

Senate Bill 78

By: Senators Anderson of the 24th, Wilkinson of the 50th, Black of the 8th, Harper of the 7th, Kirk of the 13th and others

AS PASSED SENATE

**A BILL TO BE ENTITLED
AN ACT**

1 To amend Article 2 of Chapter 2 of Title 26, relating to the adulteration and misbranding of
2 food, so as to authorize the Commissioner of Agriculture to issue a variance or waiver to
3 certain rules and regulations of the department; to provide for related matters; to repeal
4 conflicting laws; and for other purposes.

5 **BE IT ENACTED BY THE GENERAL ASSEMBLY OF GEORGIA:**

6 **SECTION 1.**

7 Article 2 of Chapter 2 of Title 26, relating to the adulteration and misbranding of food, is
8 amended by revising Code Section 26-2-34, relating to promulgation of regulations and
9 notice and hearing for regulations, as follows:

10 "26-2-34.

11 (a) The authority to promulgate regulations for the efficient enforcement of this article is
12 vested in the Commissioner. The Commissioner is authorized to make the regulations
13 promulgated under this article conform, insofar as practicable, with those promulgated
14 under the federal act.

15 (b) Hearings authorized or required by this article shall be conducted by the Commissioner
16 or such officer, agent, or employee as the Commissioner may designate for the purpose.

17 (c) Before promulgating any regulation authorized by Code Sections 26-2-35 and 26-2-37
18 and paragraph (10) of Code Section 26-2-28, the Commissioner shall give appropriate
19 notice of the proposal and of the time and place for a hearing. The regulation so
20 promulgated shall become effective on a date fixed by the Commissioner, which date shall
21 not be prior to 30 days after its promulgation. Such regulation may be amended or repealed
22 in the same manner as is provided for its adoption, except that, in the case of a regulation
23 amending or repealing any such regulation, the Commissioner, to such an extent as is
24 deemed necessary, in order to prevent undue hardship, may disregard the foregoing
25 provisions regarding notices, hearing, or effective date.

26 (d)(1) For purposes of this subsection, the term:

27 (A) 'Substantial hardship' means a significant, unique, and demonstrable economic,
28 technological, legal, or other type of hardship to the person requesting a variance or
29 waiver which impairs the ability of the person to continue to function in the regulated
30 practice or business.

31 (B) 'Variance' means a decision by an agency to grant a modification to all or part of
32 the literal requirements of a rule to a person who is subject to the rule.

33 (C) 'Waiver' means a decision by an agency not to apply all or part of a rule to a person
34 who is subject to the rule.

35 (2) The Commissioner may grant a variance or waiver to any rule promulgated pursuant
36 to this Code section when a person subject to such rule demonstrates that the purpose of
37 the underlying statute upon which the rule is based can be or has been achieved by other
38 specific means which are agreeable to the person seeking the variance or waiver and that
39 strict application of the rule would create a substantial hardship to such person.

40 (3) This subsection shall not apply, and no variance or waiver shall be sought or
41 authorized, if the granting of such variance or waiver would be harmful to the public
42 health, safety, or welfare."

43 **SECTION 2.**

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