

House Bill 287

By: Representatives Thomas of the 65th, Schofield of the 63rd, and Marin of the 96th

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 provide for the operation of
3 microenterprise food kitchens; to provide for a short title; to provide for definitions; to
4 provide for the issuance of permits; to provide for qualifications for permits; to provide for
5 rules and regulations regarding sanitation, equipment, and maintenance; to provide for
6 inspections; to provide for operating requirements; to provide for fees; to provide for
7 limitations on permits; to provide for statutory construction; to provide for conforming
8 changes; to provide 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:

H. B. 287

14 "ARTICLE 1915 26-2-470.16 This article shall be known and may be cited as the 'Microenterprise Home Kitchen
17 Operations Act.'18 26-2-471.19 As used in this article, the term:20 (1) 'Food' has the same meaning as in Code Section 26-2-21.21 (2)(A) 'Microenterprise home kitchen' means a noncommercial kitchen facility:22 (i)(I) Located in a private home and operated by a resident of the home where
23 ready-to-eat food is handled, stored, prepared, or offered for sale for consumption
24 off the premises; or25 (II) Located on a farm where ready-to-eat food is handled, stored, prepared, or
26 offered for sale for consumption on or off the premises;27 (ii) That prepares no more than 30 meals per day; and28 (iii) That meets the criteria to be a microenterprise as established by the Department
29 of Economic Development.30 (B) Such term does not include:31 (i) A food service establishment;32 (ii) A food sales establishment;33 (iii) Nonprofit food sales and food service provided under a permit issued pursuant
34 to Article 14 of this chapter;35 (iv) Food items produced in compliance with a license issued by the Department of
36 Agriculture pursuant to Article 2 of this chapter;37 (v) A bed and breakfast inn, as defined by the Department of Public Health pursuant
38 to Chapter 28 of Title 31; or

39 (vi) A group-care facility, as defined in Code Section 49-5-3.

40 (3) 'Microenterprise home kitchen permit' means a permit issued by a county board of
41 health to an operator for the purpose of operating a microenterprise home kitchen.

42 (4) 'Operator' means an individual who resides in the private home and who manages or
43 controls the microenterprise home kitchen.

44 26-2-472.

45 (a) A person shall not operate a microenterprise home kitchen without having first
46 obtained a valid microenterprise home kitchen permit pursuant to this article from the
47 county board of health in which the microenterprise home kitchen is located.

48 (b) County boards of health shall have the power and authority to issue permits to operate
49 microenterprise home kitchens in accordance with the provisions of this article and the
50 rules and regulations established by the department pursuant to this article.

51 (c) A county board of health shall impose a fee for a microenterprise home kitchen permit
52 in an amount limited to the administrative costs incurred by the county board of health in
53 issuing permits and regulating microenterprise home kitchens.

54 (d) A county board of health shall be authorized to deny, suspend, or revoke a
55 microenterprise home kitchen permit if the operator of the microenterprise home kitchen
56 fails to meet or violates the terms of the permit, this article, or the rules and regulations
57 established by the department pursuant to this article.

58 26-2-473.

59 An operator may qualify for a microenterprise home kitchen permit if:

60 (1) Food that is handled, stored, or prepared at the microenterprise home kitchen is
61 processed in compliance with state and federal regulations;

62 (2) The kitchen facility used to handle, store, or prepare food for the microenterprise
63 home kitchen meets the requirements established by the department pursuant to this
64 article;

65 (3) The microenterprise home kitchen operates only during the hours approved in the
66 microenterprise home kitchen permit; and

67 (4) The microenterprise home kitchen complies with the requirements of this article and
68 the rules and regulations established by the department.

69 26-2-474.

70 (a) The department shall establish rules and regulations to implement the provisions of this
71 article, including sanitation, equipment, and maintenance requirements for microenterprise
72 home kitchens.

73 (b) When establishing rules and regulations pursuant to this Code section, the department
74 shall not be authorized to make rules regarding:

75 (1) Handwashing facilities, except to require that a handwashing station supplied with
76 warm water, soap, and disposable hand towels is conveniently located in food
77 preparation, food dispensing, and warewashing areas;

78 (2) Kitchen sinks, kitchen sink compartments, and dish sanitation, except to require that
79 the kitchen sink has hot and cold water, has a sanitizing agent, and is fully operational
80 and that dishes are sanitized between each use;

81 (3) The individuals allowed access to the food preparation areas, food storage areas, and
82 washing areas, except during food preparation;

83 (4) Display guards, covers, or containers for display foods, except to require that
84 ready-to-eat food is protected from contamination during storage, preparation, handling,
85 transport, and display;

86 (5) Outdoor display and sale of food, except to require that food is maintained at proper
87 holding temperatures;

- 88 (6) Utensils and equipment, except to require that utensils and equipment used in the
89 home kitchen:
- 90 (A) Retain their characteristic qualities under normal use conditions;
91 (B) Are properly sanitized after use; and
92 (C) Are maintained in a sanitary manner between uses;
- 93 (7) Food contact surfaces, except to require that food contact surfaces are smooth, easily
94 cleanable, in good repair, and properly sanitized between tasks;
- 95 (8) Nonfood contact surfaces, if those surfaces are made of materials ordinarily used in
96 residential settings, except to require that those surfaces are kept clean from the
97 accumulation of residue and debris;
- 98 (9) Clean-in-place equipment, except to require that the equipment is cleaned and
99 sanitized between uses;
- 100 (10) Ventilation, except to require that gases, odors, steam, heat, grease, vapors, and
101 smoke are able to escape the kitchen;
- 102 (11) Fixed temperature measuring devices or product mimicking sensors for the holding
103 equipment for time- or temperature-controlled food, except to require nonfixed
104 temperature measuring devices for hot and cold holding of food during storage, serving,
105 and cooling;
- 106 (12) Fixed floor-mounted and table-mounted equipment, except to require that
107 floor-mounted and table-mounted equipment be in good repair and sanitized between
108 uses;
- 109 (13) Dedicated laundry facilities, except to require that linens used for the
110 microenterprise home kitchen are stored and laundered separately from household
111 laundry and that soiled laundry is stored to prevent contamination of food and equipment;
- 112 (14) Water, plumbing, drainage, and waste, except to require that:
- 113 (A) Sinks be supplied with hot and cold potable water from:
- 114 (i) An approved public water system;

- 115 (ii) A source that meets the county board of health's regulations regarding the safety
116 of drinking water, if the county board of health with jurisdiction over the
117 microenterprise home kitchen has regulations regarding the safety of drinking water;
118 or
119 (iii) A water source that is tested at least once per month for bacteriologic quality,
120 and at least once in every three-year period for lead and copper; and
121 (B) Food preparation and service be discontinued in the event of a disruption of potable
122 water service;
123 (15) The number of and path of access to toilet facilities, except to require that toilet
124 facilities are equipped with proper handwashing stations;
125 (16) Lighting, except to require that food preparations are well lit by natural or artificial
126 light whenever food is being prepared;
127 (17) Designated dressing areas and storage facilities, except to require that items not
128 ordinarily found in a home kitchen are placed or stored away from food preparation areas,
129 that dressing takes place outside of the kitchen facility, and that food items are stored in
130 a manner that does not allow for contamination;
131 (18) The presence and handling of animals, except to require that all animals are kept
132 outside of food preparation and service areas;
133 (19) Food storage, floor, wall, ceiling, and toilet surfaces, except to require that surfaces
134 are smooth, of durable construction, easily cleanable, and kept clean and free of debris;
135 (20) Kitchen facilities open to living areas, except to require that food is only prepared,
136 handled, or stored in kitchen and food storage areas;
137 (21) Submission of plans and specifications before construction or remodel of a kitchen
138 facility;
139 (22) The number and type of time- or temperature-controlled food offered for sale,
140 except:

- 141 (A) A raw time- or temperature-controlled food such as raw fish, raw milk, and raw
142 shellfish;
- 143 (B) Any food requiring special processes that would necessitate a hazard analysis and
144 critical control points plan; and
- 145 (C) Fish from waters of the state;
- 146 (23) Approved food sources, except to require that:
- 147 (A) Food in a hermetically sealed container is obtained from a regulated food
148 processing plant;
- 149 (B) Liquid milk and milk products are obtained from sources that comply with state
150 and federal standards;
- 151 (C) Fish for sale or service are commercially and legally caught;
- 152 (D) Mushrooms picked in the wild are not offered for sale or service;
- 153 (E) Game animals offered for sale or service are raised, slaughtered, and processed in
154 accordance with state laws and regulations; and
- 155 (F) At least 25 percent of ingredients are sourced locally from Georgia farmers and
156 small businesses;
- 157 (24) The use of items produced under this article; or
- 158 (25) The use of an open-air barbeque, grill, or outdoor wood-burning oven.

159 26-2-475.

- 160 (a) A county board of health shall be authorized to inspect a microenterprise home kitchen
161 to ensure compliance by an operator with the provisions of this article and the rules and
162 regulations established by the department pursuant to this article.
- 163 (b) A county board of health shall inspect a microenterprise home kitchen only:
- 164 (1) For an initial inspection, no more than one week before the microenterprise home
165 kitchen is scheduled to begin operation;
- 166 (2) For an unscheduled inspection, if the county board of health:

- 167 (A) Conducts the inspection within three days before or three days after the
168 microenterprise home kitchen is scheduled to begin operation;
169 (B) Conducts the inspection during operating hours of the microenterprise home
170 kitchen; or
171 (C) Has a valid reason to suspect that the microenterprise home kitchen is the source
172 of an adulterated food or of an outbreak of illness caused by a contaminated food; or
173 (3) If the county board of health provides the operator with reasonable advanced notice
174 of the inspection.
175 (c) The county board of health shall document the reason for any inspection subsequent
176 to the initial inspection, maintain a copy of such documentation on file with the
177 microenterprise home kitchen's permit, and provide a copy of such documentation to the
178 operator of the microenterprise home kitchen.

179 26-2-476.

180 (a) A microenterprise home kitchen shall:

181 (1) Take steps to avoid any potential contamination to:

182 (A) Food;

183 (B) Equipment;

184 (C) Utensils; or

185 (D) Unwrapped single-service and single-use articles;

186 (2) Prevent an individual from entering the food preparation area while food is being
187 prepared if the individual is known to be suffering from:

188 (A) Symptoms associated with acute gastrointestinal illness; or

189 (B) A communicable disease that is transmissible through food; and

190 (3) Comply with the following requirements:

191 (A) Time- or temperature-controlled food shall be prepared, cooked, and served on the
192 same day;

- 193 (B) Food that is sold or provided to a customer may not be consumed onsite at the
194 microenterprise home kitchen operation, except if the microenterprise home kitchen
195 operation is a farm;
- 196 (C) Food that is sold or provided to a customer shall be picked up by the consumer or
197 delivered within a safe time period based on holding equipment capacity;
- 198 (D) Food preparation may not involve processes that require a hazard analysis and
199 critical control points plan, or the production, service, or sale of raw milk or raw milk
200 products;
- 201 (E) Molluscan shellfish may not be served or sold;
- 202 (F) The operator may only sell or provide food directly to consumers and may not sell
203 or provide food to any wholesaler or retailer; and
- 204 (G) The operator shall provide the consumer with a notification that, while a permit has
205 been issued by the county board of health, the kitchen may not meet all of the
206 requirements of a commercial retail food establishment.
- 207 (b) An operator applying for a microenterprise home kitchen permit shall provide to the
208 county board of health:
- 209 (1) Written consent to enter the premises where food is prepared, cooked, stored, or
210 harvested for the microenterprise home kitchen; and
- 211 (2) Written standard operating procedures that include:
- 212 (A) All food that will be stored, handled, and prepared;
- 213 (B) The proposed procedures and methods of food preparation and handling;
- 214 (C) Procedures, methods, and schedules for cleaning utensils and equipment;
- 215 (D) Procedures and methods for the disposal of refuse; and
- 216 (E) A plan for maintaining time- or temperature-controlled food at the appropriate
217 temperatures for each time- or temperature-controlled food.

218 26-2-477.

219 In addition to the fee charged pursuant to Code Section 26-2-472, if the county board of
220 health conducts an inspection because it has a valid reason to suspect that a microenterprise
221 home kitchen is a source of an adulterated food or of an outbreak of illness caused by a
222 contaminated food and, as a result of such inspection, finds that the microenterprise home
223 kitchen was the source of an adulterated food or of an outbreak of illness caused by a
224 contaminated food, the county board of health may charge and collect a fee from the
225 operator of the microenterprise home kitchen in a reasonable amount not to exceed the total
226 direct and indirect costs of conducting the inspection.

227 26-2-478.

228 (a) A microenterprise home kitchen permit:

229 (1) Is nontransferable;

230 (2) Is renewable on an annual basis;

231 (3) Is restricted to the location and hours listed on the permit;

232 (4) Shall include a statement that reads: 'This location is permitted under modified FDA
233 requirements'; and

234 (5) Shall provide the operator the opportunity to update the food types and products
235 handled without requiring the operator to renew the permit.

236 (b) This article shall not be construed to prohibit an operator from applying for a different
237 type of food service related permit from a county board of health.

238 (c) A microenterprise home kitchen permit shall not be considered a public benefit for
239 purposes of Code Section 50-36-1."

240

PART II

241

SECTION 2-1.

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

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

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

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

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

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

263 (ii) Lasts 120 hours or less;

264 (D) Establishments engaged in the boiling, bottling, and sale of sugar cane syrup or
265 sorghum syrup within this state, provided that such bottles contain a label listing the

266 producer's name and street address, all added ingredients, and the net weight or volume
 267 of the product; ~~or~~
 268 (E) Nonprofit food sales and food service provided under a permit issued pursuant to
 269 Article 14 of this chapter; or
 270 (F) Microenterprise home kitchens as defined in Code Section 26-2-471."

271 **SECTION 2-2.**

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

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

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

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

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

290 (D) Any organization which is operating on its own property or on the property of a
 291 party that has provided written consent for the use of such property for such purpose

292 and which is exempt from taxes under paragraph (1) of subsection (a) of Code Section
 293 48-7-25 or under Section 501(d) or paragraphs (1) through (8) or paragraph (10) of
 294 Section 501(c) of the Internal Revenue Code for the purpose of operating a house or
 295 other residential structures where seriously ill or injured children and their families are
 296 provided temporary accommodations in proximity to their treatment hospitals and
 297 where food is prepared, served, transported, or stored by volunteer personnel;
 298 (E) Establishments for the preparation and serving of meals, lunches, short orders,
 299 sandwiches, frozen desserts, or other edible products if such preparation or serving is
 300 an authorized part of and occurs upon the site of an event which:
 301 (i) Is sponsored by a political subdivision of this state;
 302 (ii) Is held on the property of such sponsor or on the property of a party that has
 303 provided written consent for use of such property for such event; and
 304 (iii) Lasts 120 hours or less; ~~or~~
 305 (F) Nonprofit food sales and food service provided under a permit issued pursuant to
 306 Article 14 of this chapter; or
 307 (G) Microenterprise home kitchens as defined in Code Section 26-2-471."

308 **SECTION 2-3.**

309 Said chapter is further amended in Article 14, relating to nonprofit food sales and food
 310 service, by revising subsection (i) of Code Section 26-2-392, relating to standards for food,
 311 labeling, and containers, protection from contamination, temperature, prohibited foods,
 312 utensils and equipment, ice, transport to other location, reuse at another event, handwashing
 313 facilities, unapproved facilities, and use of offsite kitchens, as follows:

314 "(i) This Code section shall in no way be construed to allow the sale of food items which
 315 have been packaged, bottled, or canned in unapproved facilities. Food items prepared in
 316 private homes are prohibited; provided, however, that this shall not apply to:

317 (1) Any any food item produced in compliance with a license issued by the Department
318 of Agriculture pursuant to Article 2 of this chapter; or
319 (2) Microenterprise home kitchens permitted in accordance with Article 19 of this
320 chapter."

321

PART III

322

SECTION 3-1.

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