

House Bill 1766 (AS PASSED HOUSE AND SENATE)

By: Representatives James of the 114<sup>th</sup>, Ray of the 108<sup>th</sup>, Williams of the 128<sup>th</sup>, Mosley of the 129<sup>th</sup>, Post 1, Black of the 144<sup>th</sup>, and others

A BILL TO BE ENTITLED  
AN ACT

1 To amend Title 2 of the Official Code of Georgia Annotated, relating to agriculture, so as to  
2 create the Agricultural Commodities Commission for Beef and provide for its members,  
3 powers, duties, and procedures; to define certain terms; to provide for marketing orders and  
4 assessments related thereto; to provide penalties for violations; to provide for enforcement;  
5 to strike the reserved designation of Chapter 15; to provide for development of aquaculture  
6 of pacific white shrimp; to provide a short title; to define certain terms; to create the Pacific  
7 White Shrimp Aquaculture Development Advisory Council and provide for its membership,  
8 powers, and duties; to regulate aquaculture of pacific white shrimp; to provide for  
9 registration; to provide for rules and regulations; to provide for enforcement; to amend Title  
10 27 of the Official Code of Georgia Annotated, relating to game and fish, so as to change  
11 certain provisions relating to definitions relative to said title; to change certain provisions  
12 relating to permits for liberation of wildlife or liberation of domestic fish; to change certain  
13 provisions relating to sale of fish by commercial fish hatcheries, sale of game fish, bill of sale  
14 or lading for possession of certain game fish and domestic fish, and sale of diseased fish; to  
15 change certain provisions relating to licensing of wholesale and retail fish dealers and sale,  
16 transportation into state, or possession of live fish and fish eggs; to change certain provisions  
17 relating to definitions relative to aquaculture development; to provide effective dates; to  
18 provide for a contingent repeal; to repeal conflicting laws; and for other purposes.

19 BE IT ENACTED BY THE GENERAL ASSEMBLY OF GEORGIA:

20 PART I  
21 SECTION 1-1.

22 Title 2 of the Official Code of Georgia Annotated, relating to agriculture, is amended in  
23 Chapter 8, relating to agricultural commodities promotion, by adding a new article to read  
24 as follows:

## "ARTICLE 4

2-8-90.

This article shall apply only to the Agricultural Commodity Commission for Beef.

2-8-91.

As used in this article, the term:

(1) 'Advertising and sales promotion' means, in addition to the ordinarily accepted meaning thereof, trade promotion and activities for the prevention, modification, or removal of trade barriers which restrict the normal flow of beef to market and may include the presentation of facts to and negotiations with state, federal, or foreign governmental agencies on matters which affect the marketing of beef included in any marketing order made effective pursuant to this article.

(2) 'Beef' means flesh of cattle and beef products.

(3) 'Beef products' means edible products produced in whole or in part from beef, excluding milk and products made therefrom.

(4) 'Cattle' means live domesticated bovine animals, regardless of age.

(5) 'Commission' means the Agricultural Commodity Commission for Beef created under this article.

(6) 'Market agent' means any person who sells, offers for sale, markets, distributes, trades, or processes cattle that have been purchased or acquired from a producer or that are marketed on behalf of a producer or any meat packing firm or its agent that purchases or consigns to purchase cattle.

(7) 'Marketing order' means an order issued pursuant to this article prescribing rules and regulations governing producer marketing or the processing, distributing, or handling in any manner of cattle or beef within this state or establishing an assessment for financing the programs established under this article.

(8) 'Person' means an individual, firm, corporation, association, or any other business unit or any combination thereof and includes any state agency which engages in any of the commercial activities regulated pursuant to this article.

(9) 'Producer' means any person who owns or acquires ownership of cattle, except that a person shall not be considered to be a producer if the person's only share in the proceeds of a sale of cattle or beef is a sales commission, handling fee, or other service fee.

(10) 'Producer marketing' or 'marketed by producers' means any or all operations performed by any producer in preparing for market and includes selling, delivering, or disposing of, for commercial purposes, cattle which he or she has produced to any market agent as defined in this Code section.

1 (11) 'Retailer' means any person who purchases or acquires beef for resale at retail to the  
2 general public for consumption off the premises; however, such person shall also be  
3 included within the definition of 'market agent,' as set forth in this Code section, to the  
4 extent that he or she engages in the business of a market agent as defined in this Code  
5 section.

6 2-8-92.

7 (a) The Agricultural Commodity Commission for Beef shall be composed of 11 members  
8 as follows:

9 (1) Six members who shall be producers actively engaged in the beef cattle business;

10 (2) Three members who shall own or have significant interest in a business actively  
11 engaged in the marketing of cattle; and

12 (3) Two members who shall be producers actively engaged in the dairy cattle business.

13 The initial members of the commission shall be appointed by a committee consisting of the  
14 Commissioner, the chairperson of the House of Representatives Committee on Agriculture  
15 and Consumer Affairs, and the chairperson of the Senate Agriculture and Consumer Affairs  
16 Committee. Prior to making such appointments, the committee shall seek significant input  
17 from members of the cattle industry.

18 (b)(1) Initial appointments of those members described in paragraph (1) of subsection  
19 (a) of this Code section shall be made for two members for a term of two years each from  
20 the effective date of this article and until their successors are elected and qualified, two  
21 members for a term of three years each from the effective date of this article and until  
22 their successors are elected and qualified, and two members for a term of four years each  
23 from the effective date of this article and until their successors are elected and qualified.  
24 Thereafter, successors shall be elected for a term of three years each and until their  
25 successors are elected and qualified.

26 (2) Initial appointments of those members described in paragraph (2) of subsection (a)  
27 of this Code section shall be made for one member for a term of two years from the  
28 effective date of this article and until a successor is elected and qualified, one member for  
29 a term of three years from the effective date of this article and until a successor is elected  
30 and qualified, and one member for a term of four years from the effective date of this  
31 article and until a successor is elected and qualified. Thereafter, successors shall be  
32 elected for a term of three years each and until their successors are elected and qualified.

33 (3) Initial appointments of those members described in paragraph (3) of subsection (a)  
34 of this Code section shall be made for one member for a term of three years from the  
35 effective date of this article and until a successor is elected and qualified and one member  
36 for a term of four years from the effective date of this article and until a successor is

1 elected and qualified. Thereafter, successors shall be elected for a term of three years  
2 each and until their successors are elected and qualified.

3 (4) Any successor shall be elected by a plurality of valid votes cast by producers in an  
4 election for such office which shall be conducted by the commission. Any producer of  
5 record with the commission shall be eligible to vote in any such election, but candidates  
6 must meet the qualification specified in paragraph (1), (2), or (3) of subsection (a) of this  
7 Code section, as applicable, for the office for which the election is conducted. The  
8 commission shall by rules and regulations provide procedures for registering qualified  
9 candidates and conducting elections. Notice of elections and qualifying periods shall be  
10 provided in the same manner as specified for hearings under paragraph (2) of subsection  
11 (b) of Code Section 2-8-100.

12 (c) Vacancies in the offices of members shall be filled by appointment, in like manner as  
13 the appointment of initial members, for the unexpired term. Any member shall be eligible  
14 to succeed himself or herself.

15 (d) The members of the commission shall receive compensation and reimbursement of  
16 expenses as shall be provided by the commission, and such funds shall be payable from the  
17 funds of the commission.

18 (e) It shall be the duty of the Commissioner to certify to the Secretary of State the  
19 membership of the commission and each change in membership as the same occurs.

20 2-8-93.

21 (a) The commission is authorized to appoint advisory boards, special committees, and  
22 individuals, including technical and clerical personnel, to advise, aid, and assist the  
23 commission in the performance of its duties. Compensation for such services shall be fixed  
24 by the commission and may be paid from the funds of the commission. The Attorney  
25 General shall represent the commission in legal matters and shall be the attorney for the  
26 commission. If the Attorney General determines that outside legal counsel is necessary or  
27 desirable in connection with any legal matter of the commission, he or she shall so inform  
28 the commission and, upon approval of the commission, he or she shall employ such outside  
29 counsel. Compensation for such outside counsel shall be agreed upon between such counsel  
30 and the Attorney General, subject to the approval of the commission. Such compensation  
31 shall be paid from the funds of the commission. Neither Code Section 16-10-9 nor any  
32 other law shall prohibit or be applicable to the employment of such counsel.

33 (b) The commission is authorized to accept donations, gifts, and other property and to use  
34 the same for commission purposes. The commission may exercise the powers and authority  
35 conferred by law upon corporations.

1 (c) The commission shall continue as a public corporation and instrumentality of the State  
2 of Georgia until abolished by law or until terminated by referendum.

3 (d) The commission is authorized to acquire, lease as lessee, purchase, hold, own, and use  
4 any franchise or real or personal property, whether tangible or intangible, or any interest  
5 therein and, whenever the same is no longer required for purposes of the commission, to  
6 sell, lease as lessor, transfer, or dispose thereof or to exchange the same for other property  
7 or rights which are useful for its purposes.

8 2-8-94.

9 The commission shall be a public corporation and an instrumentality of the State of  
10 Georgia. By that name, style, and title, the commission may contract and be contracted  
11 with, implead and be impleaded, and complain and defend in all courts. The commission  
12 shall name its chairperson and determine a quorum for the transaction of business. The  
13 commission shall assume the duties and exercise the authority provided in this article  
14 without further formality than that provided in this article. Each member of the commission  
15 shall be a public officer and shall take an oath of office faithfully to perform his or her  
16 duties. Such oath shall be administered by the Governor or some other person qualified to  
17 administer oaths. The fact of a member's election shall be certified to the Secretary of  
18 State, who shall issue the appropriate commission under the seal of his or her office.

19 2-8-95.

20 The commission is authorized and it shall be its duty to receive, collect, and disburse the  
21 funds of the commission.

22 2-8-96.

23 Funds received by the commission under this article shall be held in trust for the  
24 commission. Such funds shall be deposited, accounted for, and disbursed in the same  
25 manner as the funds of this state but shall not be required to be deposited in the state  
26 treasury and appropriated therefrom as are other state funds. It is the express intent and  
27 purpose of this article to authorize the receipt, collection, and disbursement by the  
28 commission of such funds as trust funds of the commission without complying with the  
29 requirement applicable to funds collected for the use and benefit of the state.

30 2-8-97.

31 Any persons who handle funds under this article shall be bonded with good and sufficient  
32 surety in an amount determined by the commission for the accounting of any and all funds  
33 coming into their hands. All checks, drafts, and negotiable instruments which are drawn

1 on or payable from the funds of the Agricultural Commodity Commission for Beef shall  
2 be signed by either the chairperson or treasurer of the commission. It shall be the duty of  
3 the commission to elect annually a treasurer from among the membership of the  
4 commission. The treasurer shall have such powers and perform such duties as shall be  
5 provided by the commission.

6 2-8-98.

7 The members and employees of the commission shall not be held responsible individually  
8 in any way whatsoever to any producer, market agent, or any other person for errors in  
9 judgment, mistakes, or other acts, either of commission or omission, as principal, agent,  
10 person, or employee, except for their own individual acts of dishonesty or crime. No such  
11 person or employee shall be held responsible individually for any act or omission of any  
12 other member of the commission. The liability of the members of the commission shall be  
13 several and not joint and no member shall be liable for the default of any other member.

14 2-8-99.

15 The commission is authorized to confer with and to make any information obtained  
16 pursuant to this article available to the duly constituted governmental authorities of this  
17 state, of other states, of political subdivisions of this state or other states, and of the United  
18 States who, by reason of their duties, have legitimate concern with the subject and to  
19 cooperate with all such authorities for the purpose of obtaining administrative uniformity  
20 and achieving the objectives of this article.

21 2-8-100.

22 (a) The commission is authorized to issue, administer, and enforce the provisions of  
23 marketing orders.

24 (b)(1) Whenever the commission has reason to believe that the issuance of a marketing  
25 order or amendments to an existing marketing order will tend to effectuate the declared  
26 policy of this chapter with respect to beef, it shall, either upon its own motion or upon the  
27 application of any producer or any organization of such persons, give due notice of and  
28 an opportunity for a public hearing upon a proposed marketing order or amendments to  
29 an existing marketing order.

30 (2) Notice of any hearing called for such purpose shall be given by the commission by  
31 publishing a notice of such hearing for a period of not less than five days in a newspaper  
32 of general circulation published in the capital of the state and in such other newspapers  
33 as the commission may prescribe. No such public hearing shall be held prior to five days  
34 after the last day of such period of publication. The commission shall also mail a copy

1 of such notice of hearing and a copy of such proposed marketing order or proposed  
2 amendments to all producers whose names and addresses appear upon lists of such  
3 persons on file with the commission and who may be directly affected by the provisions  
4 of such proposed marketing order or such proposed amendments. Such notice of hearing  
5 shall in all respects comply with the requirements of Chapter 13 of Title 50, the 'Georgia  
6 Administrative Procedure Act.'

7 (3) The hearing shall be public and all testimony shall be received under oath. A full and  
8 complete record of the proceedings at such hearing shall be made and maintained on file  
9 in the office of the commission. The hearing shall, in all respects, be conducted in  
10 accordance with Chapter 13 of Title 50, the 'Georgia Administrative Procedure Act.' The  
11 hearing may be conducted by the commission or by a member of the commission, as may  
12 be designated by the commission in each instance, but no decision shall be made based  
13 on hearings conducted other than by the commission itself, at which a majority of the  
14 members thereof are present, until the members of the commission have been afforded  
15 an opportunity to review the hearing record. Where the commission conducts hearings,  
16 its recommendation shall be based on the findings reached after a review of the record  
17 of the hearing.

18 (c)(1) In order to provide the commission with accurate and reliable information with  
19 respect to the persons who may be directly affected by any proposed marketing order for  
20 beef when such information is not then on file with the commission, the commission is  
21 authorized and directed, whenever the commission has reason to believe that the issuance  
22 of a marketing order will tend to effectuate the declared policy of this chapter or upon  
23 receipt of a written application for a hearing pursuant to subsection (b) of this Code  
24 section, to notify all market agents, by publication of a notice as required in paragraph  
25 (2) of this subsection, to file with the commission within ten days from the last date of  
26 such publication a report, properly certified, showing:

27 (A) The correct name and address of such market agent;

28 (B) The quantities of cattle affected by the proposed marketing order handled by such  
29 market agent in the calendar year next preceding the filing of such report;

30 (C) The correct names and addresses of all producers who may be directly affected by  
31 such proposed marketing order, from whom such market agent received cattle in the  
32 calendar year next preceding the filing of such report; and

33 (D) The quantities of cattle received by such market agent from each such producer in  
34 the calendar year next preceding the filing of such report.

35 (2) The notice to market agents requiring them to file a report shall be published by the  
36 commission for a period of not less than five days in a newspaper of general circulation  
37 published in the capital of the state and in such other newspaper or newspapers as the

1 commission may prescribe. The commission shall also mail a copy of such notice to all  
2 market agents whose names and addresses appear upon the lists on file with the  
3 commission who may be directly affected by such proposed marketing order.

4 (3) Each market agent directly affected by a proposed marketing order shall file his or  
5 her verified report with the commission within the time specified in paragraph (1) of this  
6 subsection. Failure or refusal of any market agent to file such report shall not invalidate  
7 any proceeding taken or marketing order issued. The commission is authorized and  
8 directed to proceed upon the basis of such information and reports as may otherwise be  
9 available.

10 (4) From the reports so filed and the information so received or available to the  
11 commission, including any proper corrections, the commission shall prepare a list of the  
12 names and addresses of such producers and the quantities of cattle produced or marketed  
13 by all such producers and a list of the names and addresses of such market agents and the  
14 quantities of cattle handled by all such market agents, directly affected by such proposed  
15 marketing order or amendments thereto, in the preceding calendar year. Such lists shall  
16 constitute complete and conclusive lists for use in any finding made by the commission  
17 pursuant to subsection (a) of Code Section 2-8-102 and such findings shall be conclusive.

18 (5) The information contained in the individual reports of market agents filed with the  
19 commission pursuant to this Code section shall not be made public in such form. The  
20 information contained in such reports may be prepared in combined form for use by the  
21 commission, its agents, or other interested persons in the formulation, administration, and  
22 enforcement of a marketing order or may be made available pursuant to court order. Such  
23 information shall not be made available to anyone for private purposes.

24 2-8-101.

25 If, upon the basis of the record of testimony and documentary evidence received at the  
26 hearing provided for in Code Section 2-8-100 and the facts officially noticed therein from  
27 official publications or institutions of recognized standing, the commission determines that  
28 the issuance of a marketing order or an amendment will tend to effectuate the intent and  
29 purpose of this article, it may recommend the promulgation of a marketing order or  
30 amendment with respect to the matters specified in the hearing notice and supported by the  
31 record, containing any or all of the following provisions, but no others:

32 (1) Provisions for the establishment of plans for advertising and sales promotion to  
33 maintain present markets or to create new or larger markets for cattle raised or marketed  
34 in this state or for the prevention, modification, or removal of trade barriers which  
35 obstruct the normal flow of beef to market. The commission is authorized to prepare,  
36 issue, administer, and enforce plans for promoting the sale of beef, provided that any such

1 plan shall be directed toward promoting and increasing the sale, use, and utilization of  
2 beef without reference to a particular brand or trade name; and provided, further, that no  
3 advertising or sales promotion program shall be issued by the commission which makes  
4 use of false or unwarranted claims in behalf of any such product or disparages the quality,  
5 value, sale, or use of any other agricultural commodity;

6 (2) Provisions prohibiting unfair trade practices by which any producer or market agent  
7 tends toward establishment of monopoly, unfairly discriminates among customers as to  
8 price or quality, or engages in fraudulent, deceptive, or misleading representations,  
9 concealment, or other similar sharp business practices which are harmful to his, her, or  
10 its customers, injurious to competitors, likely to bring into disrepute persons generally  
11 engaged in production and handling of beef, or detrimental to the intent and purpose of  
12 this article;

13 (3) Provisions for carrying on research studies in promoting the production, marketing,  
14 sale, use and utilization, processing, and improvement of cattle or beef or any  
15 combination thereof and for the expenditure of moneys for such purposes. In any research  
16 carried on under this paragraph, the commission shall seek the cooperation of the dean  
17 of the College of Agricultural and Environmental Sciences of the University of Georgia  
18 in selecting the research project or projects to be carried on from time to time. Insofar as  
19 practicable, the commission shall seek to have such projects carried out by the College  
20 of Agricultural and Environmental Sciences but, if the dean of the college determines that  
21 the college has no facilities for a particular project or if the commission determines that  
22 some other research agency has better facilities therefor, the project may be carried out  
23 by other research agencies selected by the commission; and

24 (4) Provisions establishing or providing authority for establishing, either as cattle are  
25 produced or delivered by producers to market agents or as cattle or beef is handled or  
26 otherwise prepared for market or as cattle or beef is marketed by producers or market  
27 agents, an educational program designed to acquaint producers, market agents, or other  
28 interested persons with quality improvement, including sanitation practices, procedures,  
29 or methods as applied to cattle or beef.

30 2-8-102.

31 (a)(1) Except as otherwise provided by subsection (i) of this Code section, no  
32 marketing order or major amendment thereto, directly affecting producers or producer  
33 marketing, issued pursuant to this article shall be made effective by the commission  
34 unless the commission finds that such marketing order or amendment thereto has been  
35 approved or favored in a referendum among producers directly affected by a majority  
36 of the valid votes cast in such referendum and the total number of valid votes cast

1 represents not less than 25 percent of the total number of producers of record with the  
2 commission.

3 (2) If the commission determines that a referendum shall be had, the commission shall  
4 establish a referendum period of 30 days. At the close of such referendum period, the  
5 commission shall count and tabulate the ballots filed during such period. If from such  
6 tabulation the commission finds that the number of producers voting in favor of such  
7 marketing order or amendment thereto is a majority of those casting valid votes and the  
8 total number of valid votes cast represents not less than 25 percent of the total number of  
9 producers of record with the commission, the commission may make such marketing  
10 order or amendment thereto effective. The commission is authorized to prescribe such  
11 additional procedures as may be necessary to conduct such referendum.

12 (3) In the event of the failure of any proposed marketing order to be approved, no  
13 additional referendum thereon shall be held during a period of 12 months from the date  
14 of the close of the previous referendum period.

15 (b)(1) Upon the recommendation of a majority of the members of the commission, the  
16 commission may make effective minor amendments to a marketing order. The  
17 commission may require a public hearing upon minor amendments if in its opinion the  
18 substance of such minor amendments so warrants. The commission, however, shall not  
19 be required to submit minor amendments for referendum approval.

20 (2) In making effective major amendments to a marketing order, the commission shall  
21 follow the same procedures prescribed in this article for the institution of a marketing  
22 order. For the purpose of this article, a major amendment to a marketing order shall  
23 include, but shall not be limited to, any amendment which adds to or deletes from any  
24 such marketing order any of the following types of regulations or authorizations:

25 (A) Authority for the establishment of plans for advertising and sales promotion of  
26 cattle or beef;

27 (B) Authority to prohibit unfair trade practices;

28 (C) Authority for carrying out research studies in the production, processing, or  
29 distribution of cattle or beef;

30 (D) Authority to increase an assessment rate beyond the maximum rate authorized by  
31 the marketing order in effect; or

32 (E) Authority to extend the application of the provisions of any marketing order to  
33 portions or uses of cattle or beef not previously subject to such provisions or to restrict  
34 or extend the application of such provisions upon the producers or market agents of  
35 such portions or uses of such cattle or beef.

36 (3) Modification of any provisions of any marketing order in effect, for the purpose of  
37 clarifying the meaning or application of such provisions or of modifying administrative

1 procedures for carrying out such provisions, are declared not to be a major amendment  
2 of such marketing order.

3 (c) Upon the issuance of any order making effective a marketing order or any suspension,  
4 amendment, or termination thereof, a notice thereof shall be posted on a public bulletin  
5 board maintained at the offices of the commission; and a copy of such notice shall be  
6 published as the commission may prescribe. No marketing order nor any suspension,  
7 amendment, or termination thereof shall become effective until the termination of a period  
8 of five days from the date of such posting and publication. It shall also be the duty of the  
9 commission to mail a copy of the notice of such issuance to all persons directly affected  
10 by the terms of such marketing order, suspension, amendment, or termination whose names  
11 and addresses are on file in the office of the commission and to every person who files in  
12 the office of the commission a written request for such notice.

13 (d) The commission shall have the power, consistent with this article and in accordance  
14 with marketing orders and agreements made effective under this article, to establish such  
15 general rules and regulations for uniform application to all marketing orders issued under  
16 this article as may be necessary to facilitate the administration and enforcement of such  
17 marketing orders. The provisions of subsection (c) of this Code section relative to posting,  
18 publication, and time of taking effect shall be applicable to any such general rule or  
19 regulation established pursuant to this subsection and applicable to marketing orders  
20 generally. Such notice shall be furnished by the commission for each marketing order in  
21 active operation.

22 (e) The commission shall have the power, consistent with this article, to establish  
23 administrative rules and regulations for each marketing order issued and made effective as  
24 may be necessary to facilitate the supervision, administration, and enforcement of each  
25 such order. The provisions of subsection (c) of this Code section relative to posting,  
26 publication, mailing of notice, and time of taking effect shall be applicable to any such  
27 administrative rules and regulations.

28 (f) Unless extended as provided in this Code section, all marketing orders issued under the  
29 authority of this article shall expire, terminate, and become of no force and effect at the  
30 expiration of five years from the date of the issuance of the original marketing order or, if  
31 such marketing order has been extended, at the expiration of five years after the date of any  
32 such extension.

33 (g) A marketing order shall be extended for a period of five years after the date of its  
34 original expiration only if extension of such marketing order has been approved or favored  
35 in a referendum among producers directly affected by at least 60 percent of the valid votes  
36 cast in such referendum and the total number of valid votes cast represents not less than 25  
37 percent of the total number of producers of record with the commission.

1 (h) If the commission determines that a referendum shall be held, the commission shall  
2 establish a referendum period of 30 days, such referendum period to terminate at least 30  
3 days prior to the expiration date of the marketing order which is the subject of such  
4 referendum. At the close of such referendum period, the commission shall count and  
5 tabulate the ballots cast during such period. If from such tabulation the commission finds  
6 that the number of producers voting in favor of the extension of such marketing order is not  
7 less than 60 percent of the total number of valid ballots cast and the total number of valid  
8 ballots cast represents not less than 25 percent of the total number of producers of record  
9 with the commission, then such marketing order shall be extended for a period of five years  
10 after the expiration date; otherwise, the marketing order shall expire, terminate, and be of  
11 no force and effect as provided in subsection (f) of this Code section.

12 (i) In lieu of the procedures provided by this Code section, the commission may elect to  
13 follow the procedures and requirements provided by Code Section 2-8-23 for purposes of  
14 making marketing orders or amendments or extensions thereof effective pursuant to  
15 referendum or assent.

16 2-8-103.

17 Marketing orders issued by the commission under this article may be limited in their  
18 application by prescribing the marketing areas or portions of the state in which a particular  
19 order shall be effective, provided that no marketing order shall be issued by the  
20 commission unless it embraces all persons of a like class who are engaged in a specific and  
21 distinctive agricultural industry or trade within this state.

22 2-8-104.

23 (a)(1) For the purpose of providing funds to defray the necessary expenses incurred by  
24 the commission in the formulation, issuance, administration, and enforcement of each  
25 marketing order issued under this article, each such marketing order shall provide for the  
26 levying and collection of assessments in sufficient amounts to defray such expenses. Each  
27 marketing order shall indicate the maximum rate of any such assessment which may be  
28 collected and the proportion, if any, payable by each producer and market agent directly  
29 regulated or affected by such marketing order. In administering such marketing order, the  
30 commission shall adopt, from time to time, budgets to cover necessary expenses and the  
31 assessment rate necessary to provide sufficient funds. If the commission finds that each  
32 such budget and assessment rate are proper and equitable and will provide sufficient  
33 moneys to defray the necessary expenses, it may approve such budget and rate of  
34 assessment and order that each producer and market agent so assessed shall pay to the  
35 commission, at such times and in such installments as the commission may prescribe, an

1 assessment, based upon the units in which beef is marketed or upon any other uniform  
2 basis which the commission determines to be reasonable and equitable, but in amounts  
3 which (A) in the case of producers will not exceed 2 1/2 percent of the gross dollar  
4 volume of sales of the cattle affected by all such producers regulated by such marketing  
5 order, or (B) in the case of market agents will not exceed 2 1/2 percent of the gross dollar  
6 volume of purchases of cattle affected by the marketing order from producers or of the  
7 gross dollar volume of sales of cattle affected by the marketing order and handled by all  
8 such market agents regulated by such marketing order during the period during which  
9 such marketing order is effective.

10 (2) No assessments levied and collected under this subsection shall be used in carrying  
11 out any advertising or sales promotion plans.

12 (b)(1) Each marketing order which authorizes the carrying out of advertising and sales  
13 promotion plans shall provide for the levying and collection of assessments in sufficient  
14 amounts to defray the expenses of such activities. Each such marketing order shall  
15 indicate the maximum rate of any such assessment and the proportion, if any, payable by  
16 each producer and market agent directly regulated or affected by such marketing order.  
17 The commission shall adopt budgets to cover such expenses and establish the assessment  
18 rate necessary to provide sufficient funds. If the commission finds that each such budget  
19 and assessment rate are proper and equitable and will provide sufficient moneys to defray  
20 such expenses, it may approve such budget and approve and levy such assessment. Any  
21 assessments so established shall be based upon the units in which cattle are marketed or  
22 upon any other uniform basis which the commission determines to be proper and  
23 equitable. Any assessment rates established under this subsection shall be in amounts not  
24 to exceed 4 percent of the gross dollar volume of sales by all producers or by all market  
25 agents regulated by such marketing order during the period during which such marketing  
26 order is effective.

27 (2) Assessments levied and collected under this subsection shall be the only assessments  
28 used in carrying out advertising or sales promotion plans for purposes of this article.

29 (3) Any producer may at any time elect not to be subject to any assessment levied for  
30 purposes of this subsection, and any producer who has so elected in accordance with this  
31 paragraph shall be exempt from levy, not be assessed, and have no liability for  
32 assessment for purposes of this subsection. Any producer who has so elected may  
33 thereafter cancel such election at any time, in which event the producer's exemption shall  
34 cease. Any such election or cancellation by a producer shall be submitted in writing to  
35 the commission, in such form and manner as specified by the Commissioner.

36 (c) At no time shall the combined amount of assessments in effect pursuant to subsections  
37 (a) and (b) of this Code section exceed \$1.00 per head of cattle.

1 (d) In the event that the commission has reason to believe that the administration of a  
2 marketing order will be facilitated or the attainment of the purposes and objectives of the  
3 marketing order will be promoted thereby, the commission is authorized to borrow money,  
4 with or without interest, to carry out any provision of any marketing order authorized by  
5 this article and may hypothecate anticipated assessment collections applicable to such  
6 respective provisions.

7 (e) In lieu of requiring advance deposits for defraying administrative or advertising and  
8 sales promotion expenses until such time as sufficient moneys are collected for such  
9 purposes from the payment of assessments established pursuant to this Code section, the  
10 commission is authorized to receive and disburse for such purposes contributions made by  
11 producers or market agents. The commission shall not be held responsible for the  
12 repayment of such contributions, provided that whenever collections from the payment of  
13 established assessments credited to the respective marketing order accounts are sufficient  
14 so to warrant, the commission shall repay contributions or shall authorize the application  
15 of such contributions to the assessment obligations of the persons who made such  
16 contributions.

17 (f)(1) Each and every market agent for which an assessment has been established by or  
18 pursuant to this article shall, at the time of purchasing or acquiring any such cattle from  
19 the producer thereof, collect from such producer the assessment established by or in  
20 accordance with this article and remit the same to the commission. The liability of such  
21 market agent under this article shall not be discharged except upon receipt of such sums  
22 by the commission. For the purpose of this subsection, to ensure compliance with this  
23 Code section, and for the administrative convenience of the commission in enforcing  
24 payment and collection of such assessments, delivery by a producer to a market agent for  
25 processing of any cattle upon which an assessment has been established shall be deemed  
26 a sale of such cattle within the meaning of this Code section; and the assessment shall  
27 thereupon attach and become due, regardless of whether such market agent actually  
28 purchases such cattle for himself or herself or only processes same for a consideration  
29 payable by the producer or another person and such cattle are thereafter sold to another  
30 person, provided that upon collection of such assessment by the market agent to whom  
31 such cattle are so delivered for processing only, no further or additional assessment shall  
32 attach or become due by reason of the subsequent sale by such producer of such  
33 processed cattle to another person or market agent.

34 (2) This subsection shall not apply to an assessment against a producer from which such  
35 producer is exempt under subsection (b) of this Code section.

36 (g) The commission may prescribe such rules as may be necessary and reasonable for the  
37 orderly reporting and transmitting of assessments by market agents and may take all legal

1 action necessary to enforce payment of the same by market agents. The commission is  
2 authorized to issue executions for the same in like manner as executions are issued for ad  
3 valorem property taxes due the state. It shall be the duty of each and every sheriff of this  
4 state and their lawful deputies, upon the request of the commission, to levy and collect such  
5 executions and to make their return thereof to the commission in like manner as such tax  
6 executions are levied and return thereof made to county tax collectors and tax  
7 commissioners. The commission shall likewise be authorized to collect, by execution as  
8 provided in this subsection or otherwise, directly from the producer against whom any  
9 assessment levied under this Code section may be found due whenever it is determined that  
10 such producer has sold such affected cattle giving rise to such liability to a person other  
11 than to a market agent who has collected such assessment and is required by this Code  
12 section to remit the same to the commission. Furthermore, the commission may proceed  
13 against such producer and the purchaser of such cattle simultaneously if the purchaser is  
14 a market agent required to collect such assessment, until satisfaction is obtained.

15 (h) Any moneys collected by the commission pursuant to this article shall be deposited in  
16 a bank or other depository approved by the commission and shall be disbursed by the  
17 commission only for the necessary expenses incurred by the commission, as approved by  
18 the commission. Funds so collected shall be deposited and disbursed in conformity with  
19 appropriate rules and regulations prescribed by the commission. All such expenditures by  
20 the commission shall be audited at least annually by the state auditor and a copy of such  
21 audit shall be delivered within 30 days after the completion thereof to the Governor and the  
22 commission. If the commission is abolished, any funds remaining in its hands at such time  
23 shall be used to pay the existing obligations of the commission and the expenses incurred  
24 in winding up the affairs of the commission. Any excess remaining shall escheat to the  
25 state and shall be paid into the state treasury as unclaimed trust funds.

26 (i) Moneys deposited by the commission pursuant to this Code section which the  
27 commission determines are available for investment may be invested or reinvested by the  
28 commission as provided for funds of this state or of any retirement system created by law,  
29 provided that all moneys invested shall be invested in those areas of production that will  
30 provide a return at the highest bank interest rate available. It shall be the duty of the  
31 commission annually to review these investments and determine whether they are in  
32 compliance with this Code section.

33 2-8-105.

34 (a) Any assessment levied or established in accordance with this article in such specified  
35 amount as may be determined by the commission pursuant to this article shall constitute  
36 a personal debt of every person so assessed and shall be due and payable to the commission

1 when payment is called for by the commission. In the event of the failure of such person  
2 to pay any such assessment upon the date determined by the commission, the commission  
3 may file an action against such person in a court of competent jurisdiction for the collection  
4 thereof.

5 (b) In the event that any producer or market agent duly assessed pursuant to this article  
6 fails to pay to the commission the amount so assessed on or before the date specified by  
7 the commission, the commission is authorized to add to such unpaid assessment an amount  
8 not exceeding 10 percent of such unpaid assessment to defray the cost of enforcing the  
9 collection of such unpaid assessment.

10 (c) The provisions of subsection (a) of this Code section with respect to collection of  
11 assessments by action are in addition to and cumulative of the provisions of this article  
12 authorizing the issuance of executions for assessments by the commission. The 10 percent  
13 penalty authorized to be assessed upon delinquent assessments under subsection (b) of this  
14 Code section may likewise be included in any execution issued by the commission. Such  
15 remedies may be pursued concurrently until satisfaction is obtained upon either. Any  
16 penalty recovered shall become a part of the principal assessment levied and shall be for  
17 the use of the commission as are other moneys received under this article.

18 (d) This Code section shall not apply to an assessment against a producer from which such  
19 producer is exempt under subsection (b) of Code Section 2-8-104.

20 2-8-106.

21 (a) The commission may require any and all market agents subject to the provisions of any  
22 marketing order issued pursuant to this article:

23 (1) To maintain books and records reflecting their operations under the marketing order;

24 (2) To furnish to the commission or its duly authorized or designated representatives  
25 such information as may from time to time be requested by them relating to operations  
26 under the marketing order; and

27 (3) To permit inspection by the commission or its duly authorized or designated  
28 representatives of such portions of such books and records as relate to operations under  
29 the marketing order.

30 (b) Information obtained by any person under this Code section shall be confidential and  
31 shall not be disclosed by him or her to any other person, except to a person with like right  
32 to obtain the information or to any attorney employed to give legal advice thereupon or by  
33 court order.

34 (c) In order to carry out the purposes of this Code section, the commission may hold  
35 hearings, take testimony, administer oaths, subpoena witnesses, and issue subpoenas for  
36 the production of books, records, or documents of any kind.

1 2-8-107.

2 Any person who violates any provision of this article or any marketing order duly issued  
3 by the commission and in effect under this article or who violates any rule or regulation  
4 issued by the commission pursuant to this article or of any marketing order duly issued and  
5 effective under this article shall be civilly liable to the commission for a penalty in an  
6 amount not to exceed \$500.00 for each and every violation thereof, the amount of such  
7 penalty to be fixed by the commission after notice and hearing as provided by Chapter 13  
8 of Title 50, the 'Georgia Administrative Procedure Act,' for contested cases and recoverable  
9 by a civil action brought in the name of the commission or by execution issued in like  
10 manner as for assessments provided by Code Section 2-8-104. Any moneys recovered  
11 pursuant to this Code section shall be deposited and disbursed in accordance with  
12 subsection (e) of Code Section 2-8-104 as are other moneys.

13 2-8-108.

14 (a) The Attorney General of this state shall, upon complaint by the commission, or may,  
15 upon his or her own initiative if after examination of the complaint and evidence he or she  
16 believes a violation has occurred, bring an action in the superior court in the name of the  
17 commission for civil penalties or for injunctive relief, including specific performance of  
18 any obligation imposed by a marketing order or any rule or regulation issued under this  
19 article, or both, against any person violating any provisions of this article or of any  
20 marketing order or any rule or regulation duly issued by the commission under this article.

21 (b) If it appears to the court, upon any application for a temporary restraining order, upon  
22 the hearing of any order to show cause why a preliminary injunction should not be issued,  
23 or upon the hearing of any motion for a preliminary injunction, or if the court finds in any  
24 such action that any defendant therein is violating or has violated any provision of this  
25 article or of any marketing order or any rule or regulation duly issued by the commission  
26 under this article, then the court shall enjoin the defendant from committing further  
27 violations and may compel specific performance of any obligation imposed by a marketing  
28 order or any rule or regulation issued by the commission under this article. It shall not be  
29 necessary in such event to allege or prove lack of an adequate remedy at law.

30 (c) In any action brought by the Attorney General to enforce any of the provisions of this  
31 article or of any marketing order issued by the commission and effective under this article  
32 or of any rule or regulation issued by the commission pursuant to any marketing order, the  
33 judgment, if in favor of the commission, may provide that the defendant pay to the  
34 commission the costs incurred by the commission in the prosecution of such action.

1 2-8-109.

2 (a) The commission on its own motion may, and upon the complaint of any interested  
3 party charging a violation of any provision of this article or of any provision of any  
4 marketing order or any rule or regulation issued by the commission and effective under this  
5 article shall, either refer the matter directly to the Attorney General of this state or to any  
6 prosecuting attorney of this state for the institution of legal proceedings thereupon or, if the  
7 commission deems it necessary or advisable, immediately call an administrative hearing,  
8 pursuant to the provisions of Chapter 13 of Title 50, the 'Georgia Administrative Procedure  
9 Act,' governing contested cases, to consider the charges set forth in such verified  
10 complaint.

11 (b) In case the matter is referred directly by the commission to the Attorney General or any  
12 prosecuting attorney, it shall be the duty of such officer, if after examination of the  
13 complaint and the evidence he or she believes that a violation has occurred, to bring an  
14 appropriate action or actions in a court or courts of competent jurisdiction in this state.

15 (c) After an administrative hearing, if the commission finds that a violation has occurred,  
16 it shall enter its findings and notify the parties to such complaint. In its discretion, the  
17 commission shall either refer the matter to the Attorney General for the institution of legal  
18 proceedings or notify such parties to cease and desist from further violation. Upon the  
19 refusal or failure of such parties to comply or if the commission finds that the facts or  
20 circumstances warrant immediate prosecution, the commission shall file a complaint with  
21 the Attorney General or with any prosecuting attorney of this state requesting that such  
22 officer commence any or all actions authorized in this article against such respondent or  
23 respondents in a court of competent jurisdiction.

24 2-8-110.

25 (a) Any person who willfully renders or furnishes a false or fraudulent report, statement,  
26 or record required pursuant to this article or any marketing order effective under this article  
27 shall be guilty of a misdemeanor.

28 (b) Any market agent or other person engaged in the handling or processing of cattle or  
29 beef or in the wholesale or retail trade thereof who fails or refuses to furnish, upon request,  
30 information concerning the name and address of the person from whom he or she has  
31 received cattle or beef regulated by a marketing order issued and in effect under this article  
32 and the quantity of such cattle or beef received shall be guilty of a misdemeanor.

33 2-8-111.

34 Any person who violates any provision of this article or any provision of any marketing  
35 order duly issued by the commission under this article shall be guilty of a misdemeanor.

1 2-8-112.

2 The penalties and remedies prescribed in this article with respect to any violation  
3 mentioned shall be concurrent and alternative. Neither singly nor combined shall such  
4 penalties and remedies be exclusive; rather, either singly or combined, such penalties and  
5 remedies shall be cumulative with any and all other civil, criminal, or alternative rights,  
6 remedies, forfeitures, or penalties provided or allowed by law with respect to any such  
7 violation.

8 2-8-113.

9 This article shall not be applicable to any retailer of beef except to the extent that any  
10 retailer is included within the definition of 'market agent' pursuant to paragraph (11) of  
11 Code Section 2-8-91.

12 2-8-114.

13 The promulgation, adoption, and amendment of rules and regulations by the commission  
14 shall be subject to the requirements of Chapter 13 of Title 50, the 'Georgia Administrative  
15 Procedure Act.'

16 **PART II**

17 **SECTION 2-1.**

18 Said title is further amended in reserved Chapter 15 by striking the sentence "Reserved."  
19 immediately following the chapter designation and inserting in lieu thereof the following:

20 "2-15-1.

21 This chapter may be cited as the 'Georgia Pacific White Shrimp Aquaculture Development  
22 Act of 2004.'

23 2-15-2.

24 As used in this chapter, the term:

25 (1) 'Aquaculturalist' means a person or firm engaged in aquaculture.

26 (2) 'Aquaculture' means the extensive or intensive farming of aquatic animals and aquatic  
27 plants.

28 (3) 'Pacific white shrimp' means the species *Penaeus vannamei*.

1 2-15-3.

2 (a) There is created the Pacific White Shrimp Aquaculture Development Advisory  
3 Council. The council shall be composed of 15 members as follows:

4 (1) One member representing agriculture at large to be appointed by mutual agreement  
5 of the chairpersons of the House and Senate Committees on Agriculture and Consumer  
6 Affairs.

7 (2) The dean of the College of Agriculture, Home Economics, and Allied Programs of  
8 Fort Valley State University or his or her representative;

9 (3) The chairperson of the Committee on Agriculture and Consumer Affairs of the House  
10 of Representatives or his or her representative;

11 (4) The chairperson of the Committee on Agriculture and Consumer Affairs of the  
12 Senate or his or her representative;

13 (5) The Commissioner or his or her representative;

14 (6) The commissioner of natural resources or his or her representative;

15 (7) The commissioner of industry, trade, and tourism or his or her representative; and

16 (8) Eight members to be appointed as provided by this paragraph. The President of the  
17 Senate and the Speaker of the House of Representatives each shall appoint four members  
18 as follows:

19 (A) Two members shall be representatives of the pacific white shrimp aquaculture  
20 industry;

21 (B) One member shall be a representative of the aquaculture supply and equipment  
22 industry; and

23 (C) One member shall be a representative of a private industry which is doing research  
24 in the promotion of pacific white shrimp aquaculture.

25 Each of the nine appointed members shall be appointed for a term of two years and until  
26 a successor is appointed and assumes membership on the council. The terms of the first  
27 such appointed members shall begin on the effective date of this chapter.

28 (b) The purpose of the council shall be to inform and advise the department and the  
29 Department of Natural Resources regarding important developments in aquaculture of  
30 pacific white shrimp.

31 (c) The members of the council shall enter upon their duties without further act or  
32 formality. The council may make such bylaws for its government as it deems necessary but  
33 is under no duty to do so. The council may appoint working subcommittees based on  
34 identified needs. These subcommittees may consist of noncouncil members who exhibit  
35 an interest in the development of the pacific white shrimp aquaculture industry of Georgia.

36 (d) Eight members of the council shall constitute a quorum necessary for the transaction  
37 of business, and a majority vote of those present at any meeting at which there is a quorum

1 shall be sufficient to do and perform any action permitted the council by this chapter. No  
2 vacancy on the council shall impair the right of a quorum to transact any and all business  
3 of the council.

4 (e) The members shall not receive compensation for their services on the council but those  
5 members who are public officials or employees shall be reimbursed from the funds of their  
6 employing department, agency, or branch of government for per diem, travel, and other  
7 expenses in the same manner and amount as they otherwise receive for performing services  
8 for their respective departments, agencies, or branches of government.

9 (f) The council shall meet upon the call of its chairperson, who shall be elected by the  
10 members of the council. The chairpersons of the Committees on Agriculture and  
11 Consumer Affairs of the House of Representatives and the Senate shall serve as  
12 cochairpersons of the council until such time as a chairperson of the council is elected by  
13 the members.

14 (g) The council is authorized to conduct meetings at such places and at such times as it  
15 considers expedient and to do all other things consistent with this chapter which are  
16 necessary or convenient to enable it to exercise its powers, perform its duties, and  
17 accomplish the objectives and purposes of this chapter.

18 (h) Staff support for the council shall be provided by the department and the Department  
19 of Natural Resources.

20 2-15-4.

21 (a) There shall be a pacific white shrimp aquaculture program within the department.

22 (b) The department shall make a thorough study of pacific white shrimp aquaculture and  
23 the potential for development and enhancement of such aquaculture in the state. It shall be  
24 the duty of the department to develop, distribute, and, from time to time, amend a pacific  
25 white shrimp aquaculture development plan for the State of Georgia for the purpose of  
26 facilitating the establishment and growth of economically viable pacific white shrimp  
27 aquaculture enterprises in Georgia. Such plan shall include:

28 (1) An evaluation of Georgia's natural resources as they relate to pacific white shrimp  
29 aquaculture;

30 (2) An evaluation of pacific white shrimp and its potential for culture in Georgia;

31 (3) An identification of constraints to development of pacific white shrimp aquaculture  
32 in Georgia and recommendations on methods to alleviate such constraints;

33 (4) An identification of the role of the department in supporting the pacific white shrimp  
34 aquaculture industry, including an evaluation of existing physical and personnel resources  
35 and recommendations for allocation of additional resources where needed;

1 (5) A list of the resources, training programs, technical assistance, and other programs  
2 available to prospective pacific white shrimp aquaculturalists;

3 (6) Recommendations for implementation of the plan; and

4 (7) An identification of the role of other state and federal agencies in the development  
5 of the pacific white aquaculture industry.

6 (c)(1) To aid in performing its duties under this Code section, the department shall rely  
7 upon, to the extent feasible, the Georgia Center for Aquaculture Development at Fort  
8 Valley State University as a state-wide center for providing information, conducting  
9 research and development, and technology transfer training on fresh-water and marine  
10 aquaculture in diverse production systems.

11 (2) Middle Georgia Technical College shall collaborate, to the extent feasible, with the  
12 Georgia Center for Aquaculture Development at Fort Valley State University on  
13 aquaculture training.

14 2-15-5.

15 (a) Any person or firm engaged in pacific white shrimp aquaculture shall apply to the  
16 department for a pacific white shrimp aquaculture registration. The lawfully obtained  
17 pacific white shrimp of an aquaculturalist registered under this chapter shall be privately  
18 owned subject to regulation by the department; provided, however, any person selling  
19 pacific white shrimp without first obtaining a pacific white shrimp aquaculture registration  
20 shall be considered to be selling 'wildlife' or 'wild animals' and shall be subject to the  
21 provisions of Title 27 governing such sale.

22 (b) On and after January 1 of the calendar year following the year in which this chapter  
23 becomes effective, it shall be a misdemeanor for any person or firm to engage in pacific  
24 white shrimp aquaculture unless such person or firm is registered as provided by this  
25 chapter; except that this subsection shall not apply to the employees of a registered pacific  
26 white shrimp aquaculturalist.

27 2-15-6.

28 The department shall register persons engaged in pacific white shrimp aquaculture under  
29 the applicable provisions of this chapter. Such registration or any renewal thereof shall  
30 expire on December 31 of each even-numbered year following registration; provided,  
31 however, that any registration shall expire 30 days following any change in the status of  
32 any information required by the provisions of this chapter or by any rule or regulation  
33 adopted pursuant to this chapter to be reported to the department. The department shall  
34 issue to registrants who update or renew their registration new certificates of registration  
35 for the full period of registration provided for in this Code section.

1 2-15-7.

2 (a) All applications to the department for registration as a pacific white shrimp  
3 aquaculturalist shall:

4 (1) Designate an address in this state where the applicant can be personally served with  
5 legal process;

6 (2) Contain an appointment of an agent in this state for acceptance of service of legal  
7 process, together with the agent's address in this state; or

8 (3) Contain a designation of the Secretary of State for acceptance of service of legal  
9 process.

10 (b) A copy of such application shall be forwarded to the Secretary of State by the  
11 department.

12 (c) The Commissioner shall by rule or regulation establish a registration fee in such  
13 amount as it reasonable and necessary to cover administrative costs.

14 2-15-8.

15 The filing of an application with the department for registration as a pacific white shrimp  
16 aquaculturalist shall constitute an admission by the applicant that the applicant is doing  
17 business in this state.

18 2-15-9.

19 (a) The Commissioner may deny registration to:

20 (1) Any applicant with a criminal record;

21 (2) Any applicant who is found by the Commissioner to have violated any law or rule  
22 administered by the department or the Department of Natural Resources or any regulation  
23 or quarantine of the department or the Department of Natural Resources; or

24 (3) A corporation, when any of its officers has a criminal record or is found by the  
25 Commissioner to have violated any law administered by the department or the  
26 Department of Natural Resources or any regulation or quarantine of the department or the  
27 Department of Natural Resources.

28 (b) In the case of a partnership, all parties shall be considered applicants for the purpose  
29 of this Code section.

30 (c) No registration shall be denied under this chapter without opportunity for hearing in  
31 accordance with Chapter 13 of Title 50, the 'Georgia Administrative Procedure Act.'

32 2-15-10.

33 The Commissioner may revoke any outstanding registration where the holder of the same  
34 or any officer or agent of the holder is found by the Commissioner to have violated any law

1 or rule administered by the department or the Department of Natural Resources or any  
2 regulation or quarantine of the department or the Department of Natural Resources,  
3 provided that no registration shall be revoked under this Code section without opportunity  
4 for hearing in accordance with Chapter 13 of Title 50, the 'Georgia Administrative  
5 Procedure Act.'

6 2-15-11.

7 All registration certificates issued by the department shall be evidence of a registration. The  
8 department shall maintain a current list of all persons registered under this chapter.

9 2-15-12.

10 (a) The Commissioner shall make and publish such rules and regulations, not inconsistent  
11 with law, as are reasonable and necessary to carry out the purposes of this chapter.

12 (b) Such rules and regulations shall include, without limitation, best management practices  
13 that shall serve as protocols for the establishment and maintenance of responsible and  
14 sustainable pacific white shrimp aquaculture and for the protection of public health and  
15 safety, wildlife, and natural resources. By way of example only, such practices may cover  
16 site selection, site plans, stocking, disease importation management, escapement of eggs,  
17 fry, and adults, harvesting, transportation of product, effective management, food safety  
18 at the farm level, and reporting requirements. Compliance with such best management  
19 practices shall be a condition of any pacific white shrimp aquaculture registration  
20 certificate issued under this chapter.

21 2-15-13.

22 (a) It shall be unlawful for any person to have in his or her possession pacific white shrimp  
23 obtained from a pacific white shrimp aquaculturalist without a bona fide bill of sale or  
24 lading that provides the date of transaction, identifies the seller, and details at least two of  
25 the following three criteria for pacific white shrimp: number, weight, or average length.

26 (b) It shall be unlawful to sell pacific white shrimp produced by aquaculture which shrimp  
27 the department has determined to have diseases or parasites that would be harmful to native  
28 wildlife populations, including without limitation any viruses that may be latent in exotics  
29 but problematic if introduced into indigenous stocks.

30 (c) Wholesale fish dealers or retail fish dealers properly licensed under Title 27 may sell  
31 pacific white shrimp obtained from a pacific white shrimp aquaculturalist registered under  
32 this chapter.

33 (d) The Commissioner may by rule or regulation prohibit, condition, or limit the  
34 importation, possession, or sale in this state of pacific white shrimp where the same are

1 found to be harmful to endemic wildlife populations or where the importation, possession,  
2 or sale might introduce or spread disease or parasites, including without limitation any  
3 viruses that may be latent in exotics but problematic if introduced into indigenous stocks.  
4 The Commissioner shall consult with the commissioner of natural resources to determine  
5 conditions and limitations regarding importing pacific white shrimp to protect endemic  
6 wildlife populations from disease, parasites, or other harm.

7 (e) Any pacific white shrimp in the postlarval stage obtained for growout must be free of  
8 disease.

9 (f) Employees or agents of the department shall confiscate any pacific white shrimp  
10 imported, purchased, or acquired by any person in violation of this Code section or any rule  
11 or regulation of the Commissioner adopted pursuant to this Code section.

12 2-15-14.

13 (a) Any inspector or other person authorized to ascertain compliance with any provision  
14 of this chapter or any rule or regulation of the department pertaining to pacific white  
15 shrimp aquaculture may enter during normal business hours and inspect the premises of a  
16 pacific white shrimp aquaculturalist to determine whether such person is in compliance  
17 with the rules and regulations of the department.

18 (b) In the event any person refuses to give his or her consent to an inspection as provided  
19 in subsection (a) of this Code section, the Commissioner or any person authorized to make  
20 inspections may seek a warrant to make an inspection as provided in this subsection:

21 (1) Any application for an inspection warrant shall be made to a person who is a judicial  
22 officer within the meaning of Code Section 17-5-21;

23 (2) An inspection warrant shall be issued only upon cause and when supported by an  
24 affidavit particularly describing the place, dwelling, structure, premises, or vehicle to be  
25 inspected and the purpose for which the inspection is to be made. In addition, the  
26 affidavit shall contain either a statement that consent to inspect has been sought and  
27 refused or facts or circumstances reasonably justifying the failure to seek such consent.  
28 Cause shall be deemed to exist if either reasonable legislative or administrative standards  
29 for conducting a routine or area inspection are satisfied with respect to the particular  
30 place, dwelling, structure, premises, or vehicle, or there is reason to believe that a  
31 condition of nonconformity exists with respect to the particular place, dwelling, structure,  
32 premises, or vehicle;

33 (3) An inspection warrant shall be effective for the time specified therein, but not for a  
34 period of more than 14 days, unless extended or renewed by the judicial officer who  
35 signed and issued the original warrant, upon satisfying himself or herself that such  
36 extension or renewal is in the public interest. Such inspection warrant must be executed

1 and returned to the judicial officer by whom it was issued within the time specified in the  
 2 warrant or within the extended or renewed time. After the expiration of such time, the  
 3 warrant, unless executed, is void;

4 (4) An inspection pursuant to an inspection warrant shall be made between 8:00 A.M.  
 5 and 6:00 P.M. of any day or at any time during operating or regular business hours. An  
 6 inspection should not be performed in the absence of an owner or occupant of the  
 7 particular place, dwelling, structure, premises, or vehicle unless specifically authorized  
 8 by the judicial officer upon a showing that such authority is reasonably necessary to  
 9 effectuate the purpose of the regulation being enforced. An inspection pursuant to a  
 10 warrant shall not be made by means of forcible entry, except that the judicial officer may  
 11 expressly authorize a forcible entry where facts are shown which are sufficient to create  
 12 a reasonable suspicion of a violation of this chapter or any rule or regulation promulgated  
 13 pursuant to this chapter, which, if such violation existed, would be an immediate threat  
 14 to health, safety, or welfare or where facts are shown establishing that reasonable  
 15 attempts to serve a previous warrant have been unsuccessful. Where prior consent has  
 16 been sought and refused and a warrant has been issued, the warrant may be executed  
 17 without further notice to the owner or occupant of the particular place, dwelling,  
 18 structure, premises, or vehicle to be inspected;

19 (5) It shall be unlawful for any person to refuse to allow an inspection pursuant to an  
 20 inspection warrant issued as provided in this subsection. Any person violating this  
 21 paragraph shall be guilty of a misdemeanor; and

22 (6) Under this subsection, an inspection warrant is an order, in writing, signed by a  
 23 judicial officer, directed to the Commissioner or any person authorized to make  
 24 inspections for the department, and commanding him or her to conduct any inspection  
 25 authorized by any rules or regulations promulgated pursuant to this chapter.

26 (c) The provisions of Code Section 27-1-23 shall not be applicable to any person registered  
 27 under this chapter."

## 28 **SECTION 2-2.**

29 Title 27 of the Official Code of Georgia Annotated, relating to game and fish, is amended by  
 30 striking paragraphs (23) and (77) of Code Section 27-1-2, relating to definitions relative to  
 31 said title, and inserting in their respective places the following:

32 "(23) 'Domestic species' means those taxa of animals which have traditionally lived in  
 33 a state of dependence on and under the dominion and control of man and have been kept  
 34 as tame pets, raised as livestock, or used for commercial breeding purposes, including,  
 35 but not limited to, dogs, cats, horses, cattle, ratites, and chickens. Animals which live in  
 36 a captive or tame state and which lack a genetic distinction from members of the same

1 taxon living in the wild are presumptively wild animals, except that lawfully obtained  
 2 farmed fish which are held in confinement in private ponds shall be known as and  
 3 considered to be 'domestic fish,' but only if they are fish species which are either  
 4 indigenous to Georgia or are fish species which have been recognized prior to 1992 as  
 5 having an established population in Georgia waters other than private ponds; provided,  
 6 however, that *Morone americana*, white perch, shall not be a domestic fish; and provided,  
 7 further, that pacific white shrimp produced or used by and contained on the premises of  
 8 a pacific white shrimp aquaculturalist registered under Code Section 2-15-6 shall not be  
 9 presumed to be wild animals."

10 "(77) 'Wildlife' means any vertebrate or invertebrate animal life indigenous to this state  
 11 or any species introduced or specified by the board and includes fish, ~~except domestic~~  
 12 ~~fish produced by aquaculturists registered under Code Section 27-4-255~~, mammals, birds,  
 13 fish, amphibians, reptiles, crustaceans, and mollusks or any part thereof; except that such  
 14 term does not include any domestic fish produced by aquaculturalists registered under  
 15 Code Section 27-4-255 or any pacific white shrimp produced or used by and lawfully  
 16 contained on the premises of a pacific white shrimp aquaculturalist as those terms are  
 17 defined by Code Section 2-15-2."

### 18 SECTION 2-3.

19 Said title is further amended by striking Code Section 27-2-14, relating to permits for  
 20 liberation of wildlife or liberation of domestic fish, and inserting in lieu thereof the  
 21 following:

22 "27-2-14.

23 It shall be unlawful for any person to liberate any wildlife within this state or to liberate  
 24 domestic fish or pacific white shrimp (*Penaeus vannamei*) except into private ponds, except  
 25 under permit from the department; provided, however, that pen raised quail may be  
 26 released for purposes of training pointing, flushing, and retrieving dogs."

### 27 SECTION 2-4.

28 Said title is further amended by striking Code Section 27-4-75, relating to sale of fish by  
 29 commercial fish hatcheries, sale of game fish, bill of sale or lading for possession of certain  
 30 game fish and domestic fish, and sale of diseased fish, and inserting in lieu thereof the  
 31 following:

- 1 "27-4-75.
- 2 (a) It shall be unlawful to sell any fish from a commercial fish hatchery as defined in Code  
3 Section 27-1-2 unless the hatchery is licensed under Code Section 27-2-23 or except as  
4 follows:
- 5 (1) Fish may be sold as provided in Code Section 27-4-74 or 27-4-76; and
- 6 (2) Domestic fish as defined in paragraph (23) of Code Section 27-1-2 and that are  
7 produced by an ~~aquaculturist~~ aquaculturalist registered under Code Section 27-4-255.
- 8 (b) Except as provided in Code Section 27-4-74 and except for persons licensed as  
9 wholesale or retail fish dealers as provided in Code Section 27-4-76, it shall be unlawful  
10 for anyone other than a commercial fish hatchery licensed under Code Section 27-2-23 to  
11 sell any species of game fish. It shall also be unlawful for any person to have in his or her  
12 possession any such game fish obtained from a commercial fish hatchery, wholesale fish  
13 dealer, or retail fish dealer or domestic fish from an ~~aquaculturist~~ aquaculturalist registered  
14 under Code Section 27-4-255 without a bona fide bill of sale or lading which provides the  
15 date of transaction, identifies the seller, and details at least two of the following three  
16 criteria for each species of fish contained therein: number, weight, or average length.
- 17 (c) It shall also be unlawful to sell fish from a commercial fish hatchery which the  
18 department has determined to have diseases or parasites which would be harmful to native  
19 fish populations."

20 **SECTION 2-5.**

21 Said title is further amended by striking Code Section 27-4-76, relating to licensing of  
22 wholesale and retail fish dealers and sale, transportation into state, or possession of live fish  
23 and fish eggs, and inserting in lieu thereof the following:

24 "27-4-76.

- 25 (a) It shall be unlawful to engage in the business of a wholesale or retail fish dealer, as  
26 defined in Code Section 27-1-2, without first obtaining an annual license from the  
27 department as provided in Code Section 27-2-23. Properly licensed wholesale fish dealers  
28 or retail fish dealers may sell game fish obtained from a licensed fish hatchery or domestic  
29 fish obtained from a ~~registered aquaculturist~~ an aquaculturalist registered under Code  
30 Section 27-4-255 or as otherwise provided in Code Section 27-4-74. Notwithstanding any  
31 other provision to the contrary, a licensed commercial fish hatchery shall not be required  
32 to obtain a license as a wholesale fish dealer or a retail fish dealer.
- 33 (b) Notwithstanding subsection (a) of this Code section, nonresident persons may sell and  
34 transport fish and fish eggs into the state without being required to procure a wholesale fish  
35 dealer license where the sale and shipment are made to a wholesale fish dealer duly  
36 licensed under Code Section 27-2-23.

1 (c) The board may by regulation prohibit or limit the importation, possession, or sale in  
 2 this state of live fish or fish eggs where the same are found to be harmful to endemic fish  
 3 populations or where the importation, possession, or sale might introduce or spread disease  
 4 or parasites.

5 (d) The conservation rangers or other agents or officials of the department shall confiscate  
 6 any fish imported, purchased, or acquired by any person in violation of this Code section  
 7 or any regulation promulgated by the board pursuant to this Code section."

8 **SECTION 2-6.**

9 Said title is further amended by striking paragraph (1) of Code Section 27-4-252, relating to  
 10 definitions relative to aquaculture development, and inserting in lieu thereof the following:

11 "(1) 'Aquaculture' means the extensive or intensive farming of aquatic animals, other than  
 12 pacific white shrimp as defined by Code Section 2-15-2, and aquatic plants."

13 **PART III**

14 **SECTION 3-1.**

15 (a) This part shall become effective upon approval of this Act by the Governor or upon its  
 16 becoming law without such approval.

17 (b) Part I of this Act shall become effective if and when the decision of the United States  
 18 Court of Appeals for the Eighth Circuit in the case of *Livestock Marketing Association v.*  
 19 *United States Department of Agriculture*, Nos. 02-2769/2832, slip. op. (8th Cir. July 8,  
 20 2003), holding the collection of mandatory assessments to pay for generic advertising of beef  
 21 and beef products under the federal Beef Promotion and Research Act of 1985, 7 U.S.C.  
 22 Section 2901, et seq., unconstitutional as a violation of the First Amendment to the  
 23 Constitution of the United States, is affirmed by the United States Supreme Court; provided,  
 24 however, that if a petition for writ of certiorari is denied in such case or such petition is  
 25 granted but the decision of the United States Court of Appeals for the Eighth Circuit is not  
 26 affirmed prior to July 1, 2006, Part I of this Act shall not become effective and shall stand  
 27 repealed on July 1, 2006.

28 (c) Part II of this Act shall become effective only upon the effective date of a specific  
 29 appropriation of funds for purposes of said part of this Act as expressed in a line item of an  
 30 appropriations Act enacted by the General Assembly.

31 **SECTION 3-2.**

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