

House Bill 1186 (AS PASSED HOUSE AND SENATE)

By: Representatives Crawford of the 91st and Ray of the 108th

A BILL TO BE ENTITLED
AN ACT

1 To amend Article 2 of Chapter 10 of Title 2 of the Official Code of Georgia Annotated,
2 relating to farmers' markets, so as to define a term relative to farmers' markets; to change
3 certain provisions relating to a license required to sell in farmers' markets and consent to
4 inspection of property; to change certain provisions relating to suspension or revocation of
5 registration, license, or permit, procedure, and enforcement of laws, regulations, or orders;
6 to change certain provisions relating to prohibited acts; to repeal conflicting laws; and for
7 other purposes.

8 BE IT ENACTED BY THE GENERAL ASSEMBLY OF GEORGIA:

9 **SECTION 1.**

10 Article 2 of Chapter 10 of Title 2 of the Official Code of Georgia Annotated, relating to
11 farmers' markets, is amended in Code Section 2-10-52, relating to definitions, by inserting
12 a new paragraph to read as follows:

13 "(4.1) 'License' means revocable written permission from the Commissioner on a form
14 prescribed by him or her whereby a person or entity has limited authority to enter the
15 property of a farmers' market to offer for sale and sell sundry items at such market. Such
16 a license is a mere privilege and does not confer upon the licensee any title, interest, or
17 estate in any such market, its premises, or any space thereof."

18 **SECTION 2.**

19 Said article is further amended by striking Code Section 2-10-59, relating to a license
20 required to sell in farmers' markets and consent to inspection of property, and inserting in
21 lieu thereof the following:

22 "(a) In order to that the department may better manage the farmers' markets authorized by
23 this article and to thereby facilitate the use of such farmers' markets by the citizens of this
24 state, all persons and their employees, agents, and designees desiring to sell or to offer for
25 sale any items at any farmers' market which charges a gate fee must first obtain a license

1 for this purpose from the Commissioner. A license may be refused, suspended, or revoked
2 in accordance with Code Section 2-10-60.

3 (b) By applying for a license or by operating under such license, the applicant or licensee,
4 as the case may be, gives his express consent for authorized representatives of the
5 Commissioner to enter upon and inspect all property owned, leased, rented, controlled, or
6 used at the farmers' market by the applicant or licensee.

7 (c) The license required by this Code section is in addition to all other applicable licensing
8 laws and shall not constitute an exemption or waiver thereof.

9 (d) Any person who enters upon the premises of a farmers' market to sell or offer for sale
10 any items at such market without the license required by subsection (a) of this Code
11 section, if applicable, shall be subject to removal immediately from the farmers' market."

12 SECTION 3.

13 Said article is further amended by striking Code Section 2-10-60, relating to suspension or
14 revocation of registration, license, or permit, procedure, and enforcement of laws,
15 regulations, or orders, and inserting in lieu thereof the following:

16 "2-10-60.

17 ~~Notwithstanding any other provision of law:~~

18 ~~(1) Whenever it appears to the Commissioner, either upon investigation or otherwise,~~
19 ~~that any person has engaged in, is engaging in, or is about to engage in any act, practice,~~
20 ~~or transaction which is prohibited by any provision of this article governing activities for~~
21 ~~which registration with or a license or permit from the department is required, whether~~
22 ~~or not the person has so registered or obtained such a license or permit, the~~
23 ~~Commissioner may issue an order, if he deems it to be in the public interest or necessary~~
24 ~~for the protection of the citizens of this state, prohibiting such person from continuing~~
25 ~~such act, practice, or transaction or suspending or revoking any such registration, license,~~
26 ~~or permit held by such person;~~

27 ~~(2) In situations where persons otherwise would be entitled to a hearing prior to an order~~
28 ~~entered pursuant to paragraph (1) of this Code section, the Commissioner may issue such~~
29 ~~an order to be effective upon a later date without hearing unless a person subject to the~~
30 ~~order requests a hearing within ten days after receipt of the order. Failure to make the~~
31 ~~request shall constitute a waiver of any law for a hearing. The order shall contain or shall~~
32 ~~be accompanied by a notice of opportunity for hearing stating that a hearing must be~~
33 ~~requested within ten days of receipt of the notice and order. The order and notice shall~~
34 ~~be served in person by the Commissioner or his agent or by certified mail or statutory~~
35 ~~overnight delivery, return receipt requested. In the case of an individual registered with~~
36 ~~or issued a license or permit by the department, receipt of the order and notice will be~~

~~conclusively presumed five days after the mailing of the order by certified mail or statutory overnight delivery, return receipt requested, to the address provided by such person in his most recent registration or license or permit application;~~

~~(3) In situations where persons otherwise would be entitled to a hearing prior to an order, the Commissioner may issue an order to be effective immediately if the Commissioner has reasonable cause to believe that an act, practice, or transaction is occurring or is about to occur, that the situation constitutes a situation of imminent peril to the public safety or welfare, and that the situation therefore requires emergency action. The emergency order shall contain findings to this effect and reasons for the determination. The order shall contain or be accompanied by a notice of opportunity for hearing which may provide that a hearing will be held if and only if a person subject to the order requests a hearing within ten days of the receipt of the order and notice. The order and notice shall be served by the Commissioner or his agent or by certified mail or statutory overnight delivery, return receipt requested. In the case of an individual registered with or issued a license or permit by the department, receipt of the order and notice will be conclusively presumed five days after the mailing of the order by certified mail or statutory overnight delivery, return receipt requested, to the address provided by such person in his most recent registration or license or permit application;~~

~~(4) Any request for hearing made pursuant to paragraphs (2) and (3) of this Code section shall specify:~~

~~(A) In what respects such person is aggrieved;~~

~~(B) Any and all defenses such person intends to assert at the hearing;~~

~~(C) Affirmation or denial of all the facts and findings alleged in the order, and~~

~~(D) An address to which any further correspondence or notices in the proceeding may be mailed.~~

~~Upon such a request for hearing, the Commissioner shall schedule and hold the hearing, unless postponed by mutual consent, within 30 days after receipt by the Commissioner of the request therefor. The Commissioner shall give the person requesting the hearing notice of the time and place of the hearing by certified mail or statutory overnight delivery to the address specified in the request for hearing at least 15 days prior to the time of the hearing;~~

Any other provision of this title or Article 1 of Chapter 13 of Title 50 to the contrary notwithstanding:

(1) When the Commissioner, either through investigation or otherwise, has determined that any person has engaged in, is engaging in, or is about to engage in any act, practice, or transaction which is prohibited by any provision of this article or rule promulgated in support of this article governing activities for which registration with or a license or

1 permit from the department is required, whether or not such person has so registered or
 2 obtained such a license or permit, the Commissioner may issue an administrative order,
 3 if he or she deems it to be in the public interest or necessary for the protection of the
 4 citizens of this state, prohibiting such person from continuing such act, practice, or
 5 transaction or suspending or revoking any such registration, license, or permit held by
 6 such person. The administrative order shall be final and effective ten days after issuance.
 7 The administrative order and notice of right to a hearing shall be served in person by the
 8 Commissioner or his or her agent or by certified mail or statutory overnight delivery,
 9 return receipt requested. The person or persons to whom the administrative order is
 10 issued may within ten days of issuance petition the department for a hearing. A petition
 11 for hearing shall be deemed filed on the date the department receives such petition, or
 12 when mailed by first class mail, proper postage attached, properly addressed directly to
 13 the department, whichever date first occurs. The petitioner shall simultaneously serve
 14 a copy of such petition by certified mail, overnight mail, or personal service upon the
 15 Attorney General. If the person timely petitions the department for a hearing, the
 16 administrative order shall be stayed pending any administrative hearing until a final
 17 decision is rendered by the Commissioner. The administrative hearing shall be the forum
 18 in which the licensee may demonstrate that at the time of any alleged violation the
 19 licensee was in full compliance with the law;

20 (2) If the Commissioner has reasonable cause to believe that an act, practice, or
 21 transaction is occurring or is about to occur, and that such act, practice, or transaction
 22 would constitute an imminent peril to the public safety or welfare requiring emergency
 23 action, the Commissioner may issue an emergency order to be effective immediately. The
 24 emergency order shall contain findings to such effect and reasons for the determination,
 25 along with notice of right to a hearing. The person or persons to whom the emergency
 26 order is issued may within five days of issuance petition the department for a hearing on
 27 the administrative order. If such person timely petitions the department for a hearing, the
 28 administrative order shall be stayed pending any administrative hearing until a final
 29 decision is rendered by the Commissioner;

30 (3) Upon a timely request for hearing, the Commissioner shall schedule a hearing and
 31 appoint or designate a hearing officer to conduct the hearing for the taking of evidence
 32 and the issuance of a decision;

33 ~~(5)~~(4) Except where in conflict with the express provisions of this Code section and the
 34 reasonable implication of such provisions, the provisions of Chapter 13 of Title 50, the
 35 'Georgia Administrative Procedure Act,' relating to contested cases shall be applicable
 36 to the actions of the Commissioner taken pursuant to this Code section and to the conduct
 37 and judicial review of any hearings held as a result thereof;

1 ~~(6)~~(5) The Commissioner may institute actions or other legal proceedings in any superior
 2 court of proper venue as may be required for the enforcement of any law or regulation
 3 governing activities for which registration with or a license or permit from the
 4 department is required;

5 ~~(7)~~(6) The Commissioner may prosecute an action in any superior court of proper venue
 6 to enforce any order made by him or her pursuant to this Code section; and

7 ~~(8)~~(7) In cases in which the Commissioner institutes an action or other legal proceeding
 8 or prosecutes an action to enforce his or her order, the superior court may, among other
 9 appropriate relief, issue a temporary restraining order or a preliminary, interlocutory, or
 10 permanent injunction restraining or enjoining persons and those in active concert with
 11 them from engaging in any acts, practices, or transactions prohibited by orders of the
 12 Commissioner or any law or regulation governing activities for which registration with
 13 or a license or permit from the department is required. In any such action, it shall not be
 14 necessary for the Commissioner to allege or prove the absence of an adequate remedy
 15 at law."

16 SECTION 4.

17 Said article is further amended by striking Code Section 2-10-62, relating to prohibited acts,
 18 and inserting in lieu thereof the following:

19 "2-10-62.

20 (a) It shall be unlawful for any person on a farmers' market to:

- 21 (1) Engage in deceptive or dishonest trade practices;
- 22 (2) Do any act or use any language insulting to another tenant or customer; intimidate
 23 a shopper into purchasing his or her products; attempt to fix the price of products of any
 24 other farmer, vendor, or merchant; or circulate false reports tending to upset or destroy
 25 the operation of the market;
- 26 (3) Use any profane, abusive, or discourteous language on the market;
- 27 (4) Break, deface, or destroy any part of a building upon the market; interfere with
 28 electrical fixtures or wiring; or do any act tending to destroy the physical properties of
 29 the market;
- 30 (5) Move any cull agricultural products from any farmers' market for any purpose other
 31 than use as garbage or livestock feed or for dumping;
- 32 (6) Sell, offer, or expose for sale any products not meeting the requirements of the laws
 33 of this state relating to weights and measures;
- 34 (7) Use any false pack;
- 35 (8) Sublet any stall or space without the express written approval of the Commissioner;

- 1 (9) Fail or refuse to remove any vehicle or property upon direction of the farmers´
2 market manager; ~~or~~
3 (10) Erect any facility or structure upon a farmers´ market without the express written
4 approval of the Commissioner; or
5 (11) Sell or offer for sale any items at a farmers´ market without the license required by
6 subsection (a) of Code Section 2-10-59, if applicable.
7 (b) Any person who violates any provision of this Code section shall be guilty of a
8 misdemeanor."

9 **SECTION 5.**

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