1, effective July 1, 1999.

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## O.C.G.A. § 26-2-32

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***Official Code of Georgia Annotated > TITLE 26 Food, Drugs, and Cosmetics (Chs. 1 — 5) > CHAPTER 2 Standards, Labeling, and Adulteration of Food (Arts. 1 — 18) > Article 2 Adulteration and Misbranding of Food (§§ 26-2-20 — 26-2-41)***

### **26-2-32. Honey and imitation honey labels.**

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**(a)** It shall be unlawful for any person to package any product and label the product as “honey” or “imitation honey,” or to use the word “honey” in any prominent location on the label of such product, or to sell or offer for sale any product which is labeled “honey” or “imitation honey” or which contains a label with the word “honey” prominently displayed thereon, unless such product is pure honey manufactured by honeybees.

**(b)** Any person who violates any provisions of this Code section shall be guilty of a misdemeanor and, upon conviction thereof, shall be punished by a fine of not less than \$500.00 nor more than \$1,000.00 or by confinement for a total term not to exceed 12 months, or both.

### **History**

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Ga. L. 1974, p. 450, § 1; Ga. L. 1990, p. 391, § 1.

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## O.C.G.A. § 26-2-33

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### **26-2-33. Enforcement of article by Commissioner; employment of personnel.**

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

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

### **History**

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Ga. L. 1956, p. 195, § 15; Ga. L. 2000, p. 1558, § 2.

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## O.C.G.A. § 26-2-34

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### **26-2-34. Promulgation of regulations; notice and hearing for proposed amendments; variances or waivers.**

---

- (a) The authority to promulgate regulations for the efficient enforcement of this article is vested in the Commissioner. The Commissioner is authorized to make the regulations promulgated under this article conform, insofar as practicable, with those promulgated under the federal act.
- (b) Hearings authorized or required by this article shall be conducted by the Commissioner or such officer, agent, or employee as the Commissioner may designate for the purpose.
- (c) Before promulgating any regulation authorized by Code Sections 26-2-35 and 26-2-37 and paragraph (10) of Code Section 26-2-28, the Commissioner shall give appropriate notice of the proposal and of the time and place for a hearing. The regulation so promulgated shall become effective on a date fixed by the Commissioner, which date shall not be prior to 30 days after its promulgation. Such regulation may be amended or repealed in the same manner as is provided for its adoption, except that, in the case of a regulation amending or repealing any such regulation, the Commissioner, to such an extent as is deemed necessary, in order to prevent undue hardship, may disregard the foregoing provisions regarding notices, hearing, or effective date.
- (d)
- (1) For purposes of this subsection, the term:
- (A) “Substantial hardship” means a significant, unique, and demonstrable economic, technological, legal, or other type of hardship to the person requesting a variance or waiver which impairs the ability of the person to continue to function in the regulated practice or business.
- (B) “Variance” means a decision by an agency to grant a modification to all or part of the literal requirements of a rule to a person who is subject to the rule.
- (C) “Waiver” means a decision by an agency not to apply all or part of a rule to a person who is subject to the rule.
- (2) The Commissioner may grant a variance or waiver to any rule promulgated pursuant to this Code section when a person subject to such rule demonstrates that the purpose of the underlying statute upon which the rule is based can be or has been achieved by other specific means which are agreeable to the person seeking the variance or waiver and that strict application of the rule would create a substantial hardship to such person.
- (3) This subsection shall not apply, and no variance or waiver shall be sought or authorized, if the granting of such variance or waiver would be harmful to the public health, safety, or welfare.

### **History**

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Ga. L. 1956, p. 195, § 15; Ga. L. 2017, p. 619, § 1/SB 78.

O.C.G.A. § 26-2-34

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## O.C.G.A. § 26-2-34.1

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### **26-2-34.1. Confidential information.**

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The following information, records, and data obtained by the Department of Agriculture from the federal Food and Drug Administration pursuant to a contract or commissioning agreement shall be deemed confidential and shall not be open to inspection by the public, to the extent that it was obtained or furnished on a confidential basis or is exempt from disclosure under 5 U.S.C. Sec. 552, the federal Freedom of Information Act: trade secrets; confidential commercial information; information under the federal deliberative process privilege; information compiled for law enforcement purposes; or information expressly required to be kept confidential by other federal laws.

### **History**

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Code 1981, § 26-2-34.1, enacted by Ga. L. 2020, p. 486, § 1/SB 381.

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## O.C.G.A. § 26-2-35

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### **26-2-35. Food regulations.**

---

(a) Whenever in the judgment of the Commissioner such action will promote honesty and fair dealing in the interest of the consumers, the Commissioner shall promulgate regulations fixing and establishing for any food or any class of food a reasonable definition and standard of identity and, if applicable, a reasonable standard of quality and fill of container.

(b) In prescribing a definition and a standard of identity for any food or class of food in which optional ingredients are permitted, the Commissioner shall, for the purpose of promoting honesty and fair dealing in the interest of consumers, designate the optional ingredients which shall be named on the label. The definitions and standards so promulgated shall conform so far as practicable to the definitions and standards promulgated under authority of the federal act.

### **History**

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Ga. L. 1956, p. 195, § 9.

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## O.C.G.A. § 26-2-36

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### **26-2-36. Right of entry in food establishments and transport vehicles; examination of samples obtained.**

---

(a) The Commissioner or his duly authorized agent shall have free access during all hours of operation and at all other reasonable hours to any factory, warehouse, or establishment in which food is manufactured, processed, packed, or held for introduction into commerce and any vehicle being used to transport or hold such foods to commerce for the purposes:

(1) Of inspecting such factory, warehouse, establishment, or vehicle, any records of pathogen destruction, and any records of testing of samples or specimens of foods or ingredients for the presence of poisonous or deleterious substances or other contaminants and the results thereof as may be required pursuant to Code Section 26-2-27.1, to determine if any of the provisions of this article are being violated; and

(2) Of securing samples or specimens of any food, after paying or offering to pay for such sample.

(b) It shall be the duty of the Commissioner to make or cause to be made examinations of samples secured under subsection (a) of this Code section to determine whether or not this article is being violated.

### **History**

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Ga. L. 1956, p. 195, § 16; Ga. L. 2009, p. 441, § 3/SB 80.

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## O.C.G.A. § 26-2-37

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### **26-2-37. Temporary permits.**

---

(a) Whenever the Commissioner finds, after investigation, that the distribution in Georgia of any class of food may, by reason of contamination with microorganisms during manufacture, processing, or packing thereof in any locality, be injurious to health and that such injurious nature cannot be adequately determined after such articles have entered commerce, he then, and in such case only, shall promulgate regulations providing for the issuance to manufacturers, processors, or packers of such class of food in such locality of permits to which shall be attached such conditions governing the manufacture, processing, or packing of such class of food, for such temporary period of time, as may be necessary to protect the public health; and, after the effective date of such regulations and during such temporary period, no person shall introduce or deliver for introduction into commerce any such food manufactured, processed, or packed by any such manufacturer, processor, or packer unless such manufacturer, processor, or packer holds a permit issued by the Commissioner as provided by such regulations.

(b) The Commissioner is authorized to suspend immediately upon notice any permit issued under authority of this Code section if it is found that any of the conditions of the permit have been violated. The holder of a permit so suspended shall be privileged at any time to apply for the reinstatement of such permit. The Commissioner shall, immediately after prompt hearing and inspection of the establishment, reinstate such permit if it is found that adequate measures have been taken to comply with and maintain the conditions of the permit as originally issued or as amended.

(c) Any officer or employee duly designated by the Commissioner shall have access to any factory or establishment, the operator of which holds a permit from the Department of Agriculture, for the purpose of ascertaining whether or not the conditions of the permit are being complied with. Denial of access for such inspection shall be grounds for suspension of the permit until such access is freely given by the owner or operator.

### **History**

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Ga. L. 1956, p. 195, § 12.

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## O.C.G.A. § 26-2-38

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### **26-2-38. Detention or embargo of adulterated or misbranded food.**

---

**(a)** Whenever a duly authorized agent of the Commissioner finds or has probable cause to believe that any food is adulterated or misbranded within the meaning of this article, such agent shall affix to such article or to any container, field, building, or structure which contains such article a tag or other appropriate marking, giving notice that such article is, or is suspected of being, adulterated or misbranded and has been detained or embargoed and warning all persons not to remove or dispose of such article by sale or otherwise until permission for removal or disposal is given by the agent or the court. It shall be unlawful for any person to remove or dispose of such detained or embargoed article by sale or otherwise without permission of the Commissioner. Upon application, the Commissioner shall grant permission to move or dispose of such article to a safe and secure area and in a safe and secure manner.

**(b)** When an article detained or embargoed under subsection (a) of this Code section has been found by such agent to be adulterated or misbranded, he shall bring an action for condemnation of such article in the superior court of the county where the article is detained or embargoed. When such agent has found that an article so detained or embargoed is not adulterated or misbranded, he shall remove the tags or other markings.

**(c)** If the court finds that a detained or embargoed article is adulterated or misbranded, such article shall, after entry of the decree, be destroyed at the expense of the claimant thereof under the supervision of the Commissioner and all court costs and fees, and storage and other proper expenses shall be taxed against the claimant of such article or his agent, provided that, when the adulteration or misbranding can be corrected by proper labeling or processing of the article, the court, after entry of the decree and after such costs, fees, and expenses have been paid and a good and sufficient bond conditioned that such article shall be so labeled or processed, has been executed, may by proper order direct that such article be delivered to the claimant thereof for such labeling or processing under the supervision of an agent of the Commissioner. The expense of such supervision shall be paid by the claimant. Such shall be returned to the claimant of the article on representation to the court by the Commissioner that the article is no longer in violation of this article and that the expense of such supervision has been paid.

**(d)** Whenever the Commissioner or any of his authorized agents shall find in any room, building, vehicle for transportation, or other structure any meat, seafood, poultry, vegetables, fruit, or other perishable articles which are unsound, which contain any filthy, decomposed, or putrid substances, or which might be poisonous or deleterious to health or otherwise unsafe, the same shall be declared to be a nuisance and the Commissioner or his authorized agent shall immediately condemn or destroy or in any other manner render the same unsalable as human food.

### **History**

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Ga. L. 1956, p. 195, § 6; Ga. L. 1986, p. 197, § 1; Ga. L. 1998, p. 189, § 2.

O.C.G.A. § 26-2-38

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## O.C.G.A. § 26-2-39

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### **26-2-39. Summaries of judgments, decrees, and court orders; dissemination of information in the interest of health and protection of consumers against fraud.**

---

- (a) The Commissioner may cause to be published from time to time reports summarizing all judgments, decrees, and court orders which have been rendered under this article, including the nature of the charge and the disposition thereof.
- (b) The Commissioner may also cause to be disseminated such information regarding food as the Commissioner deems necessary in the interest of public health and the protection of the consumer against fraud.
- (c) Nothing in this Code section shall be construed to prohibit the Commissioner from collecting, reporting, and illustrating the results of the investigations of the Commissioner.

### **History**

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Ga. L. 1956, p. 195, § 17.

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## O.C.G.A. § 26-2-40

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### **26-2-40. Minor violations of article.**

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Nothing in this article shall be construed as requiring the Commissioner to report, for the institution of proceedings under this article, minor violations of this article whenever the Commissioner believes that the public interest will be adequately served in the circumstances by a suitable written notice or warning.

### **History**

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Ga. L. 1956, p. 195, § 8.

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## O.C.G.A. § 26-2-41

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### **26-2-41. Prosecution of violations; notice to defendant prior to institution of criminal proceeding.**

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It shall be the duty of each prosecuting attorney to whom the Commissioner reports any violation of this article to cause appropriate proceedings to be instituted in the appropriate court without delay and to prosecute the same in the manner provided by law. Before any violation of this article is reported to any prosecuting attorney for the institution of a criminal proceeding, the person against whom such proceeding is contemplated shall be given appropriate notice and an opportunity to present his views before the Commissioner or his designated agent orally or in writing, in person, or by attorney, with regard to such contemplated proceedings.

### **History**

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Ga. L. 1956, p. 195, § 7.

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