TITLE 1

GENERAL PROVISIONS

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CHAPTER 1

GENERAL PROVISIONS

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Law reviews. — For article, "Fiction in the Code: Reading Legislation as Literature," see 34 Ga. St. U. L. Rev. 581 (2018).

1-1-1. Enactment of Code.

The statutory portion of the codification of Georgia laws prepared by the Code Revision Commission and the Michie Company pursuant to a contract entered into on June 19, 1978, is enacted and shall have the effect of statutes enacted by the General Assembly of Georgia. The statutory portion of such codification shall be merged with annotations, captions, catchlines, history lines, editorial notes, cross-references, indices, title and chapter analyses, and other materials pursuant to the contract and shall be published by authority of the state pursuant to such contract and when so published shall be known and may be cited as the "Official Code of Georgia Annotated."

History. — Ga. L. 1982, p. 3, § 1.

Cross references. — Powers and duties of Code Revision Commission regarding publication of Code, §§ 28-9-3, 28-9-5. Effect of reenactment of the Code, § 28-9-5. Authorization to use state emblem on cover of official Code, § 50-3-8(b).

Editor's notes. — The Michie Company, referred to in this Code section, now operates under the trade name LexisNexis®, a division of ReedElsevier.

For the Acts reenacting the Official Code of Georgia Annotated as amended by the text and numbering contained in the 1982 through 2018 supplements, see Ga. L. 1983, p. 3, § 1; Ga. L. 1984, p. 22, § 54; Ga. L. 1985, p. 149, § 54; Ga. L. 1986, p. 10, § 54; Ga. L. 1987, p. 3, § 54; Ga. L. 1988, p. 13, § 54; Ga. L. 1989, p. 14, § 54; Ga. L. 1990, p. 8, § 54; Ga. L. 1991, p. 94, § 54; Ga. L. 1992, p. 6, § 5; Ga. L. 1993, p. 91, § 54; Ga. L. 1994, p. 97, § 54; Ga. L. 1995, p. 10, § 54; Ga. L. 1996, p. 6, § 54; Ga. L. 1997, p. 143, § 54; Ga. L. 1998, p. 128, § 54; Ga. L. 1999, p. 81, § 54; Ga. L. 2000, p. 136, § 54; Ga. L. 2001, p. 4, § 54; Ga. L. 2002, p. 415, § 54; Ga. L. 2003, p. 140, § 54; Ga. L. 2004, p. 631, § 54; Ga. L. 2005, p. 60, § 54; Ga. L. 2006, p. 72, § 54; Ga. L. 2007, p. 47, § 54; Ga. L. 2008, p. 324, § 54; Ga. L. 2009, p. 8, § 54; Ga. L. 2010, p. 878, § 54; Ga. L. 2011, p. 752, § 54; Ga. L. 2012, p. 775, § 54, Ga. L. 2013, p. 141, § 54; Ga. L. 2014, p. 866, § 54; Ga. L. 2015, p. 5, § 54; Ga. L. 2016, p. 864, § 54/HB 737; Ga. L. 2017, p. 774, § 54/HB

323, Ga. L. 2018, p. 1112, § 54/SB 365, and Ga. L. 2019, p. 1056, § 54/SB52, respectively.

Law reviews. — For article, "Researching Georgia Law," see 9 Ga. St. U. L. Rev. 585 (1993). For article, "Researching Georgia Law," see 34 Ga. St. U. L. Rev. 741 (2015).

For discussion of the work of the Code Revision Commission in making the Code, see 18 Ga. St. B. J. 102 (1982).

JUDICIAL DECISIONS

Official Code publication controls over unofficial compilation. — Attorneys who cite unofficial publication of 1981 Code do so at their peril; in any situation wherein defendant's compilation differs in any way from statutory provisions of the Official Code of Georgia Annotated as published by Michie (now LexisNexis®), it is the Michie publication which is controlling. Georgia ex rel. Gen. Ass'y v. Harrison Co., 548 F. Supp. 110 (N.D. Ga. 1982), orders vacated, 559 F. Supp. 37 (N.D. Ga. 1983).

Cited in Axson v. State, 174 Ga. App. 236, 329 S.E.2d 566 (1985).

1-1-2. Legislative intent.

The enactment of this Code is intended as a recodification, revision, modernization, and reenactment of the general laws of the State of Georgia which are currently of force and is intended, where possible, to resolve conflicts which exist in the law and to repeal those laws which are obsolete as a result of the passage of time or other causes, which have been declared unconstitutional or invalid, or which have been superseded by the enactment of later laws. Except as otherwise specifically provided by particular provisions of this Code, the enactment of this Code by the General Assembly is not intended to alter the substantive law in existence on the effective date of this Code.

Cross references. — Effective date of Code, § 1-1-9.

Law reviews. — For survey article on trial practice and procedure, see 34 Mercer L. Rev. 299 (1982).

JUDICIAL DECISIONS

Official Code publication controls over unofficial compilation. — Attorneys who cite unofficial publication of 1981 Code do so at their peril; in any situation wherein defendant's compilation differs in any way from statutory provisions of the Official Code of Georgia Annotated as published by Michie (now Lexis-Nexis®), it is the Michie publication which is controlling. Georgia ex rel. Gen. Ass'y v. Harrison Co., 548 F. Supp. 110 (N.D. Ga. 1982), orders vacated, 559 F. Supp. 37 (N.D. Ga. 1983).

Alteration of substantive law not intended. — The primary purpose of the new codification was to rearrange the statutes as previously enacted by the General Assembly into a meaningful and cohesive order, a conclusion supported by language in this section that the Code "is not intended to alter the substantive laws in existence on the effective date of this Code." Georgia ex rel. Gen. Ass'y v. Harrison Co., 548 F. Supp. 110 (N.D. Ga. 1982), orders vacated, 559 F. Supp. 37 (N.D. Ga. 1983).

Sodomy statute not changed. — By the enactment of the Official Code of Georgia, the General Assembly did not intend to change the sodomy statute (O.C.G.A.

§ 16-6-2) to exclude as a crime the placing of one's mouth on the sexual organ of another. Porter v. State, 168 Ga. App. 703, 309 S.E.2d 919 (1983).

Eminent domain notice statute not changed. — Placement of O.C.G.A. §§ 22-1-8 and 22-2-20 in different Code chapters did not, under the plain meaning of the sections and the operation of this section, extend coverage of O.C.G.A. § 22-2-20 (notice of condemnation in eminent domain provisions) to other than private property. DOT v. City of Atlanta, 255 Ga. 124, 337 S.E.2d 327 (1985).

Shoplifting statute unchanged. — It was the intention of the legislature that the provisions now codified as paragraphs (1) and (2) of O.C.G.A. § 51-7-60, governing detention of persons suspected of shoplifting, be read in the conjunctive, notwithstanding the use of the disjunctive in the present Code section because the Code revision committee's substitution of the word "or" for "or provided" between the paragraphs tends to give the statute a potentially irrational effect. K Mart Corp. v. Adamson, 192 Ga. App. 884, 386 S.E.2d 680 (1989).

Cited in Jarmon v. Murphy, 164 Ga. App. 763, 298 S.E.2d 510 (1982); Ketchum v. State, 167 Ga. App. 858, 307 S.E.2d 742 (1983); Axson v. State, 174 Ga. App. 236, 329 S.E.2d 566 (1985); Whaley v. State, 260 Ga. 384, 393 S.E.2d 681 (1990); Kumar v. Hall, 262 Ga. 639, 423 S.E.2d 653 (1992); Brophy v. McCranie, 264 Ga. 187, 442 S.E.2d 230 (1994); Charter Medical Info. Servs., Inc. v. Collins, 266 Ga. 720, 470 S.E.2d 655 (1996); Sheriff v. State, 277 Ga. 182, 587 S.E.2d 27 (2003); Hardin v. NBC Universal, Inc., 283 Ga. 477, 660 S.E.2d 374 (2008).

1-1-3. Severability.

Except as otherwise specifically provided in this Code or in an Act or resolution of the General Assembly, in the event any title, chapter, article, part, subpart, Code section, subsection, paragraph, subparagraph, item, sentence, clause, phrase, or word of this Code or of any Act or resolution of the General Assembly is declared or adjudged to be invalid or unconstitutional, such declaration or adjudication shall not affect the remaining portions of this Code or of such Act or resolution, which shall remain of full force and effect as if such portion so declared or adjudged invalid or unconstitutional were not originally a part of this Code or of such Act or resolution. The General Assembly declares that it would have enacted the remaining parts of this Code if it had known that such portion hereof would be declared or adjudged invalid or unconstitutional. The General Assembly further declares that it would have enacted the remaining parts of any other Act or resolution if it had known that such portion thereof would be declared or adjudged invalid or unconstitutional unless such Act or resolution contains an express provision to the contrary.

JUDICIAL DECISIONS

Severability clause creates presumption of separability. — The presence of a severability clause in an Act reverses the usual presumption that the General Assembly intends the Act to be an entirety and creates an opposite presumption of separability. City Council v. Mangelly, 243 Ga. 358, 254 S.E.2d 315 (1979).

Cited in Georgia Ass'n of Educators v. Harris, 749 F. Supp. 1110 (N.D. Ga. 1990); Jekyll Island-State Park Auth. v. Jekyll Island Citizens Ass'n, 266 Ga. 152, 464 S.E.2d 808 (1996).

1-1-4. Validating Acts.

The omission from this Code of any Acts passed prior to the adoption of this Code which validated any bonds, notes, warrants, certificates, or other evidences of indebtedness issued by any political subdivision or instrumentality of the state shall in no way operate or be construed to repeal or destroy the effect of any and all of such validating Acts where such validating Acts have been otherwise lawfully passed and are not in conflict with the Constitution of the United States or the Constitution of Georgia.

1-1-5. Effect of adoption of Code upon rules or regulations.

Unless otherwise provided, the adoption of this Code shall not invalidate or affect any rules or regulations which were in effect on November 1, 1982, promulgated pursuant to authority given by law, and such rules and regulations shall remain in force until repealed, replaced, or invalidated.

JUDICIAL DECISIONS

Three-minute rule remains unchanged. — Although the Official Code of Georgia Annotated (O.C.G.A.) specifically repealed the Code of 1933, the Rules of the Superior Court were not a part of that repealed code even though they "conveniently" appeared therein. The three-minute rule is one of long standing, originally promulgated pursuant to authority given by law and never specifically repealed by the General Assembly. As such, the three-minute rule remains viable and unchanged by the adoption of the O.C.G.A. Hinson v. Castellio, 168 Ga. App. 301, 308 S.E.2d 705 (1983).

OPINIONS OF THE ATTORNEY GENERAL

Citations in traffic citation form. — Since there exists no requirement that there be citations to any Code sections on the Uniform Traffic Citation Form, the Code of Georgia of 1933 citations presently set forth on the form are mere surplusage; therefore, their removal or repeal by the new Code of Georgia Annotated will have no effect on the validity of the form. 1982 Op. Att'y Gen. No. 82-28.

1-1-6. Effect of adoption of Code upon terms of office and rights of officials or employees.

(a) The adoption of this Code shall not affect the term of office or the right to hold office of any person who is in office on November 1, 1982, unless otherwise expressly provided or unless such office is abolished by the adoption of this Code.

(b) The adoption of this Code shall not affect the compensation, expenses, per diem, allowances, retirement, or other rights of any official or employee of the state or any county, municipal corporation,

school system, political subdivision, authority, or other governmental entity within this state, unless otherwise provided in this Code.

1-1-7. Notes and catchlines of Code sections not part of law.

Unless otherwise provided in this Code, the descriptive headings or catchlines immediately preceding or within the text of the individual Code sections of this Code, except the Code section numbers included in the headings or catchlines immediately preceding the text of the Code sections, and title and chapter analyses do not constitute part of the law and shall in no manner limit or expand the construction of any Code section. All historical citations, title and chapter analyses, and notes set out in this Code are given for the purpose of convenient reference and do not constitute part of the law.

History. — Ga. L. 1982, p. 3, § 1.

JUDICIAL DECISIONS

Cited in Hogan v. State, 178 Ga. App. 534, 343 S.E.2d 770 (1986); Brown v. Earp, 261 Ga. 522, 407 S.E.2d 737 (1991); South v. Bank of Am., 250 Ga. App. 747, 551 S.E.2d 55 (2001).

1-1-8. References to state law or this Code.

(a) Unless otherwise indicated in the context, references in this Code to titles, chapters, articles, parts, subparts, or Code sections shall mean titles, chapters, articles, parts, subparts, or Code sections of this Code.

(b) Unless there is an expressed intention to the contrary, any reference in this Code or in any law of this state to another provision of this Code or law of this state shall mean and be construed to refer to such other provision or law as it now or hereafter exists.

(c) Any reference in any local or special law of this state to any Act or resolution of the General Assembly or to any title, chapter, section, or other portion of any prior code of this state shall be construed to be a reference to the appropriate title, chapter, article, part, subpart, Code section, subsection, paragraph, subparagraph, division, or subdivision of the Official Code of Georgia Annotated.

(d) Unless otherwise indicated by the context in which it is used, any citation in any public or private document, writing, or other instrument to a law of the State of Georgia which has been codified in the Official Code of Georgia Annotated shall be construed to be a reference to such law as contained in the Official Code of Georgia Annotated.

(e) Any reference in any Act of the General Assembly or in any other public or private document, writing, or other instrument to "O.C.G.A."

shall mean and refer to the Official Code of Georgia Annotated published under authority of the State of Georgia. The Official Code of Georgia Annotated published under authority of the State of Georgia may be cited or referred to as "O.C.G.A."

History. — Ga. L. 1981, Ex. Sess., p. 8, § 6; Ga. L. 1982, p. 3, § 1; Ga. L. 1983, p. 3, § 2.

1-1-9. Effective date of Code.

This Code shall become effective on November 1, 1982.

JUDICIAL DECISIONS

Editor's notes. — In light of the similarity of the statutory provisions, annotations decided under former Code 1863, § 2 are included in the annotations for this Code section.

Driving while license revoked under former Code provision. — Where a driver was declared a habitual violator by the Department of Public Safety under the provisions of former Code 1933, § 68B-308(a), then was convicted for operating a motor vehicle while the driver's license was still revoked pursuant to that action, after the Official Code of Georgia Annotated became effective on November 1, 1982, the revocation of the driver's license was effective "under this Code section" within the meaning of O.C.G.A. § 40-5-58(c), and the driver can be sentenced to a five-year confinement pursuant to that section. Ketchum v. State, 167 Ga. App. 858, 307 S.E.2d 742 (1983).

Effect of adopting the Code was to enact into one statute all of the sections of the Code. Barnes v. Carter, 120 Ga. 895, 48 S.E. 387 (1904); Atkinson v. Swords, 11 Ga. App. 167, 74 S.E. 1093 (1912). See also Central of Ga. Ry. v. State, 104 Ga. 831, 31 S.E. 531, 42 L.R.A. 518 (1898); Thornton v. State, 5 Ga. App. 397, 63 S.E. 301 (1908).

Adoption, not the compilation, is the legislative Act. Western & A.R.R. v. Young, 83 Ga. 512, 10 S.E. 197 (1889).

Errors were not adopted. City of Atlanta v. Gate City Gas Light Co., 71 Ga. 106 (1883); Bailey v. McAlpin, 122 Ga. 616, 50 S.E. 388 (1905).

If Act embodied in Code, title immaterial. — If an Act has been embodied in the Code and becomes a part of the law of this state upon the adoption of the Code, the contents of the title of the original Act are immaterial. Huff v. Markham, 70 Ga. 284 (1883); Central of Ga. Ry. v. State, 104 Ga. 831, 31 S.E. 531, 42 L.R.A. 518 (1898); Kennedy v. Meara, 127 Ga. 68, 56 S.E. 243, 9 Ann. Cas. 396 (1906).

Rulings on statute applicable to Code. — Rulings are all as applicable to the Code as to the statute on which they were made, for the Code is not substantially different from the statute. Wall v. Jones, 62 Ga. 725 (1879).

Omissions considered repeals. — Where provision of the Code treats the entire subject matter, what is omitted is repealed. Shumate v. Williams, 34 Ga. 245 (1866); Georgia R.R. & Banking Co. v. Wynn, 42 Ga. 331 (1871); Miller v. Southwestern R.R., 55 Ga. 143 (1875).

Valid statute erroneously omitted still in force. — A valid statute of this state in existence at the date of the adoption of the Code, but omitted therefrom through oversight or mistake, is still in force unless expressly or by necessary implication repealed by a subsequent statute or some provision of the Code. Georgia R.R. & Banking v. Wright, 124 Ga. 596, 53 S.E. 251, aff'd, 125 Ga. 589, 54 S.E. 52 (1906), rev'd on other grounds, 207 U.S. 127, 28 S. Ct. 47, 52 L. Ed. 134 (1907); Hicks v. Moyer, 10 Ga. App. 488, 73 S.E. 754 (1912); Farley v. State, 12 Ga. App. 643, 77 S.E. 1131 (1913); Wiggins v. State, 17 Ga. App. 748, 88 S.E. 411 (1916).

Where part of a statute omitted may be restored without inconsis-

tency, there is no repeal. Daniel v. Jackson, 53 Ga. 87 (1874).

Act relating to costs on discharge before magistrate remains valid. — The 1811 Act relating to costs on discharge before the magistrate, though not embodied in the Code, not being inconsistent with any of the provisions thereof, is still of force. Gault v. Wallis, 53 Ga. 675 (1875).

Discrepancies reconciled by court. — Because the subjects of the Code were written by different men, it is the duty of the court to reconcile discrepancies. Greer v. Haugabook, 47 Ga. 282 (1872). See also Gillis v. Gillis, 96 Ga. 1, 23 S.E. 107, 51 Am. St. R. 121, 30 L.R.A. 143 (1895).

Section not retroactive. — The Code is intended to apply to future contracts, and this section does not have a retroactive operation. Bass v. Ware, 34 Ga. 386 (1866); Bryan v. Doolittle, 38 Ga. 255 (1868); Napier v. Jones, 45 Ga. 520 (1872); Gholston v. Gholston, 54 Ga. 285 (1875).

Sale by executor under will made prior to Code valid. — Where the will of a testator who died prior to the adoption of the Code created a general power of sale in his executors for certain purposes named, a private sale was valid though not made until after the Code was adopted. Smith v. Hulsey, 62 Ga. 341 (1879).

Certain decisions made before the adoption of the Code are not now law. Adams v. Barlow, 69 Ga. 302 (1882).

Cited in Eaves v. J.C. Bradford & Co., 173 Ga. App. 470, 326 S.E.2d 830 (1985).

1-1-10. Specific repealer; provisions saved from repeal.

(a) The following Codes, laws, and parts of laws are repealed, except as otherwise provided in this Code section:

(1) The Code of Georgia of 1933, as amended;

(2) All general laws enacted by the General Assembly of Georgia prior to June 1, 1981, except this Code and except as otherwise provided in this Code section; and

(3) All codes enacted or approved by the General Assembly prior to the Code of Georgia of 1933.

(b) The following laws and parts of laws are not repealed by the adoption of this Code and shall remain of full force and effect until otherwise repealed, amended, superseded, or declared invalid or unconstitutional:

(1) Acts and resolutions conveying, granting, leasing, encumbering, selling, exchanging, or authorizing easements in specific state-owned property or rights therein;

(2) Acts and resolutions providing for appropriations of state funds;

(3) Acts and resolutions granting compensation to persons, firms, partnerships, corporations, and private or governmental entities injured by the state or its officials, officers, employees, or agents;

(4) Local Acts and resolutions of the General Assembly which are in effect on November 1, 1982, and which are not in conflict with this Code;

(5) Acts and resolutions which by their terms are applicable to a named superior court or judicial circuit, including but not limited to Acts fixing the terms of court and Acts providing for judges, district attorneys, or other personnel or their compensation, powers, or duties;

(6) Resolutions proposing amendments to the Constitution or proposing a new Constitution or portions thereof;

(7) Acts and resolutions ceding jurisdiction over territory within the state to the federal government;

(8) Acts and resolutions creating committees or commissions of the General Assembly or authorizing studies;

(9) Acts and resolutions providing for the furnishing of law books to various courts, governmental entities, libraries, and public officials;

(10) Acts and resolutions designating or naming highways, bridges, buildings, ferries, dams, structures, parks, natural resources, or other property or authorizing the placement of statues, plaques, memorials, portraits, or monuments;

(11) Resolutions relating to or providing for the internal operation of the General Assembly;

(12) Resolutions not intended to have the force and effect of law;

(13) General Acts of local application which are based on population and which have not been specifically repealed or declared invalid or unconstitutional;

(14) Acts and resolutions honoring, commending, or recognizing individuals, groups, principles, or ideas or urging that certain acts be done or refrained from by the federal, state, or local governments or by individuals, groups, or entities; and

(15) Acts and resolutions relieving sureties or bondsmen.

(c) The following specific laws and parts of laws are not repealed by the adoption of this Code and shall remain of full force and effect, pursuant to their terms, until otherwise repealed, amended, superseded, or declared invalid or unconstitutional:

(1) An Act for reviving and enforcing certain laws therein mentioned and adopting the common laws of England as they existed on May 14, 1776, approved February 25, 1784. (For the adopting Act of 1784, see Prince's 1822 Digest, p. 570; Cobb's 1851 Digest, p. 721; and Code of 1863, Section 1, paragraph 6.)

(2) Section 10 of an Act amending an Act prohibiting certain practices in connection with real estate transactions, approved March 24, 1981 (Ga. L. 1981, p. 480).

(3) Section 13 of an Act known as the "Georgia Marketing Act of 1981," approved April 13, 1981 (Ga. L. 1981, p. 1354).

(4) Sections 1 and 67 of an Act to revise, modernize, codify, and update certain laws relating to alcoholic beverages, approved April 13, 1981 (Ga. L. 1981, p. 1269).

(5) Section 4 of an Act amending an Act known as the "Insurance Premium Finance Company Act," approved April 7, 1981 (Ga. L. 1981, p. 760).

(6) Sections 5 and 6 of an Act amending Code Title 56, known as the "Georgia Insurance Code," so as to provide additional qualifications for licensure of agents and counselors for life or accident and sickness insurance and for the making of annuity contracts, approved April 17, 1981 (Ga. L. 1981, p. 1789).

(7) Section 1 of an Act prohibiting discrimination in the employment of the handicapped and known as the "Georgia Equal Employment for the Handicapped Code," approved April 17, 1981 (Ga. L. 1981, p. 1803).

(8) Section 3 of an Act amending Code Section 56-3005, relating to optional policy provisions in accident and sickness policies, so as to remove the provisions relating to insurance with other insurers, approved April 9, 1981 (Ga. L. 1981, p. 1009).

(9) Section 4 of an Act amending Code Title 114, relating to workers' compensation, so as to redefine the term "employee," approved April 17, 1981 (Ga. L. 1981, p. 1585).

(10) Section 3 of an Act amending Code Title 56, known as the "Georgia Insurance Code," so as to require that certain accident and sickness policies and plans provide conversion privileges for insured surviving spouses or former spouses, approved April 7, 1981 (Ga. L. 1981, p. 640).

(11) Section 2 of an Act amending Code Section 3-305, relating to suits against representatives of obligors, so as to reduce the period of exemption from suit for representatives of estates from 12 months to six months, approved April 9, 1981 (Ga. L. 1981, p. 852).

(12) An Act providing that the State of Georgia shall be a party to the "Southern Interstate Nuclear Compact," approved March 3, 1962, (Ga. L. 1962, p. 505), as amended.

(13) A resolution creating the Georgia Semiquincentenary Commission, approved April 14, 1981 (Ga. L. 1981, p. 1472).

(14) Section 1 of an Act authorizing the Supreme Court of Georgia to establish a uniform motion for review procedure, approved March 20, 1980 (Ga. L. 1980, p. 390).

(15) Section 2 of an Act providing for distribution of certain moneys received or to be received as a result of the commission of a crime, approved April 17, 1979 (Ga. L. 1979, p. 1262).

(16) Section 4 of an Act amending certain provisions relating to trial and accusation and waiver of indictment, approved March 20, 1980 (Ga. L. 1980, p. 452).

(17) Section 4 of an Act providing for an additional credit to be given to criminal defendants who are confined in an institution or facility for treatment or examination of a physical or mental disability, approved April 3, 1972 (Ga. L. 1972, p. 742).

(18) Sections 14 and 15 of an Act providing for representation by counsel, services, and facilities for indigent persons in criminal proceedings, approved April 18, 1968 (Ga. L. 1968, p. 999).

(19) Section 13 of an Act to provide defense services for indigent persons accused of crime, approved March 9, 1979 (Ga. L. 1979, p. 367).

(20) A resolution approving the adoption of the rules of the Supreme Court, approved April 14, 1981 (Ga. L. 1981, p. 1532).

(21) Section 7 of an Act creating a new judicial circuit for this state to be known as the Douglas Judicial Circuit, approved March 20, 1980 (Ga. L. 1980, p. 563).

(22) Section 38-612 of the Code of 1933, relating to Acts allowing papers improperly registered, and their copies, when lost, to be admitted in evidence.

(23) Section 3 of an Act providing for the incorporation by reference of various fiduciary powers into wills, trusts, or other instruments in writing and providing that no exercise of any such power or authority by a fiduciary shall deprive the trust or estate involved of an otherwise available tax exemption, approved April 17, 1973 (Ga. L. 1973, p. 846).

(24) Section 3 of an Act amending an Act providing for the incorporation by reference of various fiduciary powers into wills, trusts, and other instruments in writing, approved April 17, 1973 (Ga. L. 1973, p. 846), and providing that the Act shall not apply to any will, trust, or other instrument executed prior to April 7, 1976, approved April 7, 1976 (Ga. L. 1976, p. 1586).

(25) Section 2 of an Act providing that mutual wills, other than mutual wills based on express contract, must contain an express statement that such wills are mutual wills, approved April 18, 1967 (Ga. L. 1967, p. 718).

(26) Sections 4 through 9 of an Act to provide for the number of witnesses required to attest wills and codicils and to provide for the execution and probate of wills and codicils, approved May 28, 1964 (Ga. L. 1964, Ex. Sess., p. 16).

(27) Section 2 of an Act providing a residuary bequest or devise to a surviving widow in lieu of dower or years support shall be subject to debts, taxes, expenses of administration and similar charges, approved April 8, 1968 (Ga. L. 1968, p. 1070).

(28) Section 2 of an Act changing from six months to nine months the time period within which a written instrument of renunciation must be filed, approved April 17, 1979 (Ga. L. 1979, p. 1292).

(29) Section 2 of an Act providing additional procedures for taking the testimony of witnesses for wills, approved March 24, 1976 (Ga. L. 1976, p. 640).

(30) Section 2 of an Act providing how guardians, administrators, executors, trustees, and other fiduciaries may sell stocks or bonds, approved March 2, 1953 (Ga. L. 1953, Jan.-Feb. Sess., p. 378).

(31) Section 15 of an Act providing for the supervision by the Attorney General of the administration of charitable trusts, approved March 21, 1974 (Ga. L. 1974, p. 440).

(32) Section 6 of an Act prescribing procedure for appeals upon petition to the Supreme Court or Court of Appeals in certain specified cases shall not apply to appeals in certain habeas corpus cases, approved April 12, 1979 (Ga. L. 1979, p. 619).

(33) Section 1 of an Act to be known as the "Georgia Public Revenue Code" and revising and modernizing certain revenue laws and to provide legislative intent, approved March 6, 1978 (Ga. L. 1978, p. 309).

(34) Section 13 of an Act creating the Department of Offender Rehabilitation and the Board of Offender Rehabilitation and abolishing the State Board of Probation, approved April 6, 1972 (Ga. L. 1972, p. 1069).

(35) Section 3 of an Act prohibiting any interference with the printing of the reports of the Supreme Court and the Court of Appeals, approved March 29, 1937 (Ga. L. 1937, p. 503).

(36) Section 7 of an Act providing that the powers and duties of the Department of Administrative Services relative to contracts for supplies and services required by the state shall not be construed to affect, repeal, or limit an Act known as the "Unemployment Compensation Law," approved April 12, 1979 (Ga. L. 1979, p. 659).

(37) Section 2 of an Act providing that the provisions regarding membership of certain metropolitan area planning and development commissions shall not be changed, approved April 6, 1978 (Ga. L. 1978, p. 2066).

(38) Section 2 of an Act providing that certain additional authority granted to each area planning and development commission and the expiration of such authority shall not repeal, limit, or diminish any power heretofore possessed by any metropolitan area planning and development commission, approved March 23, 1977 (Ga. L. 1977, p. 782).

(39) Section 5 of an Act providing that certain functions and authority granted to area planning and development commissions shall be cumulative of any authority provided to certain metropolitan area planning and development commissions and shall not diminish any authority heretofore granted to any such commission, approved April 11, 1978 (Ga. L. 1978, p. 2293).

(40) Section 2 of an Act reestablishing the Georgia Council for the Arts and Humanities, approved March 13, 1979 (Ga. L. 1979, p. 388).

(41) Section 9 of an Act substantially amending the duties, responsibilities and procedures of the Public Service Commission, approved April 14, 1975 (Ga. L. 1975, p. 404).

(42) Section 7 of an Act amending the powers and duties of the State Depository Board and the regulation of deposits therein, approved March 23, 1960 (Ga. L. 1960, p. 1144).

(43) Section 11 of the "Telecommunications Consolidation Act of 1973," approved April 18, 1973 (Ga. L. 1973, p. 1261).

(44) Section 9 of the "Public Safety Radio Services Act of 1975," approved April 28, 1975 (Ga. L. 1975, p. 1642).

(45) Section 2 of an Act amending an Act implementing the requirements of the Federal Intergovernmental Cooperation Act of 1968, approved March 20, 1980 (Ga. L. 1980, p. 736).

(46) Section 2 of an Act providing that powers of sale and other powers in deeds of trust, mortgages, and other instruments may be exercised by transferees and other parties regardless of whether or not the transfer specifically includes such powers or conveys title to the property described, approved April 18, 1967 (Ga. L. 1967, p. 735).

(47) Section 4 of an Act providing that a power of sale, unless limited in the instrument creating such power, authorizes a private sale by the donee of such power, except as to instruments given to secure a debt, approved March 4, 1955 (Ga. L. 1955, p. 430).

(48) An Act requiring the conditional sales of personal property to be evidenced in writing, approved September 27, 1881 (Ga. L. 1880-81, p. 143), as amended.

(49) An Act to provide that the lien of mortgages on crops given to secure the payment of debts for supplies, money, and other articles of necessity shall be superior to judgments of older date than the mortgages, approved December 21, 1899 (Ga. L. 1899, p. 78).

(50) An Act to extend the lien of mortgages on crops, before the crops are planted or growing, approved July 15, 1924 (Ga. L. 1924, p. 125).

(51) Sections 2 and 3 of an Act declaring that growing crops shall be personalty and providing that mortgages or other liens thereof shall be attested and recorded as chattel mortgages, approved August 21, 1922 (Ga. L. 1922, p. 114).

(52) An Act authorizing the securing of advances made for the purpose of planting, making, or gathering crops by giving a bill of sale, approved August 22, 1925 (Ga. L. 1925, p. 118), as amended.

(53) An Act declaring the selling or encumbering of personal property held under a conditional purchase to be illegal, approved September 28, 1883 (Ga. L. 1882-83, p. 111).

(54) An Act to prevent the removal of personal property from this state held under a conditional purchase and sale, and by the terms of the purchase, the title is retained by the vendor until the purchase price is paid, without the consent of the vendor, and to prevent the vendee in such a purchase and sale from concealing the property, approved August 15, 1910 (Ga. L. 1910, p. 120).

(55) An Act to be known as the "Apartment Ownership Act," approved April 12, 1963 (Ga. L. 1963, p. 561), as amended.

(56) An Act to create the positions of associate public service commissioners, approved February 18, 1953 (Ga. L. 1953, Jan.-Feb. Sess., p. 127).

(57) An Act to declare valid and legal the establishment and organization of housing authorities and all bonds, notes, contracts, agreements, obligations, and undertakings of such authorities, approved March 23, 1939 (Ga. L. 1939, p. 126).

(58) An Act to validate and declare legal all notes and bonds of housing authorities, and all civil proceedings, acts, and things heretofore undertaken, performed, or done with reference thereto, approved March 15, 1971 (Ga. L. 1971, p. 94).

(59) An Act to validate and declare legal the creation and establishment of housing authorities and all bonds, notes, contracts,

agreements, obligations, and undertakings of such authorities, approved February 14, 1951 (Ga. L. 1951, p. 127).

(60) An Act to validate and declare legal the creation and establishment of housing authorities and all bonds, notes, contracts, agreements, obligations, and undertakings of such authorities, approved March 10, 1959 (Ga. L. 1959, p. 141).

(61) An Act to validate and declare legal the creation and establishment of housing authorities and all bonds, contracts, agreements, notes, obligations, and undertakings of such authorities, approved March 9, 1962 (Ga. L. 1962, p. 734).

(62) Section 1 of an Act to provide for the number of directors of railroad corporations, and to provide for the ratification of prior actions of boards of directors thereof, approved April 23, 1969 (Ga. L. 1969, p. 589).

(63) An Act to provide that the seal of a notary need not be required to his attestation of deeds and to provide for the ratification of certain deeds, approved February 12, 1952 (Ga. L. 1952, p. 456).

(64) An Act to create certain emeritus offices of the state, to provide for appointment, compensation, and duties, as amended, approved March 7, 1957 (Ga. L. 1957, p. 206).

(65) A resolution giving assent of this state to an act of Congress of the United States providing for cooperative agricultural extension work, approved August 14, 1914 (Ga. L. 1914, p. 1243).

(66) An Act to enlarge the powers of the Board of Trustees of Georgia Military College, approved March 24, 1939 (Ga. L. 1939, p. 410).

(67) An Act to authorize the Toccoa Falls Institute to confer the degree of bachelor of arts in biblical education, approved March 24, 1939 (Ga. L. 1939, p. 412).

(68) An Act designating Fort Valley State College as a land-grant college, approved February 25, 1949 (Ga. L. 1949, p. 1144).

(69) An Act known as the "Georgia Professional Standards Act," approved March 25, 1976 (Ga. L. 1976, p. 966).

(70) An Act known as the "State School Building Authority for the Deaf and Blind Act," approved February 21, 1951 (Ga. L. 1951, p. 637).

(71) An Act known as the "Vocational Trade School Building Authority Act," approved February 16, 1951 (Ga. L. 1951, p. 132).

(72) Section 2 of an Act to amend Code Title 49, relating to guardians and wards, as amended, so as to enact Chapter 9 of Title 49

and to provide that a guardian need not be appointed for a minor or an incompetent person in certain instances, approved April 18, 1967 (Ga. L. 1967, p. 720).

(73) Section 3 of an Act to amend Code Title 49, relating to guardians and wards, as amended, so as to revise, modernize, and supersede Code Chapter 49-6, relating to guardians of insane persons or persons otherwise mentally incapable of managing their estates, approved April 8, 1980 (Ga. L. 1980, p. 1661).

(74) Section 5 of an Act substantially revising the law relating to the joint-secretary of the state examining boards, as amended, in particular to provide an exception, approved April 22, 1981 (Ga. L. 1981, p. 1898).

(75) Section 3 of an Act to amend Code Title 74, relating to parent and child, as amended, by enacting a new Code chapter relating to determination of paternity, approved April 1, 1980 (Ga. L. 1980, p. 1374).

(76) Section 7 of the "Georgia Child Custody Intrastate Jurisdiction Act of 1978," approved April 5, 1978 (Ga. L. 1978, p. 1957).

(77) Sections 1 and 49 of an Act substantially revising and modernizing certain laws of this state relating to family, domestic relations, and interfamilial duties, approved April 4, 1979 (Ga. L. 1979, p. 466).

(78) Sections 29 and 30 of the "Uniform Reciprocal Enforcement of Support Act," approved February 20, 1958 (Ga. L. 1958, p. 34).

History. — Code 1981, § 1-1-10; Ga. L. 1992, p. 6, § 1.

Code Commission notes. — Ga. L. 1981, p. 3, effective April 1, 1982, and Ga. L. 1982, p. 2107, effective November 1, 1982, repealed and codified numerous general Acts of local application. See Index to Local and Special Laws and General Laws of Local Application, contained in Volume 42 of this Code.

Editor's notes. — This Code section was created as part of the Code revision and was thus enacted by Ga. L. 1981, Ex. Sess., p. 8, (Code Enactment Act).

JUDICIAL DECISIONS

Editor's notes. — In light of the similarity of the statutory provisions, decisions under former Code 1933, § 102-101, which adopted the Code of Georgia of 1933, are included in the annotations for this section.

Three-minute rule remains unchanged. — Although the Official Code of Georgia Annotated (O.C.G.A.) specifically repealed the Code of 1933, the Rules of the Superior Court were not a part of that repealed code even though they "conveniently" appeared therein. The three-minute rule is one of long standing, originally promulgated pursuant to authority given by law and never specifically repealed by the General Assembly. As such, the three-minute rule remains viable and unchanged by the adoption of the O.C.G.A. Hinson v. Castellio, 168 Ga. App. 301, 308 S.E.2d 705 (1983).

Statutory offense of failing to pay for agricultural products repealed. — The enactment of the Official Code of

Georgia Annotated repealed the statute governing the offense of failing to pay for agricultural products, and thus, absent a saving provision, the prosecution for such an offense which had not reached final judgment was properly dismissed. State v. Fordham, 172 Ga. App. 853, 324 S.E.2d 796 (1984).

Effect of Code's adoption. — The legislative Act in adopting the 1933 Code had the force and effect of enacting into one statute all the provisions in that Code. Atlanta & W.P.R.R. v. Wise, 190 Ga. 254, 9 S.E.2d 63 (1940).

Effect of Code's adoption was to enact into one statute all provisions embraced in Code. Head v. Browning, 215 Ga. 263, 109 S.E.2d 798 (1959).

Legislative intention. — Just as is the rule in construing statutes, where a section is plain, unambiguous, and positive, and is not capable of two constructions, the court is not authorized to construe it according to what is supposed to be the intention of the General Assembly. Atlanta & W.P.R.R. v. Wise, 190 Ga. 254, 9 S.E.2d 63 (1940).

Section normally states existing law. — While it is true that the adoption by the General Assembly of the Code of 1933 amounted to a reenactment of each section thereof as contemporary statutes, it is also true that in construing the meaning of an ambiguous section, the original Act will be looked to in order to determine the true interpretation of the section; and in such an interpretation of an ambiguous section having the force of a statute, unless the contrary manifestly appears from the words employed, the language of such section should be construed as intending to state the previously existing law, and not to change it. State v. Camp, 189 Ga. 209, 6 S.E.2d 299 (1939).

Unless contrary manifestly appears from words employed, section should be understood as stating existing law, and not changing it. Maddox v. First Nat'l Bank, 191 Ga. 106, 11 S.E.2d 662 (1940).

Where, by the language of the section itself, its context, and by reason of the expressed subject matter under which it is grouped, it becomes proper and necessary to determine the true intent of the legislative body, it will be construed in the light of the source from which it came, to the extent that the language of the section itself may be compatible with such a construction; in such a case, where the section has been codified from a decision of the Supreme Court or of the Court of Appeals, the section will be construed, insofar as is compatible with its terms, so as to conform to the then existing law, rather than to change the rule in force at the time the Code was adopted. Atlanta & W.P.R.R. v. Wise, 190 Ga. 254, 9 S.E.2d 63 (1940).

Where an intention to change appears, it must be given effect, not because of any power of legislation vested in the codifiers or the commission, but because of the adopting statute. Maddox v. First Nat'l Bank, 191 Ga. 106, 11 S.E.2d 662 (1940).

Proposed change must be conspicuous so as to demand inference that it was noticed by the lawmaking body before the presumption against a change may be overthrown. Maddox v. First Nat'l Bank, 191 Ga. 106, 11 S.E.2d 662 (1940).

Related sections should be construed to harmonize each other. — The adoption of the Code of 1933 amounted to a reenactment of each section as contemporary statutes of the state, and each section should be dealt with as though it were contained in the same Act of the General Assembly and should be construed as if it was a separate paragraph of the same statute. Therefore, sections relating to the same subject matter and codified at the same time should be construed, if possible, to harmonize with each other, and that construction should be adopted which will prevent a contradiction by one section of the other, so that both will be operative. Grand Trunk W.R.R. v. Barge, 75 Ga. App. 646, 44 S.E.2d 281 (1947).

Sections in irreconcilable conflict. — Where two sections of the Code are found to be in irreconcilable conflict, and both sections are derived from Acts of the General Assembly, this conflict must be settled by resort to the original Acts from which the conflicting sections are derived, and that section which is derived from the later Act of the General Assembly must control. Thomas v. Hudson, 190 Ga. 622, 10 S.E.2d 396 (1940).

Sovereign immunity now a matter of constitutional law. — Although sovereign immunity and official immunity under common law was given constitutional status, Ga. Const. 1983, Art. I, Sec. II, Para. IX, it was the common law doctrines that were given constitutional status, and courts no longer have authority to abrogate or modify the doctrines. Lathrop v. Deal, 301 Ga. 408, 801 S.E.2d 867 (2017).

Cited in Davis v. State, 172 Ga. App. 893, 325 S.E.2d 926 (1984); Ballard v. Frey, 179 Ga. App. 455, 346 S.E.2d 893 (1986); Devins v. Leafmore Forest Condominium Ass'n, 200 Ga. App. 158, 407 S.E.2d 76 (1991); Denhardt v. 7 Bay Traders LLC, 296 Ga. App. 122, 673 S.E.2d 621 (2009); State v. Turnquest, No. S19A0157, 2019 Ga. LEXIS 320 (May 6, 2019).

OPINIONS OF THE ATTORNEY GENERAL

Sections not codified in Official Code deemed repealed. — Neither former Code 1933, § 69-9904 nor Code 1933, Ch. 69-12 was codified in the new Official Code of Georgia Annotated; therefore, they are deemed repealed. 1983 Op. Att'y Gen. No. U83-15.

Citations in traffic citation form. — Since there exists no requirement that there be citations to any Code sections on the Uniform Traffic Citation Form, the Code of Georgia of 1933 citations presently set forth on the form are mere surplusage; therefore, their removal or repeal by the new Code of Georgia Annotated will have no effect on the validity of the form. 1982 Op. Att'y Gen. No. 82-28.

1-1-11. General repealer.

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

CHAPTER 2

PERSONS AND THEIR RIGHTS

Sec.
1-2-1. (Effective January 1, 2020) Classes of persons generally; "natural person" defined; corporations deemed artificial persons; nature of corporations generally.
1-2-2. Categories of natural persons.
1-2-3. Duration of citizenship.
1-2-4. Right of expatriation.
1-2-5. Reacquisition of citizenship by expatriated persons and descendants.
1-2-6. Rights of citizens generally.
1-2-7. Rights of female citizens generally.
1-2-8. Rights of minors.
1-2-9. Rights of citizens of the United States while in this state generally.
1-2-10. Rights of citizens of other states or nations to sue or give evidence.
1-2-11. Rights of aliens generally; purchase, holding, and conveyance of realty.

Cross references. — Duty of General Assembly to enact laws to protect rights, privileges, and immunities due citizens of state, Ga. Const. 1983, Art. I, Sec. I, Para. VII.

Editor's notes. — By resolution (Ga. L. 1986, p. 529), the General Assembly designated the English language as the official language of the State of Georgia.

Law reviews. — For annual survey of trial practice and procedure, see 56 Mercer L. Rev. 433 (2004).

RESEARCH REFERENCES

ALR. — Disloyalty or mental reservation as ground for cancellation of certificate of citizenship, 18 A.L.R. 1185.

Right of alien to reenter after temporary absence, 57 A.L.R. 1131.

Effect of marriage of alien woman to one then an American citizen on right to enter or remain in this country, 71 A.L.R. 1213.

Suits and remedies against alien enemies, 137 A.L.R. 1361; 147 A.L.R. 1309; 148 A.L.R. 1386; 149 A.L.R. 1454; 152 A.L.R. 1451; 153 A.L.R. 1418; 155 A.L.R. 1451; 156 A.L.R. 1448; 157 A.L.R. 1449.

Right of alien enemy to take by inheritance or by will, 147 A.L.R. 1297; 148 A.L.R. 1384; 149 A.L.R. 1451; 150 A.L.R. 1418; 152 A.L.R. 1450.

Effect of war on litigation pending at the time of its outbreak, 147 A.L.R. 1298; 148 A.L.R. 1384; 149 A.L.R. 1452; 150 A.L.R. 1418; 154 A.L.R. 1447.

Domicile or residence of person in the armed forces, 152 A.L.R. 1471; 153 A.L.R. 1442; 155 A.L.R. 1466; 156 A.L.R. 1465; 157 A.L.R. 1462; 158 A.L.R. 1474.

Validity, construction, and effect of provisions in life or accident policy in relation to military service, 36 A.L.R.2d 1018.

Recovery of damages as remedy for wrongful discrimination under state or local civil rights provisions, 85 A.L.R.3d 351.

1-2-1. (Effective January 1, 2020) Classes of persons generally; "natural person" defined; corporations deemed artificial persons; nature of corporations generally.

(a) There are two classes of persons: natural and artificial.

(b) "Natural person" means any human being including an unborn child.

(c) Corporations are artificial persons. They are creatures of the law and, except insofar as the law forbids it, they are subject to be changed, modified, or destroyed at the will of their creator.

(d) Unless otherwise provided by law, any natural person, including an unborn child with a detectable human heartbeat, shall be included in population based determinations.

(e) As used in this Code section, the term:

(1) "Detectable human heartbeat" means embryonic or fetal cardiac activity or the steady and repetitive rhythmic contraction of the heart within the gestational sac.

(2) "Unborn child" means a member of the species Homo sapiens at any stage of development who is carried in the womb.

History. — Orig. Code 1863, § 1582; Code 1868, § 1645; Code 1873, § 1651; Code 1882, § 1651; Civil Code 1895, § 1802; Civil Code 1910, § 2159; Code 1933, § 79-101; Ga. L. 2019, p. 711, § 3/HB 481.

Delayed effective date. — This Code section, as set out above, becomes effective January 1, 2020. For version of this Code section in effect until January 1, 2020, see the 2019 amendment note.

The 2019 amendment, effective January 1, 2020, added subsection (b); redesignated former subsection (b) as present subsection (c); and added subsections (d) and (e).

Cross references. — Definition of "person" generally, § 1-3-3.

Editor's notes. — Ga. L. 2019, p. 711, § 1/HB 481, not codified by the General Assembly, provides: "This Act shall be known and may be cited as the 'Living Infants Fairness and Equality (LIFE) Act.'"

Ga. L. 2019, p. 711, § 2/HB 481, not codified by the General Assembly, provides: "(1) In the founding of the United States of America, the State of Georgia and the several states affirmed that: 'We hold these Truths to be self evident, that all Men are created equal, that they are endowed by their Creator with certain unalienable Rights, that among these are Life, Liberty, and the Pursuit of Happiness — that to secure these Rights, Governments are instituted among men;'

"(2) To protect the fundamental rights of all persons, and specifically to protect the fundamental rights of particular classes of persons who had not previously been recognized under law, the 14th Amendment to the United States Constitution was ratified, providing that, 'nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny any person within its jurisdiction the equal protection of the laws';

"(3) Modern medical science, not available decades ago, demonstrates that unborn children are a class of living, distinct persons and more expansive state recognition of unborn children as persons did not exist when *Planned Parenthood v. Casey* (1992) and *Roe v. Wade* (1973) established abortion related precedents;

"(4) The State of Georgia, applying reasoned judgment to the full body of modern medical science, recognizes the benefits of providing full legal recognition to an unborn child above the minimum requirements of federal law;

"(5) Article I, Section I, Paragraphs I and II of the Constitution of the State of Georgia affirm that '[n]o person shall be deprived of life, liberty, or property except by due process of law'; and that '[p]rotection to person and property is the paramount duty of government and shall be

impartial and complete. No person shall be denied the equal protection of the laws'; and

"(6) It shall be the policy of the State of Georgia to recognize unborn children as natural persons."

Ga. L. 2019, p. 711, § 13/HB 481, not codified by the General Assembly, provides: "Any citizen of this state shall have standing and the right to intervene and defend in any action challenging the constitutionality of any portion of this Act."

Ga. L. 2019, p. 711, § 14/HB 481, not codified by the General Assembly, provides: "All provisions of this Act shall be severable in accordance with Code Section 1-1-3."

Law reviews. — For survey article on business associations, see 34 Mercer L. Rev. 13 (1982). For article, "Rights: Afterthoughts," see 27 Ga. L. Rev. 473 (1993). For survey article discussing developments in law of business associations for the period from June 1, 1999 through May 31, 2000, see 52 Mercer L. Rev. 95 (2000).

JUDICIAL DECISIONS

Section becomes, in substance, a part of the charter of a corporation. Railroad Co. v. Georgia, 98 U.S. 359, 25 L. Ed. 185 (1878).

Corporation is a creature of the law. Eminent Household of Columbian Woodmen v. Thornton, 134 Ga. 405, 67 S.E. 849 (1910).

Corporation brought into existence only as result of express legislation. — The conference of power upon persons to organize a corporation is legislative in character and must be done by direct legislation, or be founded upon legislative or constitutional provisions. Free Gift Soc'y No. 25 Bros. & Sisters of Benevolence v. Edwards, 163 Ga. 857, 137 S.E. 382 (1927).

State Board of Workers' Compensation agency of state. — The State Board of Workmen's Compensation (now State Board of Workers' Compensation) is not a natural person, partnership or corporation, but an agency of the state. The state has not consented for this agency to be sued and a suit cannot be maintained against the state without its consent. Cardin v. Riegel Textile Corp., 219 Ga. 695, 135 S.E.2d 284 (1964).

Averment in indictment that representations were made to corporation is sufficient, for this is a representation to a person, although an artificial one. Turnipseed v. State, 53 Ga. App. 194, 185 S.E. 403 (1936).

In 1863 Code, state for first time asserted its right to change, modify, or alter. Barnett v. D.O. Martin Co., 191 Ga. 11, 11 S.E.2d 210 (1940).

Power to change, modify, destroy is referred to as reserved power of state. Barnett v. D.O. Martin Co., 191 Ga. 11, 11 S.E.2d 210 (1940).

Sovereign power never committed to court, but vested in state itself. — The sovereign power to alter, modify, or repeal charters is vested in the state itself, and has never been committed to the superior court. Barnett v. D.O. Martin Co., 191 Ga. 11, 11 S.E.2d 210 (1940).

Corporation of this state cannot be dissolved by act of Congress. Holland v. Heyman & Bro., 60 Ga. 174 (1878).

Where power reserved, corporations may be authorized to merge or consolidate. — Where the reserved power existed at the time of their creation, the General Assembly may authorize preexisting corporations to merge or consolidate upon the affirmative vote of less than all of the stockholders. Barnett v. D.O. Martin Co., 191 Ga. 11, 11 S.E.2d 210 (1940).

Section is broader than former Code 1910, § 2239, which pertains to withdrawal of franchise. Central R.R. & Banking Co. v. State, 54 Ga. 401 (1875), rev'd on other grounds, 92 U.S. 665, 23 L. Ed. 757 (1876).

State has right to withdraw any privilege which is part of corporation's franchise. Railroad Co. v. Georgia, 98 U.S. 359, 25 L. Ed. 185 (1878).

Right to withdraw franchise must authorize a withdrawal of every or any right or privilege which is a part of the franchise, especially in view of this statutory provision that private corporations are

subject to be changed, modified, or destroyed at the will of their creator. Barnett v. D.O. Martin Co., 191 Ga. 11, 11 S.E.2d 210 (1940).

Corporation's power differs from state's power. — There is a substantial difference between a corporation's attempting to reserve right to impair vested rights of its shareholders through altering or amending its internal structure and retention by state of power to modify or withdraw charters granted to corporations created by the state. Baugh v. Citizens & S. Nat'l Bank, 248 Ga. 180, 281 S.E.2d 531 (1981).

Under this section, railroad corporation may be confined to particular route on certain prescribed conditions, as to a portion of a line through a given county. Macon & B.R.R. v. Gibson, 85 Ga. 1, 11 S.E. 442, 21 Am. St. R. 135 (1890).

Cited in Georgia Power Co. v. City of Decatur, 181 Ga. 187, 182 S.E. 32 (1935).

RESEARCH REFERENCES

Am. Jur. 2d. — 18 Am. Jur. 2d, Corporations, §§ 65 et seq.

C.J.S. — 18 C.J.S., Corporations, § 8.

ALR. — Diversity of citizenship, for purposes of federal jurisdiction, in stockholders' derivative action, 68 A.L.R.2d 824.

Right of member, officer, agent, or director of private corporation or unincorporated association to assert personal privilege against self-incrimination with respect to production of corporate books or records, 52 A.L.R.3d 636; 87 A.L.R. Fed. 177.

Availability of sole shareholder's Fifth Amendment privilege against self-incrimination to resist production of corporation's books and records--modern status, 87 A.L.R. Fed. 177.

Punitive damages in actions for violations of Title VII of the Civil Rights Act of 1964 (42 USCA § 1981a; 42 USCA § 2000e et seq.), 150 A.L.R. Fed. 601.

1-2-2. Categories of natural persons.

Natural persons are categorized, according to their rights and status, as:

(1) Citizens;

(2) Citizens of the United States but not of this state; and

(3) Aliens.

History. — Orig. Code 1863, § 1583; Code 1868, § 1646; Code 1873, § 1652; Code 1882, § 1652; Civil Code 1895, § 1803; Civil Code 1910, § 2160; Code 1933, 79-101.

Law reviews. — For article, "Compulsory Legal Segregation in the Public Schools, with Special Reference to Georgia," see 5 Mercer L. Rev. 211 (1954). For article, "Rights: Afterthoughts," see 27 Ga. L. Rev. 473 (1993).

JUDICIAL DECISIONS

Editor's notes. — In light of the similarity of the statutory provisions, annotations decided under former Code 1933, § 79-209, which dealt with citizenship rights of insane persons, are included in the annotations for this Code section.

Section is broad enough to cover resident and nonresident persons who are non compos mentis (decided under former Code 1933, § 79-209). Shea v. Gehan, 70 Ga. App. 229, 28 S.E.2d 181 (1943).

Referring to section in determining legislative intention in other provisions. — Former Code 1933, § 79-102 (see now O.C.G.A. § 1-2-2) may be referred to in determining the intention of the General Assembly in using the phrase "mentally incompetent" in former Code 1933, § 114-306 (see now O.C.G.A. § 34-9-86), or "non compos mentis" in § 1-3-3 (decided under former Code 1933, § 79-209). Royal Indem. Co. v. Agnew, 66 Ga. App. 377, 18 S.E.2d 57 (1941).

"Insane" persons defined. — The Code defines "insane" persons, or persons "non compos mentis," or persons "mentally incompetent," as meaning persons with unsoundness of mind in many degrees, such condition of mind being of three degrees: (1) one who is so unsound as to be sent to an asylum; (2) another so unsound as to have a guardian of the person's property and of the person; and (3) another so unsound as to have a guardian only of the person's property, to see that it is not wasted (that is, a trustee) (decided under former Code 1933, § 79-209). Royal Indem. Co. v. Agnew, 66 Ga. App. 377, 18 S.E.2d 57 (1941).

In light of the similarity of the statutory provisions, opinions rendered under former Code 1933, § 79-201 are included in the annotations for this Code section.

OPINIONS OF THE ATTORNEY GENERAL

Undomiciled married woman may register to vote. — A married woman whose husband has his legal residence in Georgia may register to vote in this state even though she is not physically domiciled within the state. 1975 Op. Att'y Gen. No. 75-77 (rendered under former Code 1933, § 79-201).

RESEARCH REFERENCES

Am. Jur. 2d. — 3A Am. Jur. 2d, Aliens and Citizens, §§ 5 et seq., 284 et seq., 862 et seq., 961 et seq. 3B Am. Jur. 2d, Aliens and Citizens, §§ 1170 et seq., 1823 et seq. 3C Am. Jur. 2d, Aliens and Citizens, § 2086 et seq.

C.J.S. — 3 C.J.S., Aliens, §§ 4, 5, 7. 14 C.J.S., Citizens, §§ 1, 2.

ALR. — Disloyalty or mental reservation as ground for cancellation of certificate of citizenship, 18 A.L.R. 1185.

Showing as to mental condition which will entitle one restrained on ground of insanity to release, 19 A.L.R. 715.

Acquisition of domicile in countries (such as China, Turkey, and Egypt) granting extraterritorial privileges to foreigners, 39 A.L.R. 1155.

Diversity of citizenship, for purposes of federal jurisdiction, in stockholders' derivative action, 68 A.L.R.2d 824.

Capacity of one who is mentally incompetent but not so adjudicated to sue in his own name, 71 A.L.R.2d 1247.

1-2-3. Duration of citizenship.

Until citizenship is acquired elsewhere, a citizen of this state continues to be a citizen of this state and of the United States.

History. — Orig. Code 1863, § 54; Code 1868, § 50; Code 1873, § 47; Code 1882, § 47; Civil Code 1895, § 1806; Civil Code 1910, § 2163; Code 1933, § 79-202.

Cross references. — Determination of venue in proceedings against corporations, § 14-2-510. Determination of domicile of persons, T. 19, C. 2. Determination of residence for purposes of voter registration, § 21-2-217.

JUDICIAL DECISIONS

Forum non conveniens dismissal of FELA case. — Because a trial court lacks discretion to dismiss a Federal Employers' Liability Act case on the ground of forum non conveniens, the trial court correctly denied the railroad's motion to dismiss the case on such grounds. Southern Ry. v. Goodman, 259 Ga. 339, 380 S.E.2d 460 (1989).

Cited in Brown v. Seaboard Coast Line R.R., 229 Ga. 481, 192 S.E.2d 382 (1972); Southern Ry. v. Goodman, 259 Ga. 339, 380 S.E.2d 460 (1989).

OPINIONS OF THE ATTORNEY GENERAL

Change of residence. — Loss of citizenship does not result from change of residence not intended to be permanent. 1958-59 Op. Att'y Gen. p. 92.

1-2-4. Right of expatriation.

Except in time of war, every citizen of this state shall have the right of expatriation with a view to becoming a citizen of another country with which this state is at peace. Declaration or avowal of the intention to become a citizen of another country, accompanied by actual removal, shall be held to be a renunciation of all one's rights and duties as a citizen.

History. — Orig. Code 1863, § 53; Code 1868, § 49; Code 1873, § 46; Code 1882, § 46; Civil Code 1895, § 1805; Civil Code 1910, § 2162; Code 1933, § 79-203.

RESEARCH REFERENCES

Am. Jur. 2d. — 3B Am. Jur. 2d, Aliens and Citizens, § 1823 et seq. 3C Am. Jur. 2d, Aliens and Citizens, § 2086 et seq.

C.J.S. — 14 C.J.S., Citizens, § 18 et seq.

1-2-5. Reacquisition of citizenship by expatriated persons and descendants.

If a person expatriated under Code Section 1-2-4 acquires citizenship under some foreign power, he and his descendants who go with him for the purpose of residence may become citizens of this state again only after meeting the residence requirements and taking the oath of allegiance required of other foreigners as a condition to becoming a citizen of the United States by Section 1448 of Title 8 of the United States Code.

History. — Orig. Code 1863, § 55; Code 1868, § 51; Code 1873, § 48; Code 1882, § 48; Civil Code 1895, § 1807; Civil Code 1910, § 2164; Code 1933, § 79-204.

RESEARCH REFERENCES

Am. Jur. 2d. — 3B Am. Jur. 2d, Aliens and Citizens, § 1823 et seq. 3C Am. Jur. 2d, Aliens and Citizens, § 2086 et seq.
C.J.S. — 3A C.J.S., Aliens, § 1233.

1-2-6. Rights of citizens generally.

(a) The rights of citizens include, without limitation, the following:

(1) The right of personal security;

(2) The right of personal liberty;

(3) The right of private property and the disposition thereof;

(4) The right of the elective franchise;

(5) The right to hold office, unless disqualified by the Constitution and laws of this state;

(6) The right to appeal to the courts;

(7) The right to testify as a witness;

(8) The right to perform any civil function; and

(9) The right to keep and bear arms.

(b) All citizens are entitled to exercise all their rights as citizens, unless specially prohibited by law.

History. — Orig. Code 1863, §§ 1585, 1586; Code 1868, §§ 1648, 1649; Code 1873, §§ 1654, 1655; Code 1882, §§ 1654, 1655; Civil Code 1895, §§ 1808, 1809; Civil Code 1910, §§ 2165, 2166; Code 1933, §§ 79-205, 79-206.

Law reviews. — For article, "Disability Constitutional Law," see 63 Emory L.J. 527 (2014).

JUDICIAL DECISIONS

Analysis

General Consideration
Personal Property
Elective Franchise
Right to Hold Office
Courts
Witness
Exercise of Rights

General Consideration

State empowered to deny any citizen any right. — One who is a citizen does not necessarily have the right to exercise all the rights exercised by any citizen. It is within the power of the state, by proper methods, to deny to any citizen any right. But that denial must be made by the proper authority. White v. Clements, 39 Ga. 232 (1869).

Naturalized citizen stands upon the same footing as other citizens, and the

General Consideration (Cont'd)

naturalized citizen has all the rights anybody has — unless it is otherwise specially provided by law. White v. Clements, 39 Ga. 232 (1869).

Rights of each race are controlled and governed by same enactments or principles of law. Smith v. Dubose, 78 Ga. 413, 3 S.E. 309, 6 Am. St. R. 260 (1887).

Mentally and physically disabled person found competent. — Though a victim of sexual assault was mentally and physically disabled, a trial court did not abuse the court's discretion in determining that the victim was competent to testify against the defendant at the defendant's criminal trial because the trial court held a competency hearing and found that the victim understood the victim's responsibility to tell the truth and clearly knew what had happened, who had done it, and so communicated those facts, despite the victim's mental and physical disabilities. Wilson v. State, 270 Ga. App. 311, 605 S.E.2d 921 (2004).

Impact of pardon of sex offender. — Sex offender registration requirements were held to be a legal disability and are removed by the Georgia Board of Pardons and Paroles' order granting a pardon and removing all disabilities. State v. Davis, 303 Ga. 684, 814 S.E.2d 701 (2018).

Cited in Overton v. Gandy, 170 Ga. 562, 153 S.E. 520 (1930); Caldwell v. Hill, 179 Ga. 417, 176 S.E. 381 (1934); Patten v. Miller, 190 Ga. 123, 8 S.E.2d 757 (1940); Irwin v. Busbee, 241 Ga. 567, 247 S.E.2d 103 (1978); Hughley v. City of Thomaston, 180 Ga. App. 207, 348 S.E.2d 570 (1986); McIntyre v. Miller, 263 Ga. 578, 436 S.E.2d 2 (1993); Handel v. Powell, 284 Ga. 550, 670 S.E.2d 62 (2008); Spillers v. State, 299 Ga. App. 854, 683 S.E.2d 903 (2009).

Personal Property

Person of color has the right to a prescriptive title by adverse possession. Beatty v. Benton, 135 U.S. 244, 10 S. Ct. 747, 34 L. Ed. 124 (1890).

Elective Franchise

Party primary not within statutory and constitutional protection. — A party primary held under the provisions of former Code 1933, § 34-3212, merely chooses candidates or nominees of a political party to be submitted to the entire electorate in the general election, and is not an "election" within the meaning of that term as used in the statutory and constitutional provisions of Georgia conferring upon its citizens the right to vote in an election; the right to participate in such a primary does not come within the protection of the Fourteenth and Fifteenth Amendments to the federal Constitution. Cox v. Peters, 208 Ga. 498, 67 S.E.2d 579 (1951), appeal dismissed, 342 U.S. 936, 72 S. Ct. 559, 96 L. Ed. 697 (1952) (decided prior to enactment of O.C.G.A. §§ 21-2-71 and 21-2-152).

Right to Hold Office

Right to hold office is one of rights of citizen of this state which is provided by both statute and Constitution. White v. Clements, 39 Ga. 232 (1869).

Right of citizen to hold office is general rule, ineligibility the exception; a citizen may not be deprived of this right without proof of some disqualification specifically declared by law. McLendon v. Everett, 205 Ga. 713, 55 S.E.2d 119 (1949).

Negroes may hold office. — By the Constitution of 1868, the rights of the Negro are the same as the rights of the white man. The Constitution did not make race or color a disqualification for office and, as Negroes are citizens under former Code 1868, §§ 1648, 1649 (see now O.C.G.A. § 1-2-6), it follows that they may hold office. White v. Clements, 39 Ga. 232 (1869).

Courts

No general right of access. — In a suit challenging a court's electronic filing fee system, the trial court did not err when the court granted the motion to dismiss the plaintiff's claims under Ga. Const. 1983, Art. I, Sec. I, Para. XII and O.C.G.A. § 1-2-6(a)(6) because Ga. Const. 1983, Art. I, Sec. I, Para. XII was never

intended to provide a right of access to the courts and the Georgia Supreme Court has established that there is no express constitutional right of access to the courts under the Georgia Constitution. Best Jewelry Mfg. Co. v. Reed Elsevier Inc., 334 Ga. App. 826, 780 S.E.2d 689 (2015), cert. denied, No. S16C0502, 2016 Ga. LEXIS 286 (Ga. 2016).

Forum non conveniens doctrine in federal tort cases. — The privileges and immunities clause of the United States Constitution prohibits Georgia courts from applying the doctrine of forum non conveniens to citizens of other states who are nonresidents of Georgia in federal tort cases and declining to exercise jurisdiction of such suits brought by them. Brown v. Seaboard Coast Line R.R., 229 Ga. 481, 192 S.E.2d 382 (1972).

Because a trial court lacks discretion to dismiss a Federal Employers' Liability Act case on the ground of forum non conveniens, the trial court correctly denied the railroad's motion to dismiss the case on such grounds. Southern Ry. v. Goodman, 259 Ga. 339, 380 S.E.2d 460 (1989).

Section does not change the common law right of one spouse to sue the other. Holman v. Holman, 73 Ga. App. 205, 35 S.E.2d 923 (1945).

Action for interference with right to testify. — An action for the recovery of damages for interference with the right to testify as a witness is one "for injuries to the person" and must be commenced within two years of the alleged interference. Carter v. Seaboard Coast Line R.R., 392 F. Supp. 494 (S.D. Ga. 1974).

Witness

Right to testify protected by Constitution. — The right to testify as a witness is a personal right and is an adjunct or portion of the fundamental concept of freedom and liberty protected by the Georgia Constitution. Carter v. Seaboard Coast Line R.R., 392 F. Supp. 494 (S.D. Ga. 1974).

Right to testify neither unlimited or constitutionally fundamental. — O.C.G.A. § 1-2-6 creates a statutory right to testify as a witness that is neither unlimited nor constitutionally fundamental. Ambles v. State, 259 Ga. 406, 383 S.E.2d 555 (1989).

Georgia witness competency statutes present a reasonable requirement regarding the minimal level of understanding for people participating in one of the most important functions of government and do not violate the equal protection clause. Ambles v. State, 259 Ga. 406, 383 S.E.2d 555 (1989).

State had standing to challenge Georgia witness competency statutes. Ambles v. State, 259 Ga. 406, 383 S.E.2d 555 (1989).

Subornation of perjury as an invasion of privacy. — Evidence that a fellow employee attempted to require an employee to lie at a deposition hearing with reference to a lawsuit then in progress involving the employer interfered with the latter employee's right to testify as a witness and supported an action against that fellow employee for trespass upon the right to privacy. Troy v. Interfinancial, Inc., 171 Ga. App. 763, 320 S.E.2d 872 (1984).

Persons of color are competent witnesses in all cases. Clarke v. State, 35 Ga. 75 (1866).

Exercise of Rights

All citizens are entitled to exercise all their rights, unless prohibited by law. White v. Clements, 39 Ga. 232 (1869).

OPINIONS OF THE ATTORNEY GENERAL

Citizen has right to hold office as general rule, ineligibility being the exception, and a citizen may not be deprived of this right without proof of some disqualifications specifically declared by law. 1979 Op. Att'y Gen. No. U79-24.

Disqualification for holding office strictly construed. — The right to hold office unless disqualified by the Constitution and laws is one of the rights of Georgia citizens, and any purported disqualification for holding office must be strictly

construed and any ambiguity resolved in favor of the citizen's right to run for and hold office. 1975 Op. Att'y Gen. No. 75-18.

City's residency requirements. — The time during which an individual resided in an area prior to its annexation to a city is creditable towards the residency requirements for mayor and city councilman of that city. 1978 Op. Att'y Gen. No. U78-42.

Public office not barred by liquor conviction. — A conviction of the crime of "having liquor" does not render a person disqualified from holding public office under the laws of this state. 1967 Op. Att'y Gen. No. 67-26.

Blindness alone not a bar to holding office of sheriff. — A person otherwise possessing the qualifications to hold the office of sheriff, as specified by former Code 1933, § 24-2801 (see now O.C.G.A. § 15-16-1), may not be barred from such office because the person is blind. 1980 Op. Att'y Gen. No. U80-1.

One person may hold offices of city and probate court judge. — There is no prohibition against one person's holding both the offices of judge of a city court and ordinary of a county (now probate court judge). 1970 Op. Att'y Gen. No. U70-60.

Councilperson keeps office after moving to different ward. — Where a councilperson is elected from a particular ward, but by the voters of the entire city, the councilperson is not required to forfeit one's office if one moves to a different ward in the same city. 1975 Op. Att'y Gen. No. U75-39.

Deputy sheriff is not required to resign the deputy's office prior to running for sheriff. 1979 Op. Att'y Gen. No. U79-24.

RESEARCH REFERENCES

Am. Jur. 2d. — 15 Am. Jur. 2d, Civil Rights, § 1 et seq. 16A Am. Jur. 2d, Constitutional Law, §§ 607, 608. 16B Am. Jur. 2d, Constitutional Law, §§ 628, 629.

C.J.S. — 14 C.J.S., Civil Rights, §§ 2, 3. 16A C.J.S., Constitutional Law, §§ et seq., 699 et seq., 721 et seq., 839 et seq., 855 et seq. 16C C.J.S., Constitutional Law, § 1495 et seq., 1610 et seq., 1812 et seq., 1883 et seq. 16D C.J.S., Constitutional Law, §§ 1909 et seq., 2026 et seq., 2410 et seq.

ALR. — What businesses or establishments fall within state civil rights statute provisions prohibiting discrimination, 87 A.L.R.2d 120.

Residential swimming pool as nuisance, 49 A.L.R.3d 545.

Validity of statute imposing durational residency requirements for divorce applicants, 57 A.L.R.3d 221.

Sufficiency of courtroom facilities as affecting rights of accused, 85 A.L.R.3d 918.

Zoning: building in course of construction as establishing valid nonconforming use or vested right to complete construction for intended use, 89 A.L.R.3d 1051.

Propriety of awarding custody of child to parent residing or intending to reside in foreign country, 20 A.L.R.4th 677.

Requirement that court advise accused of, and make inquiry with respect to, waiver of right to testify, 72 A.L.R.5th 403.

When is intervention as matter of right appropriate under Rule 24(a)(2) of Federal Rules of Civil Procedure in civil rights action, 132 A.L.R. Fed. 147.

1-2-7. Rights of female citizens generally.

Female citizens are entitled to the privilege of the elective franchise and have the right to hold any civil office or perform any civil function as fully and completely as do male citizens.

History. — Orig. Code 1863, § 1587; Code 1868, § 1650; Code 1873, § 1656; Code 1882, § 1656; Civil Code 1895, § 1810; Ga. L. 1896, p. 40, § 1; Civil Code 1910, § 2167; Ga. L. 1912, p. 62, § 1; Ga. L. 1916, p. 43, § 1; Ga. L. 1918, p. 118, § 1; Ga. L. 1921, p. 106, §§ 1, 2; Code 1933, § 79-207; Ga. L. 1975, p. 779, § 2;

Ga. L. 1982, p. 3, § 1; Ga. L. 1982, p. 826, § 1; Ga. L. 1984, p. 22, § 1.

History of Code section. — The language of this section is derived in part from the decision in Ex parte Hale, 145 Ga. 350, 89 S.E. 216 (1916).

Cross references. — Sex discrimination in employment, T. 34, C. 5.

JUDICIAL DECISIONS

All qualified, nonexempt women have right to jury duty. — It is the law's intent that all women who are qualified for jury duty, and who are not exempt from jury duty under law, shall have the right to and the responsibility of jury duty in accordance with the provisions of Georgia law. Mann v. Cox, 487 F. Supp. 147 (S.D. Ga. 1979).

Cited in Curtis v. Ashworth, 165 Ga. 782, 142 S.E. 111, 59 A.L.R. 1457 (1928); Reece v. State, 208 Ga. 165, 66 S.E.2d 133 (1951).

RESEARCH REFERENCES

Am. Jur. 2d. — 16B Am. Jur. 2d, Constitutional Law, § 877 et seq.

C.J.S. — 14A C.J.S., Civil Rights, § 172 et seq.

ALR. — Validity of testamentary trust to promote women's rights, 28 A.L.R. 720.

1-2-8. Rights of minors.

The law prescribes certain ages at which persons shall be considered of sufficient maturity to discharge certain civil functions, to make contracts, and to dispose of property. Prior to those ages they are minors and are, on account of that disability, unable to exercise these rights as citizens unless such minor becomes emancipated by operation of law or pursuant to Article 10 of Chapter 11 of Title 15.

History. — Orig. Code 1863, § 1588; Code 1868, § 1651; Code 1873, § 1657; Code 1882, § 1657; Civil Code 1895, § 1811; Civil Code 1910, § 2168; Code 1933, § 79-208; Ga. L. 2006, p. 141, § 2/HB 847; Ga. L. 2013, p. 294, § 4-1/HB 242.

Cross references. — Capacity of minors to enter into contracts, § 13-3-20. Capacity of minors to apply for, receive, and repay educational loans, § 20-3-287. Age of majority, § 39-1-1.

Editor's notes. — Ga. L. 2013, p. 294, § 5-1/HB 242, not codified by the General Assembly, provides that: "This Act shall become effective on January 1, 2014, and shall apply to all offenses which occur and juvenile proceedings commenced on and after such date. Any offense occurring before January 1, 2014, shall be governed by the statute in effect at the time of such offense and shall be considered a prior adjudication for the purpose of imposing a disposition that provides for a different penalty for subsequent adjudications, of whatever class, pursuant to this Act. The enactment of this Act shall not affect any prosecutions for acts occurring before January 1, 2014, and shall not act as an abatement of any such prosecutions."

Law reviews. — For article recommending more consistency in age requirements of laws pertaining to the welfare of minors, see 6 Ga. St. B. J. 189 (1969). For article on 2006 amendment of this Code section, see 23 Ga. St. U. L. Rev. 79 (2006).

JUDICIAL DECISIONS

Workers' compensation provisions operate uniformly upon all minors who are employed under such circumstances as to come under the provisions, who are 18 years of age or over, and who are not mentally incompetent or physically incapable of earning a livelihood. Rourke v. U.S. Fid. & Guar. Co., 187 Ga. 636, 1 S.E.2d 728 (1939).

Infants are citizens, and yet they are denied by the law many civil rights; they cannot contract or make wills. White v. Clements, 39 Ga. 232 (1869); Howard v. Tucker, 65 Ga. 323 (1880).

RESEARCH REFERENCES

Am. Jur. 2d. — 16B Am. Jur. 2d, Constitutional Law, § 642.

C.J.S. — 43 C.J.S., Infants, § 220 et seq.

ALR. — Rights of mortgagee or conditional vendor under a mortgage or conditional sale contract executed by an infant, against the property covered in the hands of a third person to whom it has been conveyed or transferred by the infant, 69 A.L.R. 1371.

Effect of infant's disaffirmance of purchase-money mortgage or judgment, 77 A.L.R. 987.

Minor's entry into home of parent as sufficient to sustain burglary charge, 17 A.L.R.5th 111.

1-2-9. Rights of citizens of the United States while in this state generally.

Such citizens of the other states of the Union as are recognized as citizens of the United States by the Constitution thereof shall be entitled, while temporarily within this state, to all the rights of citizens thereof, except the elective franchise, the right to hold office, and the right to perform such civil functions as are confined by law to citizens of this state.

History. — Laws 1785, Cobb's 1851 Digest, p. 364; Code 1863, § 1591; Code 1868, § 1654; Code 1873, § 1659; Code 1882, § 1659; Civil Code 1895, § 1813; Civil Code 1910, § 2170; Code 1933, § 79-301.

Cross references. — Determination of resident status of university students for tuition or fee purposes, § 20-3-66. Determination of residence for purpose of voter registration, § 21-2-217. License requirements for motor vehicles of nonresidents, § 40-2-90 et seq.

JUDICIAL DECISIONS

Right of persons in this state other than citizens are fixed by former Civil Code 1910, § 2170 (see now O.C.G.A. § 1-2-9) and former Civil Code 1910, §§ 2171, 2173 (see now O.C.G.A. § 1-2-11). Silver v. State, 147 Ga. 162, 93 S.E. 145 (1917).

Right which citizens of state acquire for taking and cultivation of fish is property right and is not a mere privilege or immunity of citizenship. Silver v. State, 147 Ga. 162, 93 S.E. 145 (1917).

Cited in McLendon v. Everett, 205 Ga. 713, 55 S.E.2d 119 (1949); J. Bain, Inc. v. Poulos, 121 Ga. App. 647, 175 S.E.2d 86

(1970); Kennedy v. Ga. Dep't of Human Res. Child Support Enforcement, 286 Ga. App. 222, 648 S.E.2d 727 (2007).

RESEARCH REFERENCES

Am. Jur. 2d. — 25 Am. Jur. 2d, Domicil, §§ 2, 7 et seq.

C.J.S. — 14 C.J.S., Citizens, §§ 3 et seq., 28, 29. 28 C.J.S., Domicile, §§ 3, 4, 11.

ALR. — Validity of testamentary trust to promote women's rights, 28 A.L.R. 720.

What businesses or establishments fall within state civil rights statute provisions prohibiting discrimination, 87 A.L.R.2d 120.

1-2-10. Rights of citizens of other states or nations to sue or give evidence.

The citizens of other states of the United States or of foreign states at peace with this state shall, by comity, be allowed the privilege of suing in the courts of this state and of giving evidence therein, as long as the same comity is extended in the courts of the other states to the citizens of this state.

History. — Orig. Code 1863, § 1595; Code 1868, § 1657; Code 1873, § 1662; Code 1882, § 1662; Civil Code 1895, § 1817; Civil Code 1910, § 2174; Code 1933, § 79-305.

Law reviews. — For annual survey of administrative law, see 56 Mercer L. Rev. 31 (2004).

JUDICIAL DECISIONS

O.C.G.A. § 1-2-10 applies to citizens of foreign countries who are residing within the United States but does not extend to nonresident aliens. AT&T Corp. v. Sigala, 274 Ga. 137, 549 S.E.2d 373 (2001).

O.C.G.A. §§ 1-2-10 and 1-2-11, regarding the rights of citizens of other nations to sue in Georgia, apply to citizens of foreign countries who are residing within the United States and do not extend to nonresident aliens. Gonzalez v. DOT, 279 Ga. 230, 610 S.E.2d 527 (2005).

Cited in Southern Ry. v. Parker, 194 Ga. 94, 21 S.E.2d 94 (1942); J. Bain, Inc. v. Poulos, 121 Ga. App. 647, 175 S.E.2d 86 (1970); Cheeley v. Fujino, 131 Ga. App. 41, 205 S.E.2d 83 (1974).

RESEARCH REFERENCES

Am. Jur. 2d. — 3B Am. Jur. 2d, Aliens and Citizens, § 1823 et seq. 3C Am. Jur. 2d, Aliens and Citizens, § 2086 et seq.

C.J.S. — 3 C.J.S., Aliens, §§ 8 et seq., 35 et seq., 176 et seq.

ALR. — When receiver of corporation deemed to be vested with title to assets so as to entitle him to sue in a foreign jurisdiction, 29 A.L.R. 1495.

Reciprocity as affecting comity, 87 A.L.R. 973.

Right of resident alien who is a subject of an enemy country to prosecute suit during war, 137 A.L.R. 1347; 147 A.L.R. 1303; 149 A.L.R. 1453; 151 A.L.R. 1453.

Right of nonresident alien subject of enemy nation to institute suit after commencement of war, 137 A.L.R. 1355; 147

A.L.R. 1307; 148 A.L.R. 1385; 149 A.L.R. 1454; 151 A.L.R. 1454; 155 A.L.R. 1450.

Suits and remedies against alien enemy, 144 A.L.R. 1508.

Effect of war on litigation pending at the time of its outbreak, 147 A.L.R. 1298; 148 A.L.R. 1384; 149 A.L.R. 1452; 150 A.L.R. 1418; 154 A.L.R. 1447.

Suits and remedies against alien enemies, 147 A.L.R. 1309; 148 A.L.R. 1386; 149 A.L.R. 1454; 152 A.L.R. 1451; 153 A.L.R. 1419; 155 A.L.R. 1451; 156 A.L.R. 1448; 157 A.L.R. 1449.

Conflict of laws as to survival or revival of wrongful death actions against estate or personal representative of wrongdoer, 17 A.L.R.2d 690.

1-2-11. Rights of aliens generally; purchase, holding, and conveyance of realty.

(a) Aliens are the subjects of foreign governments who have not been naturalized under the laws of the United States.

(b) Aliens who are subjects of governments at peace with the United States and this state, as long as their governments remain at peace with the United States and this state, shall be entitled to all the rights of citizens of other states who are temporarily in this state and shall have the privilege of purchasing, holding, and conveying real estate in this state.

History. — Laws 1785, Cobb's 1851 Digest, p. 364; Laws 1849, Cobb's 1851 Digest, p. 367; Code 1863, §§ 1592, 1593; Code 1868, §§ 1655, 1656; Code 1873, §§ 1660, 1661; Code 1882, §§ 1660, 1661; Civil Code 1895, §§ 1814, 1816; Civil Code 1910, §§ 2171, 2173; Code 1933, §§ 79-302, 79-303.

Cross references. — Licensing of aliens as physicians, osteopaths, and other medical professionals, §§ 43-34-28, 43-34-30.

Law reviews. — For article discussing inheritance by aliens, see 10 Ga. L. Rev. 447 (1976). For article discussing legal aspects of investments and trade in Georgia by foreign business enterprises, see 27 Mercer L. Rev. 629 (1976).

JUDICIAL DECISIONS

O.C.G.A. § 1-2-11 applies to citizens of foreign countries who are residing within the United States but does not extend to nonresident aliens. AT&T Corp. v. Sigala, 274 Ga. 137, 549 S.E.2d 373 (2001).

O.C.G.A. §§ 1-2-10 and 1-2-11, regarding the rights of citizens of other nations to sue in Georgia, apply to citizens of foreign countries who are residing within the United States and do not extend to nonresident aliens; a decision adopting the doctrine of forum non conveniens was not decided on the basis of those statutes or the rights and privileges those statutes concern. Gonzalez v. DOT, 279 Ga. 230, 610 S.E.2d 527 (2005).

Entire will not invalidated by creation of void legacy for enemy alien wife. — If a wife was an alien enemy, and as such could not be a beneficiary under a will, then the nomination of her as a beneficiary would have amounted to no more than the creation of a void legacy. In such a case, the effect of the invalidity of the legacy is to render the legacy void, but not to invalidate the entire will, and it is no ground of caveat to the probate of a will that a devise to a particular person may be void. Shaw v. Fehn, 196 Ga. 661, 27 S.E.2d 406 (1943).

Cited in Fehn v. Shaw, 201 Ga. 517, 40 S.E.2d 547 (1946); Cheeley v. Fujino, 131 Ga. App. 41, 205 S.E.2d 83 (1974).

OPINIONS OF THE ATTORNEY GENERAL

Philippine citizens. — With certain minor exceptions, Philippine citizens are permitted under Georgia law to exploit natural resources and operate public utilities on the same basis as American citizens, corporations, or associations. 1967 Op. Att'y Gen. No. 67-245.

RESEARCH REFERENCES

Am. Jur. 2d. — 3A Am. Jur. 2d, Aliens and Citizens, §§ 5 et seq., 284 et seq., 862 et seq., 961 et seq. 3B Am. Jur. 2d, Aliens and Citizens, §§ 1170 et seq., 1823 et seq. 3C Am. Jur. 2d, Aliens and Citizens, § 2086 et seq.

C.J.S. — 3 C.J.S., Aliens, §§ 8 et seq., 149 et seq.

ALR. — Dower of alien widow in estate of deceased husband, 110 A.L.R. 520.

Right of alien enemy to take by inheritance or by will, 137 A.L.R. 1328; 147 A.L.R. 1297; 150 A.L.R. 1418; 152 A.L.R. 1450.

Constitutionality, construction, and application of provision of state statute that makes right of alien to succeed to property of deceased person dependent upon a reciprocal right in United States citizens, 170 A.L.R. 966.

State regulation of land ownership by alien corporation, 21 A.L.R.4th 1329.

Validity of state statutes restricting the right of aliens to bear arms, 28 A.L.R.4th 1096.

CHAPTER 3

LAWS AND STATUTES

Sec.	
1-3-1.	(Effective until January 1, 2021) Construction of statutes generally.
1-3-1.	(Effective January 1, 2021) Construction of statutes generally.
1-3-2.	Construction of definitions.
1-3-3.	Definitions.
1-3-4.	Effective date of legislative Acts.
1-3-4.1.	Effective date for general Acts requiring increases in compensation of certain county officials.
1-3-5.	Operation of laws generally; retrospective operation.
1-3-6.	When laws become obligatory; effect of ignorance.
1-3-7.	Abrogation of laws by agreement; waiver or renunciation of benefits established by law.
1-3-8.	Binding effect of legislation upon state.
1-3-9.	Effect and enforcement of foreign laws.
1-3-10.	Execution of writings and contracts.
1-3-11.	Local referenda on abolishing offices or shortening or lengthening term.

Cross references. — Duty of Secretary of State to provide copies of legislative Acts to Office of Legislative Counsel and to court clerks, § 45-13-24.

Editor's notes. — By resolution (Ga. L. 1986, p. 529), the General Assembly designated the English language as the official language of the State of Georgia.

Law reviews. — For article discussing problems of construction when repeal statutes are subsequently repealed, see 10 Ga. St. B. J. 41 (1973). For article, "Statutes of Nonstatutory Origin," see 14 Ga. L. Rev. 239 (1980). For article, "Law Among the Pleonasms: The Futility and Aconstitutionality of Legislative History in Statutory Interpretation," see 41 Emory L.J. 113 (1992).

RESEARCH REFERENCES

ALR. — Supplying omitted words in statute or ordinance, 3 A.L.R. 404; 126 A.L.R. 1325.

Inhibition by decree of divorce or statute of state or country in which it is granted, against remarriage, as affecting a marriage celebrated in another state or country, 51 A.L.R. 325.

Constitutionality of statute relating to purchase of capital stock by employees of corporation, 63 A.L.R. 841.

Previous statute as affected by attempted but unconstitutional amendment, 66 A.L.R. 1483.

Applicability of constitutional provision requiring reenactment of altered or amended statute to one which leaves intact terms of original statute, but transfers or extends its operation to another field, 67 A.L.R. 564.

Constitutionality of curative statutes purporting to validate prior unconstitutional statutes, or statutes not enacted in the manner prescribed by the Constitution, 70 A.L.R. 1436.

Unconstitutionality of later statute as affecting provision purporting specifically to repeal earlier statute, 102 A.L.R. 802.

Determination of conditions that terminate operation of legislative act which by virtue of its terms or constitutional considerations is temporary, 104 A.L.R. 1163.

Liability of public officer in respect of public money paid out in reliance upon unconstitutional statute, 118 A.L.R. 787.

"And/or," 118 A.L.R. 1367; 154 A.L.R. 866.

Inclusion or exclusion of the day of birth in computing one's age, 5 A.L.R.2d 1143.

Applicability of constitutional requirement that repealing or amendatory statute refer to statute repealed or amended, to repeal or amendment by implication, 5 A.L.R.2d 1270.

Extraterritorial operation of limitation applicable to statutory cause of action, other than by reason of "borrowing statute," 95 A.L.R.2d 1162.

1-3-1. (Effective until January 1, 2021) Construction of statutes generally.

(a) In all interpretations of statutes, the courts shall look diligently for the intention of the General Assembly, keeping in view at all times the old law, the evil, and the remedy. Grammatical errors shall not vitiate a law. A transposition of words and clauses may be resorted to when a sentence or clause is without meaning as it stands.

(b) In all interpretations of statutes, the ordinary signification shall be applied to all words, except words of art or words connected with a particular trade or subject matter, which shall have the signification attached to them by experts in such trade or with reference to such subject matter.

(c) A substantial compliance with any statutory requirement, especially on the part of public officers, shall be deemed and held sufficient, and no proceeding shall be declared void for want of such compliance, unless expressly so provided by law.

(d) In addition to the rules for construction prescribed in subsections (a) through (c) of this Code section, the rules provided in this subsection shall govern the construction of all statutes with respect to the subjects enumerated.

(1) **Bonds.** When a bond is required by law, an undertaking in writing, without seal, is sufficient; and in all bonds where the names of the obligors do not appear in the bond but are subscribed thereto, they are bound thereby.

(2) **Census.** Whenever there is used in the statutory law of this state the term "federal census," "United States census," "decennial census," or similar words referring to the official census conducted every ten years by the United States of America or any agency thereof as required by Article I, Section II, Paragraph III of the Constitution of the United States, the effective date of such census for the purpose of making operative and of force any statutory law of this state shall be determined as follows:

(A) The effective date of the census shall be July 1 of the first year after the year in which the census is conducted, for the purpose of making operative and of force the following laws:

(i) Code Section 15-16-20;

(ii) Code Sections 15-6-88 through 15-6-91;

(iii) Code Section 48-5-183;

(iv) Code Sections 15-9-63 through 15-9-66;

(v) Code Section 36-5-25;

(vi) Code Section 15-10-23; and

(vii) Code Section 45-16-11;

provided, however, that if a county's population decreases according to a more recent census below its population according to an earlier census, then, notwithstanding any other provision of law, any officer who is compensated under a law specified in this subparagraph and who is in office on the date specified in this subparagraph shall continue during his entire tenure in such office (including any future terms of office in such office) to be compensated on the basis of the county's population according to such earlier census;

(B) For purposes of any program of grants of state funds to local governments, the effective date of the census shall be July 1 of the first year after the year in which the census is conducted;

(C) For the purpose of reconstituting the membership of any constitutional or statutory board, commission, or body whose members are appointed from congressional districts, the effective date of the census shall be January 1 of the third year after the year in which the census is conducted;

(D) The effective date of the census shall be July 1 of the second year after the year in which the census is conducted for the purpose of making operative and of force all other statutory laws which do not expressly provide otherwise.

(3) **Computation of time.** Except as otherwise provided by time period computations specifically applying to other laws, when a period of time measured in days, weeks, months, years, or other measurements of time except hours is prescribed for the exercise of any privilege or the discharge of any duty, the first day shall not be counted but the last day shall be counted; and, if the last day falls on Saturday or Sunday, the party having such privilege or duty shall have through the following Monday to exercise the privilege or to discharge the duty. When the last day prescribed for such action falls on a public and legal holiday as set forth in Code Section 1-4-1, the party having the privilege or duty shall have through the next business day to exercise the privilege or to discharge the duty. When

the period of time prescribed is less than seven days, intermediate Saturdays, Sundays, and legal holidays shall be excluded in the computation.

(4) **Gender.** The masculine gender includes the feminine and the neuter.

(5) **Joint authority.** A joint authority given to any number of persons or officers may be executed by a majority of them, unless it is otherwise declared.

(6) **Number.** The singular or plural number each includes the other, unless the other is expressly excluded.

(7) **Tense.** The present or past tense includes the future.

History. — Orig. Code 1863, § 5; Code 1868, § 4; Code 1873, § 4; Code 1882, § 4; Civil Code 1895, § 4; Penal Code 1895, § 1; Civil Code 1910, § 4; Penal Code 1910, § 1; Code 1933, § 102-102; Ga. L. 1958, p. 388, § 1; Ga. L. 1963, p. 608, § 1; Ga. L. 1967, p. 579, § 1; Ga. L. 1981, p. 951, § 1; Ga. L. 1985, p. 648, § 1; Ga. L. 1990, p. 1903, § 1; Ga. L. 2001, p. 902, § 22; Ga. L. 2012, p. 173, § 2-1/HB 665; Ga. L. 2018, p. 356, § 2-1/SB 436.

The 2018 amendment, effective July 1, 2018, substituted "15-9-66" for "15-9-67" in division (d)(2)(A)(iv).

Cross references. — Computation of time in regard to exercise of privileges or discharge of duties prescribed or required by election laws, § 21-2-14. Construction of multiple amendments to same Code provision, § 28-9-5.

Editor's notes. — Code Section 1-3-1 is set out twice in this Code. The first version is effective until January 1, 2021, and the second version becomes effective on that date.

Law reviews. — For article comparing sections of the "Georgia Civil Practice Act" with preexisting provisions of the Georgia Code, see 3 Ga. St. B. J. 295 (1967). For article on the problems and benefits of multiple fiduciaries in estate planning, see 33 Mercer L. Rev. 355 (1981). For article surveying Insurance Law in 1984-1985, see 37 Mercer L. Rev. 275 (1985). For article surveying administrative law, see 38 Mercer L. Rev. 17 (1986). For article, "The Amended Open Meetings Law: New Requirements for Publicly Funded Corporations As Well As Governmental Agencies," see 25 Ga. St. B. J. 78 (1988). For article, "The Canons of Construction in Georgia: Anachronisms in Action," see 25 Ga. L. Rev. 365 (1991). For note, "Regulation and Ownership of the Marshlands: The Georgia Marshlands Act," see 5 Ga. L. Rev. 563 (1971). For article on commercial law, see 53 Mercer L. Rev. 153 (2001). For article on construction law, see 53 Mercer L. Rev. 173 (2001). For article on trial practice and procedure, see 53 Mercer L. Rev. 475 (2001). For survey article on administrative law, see 60 Mercer L. Rev. 1 (2008). For annual survey of law on real property, see 62 Mercer L. Rev. 283 (2010). For annual survey on trial practice and procedure, see 64 Mercer L. Rev. 305 (2012). For article, "Researching Georgia Law," see 34 Ga. St. U. L. Rev. 741 (2015).

For comment on Tarrant v. Davis, 62 Ga. App. 880, 10 S.E.2d 636 (1940), see 3 Ga. B. J. 54 (1941). For comment on Tift v. Bush, 209 Ga. 769, 75 S.E.2d 805 (1953), see 16 Ga. B. J. 224 (1953). For comment on Wilkinson v. Townsend, 96 Ga. App. 179, 99 S.E.2d 539 (1957) wherein the statutory authorization for the police to remove an abandoned automobile to a garage was held not to create an agency relationship between the police and auto owner giving rise to a lien against the auto owner by the garageman, see 9 Mercer L. Rev. 372 (1958).

JUDICIAL DECISIONS

Analysis

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General Consideration

Construction cannot render statute meaningless. — Because the purpose of O.C.G.A. § 17-6-72(d)(1) was remedial and had to therefore be construed in favor of the surety, in interpreting the statute and avoiding a meaningless result the trial court properly allowed a surety a remission of 50 percent of the bond amount after the surety filed its application for the bond at any time within 30 days following the expiration of the two-year period following the date of judgment. State of Ga. v. Free At Last Bail Bonds, 285 Ga. App. 734, 647 S.E.2d 402 (2007).

Cited in Citizens & S. Bank v. Taggart, 164 Ga. 351, 138 S.E. 898 (1927); City of Columbus v. Muscogee Mfg. Co., 165 Ga. 259, 140 S.E. 860 (1927); Export Ins. Co. v. Womack, 165 Ga. 815, 142 S.E. 851 (1928); Willcox v. Beechwood Band Mill Co., 166 Ga. 367, 143 S.E. 405 (1928); Allen v. Allen, 39 Ga. App. 624, 147 S.E. 798 (1929); Mobley v. Chamblee, 39 Ga. App. 645, 148 S.E. 306 (1929); Almond v. Mobley, 40 Ga. App. 305, 149 S.E. 293 (1929); Georgia Paper Stock Co. v. State Tax Bd., 174 Ga. 816, 164 S.E. 197 (1932); Carter v. Land, 174 Ga. 811, 164 S.E. 205 (1932); Murphy v. Lowry, 178 Ga. 138, 172 S.E. 457 (1933); Minsk v. Cook, 48 Ga. App. 567, 173 S.E. 446 (1934); Jackson v. State, 49 Ga. App. 345, 175 S.E. 421 (1934); Montag Bros. v. State Revenue Comm'n, 50 Ga. App. 660, 179 S.E. 563 (1935); Eason v. Morrison, 181 Ga. 322, 182 S.E. 163 (1935); Southland Ice Co. v. Doyal, 181 Ga. 797, 184 S.E. 295 (1936); Marshall v. Walker, 183 Ga. 44, 187 S.E. 81 (1936); State Revenue Comm'n v. Alexander, 54 Ga. App. 295, 187 S.E. 707 (1936); Longino v. Hanley, 184 Ga. 328, 191 S.E. 101 (1937); Jones v. Boykin, 185 Ga. 606, 196 S.E. 900 (1938); Sanders v. Paschal, 186 Ga. 837, 199 S.E. 153 (1938); Kesler v. Groover, 58 Ga. App. 548, 199 S.E. 332 (1938); Austin-Western Rd. Mach. Co. v. Fayette County, 99 F.2d 565 (5th Cir. 1938); Burden v. Gates, 188 Ga. 284, 3 S.E.2d 679 (1939); General Accident, Fire & Life Assurance Corp. v. John P. King Mfg. Co., 60 Ga. App. 281, 3 S.E.2d 841 (1939); Cason v. State, 60 Ga. App. 626, 4 S.E.2d 713 (1939); State v. Camp, 189 Ga. 209, 6 S.E.2d 299 (1939); Harrell v. Southeastern Pipe-Line Co., 190 Ga. 709, 10 S.E.2d 386 (1940); Maddox v. First Nat'l Bank, 191 Ga. 106, 11 S.E.2d 662 (1940); Jones v. State, 64 Ga. App. 376, 13 S.E.2d 462 (1941); Forrester v. Trust Co., 65 Ga. App. 167, 15 S.E.2d 559 (1941); Hirsch v. Shepherd Lumber Corp., 194 Ga. 113, 20 S.E.2d 575 (1942); Wharton v. State, 67 Ga. App. 545, 21 S.E.2d 258 (1942); Preston v. National Life & Accident Ins. Co., 196 Ga. 217, 26 S.E.2d 439 (1943); Nixon v. Nixon, 196 Ga. 148, 26 S.E.2d 711 (1943); Owens v. State, 72 Ga. App. 11, 32 S.E.2d 848 (1945); Cook v. Cobb, 72 Ga. App. 150, 33 S.E.2d 366 (1945); Blige v. State, 72 Ga. App. 438, 33 S.E.2d 917 (1945); Lumpkin v. State, 73 Ga. App. 229, 36 S.E.2d 123 (1945); Thompson v. Eastern Air Lines, 200 Ga.

216, 39 S.E.2d 225 (1946); Wright v. State, 75 Ga. App. 764, 44 S.E.2d 569 (1947); Smith v. AMOCO, 77 Ga. App. 463, 49 S.E.2d 90 (1948); Nashville, C. & St. L. Ry. v. Ham, 78 Ga. App. 403, 50 S.E.2d 831 (1948); Citizens Loan & Sec. Co. v. Trust Co., 79 Ga. App. 184, 53 S.E.2d 179 (1949); Childs v. Hampton, 80 Ga. App. 748, 57 S.E.2d 291 (1950); Delinski v. Dunn, 206 Ga. 825, 59 S.E.2d 248 (1950); Norris v. McDaniel, 207 Ga. 232, 60 S.E.2d 329 (1950); Bussey v. Hager, 82 Ga. App. 23, 60 S.E.2d 532 (1950); Reece v. State, 208 Ga. 165, 66 S.E.2d 133 (1951); Camp v. Trapp, 209 Ga. 298, 71 S.E.2d 534 (1952); Payne v. Moore Fin. Co., 87 Ga. App. 627, 74 S.E.2d 746 (1953); Beazley v. De Kalb County, 210 Ga. 41, 77 S.E.2d 740 (1953); State v. Cherokee Brick & Tile Co., 89 Ga. App. 235, 79 S.E.2d 322 (1953); Trowbridge v. Dominy, 92 Ga. App. 177, 88 S.E.2d 161 (1955); Jenkins v. State, 93 Ga. App. 360, 92 S.E.2d 43 (1956); Stein Steel & Supply Co. v. Tate, 94 Ga. App. 517, 95 S.E.2d 437 (1956); Scheuer v. Housing Auth., 214 Ga. 842, 108 S.E.2d 264 (1959); Dell v. Kugel, 99 Ga. App. 551, 109 S.E.2d 532 (1959); Crosby v. State, 100 Ga. App. 49, 110 S.E.2d 94 (1959); City Whsle. Co. v. Harper, 100 Ga. App. 151, 110 S.E.2d 561 (1959); Smith v. A.A. Wood & Son Co., 103 Ga. App. 802, 120 S.E.2d 800 (1961); Williams v. Hudgens, 217 Ga. 706, 124 S.E.2d 746 (1962); Utzman v. Caribbean & S.E. Dev. Corp., 107 Ga. App. 56, 129 S.E.2d 62 (1962); First Nat'l Ins. Co. of Am. v. Thain, 107 Ga. App. 100, 129 S.E.2d 381 (1962); Dyson v. Dixon, 219 Ga. 427, 134 S.E.2d 1 (1963); Balkcom v. Defore, 219 Ga. 641, 135 S.E.2d 425 (1964); Mach v. State, 109 Ga. App. 154, 135 S.E.2d 467 (1964); Stull v. Jack Stull, Inc., 220 Ga. 271, 138 S.E.2d 379 (1964); Goldstein v. Karr, 110 Ga. App. 806, 140 S.E.2d 40 (1964); Mitchell v. State, 111 Ga. App. 11, 140 S.E.2d 290 (1965); Millhollan v. State, 221 Ga. 165, 143 S.E.2d 730 (1965); McVay v. Anderson, 221 Ga. 381, 144 S.E.2d 741 (1965); Montgomery v. Gilbert, 112 Ga. App. 751, 146 S.E.2d 115 (1965); Red Hill Lumber Co. v. Miller, 112 Ga. App. 882, 146 S.E.2d 918 (1966); Smith v. Smith, 113 Ga. App. 111, 147 S.E.2d 466 (1966); State v. Livingston, 222 Ga. 441, 150 S.E.2d 648 (1966); Wall v. Youmans, 223 Ga. 191, 154 S.E.2d 191 (1967); Herrin v. Herrin, 224 Ga. 579, 163 S.E.2d 713 (1968); Daniels v. Allen, 118 Ga. App. 722, 165 S.E.2d 449 (1968); Martin Theaters of Ga., Inc. v. Lloyd, 118 Ga. App. 835, 165 S.E.2d 909 (1968); Anthony v. Anthony, 120 Ga. App. 261, 170 S.E.2d 273 (1969); Aliotta v. Gilreath, 226 Ga. 263, 174 S.E.2d 403 (1970); Thompson v. Abbott, 226 Ga. 353, 174 S.E.2d 904 (1970); Mull v. Aetna Cas. & Sur. Co., 226 Ga. 462, 175 S.E.2d 552 (1970); Citizens & S. Nat'l Bank v. Fulton County, 123 Ga. App. 323, 180 S.E.2d 905 (1971); Morris v. Durbin, 123 Ga. App. 383, 180 S.E.2d 925 (1971); Save The Bay Comm., Inc. v. Mayor of Savannah, 227 Ga. 436, 181 S.E.2d 351 (1971); Ansley v. State, 124 Ga. App. 670, 185 S.E.2d 562 (1971); Watts v. Teagle, 124 Ga. App. 726, 185 S.E.2d 803 (1971); Mickas v. Mickas, 229 Ga. 10, 189 S.E.2d 81 (1972); Winston Corp. v. Park Elec. Co., 126 Ga. App. 489, 191 S.E.2d 340 (1972); Dukes v. Ralston Purina Co., 127 Ga. App. 696, 194 S.E.2d 630 (1972); Nevels v. City of Sale City, 128 Ga. App. 65, 195 S.E.2d 658 (1973); Montaquila v. Cranford, 129 Ga. App. 787, 201 S.E.2d 335 (1973); Jackson v. State, 130 Ga. App. 581, 203 S.E.2d 923 (1974); Stepp v. Lance, 131 Ga. App. 193, 205 S.E.2d 490 (1974); Queen v. State, 131 Ga. App. 370, 205 S.E.2d 921 (1974); Pate v. Milford A. Scott Real Estate Co., 132 Ga. App. 49, 207 S.E.2d 567 (1974); Jones v. Hartford Accident & Indem. Co., 132 Ga. App. 130, 207 S.E.2d 613 (1974); Vohs v. Dickson, 495 F.2d 607 (5th Cir. 1974); J.A.T. v. State, 133 Ga. App. 922, 212 S.E.2d 879 (1975); Dunn v. Cofer, 134 Ga. App. 173, 213 S.E.2d 483 (1975); Blackmon v. Dixon, 134 Ga. App. 184, 213 S.E.2d 513 (1975); Chanin v. Bibb County, 234 Ga. 282, 216 S.E.2d 250 (1975); Hinson v. Georgia State Bd. of Dental Exmrs., 135 Ga. App. 488, 218 S.E.2d 162 (1975); DeFreeze v. State, 136 Ga. App. 10, 220 S.E.2d 17 (1975); Stitt v. Busbee, 136 Ga. App. 44, 220 S.E.2d 59 (1975); Garren v. Southland Corp., 235 Ga. 784, 221 S.E.2d 571 (1976); Givens v. Dunn Labs., Inc., 138 Ga. App. 26, 225 S.E.2d 480 (1976); H.R. Lee Inv. Corp. v. Groover, 138 Ga. App. 231, 225 S.E.2d 742 (1976); Camp v. Hamrick, 139 Ga. App. 61, 228 S.E.2d 288 (1976);

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Blumenau v. Citizens & S. Nat'l Bank, 139 Ga. App. 188, 228 S.E.2d 302 (1976); Turner Communications Corp. v. Georgia Dep't of Transp., 139 Ga. App. 436, 228 S.E.2d 399 (1976); Jones v. State, 139 Ga. App. 679, 229 S.E.2d 149 (1976); Smith v. State, 140 Ga. App. 200, 230 S.E.2d 350 (1976); M. Shapiro & Son v. Yates Constr. Co., 140 Ga. App. 675, 231 S.E.2d 497 (1976); Eason Publications v. Atlanta Gazette, Inc., 141 Ga. App. 321, 233 S.E.2d 232 (1977); DOT v. Spells Sign Co., 141 Ga. App. 350, 233 S.E.2d 435 (1977); Leathers v. Gilland, 141 Ga. App. 681, 234 S.E.2d 336 (1977); Chilivis v. IBM Corp., 142 Ga. App. 160, 235 S.E.2d 626 (1977); Vansant v. Allstate Ins. Co., 142 Ga. App. 684, 236 S.E.2d 858 (1977); State v. Jackson, 143 Ga. App. 88, 237 S.E.2d 533 (1977); Green v. Decatur Fed. Sav. & Loan Ass'n, 143 Ga. App. 368, 238 S.E.2d 740 (1977); Retail Union Health & Welfare Fund v. Seabrum, 240 Ga. 695, 242 S.E.2d 18 (1978); Richmond County Bd. of Tax Assessors v. Georgia R.R. Bank & Trust Co., 242 Ga. 23, 247 S.E.2d 761 (1978); Young v. Department of Human Resources, 148 Ga. App. 518, 251 S.E.2d 578 (1978); National Adv. Co. v. Department of Transp., 149 Ga. App. 334, 254 S.E.2d 571 (1979); Parker v. Ryder Truck Lines, 150 Ga. App. 163, 257 S.E.2d 18 (1979); Yeomans v. American Nat'l Ins. Co., 150 Ga. App. 334, 258 S.E.2d 1 (1979); Bergen v. Martindale-Hubbell, Inc., 245 Ga. 742, 267 S.E.2d 10 (1980); Fair v. State, 245 Ga. 868, 268 S.E.2d 316 (1980); Floyd County Bd. of Comm'rs v. Floyd County Merit Sys. Bd., 246 Ga. 44, 268 S.E.2d 651 (1980); State v. Germany, 246 Ga. 455, 271 S.E.2d 851 (1980); McCord v. Housing Auth., 246 Ga. 547, 272 S.E.2d 247 (1980); Lester v. Crooms, Inc., 157 Ga. App. 377, 277 S.E.2d 751 (1981); Earth Mgt., Inc. v. Heard County, 248 Ga. 442, 283 S.E.2d 455 (1981); Ford v. Termplan, Inc., 528 F. Supp. 1016 (N.D. Ga. 1981); West v. Dorsey, 248 Ga. 790, 285 S.E.2d 703 (1982); State Farm Mut. Auto. Ins. Co. v. Hancock, 164 Ga. App. 32, 295 S.E.2d 359 (1982); Bunkley v. Hendrix, 164 Ga. App. 401, 296 S.E.2d 223 (1982); Tabb v. State, 250 Ga. 317, 297 S.E.2d 227 (1982); State v. Chumley, 164 Ga. App. 828, 299 S.E.2d 564 (1982); McGee v. State, 165 Ga. App. 423, 299 S.E.2d 573 (1983); Sabel v. State, 250 Ga. 640, 300 S.E.2d 663 (1983); Leavell v. Life Ins. Co., 165 Ga. App. 770, 302 S.E.2d 623 (1983); Cheely v. State, 251 Ga. 685, 309 S.E.2d 128 (1983); DeWaters v. City of Atlanta, 169 Ga. App. 41, 311 S.E.2d 232 (1983); Camp v. City of Columbus, 252 Ga. 120, 311 S.E.2d 834 (1984); St. Paul Fire & Marine Ins. Co. v. Nixon, 252 Ga. 469, 314 S.E.2d 215 (1984); American Hosp. Supply Corp. v. Starline Mfg. Corp., 171 Ga. App. 790, 320 S.E.2d 857 (1984); Ausburn v. Anthony, 173 Ga. App. 505, 326 S.E.2d 588 (1985); Smith v. Smith, 254 Ga. 450, 330 S.E.2d 706 (1985); Shirley v. State, 254 Ga. 723, 334 S.E.2d 154 (1985); DeKalb County School Dist. v. Bowden, 177 Ga. App. 296, 339 S.E.2d 356 (1985); DeKalb County v. Nall, 178 Ga. App. 429, 343 S.E.2d 113 (1986); Midland Nat'l Life Ins. Co. v. Citizens & S. Nat'l Bank, 641 F. Supp. 516 (M.D. Ga. 1986); Bowen v. City of Columbus, 256 Ga. 462, 349 S.E.2d 740 (1986); Grissett v. Wilson, 181 Ga. App. 727, 353 S.E.2d 621 (1987); Alexander v. Macon-Bibb County Urban Dev. Auth. & Urban Properties #47, 257 Ga. 181, 357 S.E.2d 62 (1987); Woods v. General Elec. Credit Auto Lease, Inc., 187 Ga. App. 57, 369 S.E.2d 334 (1988); ADC Constr. Co. v. Hall, 191 Ga. App. 33, 381 S.E.2d 76 (1989); Star Mfg., Inc. v. Edenfield, 191 Ga. App. 665, 382 S.E.2d 706 (1989); AAA Bonding Co. v. State, 192 Ga. App. 684, 386 S.E.2d 50 (1989); State v. Allen, 192 Ga. App. 730, 386 S.E.2d 394 (1989); Thompson v. Tom Harvey Ford Mercury, Inc., 193 Ga. App. 64, 387 S.E.2d 28 (1989); Management Comp. Group/Southeast, Inc. v. United Sec. Emp. Programs, Inc., 194 Ga. App. 99, 389 S.E.2d 525 (1989); Kolker v. State, 260 Ga. 240, 391 S.E.2d 391 (1990); Griffin v. State, 194 Ga. App. 624, 391 S.E.2d 675 (1990); Roman v. Terrell, 195 Ga. App. 219, 393 S.E.2d 83 (1990); Palmer v. State, 260 Ga. 330, 393 S.E.2d 251 (1990); DOT v. Moseman Constr. Co., 260 Ga. 369, 393 S.E.2d 258 (1990); State Farm Mut. Auto. Ins. Co. v. Day, 195 Ga. App. 823, 394 S.E.2d 913 (1990); Atlanta Cas. Ins. Co. v. Crews, 197 Ga. App. 48, 397 S.E.2d 466 (1990); Alex-

ander v. Steining, 197 Ga. App. 328, 398 S.E.2d 390 (1990); Reid Rental, Inc. v. City of Waycross, 197 Ga. App. 676, 399 S.E.2d 247 (1990); Johnson v. Housing Auth., 198 Ga. App. 816, 403 S.E.2d 97 (1991); Garvey v. Mendenhall, 199 Ga. App. 241, 404 S.E.2d 613 (1991); Day v. Burnett, 199 Ga. App. 494, 405 S.E.2d 316 (1991); Thomason v. State, 199 Ga. App. 875, 406 S.E.2d 528 (1991); Board of Natural Resources v. Walker County, 200 Ga. App. 301, 407 S.E.2d 436 (1991); Atlanta Journal & Constitution v. Sims, 200 Ga. App. 236, 407 S.E.2d 464 (1991); Foody v. State, 200 Ga. App. 230, 407 S.E.2d 469 (1991); Smith v. Turner, 764 F. Supp. 632 (N.D. Ga. 1991); Jewell v. State, 200 Ga. App. 203, 407 S.E.2d 763 (1991); Calhoon v. Mr. Locksmith Co., 200 Ga. App. 618, 409 S.E.2d 226 (1991); Rainbow Mfg. Co. v. Bank of Fitzgerald, 129 Bankr. 702 (Bankr. M.D. Ga. 1991); Rolleston v. Munford, 201 Ga. App. 219, 410 S.E.2d 801 (1991); Liberty Nat'l Life Ins. Co. v. Coley, 201 Ga. App. 623, 411 S.E.2d 553 (1991); Calhoun County Hosp. Auth. v. Walker, 205 Ga. App. 259, 421 S.E.2d 777 (1992); Fisch v. Randall Mill Corp., 262 Ga. 861, 426 S.E.2d 883 (1993); Givins v. State, 207 Ga. App. 334, 428 S.E.2d 452 (1993); Weems v. Munson Transp., Inc., 210 Ga. App. 766, 437 S.E.2d 640 (1993); State v. Evans, 212 Ga. App. 415, 442 S.E.2d 287 (1994); Franklin v. Hill, 264 Ga. 302, 444 S.E.2d 778 (1994); Weiland v. Weiland, 216 Ga. App. 417, 454 S.E.2d 613 (1995); Miller v. Georgia Ports Auth., 266 Ga. 586, 470 S.E.2d 426 (1996); Holmes v. Chatham Area Transit Auth., 233 Ga. App. 42, 505 S.E.2d 225 (1998); VSI Enters., Inc. v. Edwards, 238 Ga. App. 369, 518 S.E.2d 765 (1999); S & A Indus. v. Bank Atlanta, 247 Ga. App. 377, 543 S.E.2d 743 (2000); Gullatt v. Omega Psi Phi Fraternity, Inc., 248 Ga. App. 779, 546 S.E.2d 927 (2001); McKenzie v. State, 250 Ga. App. 277, 549 S.E.2d 774 (2001); Cox v. Barber, 275 Ga. 415, 568 S.E.2d 478 (2002); In the Interest of T. H., 258 Ga. App. 416, 574 S.E.2d 461 (2002); Ga. Dep't of Cmty. Health, Div. of Health Planning v. Gwinnett Hosp. Sys., 262 Ga. App. 879, 586 S.E.2d 762 (2003); Waters v. Stewart, 263 Ga. App. 195, 587 S.E.2d 307 (2003); Dep't of Human Res. v. Nation, 265 Ga. App. 434, 594 S.E.2d 383 (2004); Johnson v. Ga. Dep't of Human Res., 278 Ga. 714, 606 S.E.2d 270 (2004); Cochran v. Bowers, 274 Ga. App. 449, 617 S.E.2d 563 (2005); In the Interest of K.M.C., 273 Ga. App. 276, 614 S.E.2d 896 (2005); Effingham County Bd. of Tax Assessors v. Samwilka, Inc., 278 Ga. App. 521, 629 S.E.2d 501 (2006); Summerlin v. Ga. Pines Cmty. Serv. Bd., 278 Ga. App. 831, 630 S.E.2d 115 (2006); In the Interest of L.J., 279 Ga. App. 237, 630 S.E.2d 771 (2006); Goswick v. Murray County Bd. of Educ., 281 Ga. App. 442, 636 S.E.2d 133 (2006); Echols v. Echols, 281 Ga. 546, 640 S.E.2d 257 (2007); Merry v. Williams, 281 Ga. 571, 642 S.E.2d 46 (2007); In the Interest of D.B., 284 Ga. App. 445, 644 S.E.2d 305 (2007); DBL, Inc. v. Carson, 284 Ga. App. 898, 645 S.E.2d 56 (2007); Leake v. Murphy, 284 Ga. App. 490, 644 S.E.2d 328 (2007); Ga. Public Defender Stds. Council v. State of Ga., 284 Ga. App. 660, 644 S.E.2d 510 (2007); In re Carter, 288 Ga. App. 276, 653 S.E.2d 860 (2007); Charles H. Wesley Educ. Found., Inc. v. State Election Bd., 282 Ga. 707, 654 S.E.2d 127 (2007); In re Estate of Miraglia, 290 Ga. App. 28, 658 S.E.2d 777 (2008); Carolina Tobacco Co. v. Baker, 295 Ga. App. 115, 670 S.E.2d 811 (2008); In the Interest of P.S., 295 Ga. App. 724, 673 S.E.2d 74 (2009); Morrell v. State, 297 Ga. App. 592, 677 S.E.2d 771 (2009); Moore v. Moore-McKinney, 297 Ga. App. 703, 678 S.E.2d 152 (2009); Transworld Fin. Corp. v. Coastal Tire & Container Repair, LLC, 298 Ga. App. 286, 680 S.E.2d 143 (2009); Frix v. State, 298 Ga. App. 538, 680 S.E.2d 582 (2009); Peck v. State, 300 Ga. App. 375, 685 S.E.2d 367 (2009); Emory Adventist, Inc. v. Hunter, 301 Ga. App. 215, 687 S.E.2d 267 (2009); Northeast Atlanta Bonding Co. v. State, 308 Ga. App. 573, 707 S.E.2d 921 (2011); Hill v. State, 309 Ga. App. 531, 710 S.E.2d 667 (2011); Davenport v. State, 289 Ga. 399, 711 S.E.2d 699 (2011); City of Atlanta v. City of College Park, 311 Ga. App. 62, 715 S.E.2d 158 (2011); Luangkhot v. State, 313 Ga. App. 599, 722 S.E.2d 193 (2012); Brown v. State, 314 Ga. App. 1, 723 S.E.2d 112 (2012); Walker v. State, 290 Ga. 696, 723 S.E.2d 894 (2012); Boyd v. State, 314 Ga. App. 883, 726 S.E.2d 135 (2012); Mayor &

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Aldermen of Savannah v. Batson-Cook Co., 291 Ga. 114, 728 S.E.2d 189 (2012); Brantley Land & Timber, LLC v. W & D Invs., Inc., 316 Ga. App. 277, 729 S.E.2d 458 (2012); Nicholson Hills Dev. v. Branch Banking & Trust Co., 316 Ga. App. 857, 730 S.E.2d 572 (2012); Inagawa v. Fayette County, 291 Ga. 715, 732 S.E.2d 421 (2012); Gay v. Owens, 292 Ga. 480, 738 S.E.2d 614 (2013); Norred v. Teaver, 320 Ga. App. 508, 740 S.E.2d 251 (2013); Austin v. Bank of Am., N.A., 293 Ga. 42, 743 S.E.2d 399 (2013); Turner County v. City of Ashburn, 293 Ga. 739, 749 S.E.2d 685 (2013); Nat'l City Mortg. Co. v. Tidwell, 293 Ga. 697, 749 S.E.2d 730 (2013); Atlanta Indep. Sch. Sys. v. Atlanta Neighborhood Charter Sch., 293 Ga. 629, 748 S.E.2d 884 (2013); Abdel-Samed v. Dailey, 294 Ga. 758, 755 S.E.2d 805 (2014); L & K Enters., LLC v. City National Bank, N.A., 326 Ga. App. 744, 755 S.E.2d 270 (2014); Sewell v. Cancel, 295 Ga. 235, 759 S.E.2d 485 (2014); Park v. Bailey, 329 Ga. App. 569, 765 S.E.2d 721 (2014); Fielder v. Johnson, 333 Ga. App. 658, 773 S.E.2d 831 (2015); AA-Prof'l Bail Bonding v. Deal, 332 Ga. App. 857, 775 S.E.2d 217 (2015); Evans v. State, 334 Ga. App. 104, 778 S.E.2d 360 (2015); Wright v. Brown, 336 Ga. App. 1, 783 S.E.2d 405 (2016); State v. Mantooth, 337 Ga. App. 698, 788 S.E.2d 584 (2016); Liberty Mut. Fire Ins. Co. v. Quiroga-Saenz, 343 Ga. App. 494, 807 S.E.2d 460 (2017); Ga.-Pac. Consumer Prods., LP v. Ratner, 345 Ga. App. 434, 812 S.E.2d 120 (2018); In re Estate of Gladstone, 303 Ga. 547, 814 S.E.2d 1 (2018); Maddox v. State, 346 Ga. App. 674, 816 S.E.2d 796 (2018); City of College Park v. Martin, 304 Ga. 488, 818 S.E.2d 620 (2018); Moore v. Childs, 347 Ga. App. 560, 820 S.E.2d 186 (2018); Jorree v. PMB Rentals, LLC, 349 Ga. App. 332, 825 S.E.2d 817 (2019).

Applicability

Section is intended to apply to provisions of the Code in the subject of wills. Ellis v. Darden, 86 Ga. 368, 12 S.E. 652, 11 L.R.A. 51 (1890).

Section applies to statutory, but not contractual, limitations. Rowell v. Harrell Realty Co., 25 Ga. App. 585, 103 S.E. 717 (1920) see also Simpkins v. Johnson, 3 Ga. App. 437, 60 S.E. 202 (1908); Maxwell Bros. v. Liverpool & London & Globe Ins. Co., 12 Ga. App. 127, 76 S.E. 1036 (1913).

Section applies to construction of both municipal ordinances and statutes. Risser v. City of Thomasville, 248 Ga. 866, 286 S.E.2d 727 (1982).

Paragraph (d)(3) of O.C.G.A. § 1-3-1 applies to contracts as well as statutes when the limitation is in terms of days. Management Search, Inc. v. Avon Prods., Inc., 166 Ga. App. 262, 304 S.E.2d 426 (1983).

1985 amendment. — Because the 1985 amendment to paragraph (d)(3) of O.C.G.A. § 1-3-1, effective July 1, 1985, was silent on the question of retroactive application, it has no application to a personal injury case where the period of limitations would have expired on June 29, 1985, under the law prior to the amendment. Loveless v. Grooms, 180 Ga. App. 424, 349 S.E.2d 281 (1986).

The 1985 amendment to paragraph (d)(3) extended the old statutory time period where that time period had not yet expired prior to the effective date of the amendment. Hollingsworth v. Hubbard, 184 Ga. App. 121, 361 S.E.2d 12 (1987).

Computation of time. — Superior court improperly dismissed as untimely appellant city's petition for a writ of certiorari challenging a civil service board's decision, as the petition was timely filed for purposes of O.C.G.A. § 5-4-6(a) since: (1) the last day to file the petition fell on Thanksgiving Day; (2) the Friday after Thanksgiving day, like Thanksgiving day, was a legal holiday as set forth in O.C.G.A. § 1-4-1; and (3) the petition was filed on the very next business day, as allowed by O.C.G.A. § 1-3-1(d)(3). City of Atlanta v. Hector, 256 Ga. App. 665, 569 S.E.2d 600 (2002).

Denial of an untimely motion for a continuance was not an abuse of discretion, in the absence of a proffer of defendant's counsel's testimony or other evidence to support this claim. Currington v. State, 270 Ga. App. 381, 606 S.E.2d 619 (2004).

Method of computation of time in O.C.G.A. § 1-3-1(d)(3) applies to the filing

of renewal actions under O.C.G.A. § 9-2-61(a). Parsons v. Capital Alliance Fin., LLC, 325 Ga. App. 884, 756 S.E.2d 14 (2014).

Construction of "holidays." — Because the plain language of O.C.G.A. § 1-3-1(a) and § 5-6-38(a) make no provisions for extending the filing time for notices of appeal to compensate for county declared holidays and O.C.G.A. § 1-4-2 limits religious holidays to Sundays, Good Friday did not constitute a holiday for purposes of extending the filing date. In re Estate of Dasher, 259 Ga. App. 201, 575 S.E.2d 921 (2002).

Definition according to experts in medical field. — Where executive agencies have rule-making powers delegated by the Georgia General Assembly, O.C.G.A. § 1-3-1(b) must yield to other rules of statutory construction; thus, the definition of "specialty" as understood by an American board on medical specialties was not controlling for purposes of the single-specialty exemption of O.C.G.A. § 31-6-2(14)(G)(iii) regarding the requirement of obtaining a certificate of need. Albany Surgical, P.C. v. Dep't of Cmty. Health, 257 Ga. App. 636, 572 S.E.2d 638 (2002).

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Statute is presumed to be valid and constitutional until the contrary appears, and, where challenged as a whole, the attack will necessarily fail unless the statute is invalid in every part for some reason alleged. Williams v. Ragsdale, 205 Ga. 274, 53 S.E.2d 339 (1949).

A solemn Act of the General Assembly is presumed to be constitutional. State v. Davis, 246 Ga. 761, 272 S.E.2d 721 (1980).

A statute properly enacted is presumed to be constitutional. Development Auth. v. Beverly Enters., 247 Ga. 64, 274 S.E.2d 324 (1981).

An Act of the General Assembly carries a strong presumption of constitutionality, and therefore should not be set aside unless it "plainly and palpably" conflicts with a constitutional provision. City of Atlanta v. Metropolitan Atlanta Rapid Transit Auth., 636 F.2d 1084 (5th Cir. 1981).

Statute must be construed with reference to whole system of which it is a part. Allison v. Domain, 158 Ga. App. 542, 281 S.E.2d 299 (1981).

Construction which will give effect to a statute or rule is preferred to a construction which will destroy it. Brown v. State Merit Sys. of Personnel Admin., 245 Ga. 239, 264 S.E.2d 186 (1980).

That construction which will uphold a statute in whole and in every part is preferred. Exum v. City of Valdosta, 246 Ga. 169, 269 S.E.2d 441 (1980).

Subdivision (d)(3) has no application in criminal prosecution. — In a prosecution of a county deputy for sexual battery and false imprisonment, an indictment filed on May 30, 2014, two years after the incidents that took place on May 30, 2012, was filed a day after the expiration of the statute of limitation, O.C.G.A. § 17-3-1(e); O.C.G.A. § 1-3-1(d)(3) did not apply in a criminal prosecution. State v. Dorsey, 342 Ga. App. 188, 802 S.E.2d 61 (2017).

Specific sentencing provisions controlled over general sentencing provisions. — Pursuant to O.C.G.A. § 16-13-31(g)(1), the trial court lacked the authority to probate or suspend sentences imposed against two defendants in unrelated criminal actions, and neither the 2004 nor the 2006 amendments to the general sentencing provisions under O.C.G.A. § 17-10-1(a)(1) were relevant; moreover, because O.C.G.A. §§ 17-10-6.1 and 17-10-6.2 were statutes that defined certain categories of crimes and provided the sentencing guidelines for those categories, it did not appear that the list of these two exceptions normally would have included § 16-13-31 or any other specific criminal statute, and any omission would be significant only with regard to a statute that defined classes or categories of crimes. Gillen v. State, 286 Ga. App. 616, 649 S.E.2d 832 (2007), cert. denied, No. S07C1780, 2007 Ga. LEXIS 809 (Ga. 2007).

Courts not to "read out" part of statute. — It is contrary to the generally accepted principles for construing statutes to "read out" any part of the statute as "mere surplusage" unless there is a

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clear reason for doing so. Porter v. Food Giant, Inc., 198 Ga. App. 736, 402 S.E.2d 766 (1991), cert. denied, 502 U.S. 980, 112 S. Ct. 582, 116 L. Ed. 2d 607 (1991).

Construction which renders ordinance or resolution valid preferred. — In construing an ordinance or resolution of a governmental unit, if the language is susceptible of more than one construction, that construction is preferred which will render it valid rather than invalid. Mayor of Hapeville v. Anderson, 246 Ga. 786, 272 S.E.2d 713 (1980).

It is courts' duty to put construction upon statutes, if possible, and to uphold them and carry them into effect. Lamons v. Yarbrough, 206 Ga. 50, 55 S.E.2d 551 (1949).

It is the duty of the court in construing an ambiguous statute to give it a construction, if the language permits, that will sustain the Act, rather than a construction that will render it invalid. Jones v. City of College Park, 223 Ga. 778, 158 S.E.2d 384 (1967).

Act's constitutionality determined by examining Act existing at time of offense. — The constitutionality of an Act of the General Assembly must be determined by the examination of the Act as it existed at the time of the alleged offense, not by an examination of an isolated section of the Code. Stewart v. State, 246 Ga. 70, 268 S.E.2d 906 (1980).

Statutes construed in connection and in harmony with existing law. — All statutes are presumed to be enacted by the General Assembly with full knowledge of the existing condition of the law and with reference to it. New statutes are therefore to be construed in connection and in harmony with the existing law. McPherson v. City of Dawson, 221 Ga. 861, 148 S.E.2d 298 (1966).

All statutes are presumed to be enacted by the General Assembly with full knowledge of the existing condition of the law and with reference to it; new statutes are to be construed in connection and in harmony with the existing law, and their meaning and effect will be determined in connection with not only the common law and the Constitution, but also with reference to other statutes and the decisions of the courts. State v. Davis, 246 Ga. 761, 272 S.E.2d 721 (1980); Allison v. Domain, 158 Ga. App. 542, 281 S.E.2d 299 (1981); Wigley v. Hambrick, 193 Ga. App. 903, 389 S.E.2d 763 (1989).

When O.C.G.A. §§ 15-11-40(b), 15-11-63(e)(1)(D) and (e)(2)(c) were read together to effectuate their meaning, as required by O.C.G.A. § 1-3-1(a), the juvenile court did not err in denying a juvenile's motion to commute or reduce the sentence imposed, as allegations that the juvenile was rehabilitated while in restrictive custody and would benefit from being released were insufficient to grant the juvenile court authority to modify its commitment order once physical custody of the juvenile was transferred to the Department of Juvenile Justice. In the Interest of J.V., 282 Ga. App. 319, 638 S.E.2d 757 (2006).

A statute must be viewed so as to make all its parts harmonize and to give a sensible and intelligent effect to each part. Osborn v. State, 161 Ga. App. 132, 291 S.E.2d 22 (1982).

Construction cannot render statute meaningless. — Construing O.C.G.A. § 16-10-94(c), and in order to avoid rendering the terms "and involving another person" meaningless, the court had to interpret that language as imposing felony punishment when the person committed the tampering offense involving the prosecution or defense of a third person; hence, because the state did not present any allegations or evidence indicating that the defendant committed the tampering offense to prevent the apprehension or prosecution of anyone other than the defendant, the felony sentence imposed was void, and had to be vacated. English v. State, 282 Ga. App. 552, 639 S.E.2d 551 (2006).

Courts cannot construe plain statutes. — If a statute is plain and susceptible of but one construction, the courts have no authority to place a different construction on it, but must apply it according to its terms. Thompson v. Georgia Power Co., 73 Ga. App. 587, 37 S.E.2d 622 (1946).

Courts of last resort must frequently

construe the language of a statute, but they may not substitute by judicial interpretation language of their own for the clear, unambiguous language of the statute, so as to change the meaning. Frazier v. Southern Ry., 200 Ga. 590, 37 S.E.2d 774 (1946).

Where the language of an Act is plain and unequivocal, judicial construction is not only unnecessary but is forbidden. City of Jesup v. Bennett, 226 Ga. 606, 176 S.E.2d 81 (1970).

Certain express requirements must be spelled out in statute. — A county historic preservation commission's decision was not void because the commission did not have seven members as required by an ordinance. Neither the ordinance nor the Historical Preservation Act, O.C.G.A. § 44-10-20 et seq., provided that failure to have seven active members invalidated a decision; such an express requirement was necessary under O.C.G.A. § 1-3-1(c). DeKalb County v. Buckler, 288 Ga. App. 346, 654 S.E.2d 193 (2007), cert. denied, No. S08C0514, 2008 Ga. LEXIS 374 (Ga. 2008).

Gender references. — For construction purposes, the state's act of merely tracking the language of O.C.G.A. § 16-10-24(a), which itself used the masculine pronoun "his" to include the feminine gender, did not result in a fatal variance between the evidence at trial and the allegations of the accusation, in a case involving a female officer, entitling both defendants to a directed verdict on the charges of which the defendants were eventually convicted. Curtis v. State, 285 Ga. App. 298, 645 S.E.2d 705 (2007).

Plain and ordinary meaning. — It is a fundamental principle of statutory construction that the court must give words their plain and ordinary meaning, pursuant to O.C.G.A. § 1-3-1(b); therefore, because O.C.G.A. § 9-12-61 recites explicitly that revival of a dormant judgment may be accomplished by "an action" within three years of when the judgment became dormant, not by "a judgment" within that time period, the General Assembly intended that dormant judgments could be revived during a three year period thereafter by bringing an action into existence, i.e., filing an action. Magnum Communs. Ltd. v. Samoluk, 275 Ga. App. 177, 620 S.E.2d 439 (2005).

In an action in which the plaintiff consumer filed a complaint under the Georgia Fair Business Practices Act (FBPA), O.C.G.A. § 10-1-390 et seq., and the Georgia Unfair or Deceptive Practices Toward the Elderly Act, O.C.G.A. § 10-1-850 et seq., and the lender argued for dismissal because the language of O.C.G.A. § 10-1-851 required conduct directed at more than one elderly person, the argument was rejected; consistent with O.C.G.A. § 1-3-1(d)(6), and the use of plurals or the singular form in O.C.G.A. §§ 10-1-850, 10-1-852, and 10-1-853, O.C.G.A. § 10-1-851 required only a showing that FBPA was violated against one elderly person. Kitchen v. Ameriquest Mortg. Co., No. 1:04-CV-2750-BBM, 2005 U.S. Dist. LEXIS 43937 (N.D. Ga. Apr. 29, 2005).

Trial court properly reversed a decision by the Georgia Workers' Compensation Appellate Division and reinstated a decision of an administrative law judge who found that an employee suffered a "catastrophic injury" for purposes of O.C.G.A. § 34-9-200.1(g)(6), as the employee was unable to perform the prior work done, although the employee was able to perform other work available in substantial numbers within the national economy; the relevant provision of O.C.G.A. § 34-9-200.1(g)(6) used "or" between the two types of work that an employee could perform rather than "and" and that phraseology was deemed unambiguous, plain, and capable of having only one meaning, based on statutory interpretation rules under O.C.G.A. § 1-3-1(a) and legislative changes over time to O.C.G.A. § 34-9-200.1(g)(6). Rite-Aid Corp. v. Davis, 280 Ga. App. 522, 634 S.E.2d 480 (2006).

Under the plain and ordinary language of O.C.G.A. § 17-6-72(d)(1), a bondsman who failed to assist in the arrest of the principal of its bond was not entitled to a 50 percent remission of the bond, and the district attorney's consent to the bondsman's motion had no legal effect, as such was not accepted by the trial court. Joe Ray Bonding Co. v. State of Ga., 284 Ga. App. 687, 644 S.E.2d 501 (2007).

General Rules of Construction (Cont'd)

Pursuant to the cardinal rule of statutory construction of O.C.G.A. § 1-3-1(a), the plaintiffs had no standing to challenge the facial constitutionality of O.C.G.A. § 16-11-34.2(b)(2) and (b)(4), the funeral picketing statute, because the plaintiffs admitted that the plaintiffs did not intend to impede, disrupt, or interfere with any funerals; thus, without mens rea, there was no real risk of being prosecuted and the plaintiffs had not been threatened with arrest. Hood v. Perdue, 540 F. Supp. 2d 1350 (N.D. Ga. 2008).

In construing conflicting legitimation statutes, which permitted a jury trial (O.C.G.A. § 19-7-22), with paternity statute, which expressly prohibited a jury trial (O.C.G.A. § 19-7-40), and due to the fact that the two proceedings were consolidated, the legislative ban on jury trials provided for in the paternity statute had to prevail as to hold otherwise would allow a party to thwart the paternity statute's goals of identifying the father and making sure the father paid child support. Banks v. Hopson, 275 Ga. 758, 571 S.E.2d 730 (2002).

"Bribery" has clear definition. — Within the context of O.C.G.A. § 16-10-2(a)(2), it is only "gifts" which are excepted from the purview thereof and not "bribes," no matter how small the amount involved; accordingly, where a trial court construed § 16-10-2 and held that small amounts of cash that added up to less than $100, which were accepted by defendant, a detention officer, from inmates, were specifically excepted from the offense of bribery, it did not construe the statute using the ordinary meaning of the words pursuant to O.C.G.A. § 1-3-1(b), which was error. State v. Fortner, 264 Ga. App. 783, 592 S.E.2d 454 (2003).

Statute shall be construed so as to give full force and effect to all provisions and so as to reconcile any apparent conflicts. Head v. H.J. Russell Constr. Co., 152 Ga. App. 864, 264 S.E.2d 313 (1980).

Noscitur a sociis is a familiar rule of construction, and so as to reconcile any apparent conflicts. Head v. H.J. Russell Constr. Co., 152 Ga. App. 864, 264 S.E.2d 313 (1980).

Any portion of body of laws may be invoked to ascertain meaning of another part. Royal Indem. Co. v. Agnew, 66 Ga. App. 377, 18 S.E.2d 57 (1941).

Clause's meaning manifested by context and subject matter. — The meaning of a clause in a statute depends upon the intention with which it is used as manifested by the context and considered with reference to the subject matter to which it relates. Thomas v. MacNeill, 200 Ga. 418, 37 S.E.2d 705 (1946).

Rule ejusdem generis set forth in section. — The rule ejusdem generis, to the effect that general terms following specific terms are confined to the same kind, is set forth in this section. Gore v. State, 79 Ga. App. 696, 54 S.E.2d 669 (1949).

"May" sometimes construed as mandatory. — In statutory construction, "may" is construed as mandatory when the statute concerns the public interest, or affects the rights of third persons. Great N. Nekoosa Corp. v. Board of Tax Assessors, 244 Ga. 624, 261 S.E.2d 346 (1979).

Statutes generally receive prospective rather than retrospective application. — Statutes framed in general terms and not plainly indicating the contrary will be construed prospectively, so as to apply to persons, subjects, and things within their purview and scope coming into existence subsequent to their enactment. Undercofler v. Swint, 111 Ga. App. 117, 140 S.E.2d 894 (1965).

Repeal of valid statute by implication. — A valid subsisting statute is not repealed by implication by a later Act unless they are generally inconsistent or unless the later Act covers the entire field of the former legislation. Taylor v. R.O.A. Motors, Inc., 108 Ga. App. 635, 134 S.E.2d 486 (1963).

Repeals by implication are not favored by law, and a subsequent statute repeals prior legislative Acts by implication only when they are clearly and indubitably contradictory, when they are in irreconcilable conflict with each other, and when they cannot reasonably stand together. Sutton v. Garmon, 245 Ga. 685, 266 S.E.2d 497 (1980).

Statutory remedy in derogation of the common law must be strictly pur-

sued. Haralson v. Speer, 1 Ga. App. 573, 58 S.E. 142 (1907); Seaboard Air-Line Ry. v. Bishop, 132 Ga. 71, 63 S.E. 1103 (1909).

Each case involving judicial transaction of sections stands on own facts. — A section involving civil law is frequently a compendium of the legal technique involved in the subject matter in question. The translation of sections is reflected by the courts in decisions rendered relative to the sections and are sometimes seemingly paradoxical, but a sincere student of the law will be able to readily discern and agree that in many fields of law each case must stand upon its own facts. Bromberg v. Drake, 91 Ga. App. 118, 85 S.E.2d 160 (1954).

Construction is not for jury. — What is proper construction to be given to a statute is for court and not for jury. City of Fitzgerald v. Newcomer, 162 Ga. App. 646, 291 S.E.2d 766 (1982).

Legislative Intent

Courts must look diligently for intention of the General Assembly in enacting the legislation under review. Vickery v. Foster, 74 Ga. App. 167, 39 S.E.2d 90 (1946), rev'd on other grounds, 202 Ga. 55, 42 S.E.2d 117 (1947), rev'd on other grounds, 202 Ga. 55, 42 S.E.2d 117 (1947).

The cardinal rule for the construction of statutes is to try to ascertain the intent of the General Assembly. Lamons v. Yarbrough, 206 Ga. 50, 55 S.E.2d 551 (1949).

The cardinal rule to guide the construction of law is, first, to ascertain the legislative intent and purpose in enacting the law, and then to give it that construction which will effectuate the legislative intent and purpose. City of Jesup v. Bennett, 226 Ga. 606, 176 S.E.2d 81 (1970); Hollowell v. Jove, 247 Ga. 678, 279 S.E.2d 430 (1981).

The cardinal rule in the construction of statutes is to look for the intention of the General Assembly, and the intention when ascertained must be carried into effect. Moss v. Bishop, 235 Ga. 616, 221 S.E.2d 38 (1975), overruled on other grounds, Shaheen v. Dunaway Drug Stores, Inc., 246 Ga. 790, 273 S.E.2d 158 (1980).

It is the duty of courts in the construction of statutes to give effect to the intention of the General Assembly when it is ascertainable. Parker v. Ryder Truck Lines, 150 Ga. App. 163, 257 S.E.2d 18 (1979).

The cardinal rule in the construction of legislative enactments is to ascertain the true intention of the General Assembly in the passage of the law. Board of Trustees v. Christy, 246 Ga. 553, 272 S.E.2d 288 (1980), overruled on other grounds, 278 Ga. 166, 598 S.E.2d 456 (2004).

It is fundamental that courts must look to the purpose and intent of the General Assembly and construe the law to implement that intent. Wilson v. Board of Regents, 246 Ga. 649, 272 S.E.2d 496 (1980).

In interpreting statutes, courts must look for the intent of the legislature and construe statutes to effectuate that intent; all words, except words of art, shall be given their ordinary significance. City of Roswell v. City of Atlanta, 261 Ga. 657, 410 S.E.2d 28 (1991).

Construction of a statute must square with common sense and sound reasoning. Blalock v. State, 166 Ga. 465, 143 S.E. 426 (1928).

Language in an ordinance will be given a reasonable and sensible interpretation in order to carry out the legislative intent and render an ordinance valid. Mayor of Hapeville v. Anderson, 246 Ga. 786, 272 S.E.2d 713 (1980).

When section plain and positive, court cannot construe legislative intent. — Just as is the rule in construing statutes, where a section is plain, unambiguous, and positive, and is not capable of two constructions, the court is not authorized to construe it according to what is supposed to be the intention of the General Assembly. Atlanta & W.P.R.R. v. Wise, 190 Ga. 254, 9 S.E.2d 63 (1940).

Courts are not controlled by literal meaning of law in arriving at intention of General Assembly. State v. Brantley, 147 Ga. App. 569, 249 S.E.2d 365 (1978).

Intention of the General Assembly, when discovered, shall prevail. Akin v. Freeman, 49 Ga. 51 (1873).

Statutes are not contracts, and it is intent of the General Assembly and not of any other "party" which is decisive in their construction. City of Fitzgerald v. New-

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comer, 162 Ga. App. 646, 291 S.E.2d 766 (1982).

When intention is ascertained, it governs, and mere letter of statute must yield to spirit. Roberts v. State, 4 Ga. App. 207, 60 S.E. 1082 (1908). see also Demere v. Germania Bank, 116 Ga. 317, 42 S.E. 488 (1902); Youmans v. State, 7 Ga. App. 101, 66 S.E. 383 (1909), ;.

Intention governs and this is true even though some of the verbiage may have to be eliminated from the text. Washington v. Atlantic Coast Line R.R., 136 Ga. 638, 71 S.E. 1066, 38 L.R.A. (n.s.) 867 (1911).

The intention of the General Assembly is the cardinal guide to a construction of statutes, and when it is plainly collected, it should be carried into effect, though contrary to the literal sense of terms. Thacker v. Morris, 196 Ga. 167, 26 S.E.2d 329 (1943).

While all parts of a statute should be preserved, yet a cardinal rule of construction is that the legislative intent shall be effectuated, even though some verbiage may have to be eliminated. The legislative intent should prevail over the literal import of the words. Jones v. City of College Park, 223 Ga. 778, 158 S.E.2d 384 (1967).

The real legislative intention, when collected with certainty, will always, in statutes, prevail over the literal sense of terms. City of Jesup v. Bennett, 226 Ga. 606, 176 S.E.2d 81 (1970).

Statute not construed literally where legislative purpose defeated. — An exception to the general rule that the use of plain and unequivocal language in a legislative enactment obviates any necessity for judicial construction is presented by the use of words the meaning of which in general acceptation is apparently obvious, and yet the purpose of the General Assembly would be defeated were the words employed construed literally. Bibb County v. Hancock, 211 Ga. 429, 86 S.E.2d 511 (1955).

Where to construe an Act of the General Assembly in a particular way would, while hewing to its literal terms, result in defeating the obvious legislative purposes and intent, such construction will not be given where an obvious typographical or clerical error can be corrected so as to carry out the intent. City of Jesup v. Bennett, 226 Ga. 606, 176 S.E.2d 81 (1970).

Courts may construe the language employed in the Act in connection with the context, and ascertain the legislative intent as derived from the old law, the evil, and the remedy, and will not defeat the intention and purpose of the General Assembly by giving effect to words which would render the purpose of the General Assembly in the passage of the enactment futile, unenforceable, or ineffectual. Board of Trustees v. Christy, 246 Ga. 553, 272 S.E.2d 288 (1980).

Courts obligated to refrain from ascribing unreasonable intention to General Assembly. — Even though the literal language of an Act may be plain and unequivocal, it is the duty of the courts, in determining the legislative intent, to refrain from ascribing to the General Assembly a wholly unreasonable intention or an intention to do a futile and useless thing. City of Jesup v. Bennett, 226 Ga. 606, 176 S.E.2d 81 (1970).

It is the duty of the court to consider the results and consequences of any proposed construction and not so construe a statute that will result in unreasonable or absurd consequences not contemplated by the General Assembly. GECC v. Brooks, 242 Ga. 109, 249 S.E.2d 596 (1978).

A court may decline to give a legislative Act such construction as will attribute to the General Assembly an intention to pass an Act which is not reasonable, or as will defeat the purpose of the proposed legislation. Board of Trustees v. Christy, 246 Ga. 553, 272 S.E.2d 288 (1980).

Statute's general language restrained where absurdity results. — To give effect to the intention of the General Assembly, courts are not controlled by the literal meaning of the language of the statute, but the spirit or intention of the law prevails over the letter thereof. Where the letter of the statute results in absurdity or injustice or would lead to contradictions, the meaning of general language may be restrained by the spirit or reason of the statute. Sirmans v. Sirmans, 222 Ga. 202, 149 S.E.2d 101 (1966).

Preservation of Act preferred. — It is the duty of the court to arrive at the

legislative intent, and, in doing so, it should not adopt an arbitrary rule that the General Assembly intended to make a typographical or clerical error, the result of which would be to make nonsense of the Act and not carry out the legislative scheme, but to destroy it. Lamons v. Yarbrough, 206 Ga. 50, 55 S.E.2d 551 (1949).

The construction of a statute which will give effect to legislative intent and preserve the Act is preferred to a construction which will necessarily destroy it. Webb v. Echols, 211 Ga. 724, 88 S.E.2d 625 (1955).

Statute's intent not defeated where mistaken reference to another statute. — In case of a mistake in a reference in a statute to another statute, where the real intent of the General Assembly is manifest and would be defeated by an adherence to the terms of the mistaken reference, and the Act is otherwise a complete Act within itself, the mistaken reference will be regarded as surplusage, or will be read and corrected, in order to give effect to the legislative intent. Humthlett v. Reeves, 211 Ga. 210, 85 S.E.2d 25 (1954).

Where an Act references another statute by mistake, such error will not defeat the Act if the intent of the legislation is clear. Wilson v. Board of Regents, 246 Ga. 649, 272 S.E.2d 496 (1980).

Legislation's scheme and purport criterion for determining enactment's meaning. — One proper criterion for determining the meaning of a legislative enactment is to consider the general scheme and purport of the proposed legislation. Pennington & Evans v. Douglas, A. & G. Ry., 3 Ga. App. 665, 60 S.E. 485 (1908).

Old law, mischief, and remedy considered at arriving at legislative intention. — This section directs that statutes be construed with reference to the intention of the General Assembly, and that the old law, the mischief, and the remedy be considered to arrive at that intention. Everett v. Planters' Bank, 61 Ga. 38 (1878); Mott v. Central R.R., 70 Ga. 680, 48 Am. R. 595 (1883); Barrett & Caswell v. Pulliam, 77 Ga. 552 (1886); Price Co. v. City of Atlanta, 105 Ga. 358, 31 S.E. 619 (1898); Hazlehurst v. Seaboard Air-Line Ry., 118 Ga. 858, 45 S.E. 703 (1903); Sullivan v. Curling, 149 Ga. 96, 99 S.E. 533, 5 A.L.R. 124 (1919); Georgia Ry. & Elec. Co. v. Town of Decatur, 29 Ga. App. 653, 116 S.E. 645 (1923).

To ascertain the intention of the General Assembly, after examining the words of the Act itself, it is necessary to take into view every fact and circumstance that influenced its passage. The court must consider what the law was before, the mischiefs against which the law did not provide, the nature of the remedy proposed, and the true reason of the remedy. McGuire v. McGuire, 228 Ga. 782, 187 S.E.2d 859 (1972).

Where section codified from court decision, construed to conform to existing law. — Where a section has been codified from a decision of the Supreme Court or of the Court of Appeals, the section will be construed, insofar as is compatible with its terms, so as to conform to the then existing law. Atlanta & W.P.R.R. v. Wise, 190 Ga. 254, 9 S.E.2d 63 (1940).

Act as enrolled controls over appearance in printed volume. — Where there is a conflict between the language of an Act of the General Assembly as it is enrolled and as it appears in the volume published by the public printer, the former controls. Bass v. Doughty, 5 Ga. App. 458, 63 S.E. 516 (1909).

General Assembly's intention derivable from Acts caption. — Nothing is better settled than that the intention of the General Assembly in the passage of a law is derivable as well from the caption of the Act as from the body of the Act itself. Sovereign Camp Woodmen of the World v. Beard, 26 Ga. App. 130, 105 S.E. 629, cert. denied, 26 Ga. App. 801 (1921).

All words of General Assembly, however numerous, ought to be preserved, and effect given to whole, if it can be done. No doubt courts could sometimes better legislation by rejecting some of the words delivered to them by the General Assembly for construction, but to do this, courts have no power. Butterworth v. Butterworth, 227 Ga. 301, 180 S.E.2d 549 (1971).

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In the construction of a statute the legislative intent must be determined from a consideration of it as a whole. Board of Trustees v. Christy, 246 Ga. 553, 272 S.E.2d 288 (1980).

Larger and more extensive statutory expression controls. — Where a particular expression in one part of a statute is not so extensive or large in its import as other expressions in the same statute, it must yield to the larger and more extensive expression, where the latter embodies the real intent of the General Assembly. Board of Trustees v. Christy, 246 Ga. 553, 272 S.E.2d 288 (1980).

Where there is apparent conflict between different sections of same statute, the duty of a court is to reconcile them, if possible, so as to make them consistent and harmonious with one another, and if they cannot be so reconciled, the one which best conforms to the legislative intent must stand. Board of Trustees v. Christy, 246 Ga. 553, 272 S.E.2d 288 (1980).

One of two provisos should not be rejected as senseless or superfluous. — The rule of construction that effect is to be given to all the words of a statute forbids that two provisos should be treated as having no more scope or significance than one of them would have if standing alone. It is better to wait for a legislative amendment than to arbitrarily reject one of the provisos as senseless or superfluous. Butterworth v. Butterworth, 227 Ga. 301, 180 S.E.2d 549 (1971).

Severability clause creates presumption of separability. — The presence of a severability clause in an Act reverses the usual presumption that the General Assembly intends the Act to be an entirety and creates an opposite presumption of separability. City Council v. Mangelly, 243 Ga. 358, 254 S.E.2d 315 (1979).

Legislative intent may be gathered from construing together section and Acts affecting it. Commissioners of Rds. & Revenues v. Burns, 118 Ga. 112, 44 S.E. 828 (1903).

Statutes "in pari materia" construed together. — It is an elementary rule of statutory construction that a statute must be construed in relation to other statutes of which it is a part, and all statutes relating to the same subject matter, briefly called statutes "in pari materia," are construed together and harmonized wherever possible, so as to ascertain the legislative intendment and give effect thereto. Ryan v. Commissioners of Chatham County, 203 Ga. 730, 48 S.E.2d 86 (1948).

In the construction of a statute, all laws in pari materia should be considered in order to ascertain the intention of the General Assembly. Undercofler v. L.C. Robinson & Sons, 111 Ga. App. 411, 141 S.E.2d 847, aff'd, 221 Ga. 391, 144 S.E.2d 755 (1965), overruled on other grounds, Worthen v. State, 2019 Ga. LEXIS 22 (Ga. 2019).

Except where language clear. — Statutes in pari materia may not be resorted to where language under consideration is clear, but where the terms of the statute to be construed are ambiguous or its significance is of a doubtful character, it becomes necessary to give proper consideration to other related statutes in order to ascertain the legislative intent in reference to the whole system of laws of which the doubtful statute is a part. Butterworth v. Butterworth, 227 Ga. 301, 180 S.E.2d 549 (1971).

Unclear law construed in light of whole system of laws. — While the Supreme Court recognizes the rule that statutes in pari materia may not be resorted to where the language of the statute under consideration is clear, it is equally as well settled that, where the terms of the statute to be construed are ambiguous or its significance is of a doubtful character, it becomes necessary to give proper consideration to other related statutes in order to ascertain the legislative intent in reference to the whole system of laws of which the doubtful statute is a part. Ryan v. Commissioners of Chatham

County, 203 Ga. 730, 48 S.E.2d 86 (1948).

Penal statutes are strictly construed, yet not so as to defeat General Assembly's intention. Holland v. State, 34 Ga. 455 (1866), ;. see also Atlantic Coast Line R.R. v. State, 135 Ga. 545, 69 S.E. 725, 32 L.R.A. (n.s.) 20 (1910), aff'd, 234 U.S. 280, 34 S. Ct. 829, 58 L. Ed. 1312 (1914), aff'd, 234 U.S. 280, 34 S. Ct. 829, 58 L. Ed. 1312 (1914).

It is general rule that tax laws are strictly construed against government and in favor of the citizen (Georgia Paper Stock Co. v. State Tax Bd., 174 Ga. 816, 164 S.E. 197 (1932)); but the cardinal rule is to ascertain the intention of the General Assembly in passing the legislation. O'Neal v. Whitley, 177 Ga. 491, 170 S.E. 376 (1933).

Purpose of new civil procedure provision to speed up civil actions. — One of the evils of the old law of civil procedure was that it was regarded as being too slow, and one of the purposes of the new law is to speed up civil actions. Scott v. State, 75 Ga. App. 684, 44 S.E.2d 391 (1947).

Appropriation Act referring to unenacted authorizing bill. — Where, in enacting a line item of the "General Appropriations Act," reference was made to an authorizing senate bill which was never enacted, but the legislative history was clear that the principles of that bill were enacted into law under a bill by another number and became former Code 1933, § 88-1825 (see now O.C.G.A. § 31-7-95), the Act was valid. Wilson v. Board of Regents, 246 Ga. 649, 272 S.E.2d 496 (1980).

Construction with homestead exemption statute. — Chapter 7 trustee's objection to a debtor's claim for a $20,000 exemption in debtor's residence under the Georgia homestead exemption statute, O.C.G.A. § 44-13-100(a)(1), was overruled because: (1) O.C.G.A. § 1-3-1 did not invite a court to usurp the power of the General Assembly by legislating from the bench each time the exemption statute created an unusual result; (2) the duration of the debtor's separation from the debtor's wife, while indicative of a desire to discontinue the traditional role of spouse, was not determinative of a circumstance that would authorize the court to consider such a person as an entity other than a "spouse" as used in the homestead exemption statute; and (3) there was no basis for inferring legislative intent to allow married couples, whether they lived together or separately, to spread a $20,000 exemption across multiple residences. In re Green, 319 B.R. 913 (Bankr. M.D. Ga. 2004).

Construction with O.C.G.A. § 9-11-6. — Because the responding party timely responded to a summary judgment motion, pursuant to Ga. Unif. Super. Ct. R. 6.3, given the appellate court's construction of both O.C.G.A. §§ 1-3-1 and 9-11-6, the trial court erred in denying that the oral argument on the motion and in granting summary judgment to the movant. Green v. Raw Deal, Inc., 290 Ga. App. 464, 659 S.E.2d 856 (2008).

Words' Signification

Enactment of legislation requiring judicial definitions constitutional. — One of the traditional functions of courts is to interpret and construe legislative enactments. There is no due process prohibition on the enactment of legislation which requires definitions to be provided by the judiciary. Bell v. Barrett, 241 Ga. 103, 243 S.E.2d 40 (1978).

Statute's words, if of common use, are taken in natural and ordinary signification. Price Co. v. City of Atlanta, 105 Ga. 358, 31 S.E. 619 (1898); Southern Bell Tel. & Tel. Co. v. Parker, 119 Ga. 721, 47 S.E. 194 (1904); Robinson v. State, 11 Ga. App. 847, 76 S.E. 1061 (1912); Gatlin v. State, 18 Ga. App. 9, 89 S.E. 345 (1915).

By the mandate of this section, the courts are required to give a word its ordinary signification. Thompson v. Eastern Air Lines, 200 Ga. 216, 39 S.E.2d 225 (1946).

The intention of the General Assembly is to be gathered from the statute as a whole so as to give effect to each of its parts and at the same time harmonize, if possible, the component parts, and in determining this intention, the words of the statute are to be given their ordinary and usual signification. In re Ga. Air, Inc., 345 F. Supp. 636 (N.D. Ga. 1972).

Although a statute does not undertake to define each of the words contained

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therein, this will not automatically render the statute vague, indefinite, or uncertain in meaning, since the ordinary signification shall be applied to all words, except words of art or words connected with a particular trade or subject matter. Anderson v. Little & Davenport Funeral Home, 242 Ga. 751, 251 S.E.2d 250 (1978).

Every word employed should be expounded in its plain, obvious, and commonsense meaning unless something else furnishes ground to control, qualify, or enlarge it. Wellborn v. Estes, 70 Ga. 390 (1883) see also Booth v. Saffold, 46 Ga. 278 (1872); Mott v. Central R.R., 70 Ga. 680, 48 Am. R. 595 (1883); Richmond & D.R.R. v. Howard, 79 Ga. 44, 3 S.E. 426 (1887).

Absent words of limitation, statutory words should be given ordinary and everyday meaning. Risser v. City of Thomasville, 248 Ga. 866, 286 S.E.2d 727 (1982).

In construing a constitutional provision, the ordinary signification shall be applied to words. Thomas v. MacNeill, 200 Ga. 418, 37 S.E.2d 705 (1946).

In construing statutes, their ordinary signification shall be applied to all words, except in certain defined cases. The same rule of construction is applicable to constitutional provisions. Jones v. Darby, 174 Ga. 71, 161 S.E. 835 (1931).

Construing statutory part out of context inadmissible. — It is inadmissible to mutilate a statute by lifting a mere segment out of its context and construe it without consideration of all other parts of the Act. In re Ga. Air, Inc., 345 F. Supp. 636 (N.D. Ga. 1972).

"Nominations from the floor shall always be in order" construed. — The words "Nominations from the floor shall always be in order," in a by-law are to be given their ordinary signification, and the plain and obvious meaning of the language employed is that nominations from the floor are always in order until an election has in fact been held. Hornady v. Goodman, 167 Ga. 555, 146 S.E. 173 (1928).

Term "Common or contract carrier" should be given its ordinary signification in the construction of Ga. L. 1937, Ex. Sess., p. 259 (see now O.C.G.A. § 48-10-2(10)). Undercofler v. L.C. Robinson & Sons, 111 Ga. App. 411, 141 S.E.2d 847, aff'd, 221 Ga. 391, 144 S.E.2d 755 (1965), overruled on other grounds, Worthen v. State, 2019 Ga. LEXIS 22 (Ga. 2019).

"Bona fide" meant genuine or real. — Services provided by an emergency room physician to a patient who presented with a high pressure puncture wound to one hand were "bona fide emergency services" under O.C.G.A. § 51-1-29.5(a)(5), because they were genuine or actual; it was not required that the services be provided in good faith. Abdel-Samed v. Dailey, 294 Ga. 758, 755 S.E.2d 805 (2014).

Newspaper headquartered in another state not "published within the county". — County officials' decision under O.C.G.A. § 9-13-142 to change the county's legal organ to a newspaper that was headquartered across the state line in Tennessee was properly enjoined by the trial court because the paper was edited, formatted, and issued in Tennessee; it was not "published within the county" as required by § 9-13-142(a). Catoosa County v. Rome News Media, LLC, 349 Ga. App. 123, 825 S.E.2d 507 (2019).

A riding lawnmower was not a "motor vehicle" as that term was used in the statute punishing theft of a motor vehicle, O.C.G.A. § 16-8-12(a)(5)(A); a defendant's conviction was reversed. A motor vehicle was defined by the court for purposes of § 16-8-12(a)(5)(A) as a self-propelled vehicle with wheels that was designed to be used, or was ordinarily used, to transport people or property on roads. Harris v. State, 286 Ga. 245, 686 S.E.2d 777 (2009).

Statutory words are not given ordinary meaning when legislative purpose would be frustrated. — Assuming an ascertainable legislative intention, words should be construed so as to give full effect thereto. Bohannon v. Manhattan Life Ins. Co., 555 F.2d 1205 (5th Cir. 1977).

Use of experts. — It is proper to use experts to give the definition of words of art or words connected with a particular

trade or subject matter, such as the correct name for a narcotic. Williamson v. State, 134 Ga. App. 864, 216 S.E.2d 684 (1975), overruled on other grounds, Cole v. State, 142 Ga. App. 461, 236 S.E.2d 125 (1977).

Substantial Statutory Compliance

Statute directory where no negative words nor injuries resulting from disregard. — Where a statute directs the doing of a thing in a certain time, without any negative words restraining the doing of it afterwards, generally the provision as to time is directory and not a limitation of authority; and in such case, where no injury appears to have resulted, the fact that the Act was performed after the time limit will not render it invalid. O'Neal v. Spencer, 203 Ga. 588, 47 S.E.2d 646 (1948); State v. Battise, 177 Ga. App. 583, 340 S.E.2d 240 (1986); Moreton Rolleston, Jr., Living Trust v. Glynn County Bd. of Tax Assessors, 240 Ga. App. 405, 523 S.E.2d 600 (1999), cert. denied, 2000 Ga. LEXIS 97 (2000).

Generally, statutes directing the mode of proceeding by public officers, designated to promote method, system uniformity, and dispatch in such proceedings, will be regarded as directory if a disregard thereof will not injure the rights of parties, and the statute does not declare what result shall follow noncompliance therewith, nor contain negative words importing a prohibition of any other mode of proceeding than that prescribed. Collins v. Nix, 125 Ga. App. 520, 188 S.E.2d 235 (1972); State v. Battise, 177 Ga. App. 583, 340 S.E.2d 240 (1986).

Substantial compliance by public officers with statutory requirements shall be deemed sufficient. Hart v. Columbus, 125 Ga. App. 625, 188 S.E.2d 422 (1972).

Reasonable care insufficient. — Where a substantial compliance with a statute by a railway company would be sufficient, the duty of compliance to that extent would be absolute, and the company would not have discharged the duty merely by the exercise of reasonable care to that end. Lime-Cola Bottling Co. v. Atlanta & W.P.R.R., 34 Ga. App. 103, 128 S.E. 226 (1925).

Question of substantial compliance not for jury. — It should not be left to the jury to determine whether a party could or could not substantially comply with the law. Lime-Cola Bottling Co. v. Atlanta & W.P.R.R., 34 Ga. App. 103, 128 S.E. 226 (1925).

Statement of costs prepared by judge complies with section. — A statement of costs on record in the court, prepared by the ordinary (now probate court judge), furnished a substantial compliance with the requirements of this section. Cooper v. Lunsford, 203 Ga. 166, 45 S.E.2d 395 (1947).

Substantial compliance with respect to issuing and serving of process will be sufficient, and where notice is given, no technical or formal objection shall invalidate any process. Gainesville Feed & Poultry Co. v. Waters, 87 Ga. App. 354, 73 S.E.2d 771 (1952).

It is sufficient if provisions of O.C.G.A. § 5-6-38 are substantially complied with in the notification of appeal process. Oller v. State, 187 Ga. App. 818, 371 S.E.2d 455 (1988).

Substantial compliance with registration requirement. — Trial court erred in granting a motion to dismiss for failure to have a certificate of authority at the time the complaint was filed since the plaintiff substantially complied with the registration requirements for a foreign corporation by obtaining a certificate of authority later. Health Horizons, Inc. v. State Farm Mut. Auto. Ins. Co., 239 Ga. App. 440, 521 S.E.2d 383 (1999), cert. denied, 2000 Ga. LEXIS 35 (2000), cert. denied, 2004 Ga. LEXIS 241 (2004).

Substantial compliance with Georgia Historic Preservation Act. — Because the Georgia Historic Preservation Act (HPA), O.C.G.A. § 44-1-20 et seq., does not expressly provide that a county's failure to strictly comply with the HPA's uniform procedures invalidates an ordinance adopted thereunder, and because the developers failed to show the developers were harmed by the county's alleged failure to strictly comply with the procedures of the HPA, the trial court properly applied the "substantial compliance" standard of review. Buckler v. DeKalb County Bd. of Comm'rs, 299 Ga. App. 465, 683

Substantial Statutory Compliance (Cont'd)

S.E.2d 22 (2009), cert. denied, No. S09C2027, 2010 Ga. LEXIS 3 (Ga. 2010).

No prejudice to substantive right as consequence of administrative continuance of hearing. — See Hardison v. Fayssoux, 168 Ga. App. 398, 309 S.E.2d 397 (1983).

Notice to policyholders. — Evidence that mass mailings were sent to several thousands of policyholders by an insurance company was not substantial compliance with a statutory requirement that optional no-fault insurance coverage was expressly offered to a particular insured. Shave v. Allstate Ins. Co., 549 F. Supp. 1006 (S.D. Ga. 1982).

Tax refund. — The notice of a tax refund claim filed pursuant to O.C.G.A. § 48-5-380 was not deficient, where the notice clearly stated a summary of grounds upon which the taxpayer relied. There is no requirement that the summary of grounds must be the exact grounds upon which refund is ultimately authorized; the notice was in substantial compliance with § 48-5-380. City of College Park v. Atlantic S.E. Airlines, 194 Ga. App. 637, 391 S.E.2d 460 (1990).

Substantial compliance not sufficient when statute is unambiguous. — Court of Appeals erred when the court held that a judgment creditor's notification of a judgment debtor of a garnishment eight business days after service of the garnishee substantially complied with O.C.G.A. § 18-4-64(a)(7)'s requirement that notice be given within three business days. O.C.G.A. § 1-3-1 did not apply because the statute was unambiguous. Cook v. NC Two, L.P., 289 Ga. 462, 712 S.E.2d 831 (2011).

Substantial compliance with legitimation statute, O.C.G.A. § 19-7-22. — Trial court abused the court's discretion by denying a putative biological father's motion to sever his petition for legitimation of a son from a husband's adoption proceeding because the father's petition substantially complied with the substance of the legitimation statute, O.C.G.A. § 19-7-22; the petition contained the requisite information, it was served on the wife, and it was timely filed in the proper court, and the father's failure to file his petition as a separate civil action caused no prejudice to anyone. Brewton v. Poss, 316 Ga. App. 704, 728 S.E.2d 837 (2012).

Substantial compliance with describing emergency under O.C.G.A. § 36-91-22. — City was not required to obtain a payment bond in compliance with O.C.G.A. § 36-91-90 because the requirement did not apply to emergency projects, O.C.G.A. § 36-91-22(e); the city's description in the city's minutes of the "emergency replacement of a 10-inch sanitary sewer main on Embassy Drive" was sufficient to describe the nature of the emergency. City of College Park v. Sekisui SPR Ams., LLC, 331 Ga. App. 404, 771 S.E.2d 101 (2015), cert. denied, No. S15C1141, 2015 Ga. LEXIS 471 (Ga. 2015).

Bonds

Writing treated as official statutory bond. — A writing, subscribed by the tax collector and several others, intended to be used and treated as the official bond required of the collector, though not under seal, is, by virtue of this section, to be treated as though it were the official statutory bond. Dedge v. Branch, 94 Ga. 37, 20 S.E. 657 (1894).

Certiorari bond need not be under seal. King & Co. v. Cantrell, 4 Ga. App. 263, 61 S.E. 144 (1908).

If sheriff's official bond were not under seal, it might be good under this section, but a different statute of limitations might possibly apply. Harris v. Black, 143 Ga. 497, 85 S.E. 742 (1915).

New, written, signed agreement required to renew bond. — A new agreement is required in order to effectuate a renewal of the original bond, and the new agreement is inadequate for that purpose unless it, like the bond, is in writing and signed by the fidelity company. Nowell v. Mayor of Monroe, 177 Ga. 648, 171 S.E. 136 (1933).

Securities name need not appear in bond. — See Chapple v. Tucker, 110 Ga. 467, 35 S.E. 643 (1900).

Census

Most recent United States decennial census is rational, logical, and con-

sistent means of determining population when the word "census" is used in a statute or ordinance. Mayor of Hapeville v. Anderson, 246 Ga. 786, 272 S.E.2d 713 (1980).

Computation of Time

Provision as to time as directory. — Where a statute directs the doing of a thing in a certain time, without any negative words restraining the doing of it afterwards, generally the provision as to time is directory and not a limitation of authority, and in such case, where no injury appears to have resulted, the fact that the act was performed after the time limit will not render it invalid. Middleton v. Moody, 216 Ga. 237, 115 S.E.2d 567 (1960); Collins v. Nix, 125 Ga. App. 520, 188 S.E.2d 235 (1972).

Effect of 1985 amendment on prior cases. — When the Georgia General Assembly amended O.C.G.A. § 1-3-1(d)(3) in 1985, inserting "the first day shall not be counted but the last day shall be counted", the line of pre-1985 cases standing for the proposition that the statute of limitations runs on the two year anniversary of an accident was overruled. Gardner v. Hyster Co., 785 F. Supp. 161 (M.D. Ga. 1992).

When days are to be computed, this provision is applied, and only the first or last day counted, and the last day excluded if it falls on Sunday. McLendon v. State, 14 Ga. App. 274, 80 S.E. 692 (1914) (decided prior to 1985 amendment providing that the first day not be counted but that the last day shall be counted).

General rule of computation which requires the exclusion of the first day and the inclusion of the last has been made the statutory rule of construction in this state. Tift v. City of Tifton, 214 Ga. 507, 105 S.E.2d 584 (1958) (decided prior to 1985 amendment providing that the first day not be counted but that the last day shall be counted).

Period of time anterior to commencement of action. — When a computation of a period of time that is anterior to the commencement of an action is required, O.C.G.A. § 1-3-1 is the proper method of computation. Southern Trust Ins. Co. v. First Fed. Sav. & Loan Ass'n, 168 Ga. App. 899, 310 S.E.2d 712 (1983).

Computing number of days for privilege or discharge. — When a number of days is prescribed by law for the exercise of a privilege, or the discharge of a duty, only the first or the last day shall be counted, and in computing the number of days, the first or the last day should be excluded. Sullivan v. Smith, 209 Ga. 325, 72 S.E.2d 318 (1952) (decided prior to 1985 amendment providing that the first day not be counted but that the last day shall be counted).

Only the first or the last day shall be counted, not both. Blitch v. Brewer, 83 Ga. 333, 9 S.E. 837 (1889) (decided prior to 1985 amendment providing that the first day not be counted but that the last day shall be counted).

Either the first or the last day must be figured in the computation, but not both of them. Brown v. City of Atlanta, 84 Ga. App. 4, 65 S.E.2d 611 (1951) (decided prior to 1985 amendment providing that the first day not be counted but that the last day shall be counted).

In computing the time prescribed for the exercising of a privilege or the discharge of a duty, only the first or the last day shall be counted. One or the other, however, must be counted, and it is not intended that both may be left out of the computation. First Nat'l Bank v. Mann, 211 Ga. 706, 88 S.E.2d 361 (1955) (decided prior to 1985 amendment providing that the first day not be counted but that the last day shall be counted).

Sunday is not a day in law. Brooks v. Hicks, 230 Ga. 500, 197 S.E.2d 711 (1973).

If last day Sunday, then have until Monday. — Trial court did not abuse the court's discretion in setting aside a default judgment entered in favor of former police officers under O.C.G.A. § 9-11-60(d) because the default judgment was entered despite the fact that the record disclosed that a pension fund board of trustees timely answered the complaint and, thus, there was no basis upon which to claim a default judgment; the board's answer was filed 31 days after service, but because that day was a Monday and the 30th day after service fell on a Sunday, under O.C.G.A. § 1-3-1(d)(3), the answer was timely. Stamey v. Policemen's Pension Fund Bd. of Trs., 289 Ga. 503, 712 S.E.2d 825 (2011).

Computation of Time (Cont'd)

Although the defendant's notice of appeal was filed 31 days after the entry of the last order appealed from, the filing was timely because the 30th day fell on a Sunday. Anderson v. State, 335 Ga. App. 78, 778 S.E.2d 826 (2015), cert. denied, No. S16C0630, 2016 Ga. LEXIS 294 (Ga. 2016).

Sunday makes no difference where nothing to be done. — Where there was nothing to be done on the last day, it makes no difference that it fell on the Sabbath. Merritt v. Gate City Nat'l Bank, 100 Ga. 147, 27 S.E. 979, 38 L.R.A. 749 (1897).

If last day allowed for act is both holiday and Sabbath, following Monday is included. Wood v. State, 12 Ga. App. 651, 78 S.E. 140 (1913).

Day of grace is given to party upon whom the duty is imposed, not to the other party. Gray v. Quality Fin. Co., 130 Ga. App. 762, 204 S.E.2d 483 (1974).

Service cannot be made, or legal notice given, on Sunday, or the business or work of ordinary callings done. Sawyer v. Cargile, 72 Ga. 290 (1884).

Document's filing on Monday following last day on Sunday within time prescribed. — Thirty days after the adjournment of court being allowed for the filing of the document, and the last day falling on Sunday, the filing on Monday was within the time prescribed. Page v. Blackshear, 75 Ga. 885 (1885).

The 30-day period for filing notice of appeal allowed by O.C.G.A. § 5-6-38(a) ended on November 5, a Saturday, and by operation of O.C.G.A. § 1-3-1, the appellant had through the following Monday, November 7, to file a timely notice of appeal, but despite the fact that the notice of appeal was dated November 7, it was not filed until November 8. Stancil v. Kendrix, 189 Ga. App. 909, 378 S.E.2d 417 (1989).

Where the computation is of months or years, this section is not applicable, Sundays are not excluded, and the right is lost unless invoked on or before the day last preceding the day of the month or year corresponding to the day upon which the right accrued. McLendon v. State, 14 Ga. App. 274, 80 S.E. 692 (1914).

This section does not apply where bar is in terms of years or months rather than in days. Thomas v. Couch, 171 Ga. 602, 156 S.E. 206 (1930).

This section does not apply where months and years are to be computed. Davis v. U.S. Fid. & Guar. Co., 119 Ga. App. 374, 167 S.E.2d 214 (1969).

The provisions of this section do not apply to limitations expressed in months or years. Veal v. Paulk, 121 Ga. App. 575, 174 S.E.2d 465 (1970).

This section applies only where days are to be counted, and where months and years are to be considered, the rule is not applicable. Gray v. Quality Fin. Co., 130 Ga. App. 762, 204 S.E.2d 483 (1974).

This section applies only to limitations in terms of days. It does not apply where the limitation is in terms of months or years. Allstate Ins. Co. v. Stephens, 239 Ga. 717, 238 S.E.2d 382 (1977).

Error in calculation of time for service. — Trial court erred in calculating the five-day period under O.C.G.A. § 9-11-4(c) for service of a client's complaint because the provisions of O.C.G.A. § 1-3-1(d)(3) applied since the five-day requirement was less than seven days; because the client filed the complaint on Friday, August 14, 2009, the client had until Friday, August 21, 2009 in which to achieve service in accordance with O.C.G.A. § 9-11-4(c) since the intervening Saturday and Sunday, August 15 and 16, 2009, were excluded from the calculation of the five-day period. Cleveland v. Katz, 311 Ga. App. 880, 717 S.E.2d 500 (2011).

Not applicable to limitation fixed for filing workers' compensation claim. — The provisions of this section, to the effect that when a number of days is prescribed for the exercise of any privilege and the last day shall fall on a Saturday or Sunday, the party having the privilege shall have through the following Monday to exercise it, do not apply to limitations expressed in months or years and to the limitation fixed for filing a workers' compensation claim. Chevrolet Parts Div., GMC v. Harrell, 100 Ga. App. 280, 111 S.E.2d 104 (1959).

When a limitation of years is imposed, expiration takes place at end of

yearly period without giving additional consideration to when the last day falls. Gray v. Quality Fin. Co., 130 Ga. App. 762, 204 S.E.2d 483 (1974).

Section inapplicable where construction of word "between" not required. — Where the word "between" is not subject to interpretation and does not require a construction of the statute, this section has no application. Henderson v. Henderson, 206 Ga. 23, 55 S.E.2d 578 (1949).

Service of process provision not qualified. — This section does not qualify that part of Code which requires service of process to be consummated at least 15 days before the term, or if it does, that its operation is to add to, and not subtract from, the number of days specified. There is little probability that, where Sunday intervenes, the Code intended to take a day away from a party and give it to the sheriff. Hood v. Powers, 57 Ga. 244 (1876).

From June 12 to September 12, more than three months had elapsed. Barrett & Carswell v. Devine, 60 Ga. 632 (1878).

Service of rule nisi to foreclose mortgage found sufficient. — See English v. Ozburn, 59 Ga. 392 (1877).

Attorney's fees notice. — Where the return day for filing suits in a court is the fifteenth of the month and a petition is filed on that day, a notice to bind for attorney's fees, served on the fifth of the same month, is served "ten days before suit is brought." Marietta Fertilizer Co. v. Benton, 21 Ga. App. 466, 94 S.E. 657 (1917).

Required notice of discharge hearing not given. — The giving of "five days notice of the time and place of hearing" of a petition for discharge filed by a defendant, who is held in imprisonment in default of bail, is not complied with by serving the plaintiff on the first day of May with notice that the time of hearing the petition will be on the fifth day of May following. From the first day of May to the fifth day of May is only four days. Hardin v. Mutual Clothing Co., 34 Ga. App. 466, 129 S.E. 907 (1925).

When person knows of suit, should attend at court's first term. — When a person knows that one is sued, it would be well for the person to find out about any mistake in the process and attend at the first term of the court. W.T. Rawleigh Co. v. Watts, 68 Ga. App. 786, 24 S.E.2d 213 (1943).

Computation of time specified in local statute. — Since, at a time certain local statute was enacted, the provision of this section requiring that only the first or last day shall be counted was in force, the court would presume that the General Assembly intended and understood that the time would be computed in accordance with its provisions, and that the first day would not be counted and that the last day would. Tift v. City of Tifton, 214 Ga. 507, 105 S.E.2d 584 (1958) (decided prior to 1985 amendment providing that the first day not be counted but that the last day shall be counted).

When an arrestee sued police officers for executing an allegedly expired search warrant at the arrestee's home, the officers were entitled to qualified immunity and, thus, summary judgment dismissing the claim because while O.C.G.A. § 17-5-25 required a search warrant's execution within ten days after the warrant's issuance, it was unclear, as of the warrant's execution, that O.C.G.A. § 1-3-1(d)(3), regarding time computation, did not extend that time period to make that execution timely since the tenth day after the warrant was issued fell on a Sunday, followed by a legal holiday, immediately after which the warrant was executed. Hurley v. City of St. Marys, No. 209-212, 2011 U.S. Dist. LEXIS 7399 (S.D. Ga. Jan. 26, 2011).

It was held that a damage action against a municipality was prematurely commenced before the municipality had been allowed the statutory period of 30 days after the claim had been presented when the claim was first presented on October 16, next prior to the filing of the suit on November 15. Grooms v. City of Hawkinsville, 31 Ga. App. 424, 120 S.E. 807 (1923).

In tort cases, both day of injury and day of filing must be counted in determining whether the action was filed within the period of limitation. David v. Marbut-Williams Lumber Co., 32 Ga. App. 157, 122 S.E. 906 (1924) (decided prior to

Computation of Time (Cont'd)

1985 amendment providing that the first day not be counted but that the last day shall be counted).

Injuries to the person. — Paragraph (d)(3) of O.C.G.A. § 1-3-1, as amended in 1985, governs O.C.G.A. § 9-3-33, thereby extending the statute of limitations for personal injury actions to two years and one day. Gardner v. Hyster Co., 785 F. Supp. 161 (M.D. Ga. 1992).

Personal injury action filed against heater manufacturer on the second anniversary of the injury was timely under the computation method mandated by paragraph (d)(3) of O.C.G.A. § 1-3-1 and was, therefore, within the two-year period contemplated by O.C.G.A. § 9-3-33. Davis v. Desa Int'l, Inc., 209 Ga. App. 318, 433 S.E.2d 410 (1993).

Filing of claim bound by two-year limitation. — Pursuant to O.C.G.A. § 1-3-1(d)(3), the plaintiff had until October 28, 1998, to file an action arising from an incident which occurred on October 27, 1996, for which a two year statute of limitations applied. Reese v. City of Atlanta, 247 Ga. App. 701, 545 S.E.2d 96 (2001).

Service of an uninsured motorist carrier within five business days after the date of filing of the complaint, in an action for personal injuries, related back to the date of filing as a matter of law, for statute of limitation purposes. Williams v. Colonial Ins. Co., 199 Ga. App. 760, 406 S.E.2d 99 (1991).

Demurrer found filed within time allowed. — Where the record shows that the defendant was served with a copy of the petition and process on February 14, 1952, and that the defendant filed a general demurrer to the petition on March 15, 1952, with the court taking judicial cognizance of the fact that the month of February, 1952, had 29 days, the demurrer was filed within the 30 days allowed by law. Sullivan v. Smith, 209 Ga. 325, 72 S.E.2d 318 (1952).

Certificate for review obtained on day after Columbus Day obtained within time. — Where the ten-day limitation to secure the certificate certifying the denial of summary judgment for review would have expired on Sunday, October 11, and Monday, October 12, was Columbus Day, a legal holiday, a certificate for review obtained on October 13 was obtained within time. Allstate Ins. Co. v. Cody, 123 Ga. App. 265, 180 S.E.2d 596 (1971).

Summary judgment appeal filed on thirty-second day timely. — Because the thirtieth day following an order granting summary judgment fell on Saturday and the following Monday was a state holiday, the time for filing a notice of appeal was extended to the next business day, Tuesday. Dental One Assocs. v. JKR Realty Assocs., 228 Ga. App. 307, 491 S.E.2d 414 (1997), aff'd, 269 Ga. 616, 501 S.E.2d 497 (1998).

Presentation of bill of exceptions. — When last day for certifying bill of exceptions falls on Sunday, following day is superadded. Charleston & W.C. Ry. v. Cottonseed Oil Co., 22 Ga. App. 337, 96 S.E. 586 (1918).

When the last day numerically for presenting the bill of exceptions for certification falls on Sunday, the presentation of the bill to the trial judge for certification upon the next day, Monday, is not too late. Maryland Cas. Co. v. England, 34 Ga. App. 354, 129 S.E. 446 (1926).

Where the judgment complained of was rendered on May 16, and, not counting May 16, 15 days remained in the month of May, the last day for presenting a bill of exceptions within the time provided by law, 20 days, was June 5. Since June 5 fell on Thursday, and an extra day was not added under the law for the presentation of the bill of exceptions, the bill of exceptions, tendered on Friday, June 6, was not presented to the trial judge within the time prescribed by law, and the Supreme Court was without jurisdiction to pass upon the writ of error. Blair v. Blair, 209 Ga. 347, 72 S.E.2d 288 (1952).

When last day Saturday. — When, in a condemnation proceeding, the tenth day following an assessor's award falls on a Saturday and the condemnee files an appeal two days thereafter, the entry of a judgment only two days after the award was filed is premature; a condemnee, having exercised the condenmee's right to appeal, is entitled to have a jury deter-

mine the value of the property taken or the amount of damage done. McAllister v. City of Jonesboro, 151 Ga. App. 260, 259 S.E.2d 666 (1979).

Presentation of certiorari petition. — In computing the days in which a petition for certiorari must be presented for sanction, when the last day falls on Sunday, it will be sufficient if the petition is presented for sanction on the following Monday. Wood v. State, 12 Ga. App. 651, 78 S.E. 140 (1913); Hill v. State, 14 Ga. App. 410, 81 S.E. 248 (1914).

Where the thirtieth day following the conviction of a defendant in a city court falls on a Sunday, a petition for certiorari filed on the Monday following would not be too late. Brown v. City of Atlanta, 84 Ga. App. 4, 65 S.E.2d 611 (1951).

Statutory construction applicable to contracts. — Where a contract covers the minimum number of days required by a statute, the construction applicable to statutes necessarily governs the meaning of the contract. Trust Co. v. Guardian Life Ins. Co. of Am., 124 Ga. App. 465, 184 S.E.2d 363 (1971).

Paragraph (d)(3) of this section is a rule of statutory construction, and does not apply to contractual limitations; yet, this section states a rule of reason with respect to limitations, be they statutory or contractual, which should be applied to limitations in contracts in the absence of any sound reason for not applying them. Brooks v. Hicks, 230 Ga. 500, 197 S.E.2d 711 (1973).

By analogy this section applies to contracts as well as statutes where the limitation is in terms of days. Allstate Ins. Co. v. Stephens, 239 Ga. 717, 238 S.E.2d 382 (1977).

A ten-day notice period required for cancellation of an insurance policy is governed by O.C.G.A. § 1-3-1 for computation of time and not by O.C.G.A. § 9-11-6 which deals exclusively with periods calculated after the commencement of a court proceeding. Southern Trust Ins. Co. v. First Fed. Sav. & Loan Ass'n, 168 Ga. App. 899, 310 S.E.2d 712 (1983).

Paragraph (d)(3) of O.C.G.A. § 1-3-1 was applicable to the one-year suit limitation contained in a renter's insurance policy. Since provisions were in conflict with the statutes of the state the provisions were amended to conform to such statutes. Sanders v. Allstate Ins. Co., 207 Ga. App. 461, 428 S.E.2d 575, cert. denied, No. S93C0876, 1993 Ga. LEXIS 428 (1993).

Provision not applicable to voluntarily accepted contractual limitations. — Provisions in paragraph (d)(3) of O.C.G.A. § 1-3-1 regarding extension of time to exercise a privilege have no effect upon voluntarily accepted contractual limitations on the exercise of such privilege. Desai v. Safeco Ins. Co. of Am., 173 Ga. App. 815, 328 S.E.2d 376 (1985).

Construction of time in insurance case. — Where the uncontroverted evidence shows that the property insured was consumed on the morning of the twenty-fourth of January, 1910, the 12-months limitation as to commencement of the action expired at midnight of the twenty-third of January, 1911, and, under this stipulation of the contract, the suit on the policy, which was not commenced until January 24, 1911, was barred. Maxwell Bros. v. Liverpool & London & Globe Ins. Co., 12 Ga. App. 127, 76 S.E. 1036 (1913); Phillips v. Fireman's Fund Ins. Co., 31 Ga. App. 541, 121 S.E. 255 (1924).

"Days of election" deemed 24-hour day. — The period of time contemplated by the words "days of election," as used in former Penal Code 1910, § 445, is a day of 24 hours, commencing at midnight preceding the opening of the polls, and ending at midnight succeeding the close of the polls. Rose v. State, 107 Ga. 697, 33 S.E. 439 (1899).

Failure to provide legally required three-days' notice of upcoming sale is found where a sale is advertised on December 25 to take place on December 27. Marshall v. Armour Fertilizer Works, 24 Ga. App. 402, 100 S.E. 766 (1919).

Not applicable to limitation fixed for filing materialman's lien. — The method of time computation in paragraph (d)(3) of O.C.G.A. § 1-3-1 did not apply to extend the requirement of O.C.G.A. § 44-14-361(a)(2) that a materialman's lien must be filed within three months of the delivery of materials. United States Filter Distrib. Group, Inc. v. Barnett, 241 Ga. App. 759, 526 S.E.2d 912 (1999), aff'd,

Computation of Time (Cont'd)

273 Ga. 254, 538 S.E.2d 739 (2000).

Service of responses to requests to admit. — Service of responses to requests to admit was timely as calculated pursuant to O.C.G.A. § 1-3-1(d)(3); therefore, the requests were not deemed admitted. The fact that the certificate of service was not filed with the clerk under Ga. Unif. Super. Ct. R. 5.2 until later did not impact the fact that service of the responses was timely. Cruickshank v. Fremont Inv. & Loan, 307 Ga. App. 489, 705 S.E.2d 298 (2010).

Defamation complaint timely filed. — Natural gas marketer's defamation complaint was timely filed because the complaint was filed on the first anniversary of the date of publication; O.C.G.A. § 1-3-1(d)(3) applies to the one-year statute of limitation for injuries to the reputation found in O.C.G.A. § 9-3-33, so that the first day shall not be counted in determining whether a claim is timely filed. Infinite Energy, Inc. v. Pardue, 310 Ga. App. 355, 713 S.E.2d 456 (2011).

Renewal of dismissed action. — Trial court erred by denying a debtor's refiling of an appeal as untimely because the six-month period for filing the debtor's renewal action under O.C.G.A. § 9-2-61(a) began the day after the debtor dismissed the original superior court action, and ran until December 6, 2012, based on the method of calculation under O.C.G.A. § 1-3-1(d)(3), thus, the refiling of the action on December 6 was timely. Parsons v. Capital Alliance Fin., LLC, 325 Ga. App. 884, 756 S.E.2d 14 (2014).

Gender

In generic sense, term "man" includes "woman," and pronoun "he" includes person of feminine gender. Hightower v. State, 14 Ga. App. 246, 80 S.E. 684 (1914).

Joint Authority

Majority of officials authorized to act. — Three commissioners, being a majority of five, are competent to act and make an assessment. Stevenson v. State, 69 Ga. 68 (1882).

In drawing a grand jury, the ordinary (now probate court judge) acts as one of the board of jury commissioners, and the ordinary's absence during the drawing of the jury will not render it invalid, a majority of the commissioners being present and acting. Roby v. State, 74 Ga. 812 (1885) (decided under Code 1882, § 3911).

A majority of the members of the board of education of a city had authority to institute mandamus proceedings against the mayor and council of the city. City of Blakely v. Singletary, 138 Ga. 632, 75 S.E. 1054 (1912).

Where certain relief was sought against seven members of the board of education and its secretary in their official capacity, to require them to perform specific duties as a board of education, these acts could be performed by a majority of the board. Styles v. Waters, 212 Ga. 644, 94 S.E.2d 702 (1956).

Where a writ of mandamus absolute issues against the members of a board of education, requiring them to perform certain acts in their official capacity, and a majority of such board file a writ of error to the Supreme Court, a majority of the board have the right to withdraw or dismiss, pending final disposition, the writ of error. Styles v. Waters, 212 Ga. 644, 94 S.E.2d 702 (1956).

Appeal of judgment by less than majority dismissed. — Since a majority of a five-member board is required to initiate an appeal, an appeal of a declaratory judgment by less than a majority must be dismissed. McClure v. Shirley, 227 Ga. 832, 183 S.E.2d 385 (1971).

Section inapplicable where majority acts with unqualified member. — Where authority was not in fact exercised by the majority of qualified members, but by them in conjunction with another person whose appointment was void, it would not seem that this section would have application. Felker v. City of Monroe, 22 Ga. App. 301, 95 S.E. 1023 (1918).

Administration of will. — Because former O.C.G.A. § 53-6-24(11) [pre-1998 Probate Code] does not declare that all the beneficiaries under a will must agree to the naming of an administrator with will annexed, the rule of construction in paragraph (d)(5) of O.C.G.A. § 1-3-1, that a

joint authority given to any number of persons or officers may be executed by a majority of them unless it is otherwise declared applies. Dismuke v. Dismuke, 195 Ga. App. 613, 394 S.E.2d 371 (1990), cert. denied, 1995 Ga. LEXIS 1050 (1995), cert. denied, 1999 Ga. LEXIS 39 (1999) (decided prior to the 1991 amendment to § 53-6-24, deleting (11)).

Number

Use of plural instead of singular personal pronoun in indictment will not vitiate it. Jackson v. State, 88 Ga. 784, 15 S.E. 677 (1892).

"Liquor" includes "liquors." Willburn v. State, 8 Ga. App. 28, 68 S.E. 460 (1910).

"Company" includes "individual." Atlantic Coast Line R.R. v. State, 135 Ga. 545, 69 S.E. 725, 32 L.R.A. (n.s.) 20 (1910), aff'd, 234 U.S. 280, 34 S. Ct. 829, 58 L. Ed. 1312 (1914), aff'd, 234 U.S. 280, 34 S. Ct. 829, 58 L. Ed. 1312 (1914).

"Defendant" includes "defendants." — A verdict finding in favor of "the defendant" will be construed as a finding in favor of all the defendants, where the suit is against two or more persons. Monk-Sloan Supply Co. v. Quitman Oil Co., 10 Ga. App. 390, 73 S.E. 522 (1912).

"Owner" includes "owners." Stallworth v. Martin-Ozburn Realty Co., 17 Ga. App. 689, 87 S.E. 1094 (1916).

"Witnesses" includes "witness." Herndon v. Jones County, 18 Ga. App. 523, 89 S.E. 1047 (1916).

In suit against two defendants, allegation where particular defendant is not referred to is good against an objection that it is not alleged which defendant is referred to. Brooks v. Hartsfield Co., 56 Ga. App. 184, 192 S.E. 459 (1937).

Note signed by two parties obligation of both. — Although a note contains a promise to pay in the singular number, where the note is signed by two persons, it is the obligation of both. Scott v. Gaulding, 60 Ga. App. 306, 3 S.E.2d 766 (1939).

"Opposite party." — As regards new trial applications, "opposite party" includes all parties interested in sustaining verdict. Carmichael v. City of Jackson, 194 Ga. 664, 22 S.E.2d 470 (1942).

Where school system lies in parts of two counties, a proviso expressly applying to independent school systems in a single county applies to it also. Rice v. Cook, 222 Ga. 499, 150 S.E.2d 822 (1966).

Section inapplicable when statute expressly declares one witness sufficient. — This provision does not apply when it is apparent that the statute is dealing with the number of witnesses necessary and expressly declaring that one is sufficient except in specified cases. Stone v. State, 118 Ga. 705, 45 S.E. 630, 98 Am. St. R. 145 (1903).

Illustrative Cases

Unclear tax statute construed against state and in citizen's favor. — If a statute levying taxes is not clear and positive in its terms, or if it is open to different interpretations through the indefiniteness of its provisions, it is to be construed most strongly against the state and in favor of the citizen or subject, and its provisions are not to be extended, by implication, beyond the clear import of the language used. Thompson v. Georgia Power Co., 73 Ga. App. 587, 37 S.E.2d 622 (1946).

Bank share tax to be construed so as to be constitutional. — Where the construction of the bank share tax must be reconsidered to determine its constitutionality the court should construe this statute so as to render it constitutional, rather than declare the entire act unconstitutional. Bartow County Bank v. Bartow County Bd. of Tax Assessors, 251 Ga. 831, 312 S.E.2d 102 (1984), aff'd, 470 U.S. 583, 105 S. Ct. 1516, 84 L. Ed. 2d 535 (1985), aff'd sub nom., First Nat'l Bank v. Bartow County Bd. of Tax Assessors, 470 U.S. 583, 105 S. Ct. 1516, 84 L. Ed. 2d 535 (1985).

Defective summons cured by pleadings. — As a general rule it may be said that a defective summons will be regarded as aided or cured by the pleadings served with the summons when, with all the information contained in the two papers in the defendant's possession, the defendant could not be misled as to the nature of the relief demanded, or as to the court in which the proceedings are to be instituted. W.T. Rawleigh Co. v. Watts, 68 Ga.

Illustrative Cases (Cont'd)

App. 786, 24 S.E.2d 213 (1943).

If accused can admit all accusations of indictment and still be innocent, indictment is defective. Every indictment must be complete within itself, and charge a crime and every substantial element of the offense alleged to be committed. Gore v. State, 79 Ga. App. 696, 54 S.E.2d 669 (1949).

Submission of interrogatories is mandatory in declaratory judgment action. Cole v. Frostgate Whses., Inc., 150 Ga. App. 320, 257 S.E.2d 309, rev'd on other grounds, 244 Ga. 782, 262 S.E.2d 98 (1979).

Rights growing out of contracts protected. — Where the meaning of an Act is doubtful, it would not be so construed as to impair rights growing out of contracts prior to its passage. Mitchell v. Wolfe, 70 Ga. 625 (1883).

Contract required to be written may not be modified by subsequent oral agreement. Nowell v. Mayor of Monroe, 177 Ga. 648, 171 S.E. 136 (1933).

At common law it was not required that contract of insurance should be in writing in order to be valid. Nowell v. Mayor of Monroe, 177 Ga. 648, 171 S.E. 136 (1933).

Fidelity insurance contract must be in writing. — Whether the insurer is a resident or nonresident corporation, a contract of fidelity insurance must be in writing under the laws of this state. Nowell v. Mayor of Monroe, 177 Ga. 648, 171 S.E. 136 (1933).

Rule applicable to contracts issued upon cash basis. — The rule that a policy of insurance shall be in writing and signed by the insurer applies to contracts issued upon a cash basis as well as to those issued upon a credit basis, if such there may be. Nowell v. Mayor of Monroe, 177 Ga. 648, 171 S.E. 136 (1933).

Suit cannot be maintained upon a parol renewal of an insurance policy. Nowell v. Mayor of Monroe, 177 Ga. 648, 171 S.E. 136 (1933).

Section considered in construing deed. — Without giving a strict and mandatory application of this section in the construction of a deed, yet, since it is true that the purpose is to arrive at the true meaning and intent of the language used, this section can properly be considered as illustrative of what constitutes the true intent and purpose of the instrument. Rustin v. Butler, 195 Ga. 389, 24 S.E.2d 318 (1943).

O.C.G.A. § 51-5-11 (retraction in libel action) was clearly inapplicable to defamatory statements made in a radio talk show, it being clear, giving the words "newspaper or other publication" their ordinary signification, that the General Assembly intended that the section apply exclusively to the printed media. Williamson v. Lucas, 171 Ga. App. 695, 320 S.E.2d 800 (1984).

Sanction issued by professional board. — The Board of Dentistry's decision to sanction a dentist was not void for want of jurisdiction, even though the decision was rendered more than 30 days following the close of the record, because there was no harm shown nor authority withdrawn. Thebaut v. Georgia Bd. of Dentistry, 235 Ga. App. 194, 509 S.E.2d 125 (1998).

Lien laws must be strictly construed. — Georgia's law providing for a hospital lien against a patient for services rendered, O.C.G.A. § 44-14-470 et seq., must be strictly construed. MCG Health, Inc. v. Owners Ins. Co., 302 Ga. App. 812, 692 S.E.2d 72 (2010).

SLAPP statute applied to non-Georgia residents. — Considering the text of the statute, the General Assembly's purpose, and the evil the statute was designed to correct, O.C.G.A. § 9-11-11.1(a), Georgia's Anti-SLAPP statute, encompassed a press conference held outside the territorial limits of Georgia by New York defendants. Because the press conference was held to address an issue under consideration by a judicial body, i.e., a nuisance lawsuit filed by the New York defendants against gun dealers, a Georgia gun dealer's slander suit was dismissed for failure to file a verification as required by § 9-11-11.1(b). Adventure Outdoors, Inc. v. Bloomberg, 307 Ga. App. 356, 705 S.E.2d 241 (2010), cert. denied, No. S11C0648, 2011 Ga. LEXIS 402, cert. denied, 132 S. Ct. 763, 181 L. Ed. 2d 485 (2011).

Motor vehicle hijacking statute. — Because the text of the hijacking statute, O.C.G.A. § 16-5-44.1, does not define "obtain", a court looks to the ordinary meaning of that word, given that it was not a term of art or a technical term pursuant to O.C.G.A. § 1-3-1(b); ordinarily, "obtain" means to gain or attain possession, usually by some planned action or method, and applying the ordinary meaning of "obtain", the offense of hijacking a motor vehicle is concluded when possession of the motor vehicle is attained. Jackson v. State, 309 Ga. App. 24, 709 S.E.2d 44 (2011).

Trial court misinterpreted O.C.G.A. § 16-13-49(d)(6) in holding that the defendant's vehicle, which was in close proximity to the defendant's apartment in which drugs were seized, was not subject to forfeiture because the state lacked evidence that the vehicle was in any way connected to the unlawful activity; no such connection was required. State of Ga. v. West, 331 Ga. App. 745, 771 S.E.2d 432 (2015).

Instruction to "remove" oneself from school premises must occur on occasion in question. — Dismissal of an indictment for loitering on school premises was required because O.C.G.A. § 20-2-1180(b)(1) made it a crime for a defendant to fail to remove oneself from school premises after being told to do so; in this case, it was alleged that the defendant was told to leave on a prior occasion, not the date in question. State v. Freeman, 349 Ga. App. 94, 825 S.E.2d 538 (2019).

Rape shield statute. — By the statute's plain terms the rape shield statute, O.C.G.A. § 24-2-3(a) (see now O.C.G.A. § 24-4-412), applied only in prosecutions for rape and not to child molestation cases; however, the trial court did not err by applying former O.C.G.A. § 24-2-3(a) to defendant's case because the defendant was prosecuted for, among other offenses, rape, and the fact that the defendant was acquitted of the rape charge did not require a new trial on the other charges. Abdulkadir v. State, 279 Ga. 122, 610 S.E.2d 50 (2005).

Plain language of O.C.G.A. § 42-8-62. — Defendant was not required to register as a sexual offender because the defendant successfully completed a first-offender sentence for statutory rape and burglary charges, and a "conviction" under O.C.G.A. § 42-1-12(a)(8) did not include a discharge without an adjudication of guilt following the successful completion of a first offender sentence; the plain language of O.C.G.A. § 42-8-62(a) provided that, with certain exceptions, once a first offender was discharged without an adjudication of guilt, he or she stood completely exonerated and was not considered as having been convicted of a crime. The trial court's interpretation of the statutes at issue as requiring all first offenders who had committed certain sexual offenses to register as sexual offenders for the rest of their lives rendered the plain language of O.C.G.A. § 42-1-12(8) meaningless and was improper. Jackson v. State, 299 Ga. App. 356, 683 S.E.2d 60 (2009).

Dougherty County Probate Court allowed to hold jury trials. — Dougherty County, Ga., Probate Court had jurisdiction to hold jury trials because: (1) the 2010 census, which dropped the county's population below that required by O.C.G.A. § 15-9-120(2) to allow jury trials in probate court, was not effective until July 1, 2012, under O.C.G.A. § 1-3-1(d)(2)(D); and, (2) a statutory amendment, effective on that date, decreased the population requirement. Ellis v. Johnson, 291 Ga. 127, 728 S.E.2d 200 (2012).

OPINIONS OF THE ATTORNEY GENERAL

Construction to conform to legislative intent. — In the interpretation of statutes, it is a cardinal rule that statutes must be construed to conform with the intent of the General Assembly. 1990 Op. Att'y Gen. No. 90-9.

Words given ordinary meaning. — When construing a statute, words should be given their ordinary and everyday meaning. 1990 Op. Att'y Gen. No. 90-6.

Money authorized for compensation of clerical assistants cannot be

used for any other purpose. 1962 Op. Att'y Gen. p. 566.

Act amends section of same subject matter as that dealt with by Act. — Where an amendatory Act to the Code purports to deal with one subject matter, but specifies a section number which does not deal with this subject matter and, in fact, does not exist, the legal effect of the Act is to amend the section of the same subject matter. 1954-56 Op. Att'y Gen. p. 372.

Where intention of General Assembly to repeal prior Act is manifest, that intent will be recognized. 1972 Op. Att'y Gen. No. 72-57.

The 1981 amendment, as to the effective date of a census, does not operate retrospectively to January 1, 1981, but does, as of April 9, 1981, repeal Ga. L. 1963, p. 608. 1981 Op. Att'y Gen. No. U81-54.

Phrase "goods, wares or merchandise" should be construed in its ordinary sense; this means such chattels as are ordinarily the subject of traffic and trade. 1972 Op. Att'y Gen. No. 72-96.

Ordinary significance of the phrase "state institution" is a public, state-operated institution. 1973 Op. Att'y Gen. No. 73-72.

Section immaterial where calendar date determines action's deadline. — Where a calendar date rather than a number of days determines the deadline for taking action, the fact that the last day is on Saturday or Sunday is immaterial. 1962 Op. Att'y Gen. p. 565.

If section's prohibitive period runs in months. — Former Code 1933, §§ 25-213, 25-214, 25-216, 25-301, 25-313, 25-315, and 25-317 (see now O.C.G.A. § 7-3-14(2)) should be interpreted so that the prohibitive period, either two months or six months, begins running the day following the date contained in the loan and expires midnight six months later on the same numerical calendar date, and further that the Saturday or Sunday carry-over period would not apply and could be counted toward the fulfillment of the restricted period. 1963-65 Op. Att'y Gen. p. 255.

Official action requires majority of officers to whom authority is given, rather than a majority of those then holding the office. 1980 Op. Att'y Gen. No. 80-31.

Official action requires majority of total number of positions on a board, rather than a majority of those present at a meeting. 1980 Op. Att'y Gen. No. 80-31.

Majority of members of Georgia Firemen's Pension Fund board must agree on any action to be taken before that action is binding. 1972 Op. Att'y Gen. No. 72-103.

Tax assessor board can act in absence of one member. — A board of tax assessors consisting of three members and sitting in accordance with former Code 1933, § 92-6911 (see now O.C.G.A. § 48-5-297) can legally act in the absence of one of its members; the absence of a member could be for "any reason." 1971 Op. Att'y Gen. No. U71-55.

Notice of called meeting of board of commissioners must be provided, where practical, to all board members, and failure to provide notice invalidates actions taken at a called meeting unless all members attend. 1976 Op. Att'y Gen. No. U76-57.

Larger and more extensive statutory expression controls. — Interest earned on educational purpose sales taxes and on special county one percent sales and use taxes becomes part of the tax proceeds in the account fund, which fund is required to be used exclusively for the purposes specified in the resolution or ordinance calling for the imposition of the tax. 2001 Op. Att'y Gen. No. 2001-3.

RESEARCH REFERENCES

Am. Jur. 2d. — 12 Am. Jur. 2d, Bonds, §§ 6, 11 et seq. 14 Am. Jur. 2d, Census, §§ 1, 4. 73 Am. Jur. 2d, Statutes, § 1 et seq.

C.J.S. — 11 C.J.S., Bonds, §§ 9, 11, 14. 14 C.J.S., Census, § 2. 82 C.J.S., Statutes, § 364 et seq.

ALR. — Scope and effect of exception of

"special protection and privilege," in an Act giving women the same rights as men, 26 A.L.R. 356.

Time for performance of an act under a lease when date fixed falls on Sunday or holiday, 29 A.L.R. 239.

Power of municipal corporation to legislate as to Sunday observance, 37 A.L.R. 575.

Title of statutes as an element bearing upon their construction, 37 A.L.R. 927.

Application of rule of ejusdem generis to statutes of limitation, 39 A.L.R. 1404.

What constitutes offense of obstructing or resisting officer, 48 A.L.R. 746.

Validity of ordinance as affected by motives of persons who procured its adoption, 53 A.L.R. 942.

Previous statute as affected by attempted but unconstitutional amendment, 66 A.L.R. 1483.

Constitutionality, construction, and effect of statutes in relation to conduct of driver of automobile after happening of accident, 101 A.L.R. 911.

Permissive or mandatory character of legislation in relation to payment of public debts, 103 A.L.R. 812.

Constitutionality, construction, and application of statute as to effect of taking appeal, or staying execution, on right to redeem from execution or judicial sale, 107 A.L.R. 879.

Constitutionality of statute which by express terms or construction declares that attorneys' liens shall not be affected by settlement or compromise between the parties, 122 A.L.R. 974.

Supplying omitted words in statute or ordinance, 126 A.L.R. 1325.

Character as felony or misdemeanor of offense for which a fine is provided as afected by provision for imprisonment until fine is satisfied, 127 A.L.R. 1286.

Date or event contemplated by term "passage," "enactment," "effective date," etc., employed by statute in fixing time of facts or conditions within its operation, 132 A.L.R. 1048.

Standard or system of time, 143 A.L.R. 1238.

Presumption that, in re-enacting statute, legislature adopted previous judicial construction thereof, as applied to construction by trial or intermediate appellate court, 146 A.L.R. 923.

"And/or," 154 A.L.R. 866.

What amounts to seizure and holding of employer's plant, equipment, machinery, or other property within statutory exception to inhibition on injunctions in labor disputes, 163 A.L.R. 668.

Inclusion or exclusion of the day of birth in computing one's age, 5 A.L.R.2d 1143.

Construction and effect of statutes limiting duration of agricultural leases, 17 A.L.R.2d 566.

Construction and effect in civil actions of statute, ordinance, or regulation requiring vehicles to be stopped or parked parallel with, and within certain distance of, curb, 17 A.L.R.2d 582.

Effective date of census, 43 A.L.R.2d 1353.

Meaning of "residence district," "business district," "school area," and the like, in statutes and ordinances regulating speed of motor vehicles, 50 A.L.R.2d 343.

Time for payment of insurance premium where last day falls on Sunday or holiday, 53 A.L.R.2d 877.

What constitutes a "scaffold" within scaffold safety requirement statutes, 87 A.L.R.2d 977.

Construction of zoning regulations prescribing minimum area for house lots or requiring an area proportionate to number of families to be housed, 95 A.L.R.2d 761.

Inclusion or exclusion of first and last days in computing the time for performance of an act or event which must take place a certain number of days before a known future date, 98 A.L.R.2d 1331.

Construction and application of statutes prohibiting or limiting loans to bank's officers or directors, 49 A.L.R.3d 727.

Abstention from voting of member of municipal council present at session as affecting requisite voting majority, 63 A.L.R.3d 1072.

Validity of zoning laws setting minimum lot size requirements, 1 A.L.R.5th 622.

Construction and application of zoning laws setting minimum lot size requirements, 2 A.L.R.5th 553.

1-3-1. (Effective January 1, 2021) Construction of statutes generally.

(a) In all interpretations of statutes, the courts shall look diligently for the intention of the General Assembly, keeping in view at all times the old law, the evil, and the remedy. Grammatical errors shall not vitiate a law. A transposition of words and clauses may be resorted to when a sentence or clause is without meaning as it stands.

(b) In all interpretations of statutes, the ordinary signification shall be applied to all words, except words of art or words connected with a particular trade or subject matter, which shall have the signification attached to them by experts in such trade or with reference to such subject matter.

(c) A substantial compliance with any statutory requirement, especially on the part of public officers, shall be deemed and held sufficient, and no proceeding shall be declared void for want of such compliance, unless expressly so provided by law.

(d) In addition to the rules for construction prescribed in subsections (a) through (c) of this Code section, the rules provided in this subsection shall govern the construction of all statutes with respect to the subjects enumerated.

(1) **Bonds.** When a bond is required by law, an undertaking in writing, without seal, is sufficient; and in all bonds where the names of the obligors do not appear in the bond but are subscribed thereto, they are bound thereby.

(2) **Census.** Whenever there is used in the statutory law of this state the term "federal census," "United States census," "decennial census," or similar words referring to the official census conducted every ten years by the United States of America or any agency thereof as required by Article I, Section II, Paragraph III of the Constitution of the United States, the effective date of such census for the purpose of making operative and of force any statutory law of this state shall be determined as follows:

(A) The effective date of the census shall be January 1 of the second year after the year in which the census is conducted, for the purpose of making operative and of force the following laws:

(i) Code Section 15-16-20;

(ii) Code Sections 15-6-88 through 15-6-91;

(iii) Code Section 48-5-183;

(iv) Code Sections 15-9-63 through 15-9-66;

(v) Code Section 36-5-25;

(vi) Code Section 15-10-23; and

(vii) Code Section 45-16-11;

provided, however, that if a county's population decreases according to a more recent census below its population according to an earlier census, then, notwithstanding any other provision of law, any officer who is compensated under a law specified in this subparagraph and who is in office on the date specified in this subparagraph shall continue during his or her entire tenure in such office (including any future terms of office in such office) to be compensated on the basis of the county's population according to such earlier census;

(B) For purposes of any program of grants of state funds to local governments, the effective date of the census shall be July 1 of the first year after the year in which the census is conducted;

(C) For the purpose of reconstituting the membership of any constitutional or statutory board, commission, or body whose members are appointed from congressional districts, the effective date of the census shall be January 1 of the third year after the year in which the census is conducted;

(D) The effective date of the census shall be July 1 of the second year after the year in which the census is conducted for the purpose of making operative and of force all other statutory laws which do not expressly provide otherwise.

(3) **Computation of time.** Except as otherwise provided by time period computations specifically applying to other laws, when a period of time measured in days, weeks, months, years, or other measurements of time except hours is prescribed for the exercise of any privilege or the discharge of any duty, the first day shall not be counted but the last day shall be counted; and, if the last day falls on Saturday or Sunday, the party having such privilege or duty shall have through the following Monday to exercise the privilege or to discharge the duty. When the last day prescribed for such action falls on a public and legal holiday as set forth in Code Section 1-4-1, the party having the privilege or duty shall have through the next business day to exercise the privilege or to discharge the duty. When the period of time prescribed is less than seven days, intermediate Saturdays, Sundays, and legal holidays shall be excluded in the computation.

(4) **Gender.** The masculine gender includes the feminine and the neuter.

(5) **Joint authority.** A joint authority given to any number of persons or officers may be executed by a majority of them, unless it is otherwise declared.

(6) **Number.** The singular or plural number each includes the other, unless the other is expressly excluded.

(7) **Tense.** The present or past tense includes the future.

History. — Orig. Code 1863, § 5; Code 1868, § 4; Code 1873, § 4; Code 1882, § 4; Civil Code 1895, § 4; Penal Code 1895, § 1; Civil Code 1910, § 4; Penal Code 1910, § 1; Code 1933, § 102-102; Ga. L. 1958, p. 388, § 1; Ga. L. 1963, p. 608, § 1; Ga. L. 1967, p. 579, § 1; Ga. L. 1981, p. 951, § 1; Ga. L. 1985, p. 648, § 1; Ga. L. 1990, p. 1903, § 1; Ga. L. 2001, p. 902, § 22; Ga. L. 2012, p. 173, § 2-1/HB 665; Ga. L. 2018, p. 356, § 2-1/SB 436; Ga. L. 2019, p. 1015, § 11/SB 171.

The 2018 amendment, effective July 1, 2018, substituted "15-9-66" for "15-9-67" in division (d)(2)(A)(iv).

The 2019 amendment, effective January 1, 2021, in subparagraph (d)(2)(A), substituted "January 1 of the second year" for "July 1 of the first year" in the introductory language, and inserted "or her" in the ending undesignated paragraph.

Cross references. — Computation of time in regard to exercise of privileges or discharge of duties prescribed or required by election laws, § 21-2-14. Construction of multiple amendments to same Code provision, § 28-9-5.

Editor's notes. — Code Section 1-3-1 is set out twice in this Code. The first version is effective until January 1, 2021, and the second version becomes effective on that date.

Law reviews. — For article comparing sections of the "Georgia Civil Practice Act" with preexisting provisions of the Georgia Code, see 3 Ga. St. B. J. 295 (1967). For article on the problems and benefits of multiple fiduciaries in estate planning, see 33 Mercer L. Rev. 355 (1981). For article surveying Insurance Law in 1984-1985, see 37 Mercer L. Rev. 275 (1985). For article surveying administrative law, see 38 Mercer L. Rev. 17 (1986). For article, "The Amended Open Meetings Law: New Requirements for Publicly Funded Corporations As Well As Governmental Agencies," see 25 Ga. St. B. J. 78 (1988). For article, "The Canons of Construction in Georgia: Anachronisms in Action," see 25 Ga. L. Rev. 365 (1991). For note, "Regulation and Ownership of the Marshlands: The Georgia Marshlands Act," see 5 Ga. L. Rev. 563 (1971). For article on commercial law, see 53 Mercer L. Rev. 153 (2001). For article on construction law, see 53 Mercer L. Rev. 173 (2001). For article on trial practice and procedure, see 53 Mercer L. Rev. 475 (2001). For survey article on administrative law, see 60 Mercer L. Rev. 1 (2008). For annual survey of law on real property, see 62 Mercer L. Rev. 283 (2010). For annual survey on trial practice and procedure, see 64 Mercer L. Rev. 305 (2012). For article, "Researching Georgia Law," see 34 Ga. St. U. L. Rev. 741 (2015).

For comment on Tarrant v. Davis, 62 Ga. App. 880, 10 S.E.2d 636 (1940), see 3 Ga. B. J. 54 (1941). For comment on Tift v. Bush, 209 Ga. 769, 75 S.E.2d 805 (1953), see 16 Ga. B. J. 224 (1953). For comment on Wilkinson v. Townsend, 96 Ga. App. 179, 99 S.E.2d 539 (1957) wherein the statutory authorization for the police to remove an abandoned automobile to a garage was held not to create an agency relationship between the police and auto owner giving rise to a lien against the auto owner by the garageman, see 9 Mercer L. Rev. 372 (1958).

JUDICIAL DECISIONS

Analysis

General Consideration
Applicability

General Rules of Construction
Legislative Intent
Words' Signification
Substantial Statutory Compliance
Bonds
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General Consideration

Construction cannot render statute meaningless. — Because the purpose of O.C.G.A. § 17-6-72(d)(1) was remedial and had to therefore be construed in favor of the surety, in interpreting the statute and avoiding a meaningless result the trial court properly allowed a surety a remission of 50 percent of the bond amount after the surety filed its application for the bond at any time within 30 days following the expiration of the two-year period following the date of judgment. State of Ga. v. Free At Last Bail Bonds, 285 Ga. App. 734, 647 S.E.2d 402 (2007).

Cited in Citizens & S. Bank v. Taggart, 164 Ga. 351, 138 S.E. 898 (1927); City of Columbus v. Muscogee Mfg. Co., 165 Ga. 259, 140 S.E. 860 (1927); Export Ins. Co. v. Womack, 165 Ga. 815, 142 S.E. 851 (1928); Willcox v. Beechwood Band Mill Co., 166 Ga. 367, 143 S.E. 405 (1928); Allen v. Allen, 39 Ga. App. 624, 147 S.E. 798 (1929); Mobley v. Chamblee, 39 Ga. App. 645, 148 S.E. 306 (1929); Almond v. Mobley, 40 Ga. App. 305, 149 S.E. 293 (1929); Georgia Paper Stock Co. v. State Tax Bd., 174 Ga. 816, 164 S.E. 197 (1932); Carter v. Land, 174 Ga. 811, 164 S.E. 205 (1932); Murphy v. Lowry, 178 Ga. 138, 172 S.E. 457 (1933); Minsk v. Cook, 48 Ga. App. 567, 173 S.E. 446 (1934); Jackson v. State, 49 Ga. App. 345, 175 S.E. 421 (1934); Montag Bros. v. State Revenue Comm'n, 50 Ga. App. 660, 179 S.E. 563 (1935); Eason v. Morrison, 181 Ga. 322, 182 S.E. 163 (1935); Southland Ice Co. v. Doyal, 181 Ga. 797, 184 S.E. 295 (1936); Marshall v. Walker, 183 Ga. 44, 187 S.E. 81 (1936); State Revenue Comm'n v. Alexander, 54 Ga. App. 295, 187 S.E. 707 (1936); Longino v. Hanley, 184 Ga. 328, 191 S.E. 101 (1937); Jones v. Boykin, 185 Ga. 606, 196 S.E. 900 (1938); Sanders v. Paschal, 186 Ga. 837, 199 S.E. 153 (1938); Kesler v. Groover, 58 Ga. App. 548, 199 S.E. 332 (1938); Austin-Western Rd. Mach. Co. v. Fayette County, 99 F.2d 565 (5th Cir. 1938); Burden v. Gates, 188 Ga. 284, 3 S.E.2d 679 (1939); General Accident, Fire & Life Assurance Corp. v. John P. King Mfg. Co., 60 Ga. App. 281, 3 S.E.2d 841 (1939); Cason v. State, 60 Ga. App. 626, 4 S.E.2d 713 (1939); State v. Camp, 189 Ga. 209, 6 S.E.2d 299 (1939); Harrell v. Southeastern Pipe-Line Co., 190 Ga. 709, 10 S.E.2d 386 (1940); Maddox v. First Nat'l Bank, 191 Ga. 106, 11 S.E.2d 662 (1940); Jones v. State, 64 Ga. App. 376, 13 S.E.2d 462 (1941); Forrester v. Trust Co., 65 Ga. App. 167, 15 S.E.2d 559 (1941); Hirsch v. Shepherd Lumber Corp., 194 Ga. 113, 20 S.E.2d 575 (1942); Wharton v. State, 67 Ga. App. 545, 21 S.E.2d 258 (1942); Preston v. National Life & Accident Ins. Co., 196 Ga. 217, 26 S.E.2d 439 (1943); Nixon v. Nixon, 196 Ga. 148, 26 S.E.2d 711 (1943); Owens v. State, 72 Ga. App. 11, 32 S.E.2d 848 (1945); Cook v. Cobb, 72 Ga. App. 150, 33 S.E.2d 366 (1945); Blige v. State, 72 Ga. App. 438, 33 S.E.2d 917 (1945); Lumpkin v. State, 73 Ga. App. 229, 36 S.E.2d 123 (1945); Thompson v. Eastern Air Lines, 200 Ga. 216, 39 S.E.2d 225 (1946); Wright v. State, 75 Ga. App. 764, 44 S.E.2d 569 (1947); Smith v. AMOCO, 77 Ga. App. 463, 49 S.E.2d 90 (1948); Nashville, C. & St. L. Ry. v. Ham, 78 Ga. App. 403, 50 S.E.2d 831 (1948); Citizens Loan & Sec. Co. v. Trust Co., 79 Ga. App. 184, 53 S.E.2d 179 (1949); Childs v. Hampton, 80 Ga. App. 748, 57 S.E.2d 291 (1950); Delinski v. Dunn, 206 Ga. 825, 59 S.E.2d 248 (1950); Norris v.

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McDaniel, 207 Ga. 232, 60 S.E.2d 329 (1950); Bussey v. Hager, 82 Ga. App. 23, 60 S.E.2d 532 (1950); Reece v. State, 208 Ga. 165, 66 S.E.2d 133 (1951); Camp v. Trapp, 209 Ga. 298, 71 S.E.2d 534 (1952); Payne v. Moore Fin. Co., 87 Ga. App. 627, 74 S.E.2d 746 (1953); Beazley v. De Kalb County, 210 Ga. 41, 77 S.E.2d 740 (1953); State v. Cherokee Brick & Tile Co., 89 Ga. App. 235, 79 S.E.2d 322 (1953); Trowbridge v. Dominy, 92 Ga. App. 177, 88 S.E.2d 161 (1955); Jenkins v. State, 93 Ga. App. 360, 92 S.E.2d 43 (1956); Stein Steel & Supply Co. v. Tate, 94 Ga. App. 517, 95 S.E.2d 437 (1956); Scheuer v. Housing Auth., 214 Ga. 842, 108 S.E.2d 264 (1959); Dell v. Kugel, 99 Ga. App. 551, 109 S.E.2d 532 (1959); Crosby v. State, 100 Ga. App. 49, 110 S.E.2d 94 (1959); City Whsle. Co. v. Harper, 100 Ga. App. 151, 110 S.E.2d 561 (1959); Smith v. A.A. Wood & Son Co., 103 Ga. App. 802, 120 S.E.2d 800 (1961); Williams v. Hudgens, 217 Ga. 706, 124 S.E.2d 746 (1962); Utzman v. Caribbean & S.E. Dev. Corp., 107 Ga. App. 56, 129 S.E.2d 62 (1962); First Nat'l Ins. Co. of Am. v. Thain, 107 Ga. App. 100, 129 S.E.2d 381 (1962); Dyson v. Dixon, 219 Ga. 427, 134 S.E.2d 1 (1963); Balkcom v. Defore, 219 Ga. 641, 135 S.E.2d 425 (1964); Mach v. State, 109 Ga. App. 154, 135 S.E.2d 467 (1964); Stull v. Jack Stull, Inc., 220 Ga. 271, 138 S.E.2d 379 (1964); Goldstein v. Karr, 110 Ga. App. 806, 140 S.E.2d 40 (1964); Mitchell v. State, 111 Ga. App. 11, 140 S.E.2d 290 (1965); Millhollan v. State, 221 Ga. 165, 143 S.E.2d 730 (1965); McVay v. Anderson, 221 Ga. 381, 144 S.E.2d 741 (1965); Montgomery v. Gilbert, 112 Ga. App. 751, 146 S.E.2d 115 (1965); Red Hill Lumber Co. v. Miller, 112 Ga. App. 882, 146 S.E.2d 918 (1966); Smith v. Smith, 113 Ga. App. 111, 147 S.E.2d 466 (1966); State v. Livingston, 222 Ga. 441, 150 S.E.2d 648 (1966); Wall v. Youmans, 223 Ga. 191, 154 S.E.2d 191 (1967); Herrin v. Herrin, 224 Ga. 579, 163 S.E.2d 713 (1968); Daniels v. Allen, 118 Ga. App. 722, 165 S.E.2d 449 (1968); Martin Theaters of Ga., Inc. v. Lloyd, 118 Ga. App. 835, 165 S.E.2d 909 (1968); Anthony v. Anthony, 120 Ga. App. 261, 170 S.E.2d 273 (1969); Aliotta v. Gilreath, 226 Ga. 263, 174 S.E.2d 403 (1970); Thompson v. Abbott, 226 Ga. 353, 174 S.E.2d 904 (1970); Mull v. Aetna Cas. & Sur. Co., 226 Ga. 462, 175 S.E.2d 552 (1970); Citizens & S. Nat'l Bank v. Fulton County, 123 Ga. App. 323, 180 S.E.2d 905 (1971); Morris v. Durbin, 123 Ga. App. 383, 180 S.E.2d 925 (1971); Save The Bay Comm., Inc. v. Mayor of Savannah, 227 Ga. 436, 181 S.E.2d 351 (1971); Ansley v. State, 124 Ga. App. 670, 185 S.E.2d 562 (1971); Watts v. Teagle, 124 Ga. App. 726, 185 S.E.2d 803 (1971); Mickas v. Mickas, 229 Ga. 10, 189 S.E.2d 81 (1972); Winston Corp. v. Park Elec. Co., 126 Ga. App. 489, 191 S.E.2d 340 (1972); Dukes v. Ralston Purina Co., 127 Ga. App. 696, 194 S.E.2d 630 (1972); Nevels v. City of Sale City, 128 Ga. App. 65, 195 S.E.2d 658 (1973); Montaquila v. Cranford, 129 Ga. App. 787, 201 S.E.2d 335 (1973); Jackson v. State, 130 Ga. App. 581, 203 S.E.2d 923 (1974); Stepp v. Lance, 131 Ga. App. 193, 205 S.E.2d 490 (1974); Queen v. State, 131 Ga. App. 370, 205 S.E.2d 921 (1974); Pate v. Milford A. Scott Real Estate Co., 132 Ga. App. 49, 207 S.E.2d 567 (1974); Jones v. Hartford Accident & Indem. Co., 132 Ga. App. 130, 207 S.E.2d 613 (1974); Vohs v. Dickson, 495 F.2d 607 (5th Cir. 1974); J.A.T. v. State, 133 Ga. App. 922, 212 S.E.2d 879 (1975); Dunn v. Cofer, 134 Ga. App. 173, 213 S.E.2d 483 (1975); Blackmon v. Dixon, 134 Ga. App. 184, 213 S.E.2d 513 (1975); Chanin v. Bibb County, 234 Ga. 282, 216 S.E.2d 250 (1975); Hinson v. Georgia State Bd. of Dental Exmrs., 135 Ga. App. 488, 218 S.E.2d 162 (1975); DeFreeze v. State, 136 Ga. App. 10, 220 S.E.2d 17 (1975); Stitt v. Busbee, 136 Ga. App. 44, 220 S.E.2d 59 (1975); Garren v. Southland Corp., 235 Ga. 784, 221 S.E.2d 571 (1976); Givens v. Dunn Labs., Inc., 138 Ga. App. 26, 225 S.E.2d 480 (1976); H.R. Lee Inv. Corp. v. Groover, 138 Ga. App. 231, 225 S.E.2d 742 (1976); Camp v. Hamrick, 139 Ga. App. 61, 228 S.E.2d 288 (1976); Blumenau v. Citizens & S. Nat'l Bank, 139 Ga. App. 188, 228 S.E.2d 302 (1976); Turner Communications Corp. v. Georgia Dep't of Transp., 139 Ga. App. 436, 228 S.E.2d 399 (1976); Jones v. State, 139 Ga. App. 679, 229 S.E.2d 149 (1976); Smith v. State, 140 Ga. App. 200, 230 S.E.2d 350 (1976); M. Shapiro & Son v. Yates Constr.

Co., 140 Ga. App. 675, 231 S.E.2d 497 (1976); Eason Publications v. Atlanta Gazette, Inc., 141 Ga. App. 321, 233 S.E.2d 232 (1977); DOT v. Spells Sign Co., 141 Ga. App. 350, 233 S.E.2d 435 (1977); Leathers v. Gilland, 141 Ga. App. 681, 234 S.E.2d 336 (1977); Chilivis v. IBM Corp., 142 Ga. App. 160, 235 S.E.2d 626 (1977); Vansant v. Allstate Ins. Co., 142 Ga. App. 684, 236 S.E.2d 858 (1977); State v. Jackson, 143 Ga. App. 88, 237 S.E.2d 533 (1977); Green v. Decatur Fed. Sav. & Loan Ass'n, 143 Ga. App. 368, 238 S.E.2d 740 (1977); Retail Union Health & Welfare Fund v. Seabrum, 240 Ga. 695, 242 S.E.2d 18 (1978); Richmond County Bd. of Tax Assessors v. Georgia R.R. Bank & Trust Co., 242 Ga. 23, 247 S.E.2d 761 (1978); Young v. Department of Human Resources, 148 Ga. App. 518, 251 S.E.2d 578 (1978); National Adv. Co. v. Department of Transp., 149 Ga. App. 334, 254 S.E.2d 571 (1979); Parker v. Ryder Truck Lines, 150 Ga. App. 163, 257 S.E.2d 18 (1979); Yeomans v. American Nat'l Ins. Co., 150 Ga. App. 334, 258 S.E.2d 1 (1979); Bergen v. Martindale-Hubbell, Inc., 245 Ga. 742, 267 S.E.2d 10 (1980); Fair v. State, 245 Ga. 868, 268 S.E.2d 316 (1980); Floyd County Bd. of Comm'rs v. Floyd County Merit Sys. Bd., 246 Ga. 44, 268 S.E.2d 651 (1980); State v. Germany, 246 Ga. 455, 271 S.E.2d 851 (1980); McCord v. Housing Auth., 246 Ga. 547, 272 S.E.2d 247 (1980); Lester v. Crooms, Inc., 157 Ga. App. 377, 277 S.E.2d 751 (1981); Earth Mgt., Inc. v. Heard County, 248 Ga. 442, 283 S.E.2d 455 (1981); Ford v. Termplan, Inc., 528 F. Supp. 1016 (N.D. Ga. 1981); West v. Dorsey, 248 Ga. 790, 285 S.E.2d 703 (1982); State Farm Mut. Auto. Ins. Co. v. Hancock, 164 Ga. App. 32, 295 S.E.2d 359 (1982); Bunkley v. Hendrix, 164 Ga. App. 401, 296 S.E.2d 223 (1982); Tabb v. State, 250 Ga. 317, 297 S.E.2d 227 (1982); State v. Chumley, 164 Ga. App. 828, 299 S.E.2d 564 (1982); McGee v. State, 165 Ga. App. 423, 299 S.E.2d 573 (1983); Sabel v. State, 250 Ga. 640, 300 S.E.2d 663 (1983); Leavell v. Life Ins. Co., 165 Ga. App. 770, 302 S.E.2d 623 (1983); Cheely v. State, 251 Ga. 685, 309 S.E.2d 128 (1983); DeWaters v. City of Atlanta, 169 Ga. App. 41, 311 S.E.2d 232 (1983); Camp v. City of Columbus, 252 Ga. 120, 311 S.E.2d 834 (1984); St. Paul Fire & Marine Ins. Co. v. Nixon, 252 Ga. 469, 314 S.E.2d 215 (1984); American Hosp. Supply Corp. v. Starline Mfg. Corp., 171 Ga. App. 790, 320 S.E.2d 857 (1984); Ausburn v. Anthony, 173 Ga. App. 505, 326 S.E.2d 588 (1985); Smith v. Smith, 254 Ga. 450, 330 S.E.2d 706 (1985); Shirley v. State, 254 Ga. 723, 334 S.E.2d 154 (1985); DeKalb County School Dist. v. Bowden, 177 Ga. App. 296, 339 S.E.2d 356 (1985); DeKalb County v. Nall, 178 Ga. App. 429, 343 S.E.2d 113 (1986); Midland Nat'l Life Ins. Co. v. Citizens & S. Nat'l Bank, 641 F. Supp. 516 (M.D. Ga. 1986); Bowen v. City of Columbus, 256 Ga. 462, 349 S.E.2d 740 (1986); Grissett v. Wilson, 181 Ga. App. 727, 353 S.E.2d 621 (1987); Alexander v. Macon-Bibb County Urban Dev. Auth. & Urban Properties #47, 257 Ga. 181, 357 S.E.2d 62 (1987); Woods v. General Elec. Credit Auto Lease, Inc., 187 Ga. App. 57, 369 S.E.2d 334 (1988); ADC Constr. Co. v. Hall, 191 Ga. App. 33, 381 S.E.2d 76 (1989); Star Mfg., Inc. v. Edenfield, 191 Ga. App. 665, 382 S.E.2d 706 (1989); AAA Bonding Co. v. State, 192 Ga. App. 684, 386 S.E.2d 50 (1989); State v. Allen, 192 Ga. App. 730, 386 S.E.2d 394 (1989); Thompson v. Tom Harvey Ford Mercury, Inc., 193 Ga. App. 64, 387 S.E.2d 28 (1989); Management Comp. Group/Southeast, Inc. v. United Sec. Emp. Programs, Inc., 194 Ga. App. 99, 389 S.E.2d 525 (1989); Kolker v. State, 260 Ga. 240, 391 S.E.2d 391 (1990); Griffin v. State, 194 Ga. App. 624, 391 S.E.2d 675 (1990); Roman v. Terrell, 195 Ga. App. 219, 393 S.E.2d 83 (1990); Palmer v. State, 260 Ga. 330, 393 S.E.2d 251 (1990); DOT v. Moseman Constr. Co., 260 Ga. 369, 393 S.E.2d 258 (1990); State Farm Mut. Auto. Ins. Co. v. Day, 195 Ga. App. 823, 394 S.E.2d 913 (1990); Atlanta Cas. Ins. Co. v. Crews, 197 Ga. App. 48, 397 S.E.2d 466 (1990); Alexander v. Steining, 197 Ga. App. 328, 398 S.E.2d 390 (1990); Reid Rental, Inc. v. City of Waycross, 197 Ga. App. 676, 399 S.E.2d 247 (1990); Johnson v. Housing Auth., 198 Ga. App. 816, 403 S.E.2d 97 (1991); Garvey v. Mendenhall, 199 Ga. App. 241, 404 S.E.2d 613 (1991); Day v. Burnett, 199 Ga. App. 494, 405 S.E.2d 316 (1991); Thomason v. State, 199 Ga. App. 875, 406 S.E.2d 528 (1991); Board of Natural Re-

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sources v. Walker County, 200 Ga. App. 301, 407 S.E.2d 436 (1991); Atlanta Journal & Constitution v. Sims, 200 Ga. App. 236, 407 S.E.2d 464 (1991); Foody v. State, 200 Ga. App. 230, 407 S.E.2d 469 (1991); Smith v. Turner, 764 F. Supp. 632 (N.D. Ga. 1991); Jewell v. State, 200 Ga. App. 203, 407 S.E.2d 763 (1991); Calhoon v. Mr. Locksmith Co., 200 Ga. App. 618, 409 S.E.2d 226 (1991); Rainbow Mfg. Co. v. Bank of Fitzgerald, 129 Bankr. 702 (Bankr. M.D. Ga. 1991); Rolleston v. Munford, 201 Ga. App. 219, 410 S.E.2d 801 (1991); Liberty Nat'l Life Ins. Co. v. Coley, 201 Ga. App. 623, 411 S.E.2d 553 (1991); Calhoun County Hosp. Auth. v. Walker, 205 Ga. App. 259, 421 S.E.2d 777 (1992); Fisch v. Randall Mill Corp., 262 Ga. 861, 426 S.E.2d 883 (1993); Givins v. State, 207 Ga. App. 334, 428 S.E.2d 452 (1993); Weems v. Munson Transp., Inc., 210 Ga. App. 766, 437 S.E.2d 640 (1993); State v. Evans, 212 Ga. App. 415, 442 S.E.2d 287 (1994); Franklin v. Hill, 264 Ga. 302, 444 S.E.2d 778 (1994); Weiland v. Weiland, 216 Ga. App. 417, 454 S.E.2d 613 (1995); Miller v. Georgia Ports Auth., 266 Ga. 586, 470 S.E.2d 426 (1996); Holmes v. Chatham Area Transit Auth., 233 Ga. App. 42, 505 S.E.2d 225 (1998); VSI Enters., Inc. v. Edwards, 238 Ga. App. 369, 518 S.E.2d 765 (1999); S & A Indus. v. Bank Atlanta, 247 Ga. App. 377, 543 S.E.2d 743 (2000); Gullatt v. Omega Psi Phi Fraternity, Inc., 248 Ga. App. 779, 546 S.E.2d 927 (2001); McKenzie v. State, 250 Ga. App. 277, 549 S.E.2d 774 (2001); Cox v. Barber, 275 Ga. 415, 568 S.E.2d 478 (2002); In the Interest of T. H., 258 Ga. App. 416, 574 S.E.2d 461 (2002); Ga. Dep't of Cmty. Health, Div. of Health Planning v. Gwinnett Hosp. Sys., 262 Ga. App. 879, 586 S.E.2d 762 (2003); Waters v. Stewart, 263 Ga. App. 195, 587 S.E.2d 307 (2003); Dep't of Human Res. v. Nation, 265 Ga. App. 434, 594 S.E.2d 383 (2004); Johnson v. Ga. Dep't of Human Res., 278 Ga. 714, 606 S.E.2d 270 (2004); Cochran v. Bowers, 274 Ga. App. 449, 617 S.E.2d 563 (2005); In the Interest of K.M.C., 273 Ga. App. 276, 614 S.E.2d 896 (2005); Effingham County Bd. of Tax Assessors v. Samwilka, Inc., 278 Ga. App. 521, 629 S.E.2d 501 (2006); Summerlin v. Ga. Pines Cmty. Serv. Bd., 278 Ga. App. 831, 630 S.E.2d 115 (2006); In the Interest of L.J., 279 Ga. App. 237, 630 S.E.2d 771 (2006); Goswick v. Murray County Bd. of Educ., 281 Ga. App. 442, 636 S.E.2d 133 (2006); Echols v. Echols, 281 Ga. 546, 640 S.E.2d 257 (2007); Merry v. Williams, 281 Ga. 571, 642 S.E.2d 46 (2007); In the Interest of D.B., 284 Ga. App. 445, 644 S.E.2d 305 (2007); DBL, Inc. v. Carson, 284 Ga. App. 898, 645 S.E.2d 56 (2007); Leake v. Murphy, 284 Ga. App. 490, 644 S.E.2d 328 (2007); Ga. Public Defender Stds. Council v. State of Ga., 284 Ga. App. 660, 644 S.E.2d 510 (2007); In re Carter, 288 Ga. App. 276, 653 S.E.2d 860 (2007); Charles H. Wesley Educ. Found., Inc. v. State Election Bd., 282 Ga. 707, 654 S.E.2d 127 (2007); In re Estate of Miraglia, 290 Ga. App. 28, 658 S.E.2d 777 (2008); Carolina Tobacco Co. v. Baker, 295 Ga. App. 115, 670 S.E.2d 811 (2008); In the Interest of P.S., 295 Ga. App. 724, 673 S.E.2d 74 (2009); Morrell v. State, 297 Ga. App. 592, 677 S.E.2d 771 (2009); Moore v. Moore-McKinney, 297 Ga. App. 703, 678 S.E.2d 152 (2009); Transworld Fin. Corp. v. Coastal Tire & Container Repair, LLC, 298 Ga. App. 286, 680 S.E.2d 143 (2009); Frix v. State, 298 Ga. App. 538, 680 S.E.2d 582 (2009); Peck v. State, 300 Ga. App. 375, 685 S.E.2d 367 (2009); Emory Adventist, Inc. v. Hunter, 301 Ga. App. 215, 687 S.E.2d 267 (2009); Northeast Atlanta Bonding Co. v. State, 308 Ga. App. 573, 707 S.E.2d 921 (2011); Hill v. State, 309 Ga. App. 531, 710 S.E.2d 667 (2011); Davenport v. State, 289 Ga. 399, 711 S.E.2d 699 (2011); City of Atlanta v. City of College Park, 311 Ga. App. 62, 715 S.E.2d 158 (2011); Luangkhot v. State, 313 Ga. App. 599, 722 S.E.2d 193 (2012); Brown v. State, 314 Ga. App. 1, 723 S.E.2d 112 (2012); Walker v. State, 290 Ga. 696, 723 S.E.2d 894 (2012); Boyd v. State, 314 Ga. App. 883, 726 S.E.2d 135 (2012); Mayor & Aldermen of Savannah v. Batson-Cook Co., 291 Ga. 114, 728 S.E.2d 189 (2012); Brantley Land & Timber, LLC v. W & D Invs., Inc., 316 Ga. App. 277, 729 S.E.2d 458 (2012); Nicholson Hills Dev. v. Branch Banking & Trust Co., 316 Ga. App. 857, 730 S.E.2d 572 (2012); Inagawa v. Fayette County, 291 Ga. 715, 732 S.E.2d 421

(2012); Gay v. Owens, 292 Ga. 480, 738 S.E.2d 614 (2013); Norred v. Teaver, 320 Ga. App. 508, 740 S.E.2d 251 (2013); Austin v. Bank of Am., N.A., 293 Ga. 42, 743 S.E.2d 399 (2013); Turner County v. City of Ashburn, 293 Ga. 739, 749 S.E.2d 685 (2013); Nat'l City Mortg. Co. v. Tidwell, 293 Ga. 697, 749 S.E.2d 730 (2013); Atlanta Indep. Sch. Sys. v. Atlanta Neighborhood Charter Sch., 293 Ga. 629, 748 S.E.2d 884 (2013); Abdel-Samed v. Dailey, 294 Ga. 758, 755 S.E.2d 805 (2014); L & K Enters., LLC v. City National Bank, N.A., 326 Ga. App. 744, 755 S.E.2d 270 (2014); Sewell v. Cancel, 295 Ga. 235, 759 S.E.2d 485 (2014); Park v. Bailey, 329 Ga. App. 569, 765 S.E.2d 721 (2014); Fielder v. Johnson, 333 Ga. App. 658, 773 S.E.2d 831 (2015); AA-Prof'l Bail Bonding v. Deal, 332 Ga. App. 857, 775 S.E.2d 217 (2015); Evans v. State, 334 Ga. App. 104, 778 S.E.2d 360 (2015); Wright v. Brown, 336 Ga. App. 1, 783 S.E.2d 405 (2016); State v. Mantooth, 337 Ga. App. 698, 788 S.E.2d 584 (2016); Liberty Mut. Fire Ins. Co. v. Quiroga-Saenz, 343 Ga. App. 494, 807 S.E.2d 460 (2017); Ga.-Pac. Consumer Prods., LP v. Ratner, 345 Ga. App. 434, 812 S.E.2d 120 (2018); In re Estate of Gladstone, 303 Ga. 547, 814 S.E.2d 1 (2018); Maddox v. State, 346 Ga. App. 674, 816 S.E.2d 796 (2018); City of College Park v. Martin, 304 Ga. 488, 818 S.E.2d 620 (2018); Moore v. Childs, 347 Ga. App. 560, 820 S.E.2d 186 (2018); Jorree v. PMB Rentals, LLC, 349 Ga. App. 332, 825 S.E.2d 817 (2019).

Applicability

Section is intended to apply to provisions of the Code in the subject of wills. Ellis v. Darden, 86 Ga. 368, 12 S.E. 652, 11 L.R.A. 51 (1890).

Section applies to statutory, but not contractual, limitations. Rowell v. Harrell Realty Co., 25 Ga. App. 585, 103 S.E. 717 (1920) see also Simpkins v. Johnson, 3 Ga. App. 437, 60 S.E. 202 (1908); Maxwell Bros. v. Liverpool & London & Globe Ins. Co., 12 Ga. App. 127, 76 S.E. 1036 (1913).

Section applies to construction of both municipal ordinances and statutes. Risser v. City of Thomasville, 248 Ga. 866, 286 S.E.2d 727 (1982).

Paragraph (d)(3) of O.C.G.A. § 1-3-1 applies to contracts as well as statutes when the limitation is in terms of days. Management Search, Inc. v. Avon Prods., Inc., 166 Ga. App. 262, 304 S.E.2d 426 (1983).

1985 amendment. — Because the 1985 amendment to paragraph (d)(3) of O.C.G.A. § 1-3-1, effective July 1, 1985, was silent on the question of retroactive application, it has no application to a personal injury case where the period of limitations would have expired on June 29, 1985, under the law prior to the amendment. Loveless v. Grooms, 180 Ga. App. 424, 349 S.E.2d 281 (1986).

The 1985 amendment to paragraph (d)(3) extended the old statutory time period where that time period had not yet expired prior to the effective date of the amendment. Hollingsworth v. Hubbard, 184 Ga. App. 121, 361 S.E.2d 12 (1987).

Computation of time. — Superior court improperly dismissed as untimely appellant city's petition for a writ of certiorari challenging a civil service board's decision, as the petition was timely filed for purposes of O.C.G.A. § 5-4-6(a) since: (1) the last day to file the petition fell on Thanksgiving Day; (2) the Friday after Thanksgiving day, like Thanksgiving day, was a legal holiday as set forth in O.C.G.A. § 1-4-1; and (3) the petition was filed on the very next business day, as allowed by O.C.G.A. § 1-3-1(d)(3). City of Atlanta v. Hector, 256 Ga. App. 665, 569 S.E.2d 600 (2002).

Denial of an untimely motion for a continuance was not an abuse of discretion, in the absence of a proffer of defendant's counsel's testimony or other evidence to support this claim. Currington v. State, 270 Ga. App. 381, 606 S.E.2d 619 (2004).

Method of computation of time in O.C.G.A. § 1-3-1(d)(3) applies to the filing of renewal actions under O.C.G.A. § 9-2-61(a). Parsons v. Capital Alliance Fin., LLC, 325 Ga. App. 884, 756 S.E.2d 14 (2014).

Construction of "holidays." — Because the plain language of O.C.G.A. § 1-3-1(a) and § 5-6-38(a) make no provisions for extending the filing time for notices of appeal to compensate for county declared holidays and O.C.G.A. § 1-4-2

Applicability (Cont'd)

limits religious holidays to Sundays, Good Friday did not constitute a holiday for purposes of extending the filing date. In re Estate of Dasher, 259 Ga. App. 201, 575 S.E.2d 921 (2002).

Definition according to experts in medical field. — Where executive agencies have rule-making powers delegated by the Georgia General Assembly, O.C.G.A. § 1-3-1(b) must yield to other rules of statutory construction; thus, the definition of "specialty" as understood by an American board on medical specialties was not controlling for purposes of the single-specialty exemption of O.C.G.A. § 31-6-2(14)(G)(iii) regarding the requirement of obtaining a certificate of need. Albany Surgical, P.C. v. Dep't of Cmty. Health, 257 Ga. App. 636, 572 S.E.2d 638 (2002).

General Rules of Construction

Statute is presumed to be valid and constitutional until the contrary appears, and, where challenged as a whole, the attack will necessarily fail unless the statute is invalid in every part for some reason alleged. Williams v. Ragsdale, 205 Ga. 274, 53 S.E.2d 339 (1949).

A solemn Act of the General Assembly is presumed to be constitutional. State v. Davis, 246 Ga. 761, 272 S.E.2d 721 (1980).

A statute properly enacted is presumed to be constitutional. Development Auth. v. Beverly Enters., 247 Ga. 64, 274 S.E.2d 324 (1981).

An Act of the General Assembly carries a strong presumption of constitutionality, and therefore should not be set aside unless it "plainly and palpably" conflicts with a constitutional provision. City of Atlanta v. Metropolitan Atlanta Rapid Transit Auth., 636 F.2d 1084 (5th Cir. 1981).

Statute must be construed with reference to whole system of which it is a part. Allison v. Domain, 158 Ga. App. 542, 281 S.E.2d 299 (1981).

Construction which will give effect to a statute or rule is preferred to a construction which will destroy it. Brown v. State Merit Sys. of Personnel Admin., 245 Ga. 239, 264 S.E.2d 186 (1980).

That construction which will uphold a statute in whole and in every part is preferred. Exum v. City of Valdosta, 246 Ga. 169, 269 S.E.2d 441 (1980).

Subdivision (d)(3) has no application in criminal prosecution. — In a prosecution of a county deputy for sexual battery and false imprisonment, an indictment filed on May 30, 2014, two years after the incidents that took place on May 30, 2012, was filed a day after the expiration of the statute of limitation, O.C.G.A. § 17-3-1(e); O.C.G.A. § 1-3-1(d)(3) did not apply in a criminal prosecution. State v. Dorsey, 342 Ga. App. 188, 802 S.E.2d 61 (2017).

Specific sentencing provisions controlled over general sentencing provisions. — Pursuant to O.C.G.A. § 16-13-31(g)(1), the trial court lacked the authority to probate or suspend sentences imposed against two defendants in unrelated criminal actions, and neither the 2004 nor the 2006 amendments to the general sentencing provisions under O.C.G.A. § 17-10-1(a)(1) were relevant; moreover, because O.C.G.A. §§ 17-10-6.1 and 17-10-6.2 were statutes that defined certain categories of crimes and provided the sentencing guidelines for those categories, it did not appear that the list of these two exceptions normally would have included § 16-13-31 or any other specific criminal statute, and any omission would be significant only with regard to a statute that defined classes or categories of crimes. Gillen v. State, 286 Ga. App. 616, 649 S.E.2d 832 (2007), cert. denied, No. S07C1780, 2007 Ga. LEXIS 809 (Ga. 2007).

Courts not to "read out" part of statute. — It is contrary to the generally accepted principles for construing statutes to "read out" any part of the statute as "mere surplusage" unless there is a clear reason for doing so. Porter v. Food Giant, Inc., 198 Ga. App. 736, 402 S.E.2d 766 (1991), cert. denied, 502 U.S. 980, 112 S. Ct. 582, 116 L. Ed. 2d 607 (1991).

Construction which renders ordinance or resolution valid preferred. — In construing an ordinance or resolution of a governmental unit, if the language is susceptible of more than one

construction, that construction is preferred which will render it valid rather than invalid. Mayor of Hapeville v. Anderson, 246 Ga. 786, 272 S.E.2d 713 (1980).

It is courts' duty to put construction upon statutes, if possible, and to uphold them and carry them into effect. Lamons v. Yarbrough, 206 Ga. 50, 55 S.E.2d 551 (1949).

It is the duty of the court in construing an ambiguous statute to give it a construction, if the language permits, that will sustain the Act, rather than a construction that will render it invalid. Jones v. City of College Park, 223 Ga. 778, 158 S.E.2d 384 (1967).

Act's constitutionality determined by examining Act existing at time of offense. — The constitutionality of an Act of the General Assembly must be determined by the examination of the Act as it existed at the time of the alleged offense, not by an examination of an isolated section of the Code. Stewart v. State, 246 Ga. 70, 268 S.E.2d 906 (1980).

Statutes construed in connection and in harmony with existing law. — All statutes are presumed to be enacted by the General Assembly with full knowledge of the existing condition of the law and with reference to it. New statutes are therefore to be construed in connection and in harmony with the existing law. McPherson v. City of Dawson, 221 Ga. 861, 148 S.E.2d 298 (1966).

All statutes are presumed to be enacted by the General Assembly with full knowledge of the existing condition of the law and with reference to it; new statutes are to be construed in connection and in harmony with the existing law, and their meaning and effect will be determined in connection with not only the common law and the Constitution, but also with reference to other statutes and the decisions of the courts. State v. Davis, 246 Ga. 761, 272 S.E.2d 721 (1980); Allison v. Domain, 158 Ga. App. 542, 281 S.E.2d 299 (1981); Wigley v. Hambrick, 193 Ga. App. 903, 389 S.E.2d 763 (1989).

When O.C.G.A. §§ 15-11-40(b), 15-11-63(e)(1)(D) and (e)(2)(c) were read together to effectuate their meaning, as required by O.C.G.A. § 1-3-1(a), the juvenile court did not err in denying a juvenile's motion to commute or reduce the sentence imposed, as allegations that the juvenile was rehabilitated while in restrictive custody and would benefit from being released were insufficient to grant the juvenile court authority to modify its commitment order once physical custody of the juvenile was transferred to the Department of Juvenile Justice. In the Interest of J.V., 282 Ga. App. 319, 638 S.E.2d 757 (2006).

A statute must be viewed so as to make all its parts harmonize and to give a sensible and intelligent effect to each part. Osborn v. State, 161 Ga. App. 132, 291 S.E.2d 22 (1982).

Construction cannot render statute meaningless. — Construing O.C.G.A. § 16-10-94(c), and in order to avoid rendering the terms "and involving another person" meaningless, the court had to interpret that language as imposing felony punishment when the person committed the tampering offense involving the prosecution or defense of a third person; hence, because the state did not present any allegations or evidence indicating that the defendant committed the tampering offense to prevent the apprehension or prosecution of anyone other than the defendant, the felony sentence imposed was void, and had to be vacated. English v. State, 282 Ga. App. 552, 639 S.E.2d 551 (2006).

Courts cannot construe plain statutes. — If a statute is plain and susceptible of but one construction, the courts have no authority to place a different construction on it, but must apply it according to its terms. Thompson v. Georgia Power Co., 73 Ga. App. 587, 37 S.E.2d 622 (1946).

Courts of last resort must frequently construe the language of a statute, but they may not substitute by judicial interpretation language of their own for the clear, unambiguous language of the statute, so as to change the meaning. Frazier v. Southern Ry., 200 Ga. 590, 37 S.E.2d 774 (1946).

Where the language of an Act is plain and unequivocal, judicial construction is not only unnecessary but is forbidden. City of Jesup v. Bennett, 226 Ga. 606, 176 S.E.2d 81 (1970).

General Rules of Construction (Cont'd)

Certain express requirements must be spelled out in statute. — A county historic preservation commission's decision was not void because the commission did not have seven members as required by an ordinance. Neither the ordinance nor the Historical Preservation Act, O.C.G.A. § 44-10-20 et seq., provided that failure to have seven active members invalidated a decision; such an express requirement was necessary under O.C.G.A. § 1-3-1(c). DeKalb County v. Buckler, 288 Ga. App. 346, 654 S.E.2d 193 (2007), cert. denied, No. S08C0514, 2008 Ga. LEXIS 374 (Ga. 2008).

Gender references. — For construction purposes, the state's act of merely tracking the language of O.C.G.A. § 16-10-24(a), which itself used the masculine pronoun "his" to include the feminine gender, did not result in a fatal variance between the evidence at trial and the allegations of the accusation, in a case involving a female officer, entitling both defendants to a directed verdict on the charges of which the defendants were eventually convicted. Curtis v. State, 285 Ga. App. 298, 645 S.E.2d 705 (2007).

Plain and ordinary meaning. — It is a fundamental principle of statutory construction that the court must give words their plain and ordinary meaning, pursuant to O.C.G.A. § 1-3-1(b); therefore, because O.C.G.A. § 9-12-61 recites explicitly that revival of a dormant judgment may be accomplished by "an action" within three years of when the judgment became dormant, not by "a judgment" within that time period, the General Assembly intended that dormant judgments could be revived during a three year period thereafter by bringing an action into existence, i.e., filing an action. Magnum Communs. Ltd. v. Samoluk, 275 Ga. App. 177, 620 S.E.2d 439 (2005).

In an action in which the plaintiff consumer filed a complaint under the Georgia Fair Business Practices Act (FBPA), O.C.G.A. § 10-1-390 et seq., and the Georgia Unfair or Deceptive Practices Toward the Elderly Act, O.C.G.A. § 10-1-850 et seq., and the lender argued for dismissal because the language of O.C.G.A. § 10-1-851 required conduct directed at more than one elderly person, the argument was rejected; consistent with O.C.G.A. § 1-3-1(d)(6), and the use of plurals or the singular form in O.C.G.A. §§ 10-1-850, 10-1-852, and 10-1-853, O.C.G.A. § 10-1-851 required only a showing that FBPA was violated against one elderly person. Kitchen v. Ameriquest Mortg. Co., No. 1:04-CV-2750-BBM, 2005 U.S. Dist. LEXIS 43937 (N.D. Ga. Apr. 29, 2005).

Trial court properly reversed a decision by the Georgia Workers' Compensation Appellate Division and reinstated a decision of an administrative law judge who found that an employee suffered a "catastrophic injury" for purposes of O.C.G.A. § 34-9-200.1(g)(6), as the employee was unable to perform the prior work done, although the employee was able to perform other work available in substantial numbers within the national economy; the relevant provision of O.C.G.A. § 34-9-200.1(g)(6) used "or" between the two types of work that an employee could perform rather than "and" and that phraseology was deemed unambiguous, plain, and capable of having only one meaning, based on statutory interpretation rules under O.C.G.A. § 1-3-1(a) and legislative changes over time to O.C.G.A. § 34-9-200.1(g)(6). Rite-Aid Corp. v. Davis, 280 Ga. App. 522, 634 S.E.2d 480 (2006).

Under the plain and ordinary language of O.C.G.A. § 17-6-72(d)(1), a bondsman who failed to assist in the arrest of the principal of its bond was not entitled to a 50 percent remission of the bond, and the district attorney's consent to the bondsman's motion had no legal effect, as such was not accepted by the trial court. Joe Ray Bonding Co. v. State of Ga., 284 Ga. App. 687, 644 S.E.2d 501 (2007).

Pursuant to the cardinal rule of statutory construction of O.C.G.A. § 1-3-1(a), the plaintiffs had no standing to challenge the facial constitutionality of O.C.G.A. § 16-11-34.2(b)(2) and (b)(4), the funeral picketing statute, because the plaintiffs admitted that the plaintiffs did not intend to impede, disrupt, or interfere with any funerals; thus, without mens rea, there

was no real risk of being prosecuted and the plaintiffs had not been threatened with arrest. Hood v. Perdue, 540 F. Supp. 2d 1350 (N.D. Ga. 2008).

In construing conflicting legitimation statutes, which permitted a jury trial (O.C.G.A. § 19-7-22), with paternity statute, which expressly prohibited a jury trial (O.C.G.A. § 19-7-40), and due to the fact that the two proceedings were consolidated, the legislative ban on jury trials provided for in the paternity statute had to prevail as to hold otherwise would allow a party to thwart the paternity statute's goals of identifying the father and making sure the father paid child support. Banks v. Hopson, 275 Ga. 758, 571 S.E.2d 730 (2002).

"Bribery" has clear definition. — Within the context of O.C.G.A. § 16-10-2(a)(2), it is only "gifts" which are excepted from the purview thereof and not "bribes," no matter how small the amount involved; accordingly, where a trial court construed § 16-10-2 and held that small amounts of cash that added up to less than $100, which were accepted by defendant, a detention officer, from inmates, were specifically excepted from the offense of bribery, it did not construe the statute using the ordinary meaning of the words pursuant to O.C.G.A. § 1-3-1(b), which was error. State v. Fortner, 264 Ga. App. 783, 592 S.E.2d 454 (2003).

Statute shall be construed so as to give full force and effect to all provisions and so as to reconcile any apparent conflicts. Head v. H.J. Russell Constr. Co., 152 Ga. App. 864, 264 S.E.2d 313 (1980).

Noscitur a sociis is a familiar rule of construction, and so as to reconcile any apparent conflicts. Head v. H.J. Russell Constr. Co., 152 Ga. App. 864, 264 S.E.2d 313 (1980).

Any portion of body of laws may be invoked to ascertain meaning of another part. Royal Indem. Co. v. Agnew, 66 Ga. App. 377, 18 S.E.2d 57 (1941).

Clause's meaning manifested by context and subject matter. — The meaning of a clause in a statute depends upon the intention with which it is used as manifested by the context and considered with reference to the subject matter to which it relates. Thomas v. MacNeill, 200 Ga. 418, 37 S.E.2d 705 (1946).

Rule ejusdem generis set forth in section. — The rule ejusdem generis, to the effect that general terms following specific terms are confined to the same kind, is set forth in this section. Gore v. State, 79 Ga. App. 696, 54 S.E.2d 669 (1949).

"May" sometimes construed as mandatory. — In statutory construction, "may" is construed as mandatory when the statute concerns the public interest, or affects the rights of third persons. Great N. Nekoosa Corp. v. Board of Tax Assessors, 244 Ga. 624, 261 S.E.2d 346 (1979).

Statutes generally receive prospective rather than retrospective application. — Statutes framed in general terms and not plainly indicating the contrary will be construed prospectively, so as to apply to persons, subjects, and things within their purview and scope coming into existence subsequent to their enactment. Undercofler v. Swint, 111 Ga. App. 117, 140 S.E.2d 894 (1965).

Repeal of valid statute by implication. — A valid subsisting statute is not repealed by implication by a later Act unless they are generally inconsistent or unless the later Act covers the entire field of the former legislation. Taylor v. R.O.A. Motors, Inc., 108 Ga. App. 635, 134 S.E.2d 486 (1963).

Repeals by implication are not favored by law, and a subsequent statute repeals prior legislative Acts by implication only when they are clearly and indubitably contradictory, when they are in irreconcilable conflict with each other, and when they cannot reasonably stand together. Sutton v. Garmon, 245 Ga. 685, 266 S.E.2d 497 (1980).

Statutory remedy in derogation of the common law must be strictly pursued. Haralson v. Speer, 1 Ga. App. 573, 58 S.E. 142 (1907); Seaboard Air-Line Ry. v. Bishop, 132 Ga. 71, 63 S.E. 1103 (1909).

Each case involving judicial transaction of sections stands on own facts. — A section involving civil law is frequently a compendium of the legal technique involved in the subject matter in question. The translation of sections is reflected by the courts in decisions rendered relative to the sections and are

General Rules of Construction (Cont'd)

sometimes seemingly paradoxical, but a sincere student of the law will be able to readily discern and agree that in many fields of law each case must stand upon its own facts. Bromberg v. Drake, 91 Ga. App. 118, 85 S.E.2d 160 (1954).

Construction is not for jury. — What is proper construction to be given to a statute is for court and not for jury. City of Fitzgerald v. Newcomer, 162 Ga. App. 646, 291 S.E.2d 766 (1982).

Legislative Intent

Courts must look diligently for intention of the General Assembly in enacting the legislation under review. Vickery v. Foster, 74 Ga. App. 167, 39 S.E.2d 90 (1946), rev'd on other grounds, 202 Ga. 55, 42 S.E.2d 117 (1947), rev'd on other grounds, 202 Ga. 55, 42 S.E.2d 117 (1947).

The cardinal rule for the construction of statutes is to try to ascertain the intent of the General Assembly. Lamons v. Yarbrough, 206 Ga. 50, 55 S.E.2d 551 (1949).

The cardinal rule to guide the construction of law is, first, to ascertain the legislative intent and purpose in enacting the law, and then to give it that construction which will effectuate the legislative intent and purpose. City of Jesup v. Bennett, 226 Ga. 606, 176 S.E.2d 81 (1970); Hollowell v. Jove, 247 Ga. 678, 279 S.E.2d 430 (1981).

The cardinal rule in the construction of statutes is to look for the intention of the General Assembly, and the intention when ascertained must be carried into effect. Moss v. Bishop, 235 Ga. 616, 221 S.E.2d 38 (1975), overruled on other grounds, Shaheen v. Dunaway Drug Stores, Inc., 246 Ga. 790, 273 S.E.2d 158 (1980).

It is the duty of courts in the construction of statutes to give effect to the intention of the General Assembly when it is ascertainable. Parker v. Ryder Truck Lines, 150 Ga. App. 163, 257 S.E.2d 18 (1979).

The cardinal rule in the construction of legislative enactments is to ascertain the true intention of the General Assembly in the passage of the law. Board of Trustees v. Christy, 246 Ga. 553, 272 S.E.2d 288 (1980), overruled on other grounds, 278 Ga. 166, 598 S.E.2d 456 (2004).

It is fundamental that courts must look to the purpose and intent of the General Assembly and construe the law to implement that intent. Wilson v. Board of Regents, 246 Ga. 649, 272 S.E.2d 496 (1980).

In interpreting statutes, courts must look for the intent of the legislature and construe statutes to effectuate that intent; all words, except words of art, shall be given their ordinary significance. City of Roswell v. City of Atlanta, 261 Ga. 657, 410 S.E.2d 28 (1991).

Construction of a statute must square with common sense and sound reasoning. Blalock v. State, 166 Ga. 465, 143 S.E. 426 (1928).

Language in an ordinance will be given a reasonable and sensible interpretation in order to carry out the legislative intent and render an ordinance valid. Mayor of Hapeville v. Anderson, 246 Ga. 786, 272 S.E.2d 713 (1980).

When section plain and positive, court cannot construe legislative intent. — Just as is the rule in construing statutes, where a section is plain, unambiguous, and positive, and is not capable of two constructions, the court is not authorized to construe it according to what is supposed to be the intention of the General Assembly. Atlanta & W.P.R.R. v. Wise, 190 Ga. 254, 9 S.E.2d 63 (1940).

Courts are not controlled by literal meaning of law in arriving at intention of General Assembly. State v. Brantley, 147 Ga. App. 569, 249 S.E.2d 365 (1978).

Intention of the General Assembly, when discovered, shall prevail. Akin v. Freeman, 49 Ga. 51 (1873).

Statutes are not contracts, and it is intent of the General Assembly and not of any other "party" which is decisive in their construction. City of Fitzgerald v. Newcomer, 162 Ga. App. 646, 291 S.E.2d 766 (1982).

When intention is ascertained, it governs, and mere letter of statute must yield to spirit. Roberts v. State, 4 Ga. App. 207, 60 S.E. 1082 (1908). see also Demere v. Germania Bank, 116 Ga. 317, 42 S.E. 488 (1902); Youmans v. State, 7 Ga. App. 101, 66 S.E. 383 (1909), ;.

Intention governs and this is true even though some of the verbiage may have to be eliminated from the text. Washington v. Atlantic Coast Line R.R., 136 Ga. 638, 71 S.E. 1066, 38 L.R.A. (n.s.) 867 (1911).

The intention of the General Assembly is the cardinal guide to a construction of statutes, and when it is plainly collected, it should be carried into effect, though contrary to the literal sense of terms. Thacker v. Morris, 196 Ga. 167, 26 S.E.2d 329 (1943).

While all parts of a statute should be preserved, yet a cardinal rule of construction is that the legislative intent shall be effectuated, even though some verbiage may have to be eliminated. The legislative intent should prevail over the literal import of the words. Jones v. City of College Park, 223 Ga. 778, 158 S.E.2d 384 (1967).

The real legislative intention, when collected with certainty, will always, in statutes, prevail over the literal sense of terms. City of Jesup v. Bennett, 226 Ga. 606, 176 S.E.2d 81 (1970).

Statute not construed literally where legislative purpose defeated. — An exception to the general rule that the use of plain and unequivocal language in a legislative enactment obviates any necessity for judicial construction is presented by the use of words the meaning of which in general acceptation is apparently obvious, and yet the purpose of the General Assembly would be defeated were the words employed construed literally. Bibb County v. Hancock, 211 Ga. 429, 86 S.E.2d 511 (1955).

Where to construe an Act of the General Assembly in a particular way would, while hewing to its literal terms, result in defeating the obvious legislative purposes and intent, such construction will not be given where an obvious typographical or clerical error can be corrected so as to carry out the intent. City of Jesup v. Bennett, 226 Ga. 606, 176 S.E.2d 81 (1970).

Courts may construe the language employed in the Act in connection with the context, and ascertain the legislative intent as derived from the old law, the evil, and the remedy, and will not defeat the intention and purpose of the General Assembly by giving effect to words which would render the purpose of the General Assembly in the passage of the enactment futile, unenforceable, or ineffectual. Board of Trustees v. Christy, 246 Ga. 553, 272 S.E.2d 288 (1980).

Courts obligated to refrain from ascribing unreasonable intention to General Assembly. — Even though the literal language of an Act may be plain and unequivocal, it is the duty of the courts, in determining the legislative intent, to refrain from ascribing to the General Assembly a wholly unreasonable intention or an intention to do a futile and useless thing. City of Jesup v. Bennett, 226 Ga. 606, 176 S.E.2d 81 (1970).

It is the duty of the court to consider the results and consequences of any proposed construction and not so construe a statute that will result in unreasonable or absurd consequences not contemplated by the General Assembly. GECC v. Brooks, 242 Ga. 109, 249 S.E.2d 596 (1978).

A court may decline to give a legislative Act such construction as will attribute to the General Assembly an intention to pass an Act which is not reasonable, or as will defeat the purpose of the proposed legislation. Board of Trustees v. Christy, 246 Ga. 553, 272 S.E.2d 288 (1980).

Statute's general language restrained where absurdity results. — To give effect to the intention of the General Assembly, courts are not controlled by the literal meaning of the language of the statute, but the spirit or intention of the law prevails over the letter thereof. Where the letter of the statute results in absurdity or injustice or would lead to contradictions, the meaning of general language may be restrained by the spirit or reason of the statute. Sirmans v. Sirmans, 222 Ga. 202, 149 S.E.2d 101 (1966).

Preservation of Act preferred. — It is the duty of the court to arrive at the legislative intent, and, in doing so, it should not adopt an arbitrary rule that the General Assembly intended to make a typographical or clerical error, the result of which would be to make nonsense of the Act and not carry out the legislative scheme, but to destroy it. Lamons v. Yarbrough, 206 Ga. 50, 55 S.E.2d 551 (1949).

The construction of a statute which will

Legislative Intent (Cont'd)

give effect to legislative intent and preserve the Act is preferred to a construction which will necessarily destroy it. Webb v. Echols, 211 Ga. 724, 88 S.E.2d 625 (1955).

Statute's intent not defeated where mistaken reference to another statute. — In case of a mistake in a reference in a statute to another statute, where the real intent of the General Assembly is manifest and would be defeated by an adherence to the terms of the mistaken reference, and the Act is otherwise a complete Act within itself, the mistaken reference will be regarded as surplusage, or will be read and corrected, in order to give effect to the legislative intent. Humthlett v. Reeves, 211 Ga. 210, 85 S.E.2d 25 (1954).

Where an Act references another statute by mistake, such error will not defeat the Act if the intent of the legislation is clear. Wilson v. Board of Regents, 246 Ga. 649, 272 S.E.2d 496 (1980).

Legislation's scheme and purport criterion for determining enactment's meaning. — One proper criterion for determining the meaning of a legislative enactment is to consider the general scheme and purport of the proposed legislation. Pennington & Evans v. Douglas, A. & G. Ry., 3 Ga. App. 665, 60 S.E. 485 (1908).

Old law, mischief, and remedy considered at arriving at legislative intention. — This section directs that statutes be construed with reference to the intention of the General Assembly, and that the old law, the mischief, and the remedy be considered to arrive at that intention. Everett v. Planters' Bank, 61 Ga. 38 (1878); Mott v. Central R.R., 70 Ga. 680, 48 Am. R. 595 (1883); Barrett & Caswell v. Pulliam, 77 Ga. 552 (1886); Price Co. v. City of Atlanta, 105 Ga. 358, 31 S.E. 619 (1898); Hazlehurst v. Seaboard Air-Line Ry., 118 Ga. 858, 45 S.E. 703 (1903); Sullivan v. Curling, 149 Ga. 96, 99 S.E. 533, 5 A.L.R. 124 (1919); Georgia Ry. & Elec. Co. v. Town of Decatur, 29 Ga. App. 653, 116 S.E. 645 (1923).

To ascertain the intention of the General Assembly, after examining the words of the Act itself, it is necessary to take into view every fact and circumstance that influenced its passage. The court must consider what the law was before, the mischiefs against which the law did not provide, the nature of the remedy proposed, and the true reason of the remedy. McGuire v. McGuire, 228 Ga. 782, 187 S.E.2d 859 (1972).

Where section codified from court decision, construed to conform to existing law. — Where a section has been codified from a decision of the Supreme Court or of the Court of Appeals, the section will be construed, insofar as is compatible with its terms, so as to conform to the then existing law. Atlanta & W.P.R.R. v. Wise, 190 Ga. 254, 9 S.E.2d 63 (1940).

Act as enrolled controls over appearance in printed volume. — Where there is a conflict between the language of an Act of the General Assembly as it is enrolled and as it appears in the volume published by the public printer, the former controls. Bass v. Doughty, 5 Ga. App. 458, 63 S.E. 516 (1909).

General Assembly's intention derivable from Acts caption. — Nothing is better settled than that the intention of the General Assembly in the passage of a law is derivable as well from the caption of the Act as from the body of the Act itself. Sovereign Camp Woodmen of the World v. Beard, 26 Ga. App. 130, 105 S.E. 629, cert. denied, 26 Ga. App. 801 (1921).

All words of General Assembly, however numerous, ought to be preserved, and effect given to whole, if it can be done. No doubt courts could sometimes better legislation by rejecting some of the words delivered to them by the General Assembly for construction, but to do this, courts have no power. Butterworth v. Butterworth, 227 Ga. 301, 180 S.E.2d 549 (1971).

All words of General Assembly, however numerous, ought to be preserved, and effect given to whole, if it can be done. No doubt courts could sometimes better legislation by rejecting some of the words delivered to them by the General Assembly for construction, but to do this, courts have no power. Butterworth v. Butterworth, 227 Ga. 301, 180 S.E.2d 549 (1971).

In the construction of a statute the legislative intent must be determined from a consideration of it as a whole. Board of Trustees v. Christy, 246 Ga. 553, 272 S.E.2d 288 (1980).

Larger and more extensive statutory expression controls. — Where a particular expression in one part of a statute is not so extensive or large in its import as other expressions in the same statute, it must yield to the larger and more extensive expression, where the latter embodies the real intent of the General Assembly. Board of Trustees v. Christy, 246 Ga. 553, 272 S.E.2d 288 (1980).

Where there is apparent conflict between different sections of same statute, the duty of a court is to reconcile them, if possible, so as to make them consistent and harmonious with one another, and if they cannot be so reconciled, the one which best conforms to the legislative intent must stand. Board of Trustees v. Christy, 246 Ga. 553, 272 S.E.2d 288 (1980).

One of two provisos should not be rejected as senseless or superfluous. — The rule of construction that effect is to be given to all the words of a statute forbids that two provisos should be treated as having no more scope or significance than one of them would have if standing alone. It is better to wait for a legislative amendment than to arbitrarily reject one of the provisos as senseless or superfluous. Butterworth v. Butterworth, 227 Ga. 301, 180 S.E.2d 549 (1971).

Severability clause creates presumption of separability. — The presence of a severability clause in an Act reverses the usual presumption that the General Assembly intends the Act to be an entirety and creates an opposite presumption of separability. City Council v. Mangelly, 243 Ga. 358, 254 S.E.2d 315 (1979).

Legislative intent may be gathered from construing together section and Acts affecting it. Commissioners of Rds. & Revenues v. Burns, 118 Ga. 112, 44 S.E. 828 (1903).

Statutes "in pari materia" construed together. — It is an elementary rule of statutory construction that a statute must be construed in relation to other statutes of which it is a part, and all statutes relating to the same subject matter, briefly called statutes "in pari materia," are construed together and harmonized wherever possible, so as to ascertain the legislative intendment and give effect thereto. Ryan v. Commissioners of Chatham County, 203 Ga. 730, 48 S.E.2d 86 (1948).

In the construction of a statute, all laws in pari materia should be considered in order to ascertain the intention of the General Assembly. Undercofler v. L.C. Robinson & Sons, 111 Ga. App. 411, 141 S.E.2d 847, aff'd, 221 Ga. 391, 144 S.E.2d 755 (1965), overruled on other grounds, Worthen v. State, 2019 Ga. LEXIS 22 (Ga. 2019).

Except where language clear. — Statutes in pari materia may not be resorted to where language under consideration is clear, but where the terms of the statute to be construed are ambiguous or its significance is of a doubtful character, it becomes necessary to give proper consideration to other related statutes in order to ascertain the legislative intent in reference to the whole system of laws of which the doubtful statute is a part. Butterworth v. Butterworth, 227 Ga. 301, 180 S.E.2d 549 (1971).

Unclear law construed in light of whole system of laws. — While the Supreme Court recognizes the rule that statutes in pari materia may not be resorted to where the language of the statute under consideration is clear, it is equally as well settled that, where the terms of the statute to be construed are ambiguous or its significance is of a doubtful character, it becomes necessary to give proper consideration to other related statutes in order to ascertain the legislative intent in reference to the whole system of laws of which the doubtful statute is a part. Ryan v. Commissioners of Chatham County, 203 Ga. 730, 48 S.E.2d 86 (1948).

Penal statutes are strictly construed, yet not so as to defeat General Assembly's intention. Holland v. State, 34 Ga. 455 (1866), ;. see also Atlantic Coast Line R.R. v. State, 135 Ga. 545, 69 S.E. 725, 32 L.R.A. (n.s.) 20 (1910), aff'd, 234 U.S. 280, 34 S. Ct. 829, 58 L. Ed. 1312 (1914), aff'd, 234 U.S. 280, 34 S. Ct. 829,

Legislative Intent (Cont'd)

58 L. Ed. 1312 (1914).

It is general rule that tax laws are strictly construed against government and in favor of the citizen (Georgia Paper Stock Co. v. State Tax Bd., 174 Ga. 816, 164 S.E. 197 (1932)); but the cardinal rule is to ascertain the intention of the General Assembly in passing the legislation. O'Neal v. Whitley, 177 Ga. 491, 170 S.E. 376 (1933).

Purpose of new civil procedure provision to speed up civil actions. — One of the evils of the old law of civil procedure was that it was regarded as being too slow, and one of the purposes of the new law is to speed up civil actions. Scott v. State, 75 Ga. App. 684, 44 S.E.2d 391 (1947).

Appropriation Act referring to unenacted authorizing bill. — Where, in enacting a line item of the "General Appropriations Act," reference was made to an authorizing senate bill which was never enacted, but the legislative history was clear that the principles of that bill were enacted into law under a bill by another number and became former Code 1933, § 88-1825 (see now O.C.G.A. § 31-7-95), the Act was valid. Wilson v. Board of Regents, 246 Ga. 649, 272 S.E.2d 496 (1980).

Construction with homestead exemption statute. — Chapter 7 trustee's objection to a debtor's claim for a $20,000 exemption in debtor's residence under the Georgia homestead exemption statute, O.C.G.A. § 44-13-100(a)(1), was overruled because: (1) O.C.G.A. § 1-3-1 did not invite a court to usurp the power of the General Assembly by legislating from the bench each time the exemption statute created an unusual result; (2) the duration of the debtor's separation from the debtor's wife, while indicative of a desire to discontinue the traditional role of spouse, was not determinative of a circumstance that would authorize the court to consider such a person as an entity other than a "spouse" as used in the homestead exemption statute; and (3) there was no basis for inferring legislative intent to allow married couples, whether they lived together or separately, to spread a $20,000 exemption across multiple residences. In re Green, 319 B.R. 913 (Bankr. M.D. Ga. 2004).

Construction with O.C.G.A. § 9-11-6. — Because the responding party timely responded to a summary judgment motion, pursuant to Ga. Unif. Super. Ct. R. 6.3, given the appellate court's construction of both O.C.G.A. §§ 1-3-1 and 9-11-6, the trial court erred in denying that the oral argument on the motion and in granting summary judgment to the movant. Green v. Raw Deal, Inc., 290 Ga. App. 464, 659 S.E.2d 856 (2008).

Words' Signification

Enactment of legislation requiring judicial definitions constitutional. — One of the traditional functions of courts is to interpret and construe legislative enactments. There is no due process prohibition on the enactment of legislation which requires definitions to be provided by the judiciary. Bell v. Barrett, 241 Ga. 103, 243 S.E.2d 40 (1978).

Statute's words, if of common use, are taken in natural and ordinary signification. Price Co. v. City of Atlanta, 105 Ga. 358, 31 S.E. 619 (1898); Southern Bell Tel. & Tel. Co. v. Parker, 119 Ga. 721, 47 S.E. 194 (1904); Robinson v. State, 11 Ga. App. 847, 76 S.E. 1061 (1912); Gatlin v. State, 18 Ga. App. 9, 89 S.E. 345 (1915).

By the mandate of this section, the courts are required to give a word its ordinary signification. Thompson v. Eastern Air Lines, 200 Ga. 216, 39 S.E.2d 225 (1946).

The intention of the General Assembly is to be gathered from the statute as a whole so as to give effect to each of its parts and at the same time harmonize, if possible, the component parts, and in determining this intention, the words of the statute are to be given their ordinary and usual signification. In re Ga. Air, Inc., 345 F. Supp. 636 (N.D. Ga. 1972).

Although a statute does not undertake to define each of the words contained therein, this will not automatically render the statute vague, indefinite, or uncertain in meaning, since the ordinary signification shall be applied to all words, except words of art or words connected with a particular trade or subject matter. Anderson v. Little & Davenport Funeral Home,

242 Ga. 751, 251 S.E.2d 250 (1978).

Every word employed should be expounded in its plain, obvious, and commonsense meaning unless something else furnishes ground to control, qualify, or enlarge it. Wellborn v. Estes, 70 Ga. 390 (1883) see also Booth v. Saffold, 46 Ga. 278 (1872); Mott v. Central R.R., 70 Ga. 680, 48 Am. R. 595 (1883); Richmond & D.R.R. v. Howard, 79 Ga. 44, 3 S.E. 426 (1887).

Absent words of limitation, statutory words should be given ordinary and everyday meaning. Risser v. City of Thomasville, 248 Ga. 866, 286 S.E.2d 727 (1982).

In construing a constitutional provision, the ordinary signification shall be applied to words. Thomas v. MacNeill, 200 Ga. 418, 37 S.E.2d 705 (1946).

In construing statutes, their ordinary signification shall be applied to all words, except in certain defined cases. The same rule of construction is applicable to constitutional provisions. Jones v. Darby, 174 Ga. 71, 161 S.E. 835 (1931).

Construing statutory part out of context inadmissible. — It is inadmissible to mutilate a statute by lifting a mere segment out of its context and construe it without consideration of all other parts of the Act. In re Ga. Air, Inc., 345 F. Supp. 636 (N.D. Ga. 1972).

"Nominations from the floor shall always be in order" construed. — The words "Nominations from the floor shall always be in order," in a by-law are to be given their ordinary signification, and the plain and obvious meaning of the language employed is that nominations from the floor are always in order until an election has in fact been held. Hornady v. Goodman, 167 Ga. 555, 146 S.E. 173 (1928).

Term "common or contract carrier" should be given its ordinary signification in the construction of Ga. L. 1937, Ex. Sess., p. 259 (see now O.C.G.A. § 48-10-2(10)). Undercofler v. L.C. Robinson & Sons, 111 Ga. App. 411, 141 S.E.2d 847, aff'd, 221 Ga. 391, 144 S.E.2d 755 (1965), overruled on other grounds, Worthen v. State, 2019 Ga. LEXIS 22 (Ga. 2019).

"Bona fide" meant genuine or real. — Services provided by an emergency room physician to a patient who presented with a high pressure puncture wound to one hand were "bona fide emergency services" under O.C.G.A. § 51-1-29.5(a)(5), because they were genuine or actual; it was not required that the services be provided in good faith. Abdel-Samed v. Dailey, 294 Ga. 758, 755 S.E.2d 805 (2014).

Newspaper headquartered in another state not "published within the county". — County officials' decision under O.C.G.A. § 9-13-142 to change the county's legal organ to a newspaper that was headquartered across the state line in Tennessee was properly enjoined by the trial court because the paper was edited, formatted, and issued in Tennessee; it was not "published within the county" as required by § 9-13-142(a). Catoosa County v. Rome News Media, LLC, 349 Ga. App. 123, 825 S.E.2d 507 (2019).

A riding lawnmower was not a "motor vehicle" as that term was used in the statute punishing theft of a motor vehicle, O.C.G.A. § 16-8-12(a)(5)(A); a defendant's conviction was reversed. A motor vehicle was defined by the court for purposes of § 16-8-12(a)(5)(A) as a self-propelled vehicle with wheels that was designed to be used, or was ordinarily used, to transport people or property on roads. Harris v. State, 286 Ga. 245, 686 S.E.2d 777 (2009).

Statutory words are not given ordinary meaning when legislative purpose would be frustrated. — Assuming an ascertainable legislative intention, words should be construed so as to give full effect thereto. Bohannon v. Manhattan Life Ins. Co., 555 F.2d 1205 (5th Cir. 1977).

Use of experts. — It is proper to use experts to give the definition of words of art or words connected with a particular trade or subject matter, such as the correct name for a narcotic. Williamson v. State, 134 Ga. App. 864, 216 S.E.2d 684 (1975), overruled on other grounds, Cole v.

Words' Signification (Cont'd)

State, 142 Ga. App. 461, 236 S.E.2d 125 (1977).

Substantial Statutory Compliance

Statute directory where no negative words nor injuries resulting from disregard. — Where a statute directs the doing of a thing in a certain time, without any negative words restraining the doing of it afterwards, generally the provision as to time is directory and not a limitation of authority; and in such case, where no injury appears to have resulted, the fact that the Act was performed after the time limit will not render it invalid. O'Neal v. Spencer, 203 Ga. 588, 47 S.E.2d 646 (1948); State v. Battise, 177 Ga. App. 583, 340 S.E.2d 240 (1986); Moreton Rolleston, Jr., Living Trust v. Glynn County Bd. of Tax Assessors, 240 Ga. App. 405, 523 S.E.2d 600 (1999), cert. denied, 2000 Ga. LEXIS 97 (2000).

Generally, statutes directing the mode of proceeding by public officers, designated to promote method, system uniformity, and dispatch in such proceedings, will be regarded as directory if a disregard thereof will not injure the rights of parties, and the statute does not declare what result shall follow noncompliance therewith, nor contain negative words importing a prohibition of any other mode of proceeding than that prescribed. Collins v. Nix, 125 Ga. App. 520, 188 S.E.2d 235 (1972); State v. Battise, 177 Ga. App. 583, 340 S.E.2d 240 (1986).

Substantial compliance by public officers with statutory requirements shall be deemed sufficient. Hart v. Columbus, 125 Ga. App. 625, 188 S.E.2d 422 (1972).

Reasonable care insufficient. — Where a substantial compliance with a statute by a railway company would be sufficient, the duty of compliance to that extent would be absolute, and the company would not have discharged the duty merely by the exercise of reasonable care to that end. Lime-Cola Bottling Co. v. Atlanta & W.P.R.R., 34 Ga. App. 103, 128 S.E. 226 (1925).

Question of substantial compliance not for jury. — It should not be left to the jury to determine whether a party could or could not substantially comply with the law. Lime-Cola Bottling Co. v. Atlanta & W.P.R.R., 34 Ga. App. 103, 128 S.E. 226 (1925).

Statement of costs prepared by judge complies with section. — A statement of costs on record in the court, prepared by the ordinary (now probate court judge), furnished a substantial compliance with the requirements of this section. Cooper v. Lunsford, 203 Ga. 166, 45 S.E.2d 395 (1947).

Substantial compliance with respect to issuing and serving of process will be sufficient, and where notice is given, no technical or formal objection shall invalidate any process. Gainesville Feed & Poultry Co. v. Waters, 87 Ga. App. 354, 73 S.E.2d 771 (1952).

It is sufficient if provisions of O.C.G.A. § 5-6-38 are substantially complied with in the notification of appeal process. Oller v. State, 187 Ga. App. 818, 371 S.E.2d 455 (1988).

Substantial compliance with registration requirement. — Trial court erred in granting a motion to dismiss for failure to have a certificate of authority at the time the complaint was filed since the plaintiff substantially complied with the registration requirements for a foreign corporation by obtaining a certificate of authority later. Health Horizons, Inc. v. State Farm Mut. Auto. Ins. Co., 239 Ga. App. 440, 521 S.E.2d 383 (1999), cert. denied, 2000 Ga. LEXIS 35 (2000), cert. denied, 2004 Ga. LEXIS 241 (2004).

Substantial compliance with Georgia Historic Preservation Act. — Because the Georgia Historic Preservation Act (HPA), O.C.G.A. § 44-1-20 et seq., does not expressly provide that a county's failure to strictly comply with the HPA's uniform procedures invalidates an ordinance adopted thereunder, and because the developers failed to show the developers were harmed by the county's alleged failure to strictly comply with the procedures of the HPA, the trial court properly applied the "substantial compliance" standard of review. Buckler v. DeKalb County Bd. of Comm'rs, 299 Ga. App. 465, 683 S.E.2d 22 (2009), cert. denied, No. S09C2027, 2010 Ga. LEXIS 3 (Ga. 2010).

No prejudice to substantive right as consequence of administrative continuance of hearing. — See Hardison v. Fayssoux, 168 Ga. App. 398, 309 S.E.2d 397 (1983).

Notice to policyholders. — Evidence that mass mailings were sent to several thousands of policyholders by an insurance company was not substantial compliance with a statutory requirement that optional no-fault insurance coverage was expressly offered to a particular insured. Shave v. Allstate Ins. Co., 549 F. Supp. 1006 (S.D. Ga. 1982).

Tax refund. — The notice of a tax refund claim filed pursuant to O.C.G.A. § 48-5-380 was not deficient, where the notice clearly stated a summary of grounds upon which the taxpayer relied. There is no requirement that the summary of grounds must be the exact grounds upon which refund is ultimately authorized; the notice was in substantial compliance with § 48-5-380. City of College Park v. Atlantic S.E. Airlines, 194 Ga. App. 637, 391 S.E.2d 460 (1990).

Substantial compliance not sufficient when statute is unambiguous. — Court of Appeals erred when the court held that a judgment creditor's notification of a judgment debtor of a garnishment eight business days after service of the garnishee substantially complied with O.C.G.A. § 18-4-64(a)(7)'s requirement that notice be given within three business days. O.C.G.A. § 1-3-1 did not apply because the statute was unambiguous. Cook v. NC Two, L.P., 289 Ga. 462, 712 S.E.2d 831 (2011).

Substantial compliance with legitimation statute, O.C.G.A. § 19-7-22. — Trial court abused the court's discretion by denying a putative biological father's motion to sever his petition for legitimation of a son from a husband's adoption proceeding because the father's petition substantially complied with the substance of the legitimation statute, O.C.G.A. § 19-7-22; the petition contained the requisite information, it was served on the wife, and it was timely filed in the proper court, and the father's failure to file his petition as a separate civil action caused no prejudice to anyone. Brewton v. Poss, 316 Ga. App. 704, 728 S.E.2d 837 (2012).

Substantial compliance with describing emergency under O.C.G.A. § 36-91-22. — City was not required to obtain a payment bond in compliance with O.C.G.A. § 36-91-90 because the requirement did not apply to emergency projects, O.C.G.A. § 36-91-22(e); the city's description in the city's minutes of the "emergency replacement of a 10-inch sanitary sewer main on Embassy Drive" was sufficient to describe the nature of the emergency. City of College Park v. Sekisui SPR Ams., LLC, 331 Ga. App. 404, 771 S.E.2d 101 (2015), cert. denied, No. S15C1141, 2015 Ga. LEXIS 471 (Ga. 2015).

Bonds

Writing treated as official statutory bond. — A writing, subscribed by the tax collector and several others, intended to be used and treated as the official bond required of the collector, though not under seal, is, by virtue of this section, to be treated as though it were the official statutory bond. Dedge v. Branch, 94 Ga. 37, 20 S.E. 657 (1894).

Certiorari bond need not be under seal. King & Co. v. Cantrell, 4 Ga. App. 263, 61 S.E. 144 (1908).

If sheriff's official bond were not under seal, it might be good under this section, but a different statute of limitations might possibly apply. Harris v. Black, 143 Ga. 497, 85 S.E. 742 (1915).

New, written, signed agreement required to renew bond. — A new agreement is required in order to effectuate a renewal of the original bond, and the new agreement is inadequate for that purpose unless it, like the bond, is in writing and signed by the fidelity company. Nowell v. Mayor of Monroe, 177 Ga. 648, 171 S.E. 136 (1933).

Securities name need not appear in bond. — See Chapple v. Tucker, 110 Ga. 467, 35 S.E. 643 (1900).

Census

Most recent United States decennial census is rational, logical, and consistent means of determining population when the word "census" is used in a statute or ordinance. Mayor of Hapeville v. Anderson, 246 Ga. 786, 272 S.E.2d 713 (1980).

Computation of Time

Provision as to time as directory. — Where a statute directs the doing of a thing in a certain time, without any negative words restraining the doing of it afterwards, generally the provision as to time is directory and not a limitation of authority, and in such case, where no injury appears to have resulted, the fact that the act was performed after the time limit will not render it invalid. Middleton v. Moody, 216 Ga. 237, 115 S.E.2d 567 (1960); Collins v. Nix, 125 Ga. App. 520, 188 S.E.2d 235 (1972).

Effect of 1985 amendment on prior cases. — When the Georgia General Assembly amended O.C.G.A. § 1-3-1(d)(3) in 1985, inserting "the first day shall not be counted but the last day shall be counted", the line of pre-1985 cases standing for the proposition that the statute of limitations runs on the two year anniversary of an accident was overruled. Gardner v. Hyster Co., 785 F. Supp. 161 (M.D. Ga. 1992).

When days are to be computed, this provision is applied, and only the first or last day counted, and the last day excluded if it falls on Sunday. McLendon v. State, 14 Ga. App. 274, 80 S.E. 692 (1914) (decided prior to 1985 amendment providing that the first day not be counted but that the last day shall be counted).

General rule of computation which requires the exclusion of the first day and the inclusion of the last has been made the statutory rule of construction in this state. Tift v. City of Tifton, 214 Ga. 507, 105 S.E.2d 584 (1958) (decided prior to 1985 amendment providing that the first day not be counted but that the last day shall be counted).

Period of time anterior to commencement of action. — When a computation of a period of time that is anterior to the commencement of an action is required, O.C.G.A. § 1-3-1 is the proper method of computation. Southern Trust Ins. Co. v. First Fed. Sav. & Loan Ass'n, 168 Ga. App. 899, 310 S.E.2d 712 (1983).

Computing number of days for privilege or discharge. — When a number of days is prescribed by law for the exercise of a privilege, or the discharge of a duty, only the first or the last day shall be counted, and in computing the number of days, the first or the last day should be excluded. Sullivan v. Smith, 209 Ga. 325, 72 S.E.2d 318 (1952) (decided prior to 1985 amendment providing that the first day not be counted but that the last day shall be counted).

Only the first or the last day shall be counted, not both. Blitch v. Brewer, 83 Ga. 333, 9 S.E. 837 (1889) (decided prior to 1985 amendment providing that the first day not be counted but that the last day shall be counted).

Either the first or the last day must be figured in the computation, but not both of them. Brown v. City of Atlanta, 84 Ga. App. 4, 65 S.E.2d 611 (1951) (decided prior to 1985 amendment providing that the first day not be counted but that the last day shall be counted).

In computing the time prescribed for the exercising of a privilege or the discharge of a duty, only the first or the last day shall be counted. One or the other, however, must be counted, and it is not intended that both may be left out of the computation. First Nat'l Bank v. Mann, 211 Ga. 706, 88 S.E.2d 361 (1955) (decided prior to 1985 amendment providing that the first day not be counted but that the last day shall be counted).

Sunday is not a day in law. Brooks v. Hicks, 230 Ga. 500, 197 S.E.2d 711 (1973).

If last day Sunday, then have until Monday. — Trial court did not abuse the court's discretion in setting aside a default judgment entered in favor of former police officers under O.C.G.A. § 9-11-60(d) because the default judgment was entered despite the fact that the record disclosed that a pension fund board of trustees timely answered the complaint and, thus, there was no basis upon which to claim a default judgment; the board's answer was filed 31 days after service, but because that day was a Monday and the 30th day after service fell on a Sunday, under O.C.G.A. § 1-3-1(d)(3), the answer was timely. Stamey v. Policemen's Pension Fund Bd. of Trs., 289 Ga. 503, 712 S.E.2d 825 (2011).

Although the defendant's notice of appeal was filed 31 days after the entry of the last order appealed from, the filing was timely because the 30th day fell on a Sunday. Anderson v. State, 335 Ga. App.

78, 778 S.E.2d 826 (2015), cert. denied, No. S16C0630, 2016 Ga. LEXIS 294 (Ga. 2016).

Sunday makes no difference where nothing to be done. — Where there was nothing to be done on the last day, it makes no difference that it fell on the Sabbath. Merritt v. Gate City Nat'l Bank, 100 Ga. 147, 27 S.E. 979, 38 L.R.A. 749 (1897).

If last day allowed for act is both holiday and Sabbath, following Monday is included. Wood v. State, 12 Ga. App. 651, 78 S.E. 140 (1913).

Day of grace is given to party upon whom the duty is imposed, not to the other party. Gray v. Quality Fin. Co., 130 Ga. App. 762, 204 S.E.2d 483 (1974).

Service cannot be made, or legal notice given, on Sunday, or the business or work of ordinary callings done. Sawyer v. Cargile, 72 Ga. 290 (1884).

Document's filing on Monday following last day on Sunday within time prescribed. — Thirty days after the adjournment of court being allowed for the filing of the document, and the last day falling on Sunday, the filing on Monday was within the time prescribed. Page v. Blackshear, 75 Ga. 885 (1885).

The 30-day period for filing notice of appeal allowed by O.C.G.A. § 5-6-38(a) ended on November 5, a Saturday, and by operation of O.C.G.A. § 1-3-1, the appellant had through the following Monday, November 7, to file a timely notice of appeal, but despite the fact that the notice of appeal was dated November 7, it was not filed until November 8. Stancil v. Kendrix, 189 Ga. App. 909, 378 S.E.2d 417 (1989).

Where the computation is of months or years, this section is not applicable, Sundays are not excluded, and the right is lost unless invoked on or before the day last preceding the day of the month or year corresponding to the day upon which the right accrued. McLendon v. State, 14 Ga. App. 274, 80 S.E. 692 (1914).

This section does not apply where bar is in terms of years or months rather than in days. Thomas v. Couch, 171 Ga. 602, 156 S.E. 206 (1930).

This section does not apply where months and years are to be computed. Davis v. U.S. Fid. & Guar. Co., 119 Ga. App. 374, 167 S.E.2d 214 (1969).

The provisions of this section do not apply to limitations expressed in months or years. Veal v. Paulk, 121 Ga. App. 575, 174 S.E.2d 465 (1970).

This section applies only where days are to be counted, and where months and years are to be considered, the rule is not applicable. Gray v. Quality Fin. Co., 130 Ga. App. 762, 204 S.E.2d 483 (1974).

This section applies only to limitations in terms of days. It does not apply where the limitation is in terms of months or years. Allstate Ins. Co. v. Stephens, 239 Ga. 717, 238 S.E.2d 382 (1977).

Error in calculation of time for service. — Trial court erred in calculating the five-day period under O.C.G.A. § 9-11-4(c) for service of a client's complaint because the provisions of O.C.G.A. § 1-3-1(d)(3) applied since the five-day requirement was less than seven days; because the client filed the complaint on Friday, August 14, 2009, the client had until Friday, August 21, 2009 in which to achieve service in accordance with O.C.G.A. § 9-11-4(c) since the intervening Saturday and Sunday, August 15 and 16, 2009, were excluded from the calculation of the five-day period. Cleveland v. Katz, 311 Ga. App. 880, 717 S.E.2d 500 (2011).

Not applicable to limitation fixed for filing workers' compensation claim. — The provisions of this section, to the effect that when a number of days is prescribed for the exercise of any privilege and the last day shall fall on a Saturday or Sunday, the party having the privilege shall have through the following Monday to exercise it, do not apply to limitations expressed in months or years and to the limitation fixed for filing a workers' compensation claim. Chevrolet Parts Div., GMC v. Harrell, 100 Ga. App. 280, 111 S.E.2d 104 (1959).

When a limitation of years is imposed, expiration takes place at end of yearly period without giving additional consideration to when the last day falls. Gray v. Quality Fin. Co., 130 Ga. App. 762, 204 S.E.2d 483 (1974).

Section inapplicable where construction of word "between" not re-

Computation of Time (Cont'd)

quired. — Where the word "between" is not subject to interpretation and does not require a construction of the statute, this section has no application. Henderson v. Henderson, 206 Ga. 23, 55 S.E.2d 578 (1949).

Service of process provision not qualified. — This section does not qualify that part of Code which requires service of process to be consummated at least 15 days before the term, or if it does, that its operation is to add to, and not subtract from, the number of days specified. There is little probability that, where Sunday intervenes, the Code intended to take a day away from a party and give it to the sheriff. Hood v. Powers, 57 Ga. 244 (1876).

From June 12 to September 12, more than three months had elapsed. Barrett & Carswell v. Devine, 60 Ga. 632 (1878).

Service of rule nisi to foreclose mortgage found sufficient. — See English v. Ozburn, 59 Ga. 392 (1877).

Attorney's fees notice. — Where the return day for filing suits in a court is the fifteenth of the month and a petition is filed on that day, a notice to bind for attorney's fees, served on the fifth of the same month, is served "ten days before suit is brought." Marietta Fertilizer Co. v. Benton, 21 Ga. App. 466, 94 S.E. 657 (1917).

Required notice of discharge hearing not given. — The giving of "five days notice of the time and place of hearing" of a petition for discharge filed by a defendant, who is held in imprisonment in default of bail, is not complied with by serving the plaintiff on the first day of May with notice that the time of hearing the petition will be on the fifth day of May following. From the first day of May to the fifth day of May is only four days. Hardin v. Mutual Clothing Co., 34 Ga. App. 466, 129 S.E. 907 (1925).

When person knows of suit, should attend at court's first term. — When a person knows that one is sued, it would be well for the person to find out about any mistake in the process and attend at the first term of the court. W.T. Rawleigh Co. v. Watts, 68 Ga. App. 786, 24 S.E.2d 213 (1943).

Computation of time specified in local statute. — Since, at a time certain local statute was enacted, the provision of this section requiring that only the first or last day shall be counted was in force, the court would presume that the General Assembly intended and understood that the time would be computed in accordance with its provisions, and that the first day would not be counted and that the last day would. Tift v. City of Tifton, 214 Ga. 507, 105 S.E.2d 584 (1958) (decided prior to 1985 amendment providing that the first day not be counted but that the last day shall be counted).

When an arrestee sued police officers for executing an allegedly expired search warrant at the arrestee's home, the officers were entitled to qualified immunity and, thus, summary judgment dismissing the claim because while O.C.G.A. § 17-5-25 required a search warrant's execution within ten days after the warrant's issuance, it was unclear, as of the warrant's execution, that O.C.G.A. § 1-3-1(d)(3), regarding time computation, did not extend that time period to make that execution timely since the tenth day after the warrant was issued fell on a Sunday, followed by a legal holiday, immediately after which the warrant was executed. Hurley v. City of St. Marys, No. 209-212, 2011 U.S. Dist. LEXIS 7399 (S.D. Ga. Jan. 26, 2011).

It was held that a damage action against a municipality was prematurely commenced before the municipality had been allowed the statutory period of 30 days after the claim had been presented when the claim was first presented on October 16, next prior to the filing of the suit on November 15. Grooms v. City of Hawkinsville, 31 Ga. App. 424, 120 S.E. 807 (1923).

In tort cases, both day of injury and day of filing must be counted in determining whether the action was filed within the period of limitation. David v. Marbut-Williams Lumber Co., 32 Ga. App. 157, 122 S.E. 906 (1924) (decided prior to 1985 amendment providing that the first day not be counted but that the last day shall be counted).

Injuries to the person. — Paragraph (d)(3) of O.C.G.A. § 1-3-1, as amended in

1985, governs O.C.G.A. § 9-3-33, thereby extending the statute of limitations for personal injury actions to two years and one day. Gardner v. Hyster Co., 785 F. Supp. 161 (M.D. Ga. 1992).

Personal injury action filed against heater manufacturer on the second anniversary of the injury was timely under the computation method mandated by paragraph (d)(3) of O.C.G.A. § 1-3-1 and was, therefore, within the two-year period contemplated by O.C.G.A. § 9-3-33. Davis v. Desa Int'l, Inc., 209 Ga. App. 318, 433 S.E.2d 410 (1993).

Filing of claim bound by two-year limitation. — Pursuant to O.C.G.A. § 1-3-1(d)(3), the plaintiff had until October 28, 1998, to file an action arising from an incident which occurred on October 27, 1996, for which a two year statute of limitations applied. Reese v. City of Atlanta, 247 Ga. App. 701, 545 S.E.2d 96 (2001).

Service of an uninsured motorist carrier within five business days after the date of filing of the complaint, in an action for personal injuries, related back to the date of filing as a matter of law, for statute of limitation purposes. Williams v. Colonial Ins. Co., 199 Ga. App. 760, 406 S.E.2d 99 (1991).

Demurrer found filed within time allowed. — Where the record shows that the defendant was served with a copy of the petition and process on February 14, 1952, and that the defendant filed a general demurrer to the petition on March 15, 1952, with the court taking judicial cognizance of the fact that the month of February, 1952, had 29 days, the demurrer was filed within the 30 days allowed by law. Sullivan v. Smith, 209 Ga. 325, 72 S.E.2d 318 (1952).

Certificate for review obtained on day after Columbus Day obtained within time. — Where the ten-day limitation to secure the certificate certifying the denial of summary judgment for review would have expired on Sunday, October 11, and Monday, October 12, was Columbus Day, a legal holiday, a certificate for review obtained on October 13 was obtained within time. Allstate Ins. Co. v. Cody, 123 Ga. App. 265, 180 S.E.2d 596 (1971).

Summary judgment appeal filed on thirty-second day timely. — Because the thirtieth day following an order granting summary judgment fell on Saturday and the following Monday was a state holiday, the time for filing a notice of appeal was extended to the next business day, Tuesday. Dental One Assocs. v. JKR Realty Assocs., 228 Ga. App. 307, 491 S.E.2d 414 (1997), aff'd, 269 Ga. 616, 501 S.E.2d 497 (1998).

Presentation of bill of exceptions. — When last day for certifying bill of exceptions falls on Sunday, following day is superadded. Charleston & W.C. Ry. v. Cottonseed Oil Co., 22 Ga. App. 337, 96 S.E. 586 (1918).

When the last day numerically for presenting the bill of exceptions for certification falls on Sunday, the presentation of the bill to the trial judge for certification upon the next day, Monday, is not too late. Maryland Cas. Co. v. England, 34 Ga. App. 354, 129 S.E. 446 (1926).

Where the judgment complained of was rendered on May 16, and, not counting May 16, 15 days remained in the month of May, the last day for presenting a bill of exceptions within the time provided by law, 20 days, was June 5. Since June 5 fell on Thursday, and an extra day was not added under the law for the presentation of the bill of exceptions, the bill of exceptions, tendered on Friday, June 6, was not presented to the trial judge within the time prescribed by law, and the Supreme Court was without jurisdiction to pass upon the writ of error. Blair v. Blair, 209 Ga. 347, 72 S.E.2d 288 (1952).

When last day Saturday. — When, in a condemnation proceeding, the tenth day following an assessor's award falls on a Saturday and the condemnee files an appeal two days thereafter, the entry of a judgment only two days after the award was filed is premature; a condemnee, having exercised the condenmee's right to appeal, is entitled to have a jury determine the value of the property taken or the amount of damage done. McAllister v. City of Jonesboro, 151 Ga. App. 260, 259 S.E.2d 666 (1979).

Presentation of certiorari petition. — In computing the days in which a petition for certiorari must be presented

Computation of Time (Cont'd)

for sanction, when the last day falls on Sunday, it will be sufficient if the petition is presented for sanction on the following Monday. Wood v. State, 12 Ga. App. 651, 78 S.E. 140 (1913); Hill v. State, 14 Ga. App. 410, 81 S.E. 248 (1914).

Where the thirtieth day following the conviction of a defendant in a city court falls on a Sunday, a petition for certiorari filed on the Monday following would not be too late. Brown v. City of Atlanta, 84 Ga. App. 4, 65 S.E.2d 611 (1951).

Statutory construction applicable to contracts. — Where a contract covers the minimum number of days required by a statute, the construction applicable to statutes necessarily governs the meaning of the contract. Trust Co. v. Guardian Life Ins. Co. of Am., 124 Ga. App. 465, 184 S.E.2d 363 (1971).

Paragraph (d)(3) of this section is a rule of statutory construction, and does not apply to contractual limitations; yet, this section states a rule of reason with respect to limitations, be they statutory or contractual, which should be applied to limitations in contracts in the absence of any sound reason for not applying them. Brooks v. Hicks, 230 Ga. 500, 197 S.E.2d 711 (1973).

By analogy this section applies to contracts as well as statutes where the limitation is in terms of days. Allstate Ins. Co. v. Stephens, 239 Ga. 717, 238 S.E.2d 382 (1977).

A ten-day notice period required for cancellation of an insurance policy is governed by O.C.G.A. § 1-3-1 for computation of time and not by O.C.G.A. § 9-11-6 which deals exclusively with periods calculated after the commencement of a court proceeding. Southern Trust Ins. Co. v. First Fed. Sav. & Loan Ass'n, 168 Ga. App. 899, 310 S.E.2d 712 (1983).

Paragraph (d)(3) of O.C.G.A. § 1-3-1 was applicable to the one-year suit limitation contained in a renter's insurance policy. Since provisions were in conflict with the statutes of the state the provisions were amended to conform to such statutes. Sanders v. Allstate Ins. Co., 207 Ga. App. 461, 428 S.E.2d 575, cert. denied, No. S93C0876, 1993 Ga. LEXIS 428 (1993).

Provision not applicable to voluntarily accepted contractual limitations. — Provisions in paragraph (d)(3) of O.C.G.A. § 1-3-1 regarding extension of time to exercise a privilege have no effect upon voluntarily accepted contractual limitations on the exercise of such privilege. Desai v. Safeco Ins. Co. of Am., 173 Ga. App. 815, 328 S.E.2d 376 (1985).

Construction of time in insurance case. — Where the uncontroverted evidence shows that the property insured was consumed on the morning of the twenty-fourth of January, 1910, the 12-months limitation as to commencement of the action expired at midnight of the twenty-third of January, 1911, and, under this stipulation of the contract, the suit on the policy, which was not commenced until January 24, 1911, was barred. Maxwell Bros. v. Liverpool & London & Globe Ins. Co., 12 Ga. App. 127, 76 S.E. 1036 (1913); Phillips v. Fireman's Fund Ins. Co., 31 Ga. App. 541, 121 S.E. 255 (1924).

"Days of election" deemed 24-hour day. — The period of time contemplated by the words "days of election," as used in former Penal Code 1910, § 445, is a day of 24 hours, commencing at midnight preceding the opening of the polls, and ending at midnight succeeding the close of the polls. Rose v. State, 107 Ga. 697, 33 S.E. 439 (1899).

Failure to provide legally required three-days' notice of upcoming sale is found where a sale is advertised on December 25 to take place on December 27. Marshall v. Armour Fertilizer Works, 24 Ga. App. 402, 100 S.E. 766 (1919).

Not applicable to limitation fixed for filing materialman's lien. — The method of time computation in paragraph (d)(3) of O.C.G.A. § 1-3-1 did not apply to extend the requirement of O.C.G.A. § 44-14-361(a)(2) that a materialman's lien must be filed within three months of the delivery of materials. United States Filter Distrib. Group, Inc. v. Barnett, 241 Ga. App. 759, 526 S.E.2d 912 (1999), aff'd, 273 Ga. 254, 538 S.E.2d 739 (2000).

Service of responses to requests to admit. — Service of responses to requests to admit was timely as calculated pursuant to O.C.G.A. § 1-3-1(d)(3); therefore,

the requests were not deemed admitted. The fact that the certificate of service was not filed with the clerk under Ga. Unif. Super. Ct. R. 5.2 until later did not impact the fact that service of the responses was timely. Cruickshank v. Fremont Inv. & Loan, 307 Ga. App. 489, 705 S.E.2d 298 (2010).

Defamation complaint timely filed. — Natural gas marketer's defamation complaint was timely filed because the complaint was filed on the first anniversary of the date of publication; O.C.G.A. § 1-3-1(d)(3) applies to the one-year statute of limitation for injuries to the reputation found in O.C.G.A. § 9-3-33, so that the first day shall not be counted in determining whether a claim is timely filed. Infinite Energy, Inc. v. Pardue, 310 Ga. App. 355, 713 S.E.2d 456 (2011).

Renewal of dismissed action. — Trial court erred by denying a debtor's refiling of an appeal as untimely because the six-month period for filing the debtor's renewal action under O.C.G.A. § 9-2-61(a) began the day after the debtor dismissed the original superior court action, and ran until December 6, 2012, based on the method of calculation under O.C.G.A. § 1-3-1(d)(3), thus, the refiling of the action on December 6 was timely. Parsons v. Capital Alliance Fin., LLC, 325 Ga. App. 884, 756 S.E.2d 14 (2014).

Gender

In generic sense, term "man" includes "woman," and pronoun "he" includes person of feminine gender. Hightower v. State, 14 Ga. App. 246, 80 S.E. 684 (1914).

Joint Authority

Majority of officials authorized to act. — Three commissioners, being a majority of five, are competent to act and make an assessment. Stevenson v. State, 69 Ga. 68 (1882).

In drawing a grand jury, the ordinary (now probate court judge) acts as one of the board of jury commissioners, and the ordinary's absence during the drawing of the jury will not render it invalid, a majority of the commissioners being present and acting. Roby v. State, 74 Ga. 812 (1885) (decided under Code 1882, § 3911).

A majority of the members of the board of education of a city had authority to institute mandamus proceedings against the mayor and council of the city. City of Blakely v. Singletary, 138 Ga. 632, 75 S.E. 1054 (1912).

Where certain relief was sought against seven members of the board of education and its secretary in their official capacity, to require them to perform specific duties as a board of education, these acts could be performed by a majority of the board. Styles v. Waters, 212 Ga. 644, 94 S.E.2d 702 (1956).

Where a writ of mandamus absolute issues against the members of a board of education, requiring them to perform certain acts in their official capacity, and a majority of such board file a writ of error to the Supreme Court, a majority of the board have the right to withdraw or dismiss, pending final disposition, the writ of error. Styles v. Waters, 212 Ga. 644, 94 S.E.2d 702 (1956).

Appeal of judgment by less than majority dismissed. — Since a majority of a five-member board is required to initiate an appeal, an appeal of a declaratory judgment by less than a majority must be dismissed. McClure v. Shirley, 227 Ga. 832, 183 S.E.2d 385 (1971).

Section inapplicable where majority acts with unqualified member. — Where authority was not in fact exercised by the majority of qualified members, but by them in conjunction with another person whose appointment was void, it would not seem that this section would have application. Felker v. City of Monroe, 22 Ga. App. 301, 95 S.E. 1023 (1918).

Administration of will. — Because former O.C.G.A. § 53-6-24(11) [pre-1998 Probate Code] does not declare that all the beneficiaries under a will must agree to the naming of an administrator with will annexed, the rule of construction in paragraph (d)(5) of O.C.G.A. § 1-3-1, that a joint authority given to any number of persons or officers may be executed by a majority of them unless it is otherwise declared applies. Dismuke v. Dismuke, 195 Ga. App. 613, 394 S.E.2d 371 (1990), cert. denied, 1995 Ga. LEXIS 1050 (1995), cert. denied, 1999 Ga. LEXIS 39 (1999) (decided prior to the 1991 amendment to

Joint Authority (Cont'd)

§ 53-6-24, deleting (11)).

Number

Use of plural instead of singular personal pronoun in indictment will not vitiate it. Jackson v. State, 88 Ga. 784, 15 S.E. 677 (1892).

"Liquor" includes "liquors." Willburn v. State, 8 Ga. App. 28, 68 S.E. 460 (1910).

"Company" includes "individual." Atlantic Coast Line R.R. v. State, 135 Ga. 545, 69 S.E. 725, 32 L.R.A. (n.s.) 20 (1910), aff'd, 234 U.S. 280, 34 S. Ct. 829, 58 L. Ed. 1312 (1914), aff'd, 234 U.S. 280, 34 S. Ct. 829, 58 L. Ed. 1312 (1914).

"Defendant" includes "defendants." — A verdict finding in favor of "the defendant" will be construed as a finding in favor of all the defendants, where the suit is against two or more persons. Monk-Sloan Supply Co. v. Quitman Oil Co., 10 Ga. App. 390, 73 S.E. 522 (1912).

"Owner" includes "owners." Stallworth v. Martin-Ozburn Realty Co., 17 Ga. App. 689, 87 S.E. 1094 (1916).

"Witnesses" includes "witness." Herndon v. Jones County, 18 Ga. App. 523, 89 S.E. 1047 (1916).

In suit against two defendants, allegation where particular defendant is not referred to is good against an objection that it is not alleged which defendant is referred to. Brooks v. Hartsfield Co., 56 Ga. App. 184, 192 S.E. 459 (1937).

Note signed by two parties obligation of both. — Although a note contains a promise to pay in the singular number, where the note is signed by two persons, it is the obligation of both. Scott v. Gaulding, 60 Ga. App. 306, 3 S.E.2d 766 (1939).

"Opposite party." — As regards new trial applications, "opposite party" includes all parties interested in sustaining verdict. Carmichael v. City of Jackson, 194 Ga. 664, 22 S.E.2d 470 (1942).

Where school system lies in parts of two counties, a proviso expressly applying to independent school systems in a single county applies to it also. Rice v. Cook, 222 Ga. 499, 150 S.E.2d 822 (1966).

Section inapplicable when statute expressly declares one witness sufficient. — This provision does not apply when it is apparent that the statute is dealing with the number of witnesses necessary and expressly declaring that one is sufficient except in specified cases. Stone v. State, 118 Ga. 705, 45 S.E. 630, 98 Am. St. R. 145 (1903).

Illustrative Cases

Unclear tax statute construed against state and in citizen's favor. — If a statute levying taxes is not clear and positive in its terms, or if it is open to different interpretations through the indefiniteness of its provisions, it is to be construed most strongly against the state and in favor of the citizen or subject, and its provisions are not to be extended, by implication, beyond the clear import of the language used. Thompson v. Georgia Power Co., 73 Ga. App. 587, 37 S.E.2d 622 (1946).

Bank share tax to be construed so as to be constitutional. — Where the construction of the bank share tax must be reconsidered to determine its constitutionality the court should construe this statute so as to render it constitutional, rather than declare the entire act unconstitutional. Bartow County Bank v. Bartow County Bd. of Tax Assessors, 251 Ga. 831, 312 S.E.2d 102 (1984), aff'd, 470 U.S. 583, 105 S. Ct. 1516, 84 L. Ed. 2d 535 (1985), aff'd sub nom., First Nat'l Bank v. Bartow County Bd. of Tax Assessors, 470 U.S. 583, 105 S. Ct. 1516, 84 L. Ed. 2d 535 (1985).

Defective summons cured by pleadings. — As a general rule it may be said that a defective summons will be regarded as aided or cured by the pleadings served with the summons when, with all the information contained in the two papers in the defendant's possession, the defendant could not be misled as to the nature of the relief demanded, or as to the court in which the proceedings are to be instituted. W.T. Rawleigh Co. v. Watts, 68 Ga. App. 786, 24 S.E.2d 213 (1943).

If accused can admit all accusations of indictment and still be innocent, indictment is defective. Every indictment must be complete within itself, and charge a crime and every substantial element of the offense alleged to be com-

mitted. Gore v. State, 79 Ga. App. 696, 54 S.E.2d 669 (1949).

Submission of interrogatories is mandatory in declaratory judgment action. Cole v. Frostgate Whses., Inc., 150 Ga. App. 320, 257 S.E.2d 309, rev'd on other grounds, 244 Ga. 782, 262 S.E.2d 98 (1979).

Rights growing out of contracts protected. — Where the meaning of an Act is doubtful, it would not be so construed as to impair rights growing out of contracts prior to its passage. Mitchell v. Wolfe, 70 Ga. 625 (1883).

Contract required to be written may not be modified by subsequent oral agreement. Nowell v. Mayor of Monroe, 177 Ga. 648, 171 S.E. 136 (1933).

At common law it was not required that contract of insurance should be in writing in order to be valid. Nowell v. Mayor of Monroe, 177 Ga. 648, 171 S.E. 136 (1933).

Fidelity insurance contract must be in writing. — Whether the insurer is a resident or nonresident corporation, a contract of fidelity insurance must be in writing under the laws of this state. Nowell v. Mayor of Monroe, 177 Ga. 648, 171 S.E. 136 (1933).

Rule applicable to contracts issued upon cash basis. — The rule that a policy of insurance shall be in writing and signed by the insurer applies to contracts issued upon a cash basis as well as to those issued upon a credit basis, if such there may be. Nowell v. Mayor of Monroe, 177 Ga. 648, 171 S.E. 136 (1933).

Suit cannot be maintained upon a parol renewal of an insurance policy. Nowell v. Mayor of Monroe, 177 Ga. 648, 171 S.E. 136 (1933).

Section considered in construing deed. — Without giving a strict and mandatory application of this section in the construction of a deed, yet, since it is true that the purpose is to arrive at the true meaning and intent of the language used, this section can properly be considered as illustrative of what constitutes the true intent and purpose of the instrument. Rustin v. Butler, 195 Ga. 389, 24 S.E.2d 318 (1943).

O.C.G.A. § 51-5-11 (retraction in libel action) was clearly inapplicable to defamatory statements made in a radio talk show, it being clear, giving the words "newspaper or other publication" their ordinary signification, that the General Assembly intended that the section apply exclusively to the printed media. Williamson v. Lucas, 171 Ga. App. 695, 320 S.E.2d 800 (1984).

Sanction issued by professional board. — The Board of Dentistry's decision to sanction a dentist was not void for want of jurisdiction, even though the decision was rendered more than 30 days following the close of the record, because there was no harm shown nor authority withdrawn. Thebaut v. Georgia Bd. of Dentistry, 235 Ga. App. 194, 509 S.E.2d 125 (1998).

Lien laws must be strictly construed. — Georgia's law providing for a hospital lien against a patient for services rendered, O.C.G.A. § 44-14-470 et seq., must be strictly construed. MCG Health, Inc. v. Owners Ins. Co., 302 Ga. App. 812, 692 S.E.2d 72 (2010).

SLAPP statute applied to non-Georgia residents. — Considering the text of the statute, the General Assembly's purpose, and the evil the statute was designed to correct, O.C.G.A. § 9-11-11.1(a), Georgia's Anti-SLAPP statute, encompassed a press conference held outside the territorial limits of Georgia by New York defendants. Because the press conference was held to address an issue under consideration by a judicial body, i.e., a nuisance lawsuit filed by the New York defendants against gun dealers, a Georgia gun dealer's slander suit was dismissed for failure to file a verification as required by § 9-11-11.1(b). Adventure Outdoors, Inc. v. Bloomberg, 307 Ga. App. 356, 705 S.E.2d 241 (2010), cert. denied, No. S11C0648, 2011 Ga. LEXIS 402, cert. denied, 132 S. Ct. 763, 181 L. Ed. 2d 485 (2011).

Motor vehicle hijacking statute. — Because the text of the hijacking statute, O.C.G.A. § 16-5-44.1, does not define "obtain", a court looks to the ordinary meaning of that word, given that it was not a term of art or a technical term pursuant to O.C.G.A. § 1-3-1(b); ordinarily, "obtain" means to gain or attain possession, usually by some planned action or method,

Illustrative Cases (Cont'd)

and applying the ordinary meaning of "obtain", the offense of hijacking a motor vehicle is concluded when possession of the motor vehicle is attained. Jackson v. State, 309 Ga. App. 24, 709 S.E.2d 44 (2011).

Trial court misinterpreted O.C.G.A. § 16-13-49(d)(6) in holding that the defendant's vehicle, which was in close proximity to the defendant's apartment in which drugs were seized, was not subject to forfeiture because the state lacked evidence that the vehicle was in any way connected to the unlawful activity; no such connection was required. State of Ga. v. West, 331 Ga. App. 745, 771 S.E.2d 432 (2015).

Instruction to "remove" oneself from school premises must occur on occasion in question. — Dismissal of an indictment for loitering on school premises was required because O.C.G.A. § 20-2-1180(b)(1) made it a crime for a defendant to fail to remove oneself from school premises after being told to do so; in this case, it was alleged that the defendant was told to leave on a prior occasion, not the date in question. State v. Freeman, 349 Ga. App. 94, 825 S.E.2d 538 (2019).

Rape shield statute. — By the statute's plain terms the rape shield statute, O.C.G.A. § 24-2-3(a) (see now O.C.G.A. § 24-4-412), applied only in prosecutions for rape and not to child molestation cases; however, the trial court did not err by applying former O.C.G.A. § 24-2-3(a) to defendant's case because the defendant was prosecuted for, among other offenses, rape, and the fact that the defendant was acquitted of the rape charge did not require a new trial on the other charges. Abdulkadir v. State, 279 Ga. 122, 610 S.E.2d 50 (2005).

Plain language of O.C.G.A. § 42-8-62. — Defendant was not required to register as a sexual offender because the defendant successfully completed a first-offender sentence for statutory rape and burglary charges, and a "conviction" under O.C.G.A. § 42-1-12(a)(8) did not include a discharge without an adjudication of guilt following the successful completion of a first offender sentence; the plain language of O.C.G.A. § 42-8-62(a) provided that, with certain exceptions, once a first offender was discharged without an adjudication of guilt, he or she stood completely exonerated and was not considered as having been convicted of a crime. The trial court's interpretation of the statutes at issue as requiring all first offenders who had committed certain sexual offenses to register as sexual offenders for the rest of their lives rendered the plain language of O.C.G.A. § 42-1-12(8) meaningless and was improper. Jackson v. State, 299 Ga. App. 356, 683 S.E.2d 60 (2009).

Dougherty County Probate Court allowed to hold jury trials. — Dougherty County, Ga., Probate Court had jurisdiction to hold jury trials because: (1) the 2010 census, which dropped the county's population below that required by O.C.G.A. § 15-9-120(2) to allow jury trials in probate court, was not effective until July 1, 2012, under O.C.G.A. § 1-3-1(d)(2)(D); and, (2) a statutory amendment, effective on that date, decreased the population requirement. Ellis v. Johnson, 291 Ga. 127, 728 S.E.2d 200 (2012).

OPINIONS OF THE ATTORNEY GENERAL

Construction to conform to legislative intent. — In the interpretation of statutes, it is a cardinal rule that statutes must be construed to conform with the intent of the General Assembly. 1990 Op. Att'y Gen. No. 90-9.

Words given ordinary meaning. — When construing a statute, words should be given their ordinary and everyday meaning. 1990 Op. Att'y Gen. No. 90-6.

Money authorized for compensation of clerical assistants cannot be used for any other purpose. 1962 Op. Att'y Gen. p. 566.

Act amends section of same subject matter as that dealt with by Act. — Where an amendatory Act to the Code purports to deal with one subject matter, but specifies a section number which does not deal with this subject matter and, in

fact, does not exist, the legal effect of the Act is to amend the section of the same subject matter. 1954-56 Op. Att'y Gen. p. 372.

Where intention of General Assembly to repeal prior Act is manifest, that intent will be recognized. 1972 Op. Att'y Gen. No. 72-57.

The 1981 amendment, as to the effective date of a census, does not operate retrospectively to January 1, 1981, but does, as of April 9, 1981, repeal Ga. L. 1963, p. 608. 1981 Op. Att'y Gen. No. U81-54.

Phrase "goods, wares or merchandise" should be construed in its ordinary sense; this means such chattels as are ordinarily the subject of traffic and trade. 1972 Op. Att'y Gen. No. 72-96.

Ordinary significance of the phrase "state institution" is a public, state-operated institution. 1973 Op. Att'y Gen. No. 73-72.

Section immaterial where calendar date determines action's deadline. — Where a calendar date rather than a number of days determines the deadline for taking action, the fact that the last day is on Saturday or Sunday is immaterial. 1962 Op. Att'y Gen. p. 565.

If section's prohibitive period runs in months. — Former Code 1933, §§ 25-213, 25-214, 25-216, 25-301, 25-313, 25-315, and 25-317 (see now O.C.G.A. § 7-3-14(2)) should be interpreted so that the prohibitive period, either two months or six months, begins running the day following the date contained in the loan and expires midnight six months later on the same numerical calendar date, and further that the Saturday or Sunday carry-over period would not apply and could be counted toward the fulfillment of the restricted period. 1963-65 Op. Att'y Gen. p. 255.

Official action requires majority of officers to whom authority is given, rather than a majority of those then holding the office. 1980 Op. Att'y Gen. No. 80-31.

Official action requires majority of total number of positions on a board, rather than a majority of those present at a meeting. 1980 Op. Att'y Gen. No. 80-31.

Majority of members of Georgia Firemen's Pension Fund board must agree on any action to be taken before that action is binding. 1972 Op. Att'y Gen. No. 72-103.

Tax assessor board can act in absence of one member. — A board of tax assessors consisting of three members and sitting in accordance with former Code 1933, § 92-6911 (see now O.C.G.A. § 48-5-297) can legally act in the absence of one of its members; the absence of a member could be for "any reason." 1971 Op. Att'y Gen. No. U71-55.

Notice of called meeting of board of commissioners must be provided, where practical, to all board members, and failure to provide notice invalidates actions taken at a called meeting unless all members attend. 1976 Op. Att'y Gen. No. U76-57.

Larger and more extensive statutory expression controls. — Interest earned on educational purpose sales taxes and on special county one percent sales and use taxes becomes part of the tax proceeds in the account fund, which fund is required to be used exclusively for the purposes specified in the resolution or ordinance calling for the imposition of the tax. 2001 Op. Att'y Gen. No. 2001-3.

RESEARCH REFERENCES

Am. Jur. 2d. — 12 Am. Jur. 2d, Bonds, §§ 6, 11 et seq. 14 Am. Jur. 2d, Census, §§ 1, 4. 73 Am. Jur. 2d, Statutes, § 1 et seq.

C.J.S. — 11 C.J.S., Bonds, §§ 9, 11, 14. 14 C.J.S., Census, § 2. 82 C.J.S., Statutes, § 364 et seq.

ALR. — Scope and effect of exception of "special protection and privilege," in an Act giving women the same rights as men, 26 A.L.R. 356.

Time for performance of an act under a lease when date fixed falls on Sunday or holiday, 29 A.L.R. 239.

Power of municipal corporation to legislate as to Sunday observance, 37 A.L.R. 575.

Title of statutes as an element bearing upon their construction, 37 A.L.R. 927.

Application of rule of ejusdem generis to statutes of limitation, 39 A.L.R. 1404.

What constitutes offense of obstructing or resisting officer, 48 A.L.R. 746.

Validity of ordinance as affected by motives of persons who procured its adoption, 53 A.L.R. 942.

Previous statute as affected by attempted but unconstitutional amendment, 66 A.L.R. 1483.

Constitutionality, construction, and effect of statutes in relation to conduct of driver of automobile after happening of accident, 101 A.L.R. 911.

Permissive or mandatory character of legislation in relation to payment of public debts, 103 A.L.R. 812.

Constitutionality, construction, and application of statute as to effect of taking appeal, or staying execution, on right to redeem from execution or judicial sale, 107 A.L.R. 879.

Constitutionality of statute which by express terms or construction declares that attorneys' liens shall not be affected by settlement or compromise between the parties, 122 A.L.R. 974.

Supplying omitted words in statute or ordinance, 126 A.L.R. 1325.

Character as felony or misdemeanor of offense for which a fine is provided as afected by provision for imprisonment until fine is satisfied, 127 A.L.R. 1286.

Date or event contemplated by term "passage," "enactment," "effective date," etc., employed by statute in fixing time of facts or conditions within its operation, 132 A.L.R. 1048.

Standard or system of time, 143 A.L.R. 1238.

Presumption that, in re-enacting statute, legislature adopted previous judicial construction thereof, as applied to construction by trial or intermediate appellate court, 146 A.L.R. 923.

"And/or," 154 A.L.R. 866.

What amounts to seizure and holding of employer's plant, equipment, machinery, or other property within statutory exception to inhibition on injunctions in labor disputes, 163 A.L.R. 668.

Inclusion or exclusion of the day of birth in computing one's age, 5 A.L.R.2d 1143.

Construction and effect of statutes limiting duration of agricultural leases, 17 A.L.R.2d 566.

Construction and effect in civil actions of statute, ordinance, or regulation requiring vehicles to be stopped or parked parallel with, and within certain distance of, curb, 17 A.L.R.2d 582.

Effective date of census, 43 A.L.R.2d 1353.

Meaning of "residence district," "business district," "school area," and the like, in statutes and ordinances regulating speed of motor vehicles, 50 A.L.R.2d 343.

Time for payment of insurance premium where last day falls on Sunday or holiday, 53 A.L.R.2d 877.

What constitutes a "scaffold" within scaffold safety requirement statutes, 87 A.L.R.2d 977.

Construction of zoning regulations prescribing minimum area for house lots or requiring an area proportionate to number of families to be housed, 95 A.L.R.2d 761.

Inclusion or exclusion of first and last days in computing the time for performance of an act or event which must take place a certain number of days before a known future date, 98 A.L.R.2d 1331.

Construction and application of statutes prohibiting or limiting loans to bank's officers or directors, 49 A.L.R.3d 727.

Abstention from voting of member of municipal council present at session as affecting requisite voting majority, 63 A.L.R.3d 1072.

Validity of zoning laws setting minimum lot size requirements, 1 A.L.R.5th 622.

Construction and application of zoning laws setting minimum lot size requirements, 2 A.L.R.5th 553.

1-3-2. Construction of definitions.

As used in this Code or in any other law of this state, defined words shall have the meanings specified, unless the context in which the word or term is used clearly requires that a different meaning be used.

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"Children." — A ward's stepchildren were not "children" under the guardianship statute, nor were they next of kin and, because there were individuals related to the ward by blood, who were not notified of the guardianship proceedings, the appointment of the guardian was void. Wilson v. James, 260 Ga. 234, 392 S.E.2d 5 (1990).

"Person." — Non-profit association with the purpose of focusing on public interest matters of self-defense and gun laws of the State of Georgia was not a "person" which could claim to have an interest in the offices held by the Georgia Code Revision Commission members for purposes of pursuing a writ of quo warranto under O.C.G.A. § 9-6-60. No association standing was shown because the interests the association sought to protect were not shown to be germane to its purpose. Georgiacarry.org, Inc. v. Allen, 299 Ga. 716, 791 S.E.2d 800 (2016).

"Property" in apportionment statute included tangible and intangible property. — O.C.G.A. § 51-12-33, Georgia's apportionment statute, applied to tort claims for damage to tangible and intangible property and, therefore, applied to purely pecuniary losses. FDIC v. Loudermilk, 305 Ga. 558, 826 S.E.2d 116 (2019).

1-3-3. Definitions.

As used in this Code or in any other law of this state, the term:

(1) "Abode" ordinarily means domicile.

(2) "Accident" means an event which takes place without one's foresight or expectation or design.

(3) "Act of God" means an accident produced by physical causes which are irresistible or inevitable, such as lightning, storms, perils of the sea, earthquakes, inundations, sudden death, or illness. This expression excludes all idea of human agency.

(4) "Aforesaid" means next before.

(4.1) "Agriculture," "agricultural operations," or "agricultural or farm products" means raising, harvesting, or storing of crops; feeding, breeding, or managing livestock or poultry; producing or storing feed for use in the production of livestock, including, but not limited to, cattle, calves, swine, hogs, goats, sheep, and rabbits, or for use in the production of poultry, including, but not limited to, chickens, hens, ratites, and turkeys; producing plants, trees, fowl, or animals; or the production of aquacultural, horticultural, dairy, livestock, poultry, eggs, and apiarian products. If the term "agriculture," "agricultural operations," or "agricultural or farm products" is defined in Title 2,

Title 4, Title 10, or Title 11 or in any chapter, article, part, subpart, or Code section of such titles, such specific definition shall control for such purposes over the definition contained in this paragraph. Agricultural or farm products are considered grown in this state if such products are grown, produced, or processed in this state, whether or not such products are composed of constituent products grown or produced outside this state.

(5) "As soon as possible" means within a reasonable time, having due regard to all the circumstances.

(6) "Child" or "grandchild" means legitimate descendants.

(7) "County governing authority" means the board of county commissioners, the sole county commissioner, or the governing authority of a consolidated government.

(7.1) "Crops" or "growing crops" means fruits and products of all annual or perennial plants, trees, and shrubs and shall also include plants, trees, shrubs, and other agricultural products that are produced for sale. If the term "crops" or "growing crops" is defined in Title 2, Title 4, or Title 10 or in any chapter, article, part, subpart, or Code section of such titles, such specific definition shall control for such purposes over the definition contained in this paragraph.

(8) "Following" means next after.

(9) "Lunatic," "insane," or "non compos mentis" each includes all persons of unsound mind.

(10) "May" ordinarily denotes permission and not command. However, where the word as used concerns the public interest or affects the rights of third persons, it shall be construed to mean "must" or "shall."

(11) "Month" means a calendar month. A scholastic month in public schools is 20 school days.

(12) "Oath" includes affirmation.

(13) "Penitentiary" means any place where inmates are confined under the authority of any law of this state.

(14) "Person" includes a corporation.

(15) "Preceding" means next before.

(16) "Property" includes real and personal property.

(16.1) "Ratites" mean any members of the ratite family, including but not limited to ostriches, emus, and rheas, which are not indigenous to this state and which are raised for the purpose of producing meat, fiber, or animal by-products or as breeding stock. For the

purposes of the laws of this state, ratites shall be treated as poultry and the term poultry as used in this Code or any law of this state shall include ratites unless such ratites are specifically excluded from the operation of any such law or unless such law or the operation thereof is restricted to a certain type of poultry.

(17) "Seal" includes impressions on the paper itself, as well as impressions on wax or wafers. With the exception of official seals, a scrawl or any other mark intended as a seal shall be held as such.

(18) "Sickness" means any affection of the body which deprives it temporarily of the power to fulfill its usual functions.

(19) "Signature" or "subscription" includes the mark of an illiterate or infirm person.

(19.5) "Statutory overnight delivery" shall have the meaning provided for in subsection (b) of Code Section 9-10-12.

(20) "Trespass" means any misfeasance, transgression, or offense which damages another's health, reputation, or property.

(21) "Until," when used with reference to a certain day, includes all of such day.

(22) "Whereas" means considering that.

(23) "Writing" includes printing and all numerals.

(24) "Year" means a calendar year.

History. — Laws 1838, Cobb's 1851 Digest, pp. 274, 536; Laws 1833, Cobb's 1851 Digest, p. 780; Code 1863, § 6; Code 1868, § 5; Code 1873, § 5; Code 1882, § 5; Civil Code 1895, § 5; Penal Code 1895, § 2; Ga. L. 1896, p. 82, § 1; Civil Code 1910, § 5; Penal Code 1910, § 2; Code 1933, § 102-103; Ga. L. 1957, p. 477, § 6; Ga. L. 1987, p. 1482, § 1; Ga. L. 1991, p. 1849, § 1; Ga. L. 1992, p. 2398, § 1; Ga. L. 1995, p. 347, §§ 1, 2; Ga. L. 2000, p. 1589, § 1; Ga. L. 2001, p. 362, § 23; Ga. L. 2008, p. 458, § 1/SB 364.

History of Code section. — The language of this Code section is derived in part from the decisions in Central of Ga. Ry. v. Hall, 124 Ga. 322, 52 S.E. 679 (1905); Georgia F. & A. Ry. v. Sasser, 130 Ga. 394, 60 S.E. 997 (1908); W.E. Coldwell Co. v. Cowart, 138 Ga. 233, 75 S.E. 425 (1912); Great Am. Coop. Fire Ass'n v. Jenkins, 11 Ga. App. 784, 76 S.E. 159 (1912); Martin v. Waycross Coca-Cola Bottling Co., 18 Ga. App. 226, 89 S.E. 495 (1916); Gainesville Grocery Co. v. Bank of Dahlonega, 25 Ga. App. 230, 102 S.E. 912 (1920); Browning v. State, 31 Ga. App. 150, 120 S.E. 649 (1923); Evans v. Cannon, 34 Ga. App. 470, 130 S.E. 76 (1925); Central of Ga. Ry. v. Council Bros., 36 Ga. App. 574, 137 S.E. 569 (1927); Hanson v. Williams, 170 Ga. 779, 154 S.E. 240 (1930).

Cross references. — Construction of terms "city," "town," "municipality," and "village" as synonymous, § 36-30-1.

Law reviews. — For article, "The Georgia Law of Insanity," see 3 Ga. B. J. 28 (1941). For survey article on insurance, see 34 Mercer L. Rev. 177 (1982). For article, "Publicity, Liberty and Intellectual Property: A Conceptual and Economic Analysis of the Inheritability Issue," see 34 Emory L.J. 1 (1985). For survey article on law of torts, see 59 Mercer L. Rev. 397 (2007).

For note comparing procedures for hospitalization of the mentally ill in Georgia

to other jurisdictions and suggesting improvements, see 7 Mercer L. Rev. 361 (1956). For note discussing concept of "act of God," see 4 Ga. L. Rev. 555 (1970).

JUDICIAL DECISIONS

Analysis

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General Consideration

Any part of law may be used to ascertain meaning of another part. — Any portion of a body of laws may well be invoked to ascertain the meaning of words and phrases used in another part. Royal Indem. Co. v. Agnew, 66 Ga. App. 377, 18 S.E.2d 57 (1941).

Cited in Chandler v. Johnson, 39 Ga. 85 (1869); Pearson v. Wimbish, 124 Ga. 701, 52 S.E. 751, 4 Ann. Cas. 501 (1906); Surles v. State, 148 Ga. 537, 97 S.E. 538 (1918); Shelton v. State, 150 Ga. 71, 102 S.E. 355 (1920); Citizens' Bank v. Hall, 179 Ga. 662, 177 S.E. 496 (1934); Constitution Publishing Co. v. Lyon, 52 Ga. App. 434, 183 S.E. 653 (1936); Longino v. Hanley, 184 Ga. 328, 191 S.E. 101 (1937); Regents of Univ. Sys. v. Trust Co., 186 Ga. 498, 198 S.E. 345 (1938); Paul v. State, 186 Ga. 825, 199 S.E. 206 (1938); Walker v. State, 63 Ga. App. 254, 10 S.E.2d 767 (1940); Turner v. State, 65 Ga. App. 292, 16 S.E.2d 160 (1941); Foster v. Brown, 199 Ga. 444, 34 S.E.2d 530 (1945); Whitehurst v. Singletary, 77 Ga. App. 811, 50 S.E.2d 80 (1948); Roe v. Pitts, 82 Ga. App. 770, 62 S.E.2d 387 (1950); Lane v. Varner, 89 Ga. App. 47, 78 S.E.2d 528 (1953); Folsom v. Summer, Locatell & Co., 90 Ga. App. 696, 83 S.E.2d 855 (1954); Hobbs v. New England Ins. Co., 212 Ga. 513, 93 S.E.2d 653 (1956); Cobb v. Big Apple Supermarket of Columbus, Inc., 106 Ga. App. 790, 128 S.E.2d 536 (1962); Hardy v. MacKinnon, 107 Ga. App. 120, 129 S.E.2d 391 (1962); Lovett v. American Family Life Ins. Co., 107 Ga. App. 603, 131 S.E.2d 70 (1963); Fincher v. Fox, 107 Ga. App. 695, 131 S.E.2d 651 (1963); YMCA v. Bailey, 112 Ga. App. 684, 146 S.E.2d 324 (1965); Georgia R.R. & Banking Co. v. Thigpen, 113 Ga. App. 65, 147 S.E.2d 346 (1966); Cooper v. Melvin, 223 Ga. 239, 154 S.E.2d 373 (1967); Blair v. Rayburn, 120 Ga. App. 57, 169 S.E.2d 679 (1969); Georgia S. & Fla. Ry. v. Blanchard, 121 Ga. App. 82, 173 S.E.2d 103 (1970); U.S. Fid. & Guar. Co. v. Lockhart, 229 Ga. 292, 191 S.E.2d 59 (1972); Firestone Tire & Rubber Co. v. Jackson Transp. Co., 126 Ga. App. 471, 191 S.E.2d 110 (1972); White v. Hammond, 129 Ga. App. 408, 199 S.E.2d 809 (1973); Tek-Aid, Inc. v. Eisenberg, 137 Ga. App. 99, 223 S.E.2d 29 (1975); Hughes v. Star Bonding Co., 137 Ga. App. 661, 224 S.E.2d 863 (1976); Smiley v. Davenport, 139 Ga. App. 753, 229 S.E.2d 489 (1976); Beneficial Std. Life Ins. Co. v. Hamby, 142

Ga. App. 449, 236 S.E.2d 116 (1977); Smith v. Cofer, 243 Ga. 530, 255 S.E.2d 49 (1979); Mitchell v. Mitchell, 245 Ga. 291, 264 S.E.2d 222 (1980); Harrelson Rubber Co. v. Super Treads, Inc., 7 Bankr. 532 (M.D. Ga. 1980); Georgia Int'l Life Ins. Co. v. Harden, 158 Ga. App. 450, 280 S.E.2d 863 (1981); Chatham County v. Kiley, 249 Ga. 110, 288 S.E.2d 551 (1982); Hart v. Owens-Illinois, Inc., 250 Ga. 397, 297 S.E.2d 462 (1982); Board of Comm'rs v. Clayton County Sch. Dist., 250 Ga. 244, 297 S.E.2d 724 (1982); Kelley v. Foster, 192 Ga. App. 95, 383 S.E.2d 646 (1989); Ring v. Williams, 192 Ga. App. 329, 384 S.E.2d 914 (1989); Savannah Bank & Trust Co. v. Weiner, 193 Ga. App. 616, 388 S.E.2d 725 (1989); Moss v. Protective Life Ins. Co., 203 Ga. App. 389, 417 S.E.2d 340 (1992); Hall v. Holder, 955 F.2d 1563 (11th Cir. 1992); Holder v. Hall, 512 U.S. 874, 114 S. Ct. 2581, 129 L. Ed. 2d 687 (1994); Allstate Ins. Co. v. Grayes, 216 Ga. App. 419, 454 S.E.2d 616 (1995); Valley Place, Ltd. v. T.I. Equity Fund, L.P., 246 Ga. App. 378, 541 S.E.2d 37 (2000); Manders v. Lee, 338 F.3d 1304 (11th Cir. 2003); White v. Shamrock Bldg. Sys., 294 Ga. App. 340, 669 S.E.2d 168 (2008); Pelphrey v. Cobb County, 547 F.3d 1263 (11th Cir. 2008); Meredith v. Thompson, 312 Ga. App. 697, 719 S.E.2d 592 (2011); Ga.-Pac. Consumer Prods., LP v. Ratner, 345 Ga. App. 434, 812 S.E.2d 120 (2018).

"Abode"

"Abode" ordinarily means "domicile." Hanson v. Williams, 170 Ga. 779, 154 S.E. 240 (1930).

"Accident"

"Accident" means unintentional act. — To the average layman, "accident" means only what the definition given it in this section states; an unintentional act, as opposed to something done in order to achieve a particular consequence. Bush v. Skelton, 91 Ga. App. 83, 84 S.E.2d 835 (1954).

"Accident" means an unintentional act, as opposed to something done in order to achieve a particular consequence. Cohran v. Douglasville Concrete Prods., Inc., 153 Ga. App. 8, 264 S.E.2d 507 (1980).

For purposes of constructing subject insurance policy, accident meant "an event which takes place without one's foresight or expectation or design." Crook v. Georgia Farm Bureau Mut. Ins. Co., 207 Ga. App. 614, 428 S.E.2d 802 (1993).

"Accident" in its strict sense implies absence of negligence for which no one is liable. Richter v. Atlantic Co., 65 Ga. App. 605, 16 S.E.2d 259 (1941).

The idea of "accident" excludes responsibility because of negligence. Bush v. Skelton, 91 Ga. App. 83, 84 S.E.2d 835 (1954).

The legal connotation of "accident" has reference to unintentional acts occurring without being caused by any negligence of the parties involved. Lawrence v. Hayes, 92 Ga. App. 778, 90 S.E.2d 102 (1955).

The defense of accident is to be confined to its strict sense as an occurrence which takes place in the absence of negligence and for which no one would be liable. Chadwick v. Miller, 169 Ga. App. 338, 312 S.E.2d 835 (1983).

Although the definition of "accident" is somewhat ambiguous, in that it may also be said of lack of ordinary care that does not exist by reason of foresight or design, yet the distinction has been clearly stated in the cases as something which would not have been precluded by the exercise of ordinary care on the part of either the plaintiff or the defendant. Zayre of Ga., Inc. v. Haynes, 134 Ga. App. 15, 213 S.E.2d 163 (1975).

Personal injury cases. — Word "accident" means, in personal injury cases, injury which occurs without being caused by negligence of either the plaintiff or the defendant. Cohran v. Douglasville Concrete Prods., Inc., 153 Ga. App. 8, 264 S.E.2d 507 (1980); Freed v. Redwing Refrigeration, Inc., 156 Ga. App. 817, 275 S.E.2d 691 (1980).

An "accident," in a strict legal sense, as applied to negligence cases, refers to an event which is not proximately caused by negligence, but instead arises from an unforeseen or unexplained cause. But it is also often used to indicate a happening which, although not wholly free from negligence by some person, was not proximately caused by the failure of either of the parties to a case to exercise ordinary

"Accident" (Cont'd)

care in the situation. Baggett v. Jackson, 79 Ga. App. 460, 54 S.E.2d 146 (1949).

The word "accident," as applied to personal injury cases, has a legal meaning as referring to an injury which occurs without being caused by the negligence of either the plaintiff or the defendant. Bush v. Skelton, 91 Ga. App. 83, 84 S.E.2d 835 (1954).

In a personal injury case, an "accident" is an event which happens unmixed with the lack of ordinary care and diligence of either party, for which there can be no recovery. Trammell v. Williams, 97 Ga. App. 31, 101 S.E.2d 887 (1958).

No error in refusing accident charge when evidence plainly shows negligence. — There is no error in a refusal to charge the jury on the law of accident, even upon request, when the evidence plainly shows that the plaintiff's injuries were the result of the defendants' negligence. Lawrence v. Hayes, 92 Ga. App. 778, 90 S.E.2d 102 (1955).

Defendant willfully and wantonly fires loaded pistol. — Where the defendant was engaged in the unlawful act of willfully and wantonly firing a loaded pistol between dark and daylight on a public highway, not on the defendant's own premises or in defense of person or property, from which a homicide resulted, the defense of accidental homicide was not involved, and the trial judge did not err in refusing to give a written request to charge. Creel v. State, 216 Ga. 233, 115 S.E.2d 552 (1960).

Because the underlying civil action did not involve allegations of an "accident," and there was no "occurrence" under the terms of the insurance policy, the defendant insurer had no duty to defend or indemnify plaintiffs in the underlying action and the insurer was entitled to summary judgment on the plaintiffs' suit. Burt Co. v. Clarendon Nat'l Ins. Co., 385 Fed. Appx. 892 (11th Cir. 2010) (Unpublished).

Error to give charge where defense not sustained by evidence. — It is error to give in charge the law of accident where neither the pleadings nor any evidence would sustain this defense. Bush v. Skelton, 91 Ga. App. 83, 84 S.E.2d 835 (1954).

Evidence plainly shows negligence. — Where the evidence plainly shows that the injuries of the plaintiff were due either exclusively to the plaintiff's own negligence, or solely to the negligence of the defendant, or to the negligence of both the plaintiff and the defendant, it is error for the court to charge the law of accident. Everett v. Clegg, 213 Ga. 168, 97 S.E.2d 689 (1957).

Where no accident, and charge given without defining term, error requires reversal. — Where an accident is not involved in a case, and a charge is given on "accident" without defining the term, which would tend to lead the jury to believe that the plaintiffs could not recover unless the act of the defendant was nonaccidental or intentional, then the charge is an error requiring a reversal of the case. Bush v. Skelton, 91 Ga. App. 83, 84 S.E.2d 835 (1954).

Where accident question not raised, injection of theory of accident reversible error. — Where neither the pleadings nor the evidence raised any question of accident, the issue before the jury being whether the injuries of the plaintiff were caused by the negligence of the defendant, or by the plaintiff's own negligence, or by the joint negligence of both, the injection by the court of the theory of accident as a cause of the two vehicles colliding was calculated to detract the attention of the jury from the real issue in the case and was reversible error. Everett v. Clegg, 213 Ga. 168, 97 S.E.2d 689 (1957).

HOA's removal of homeowners' sign presented jury question. — In a dispute involving a homeowners' association's (HOA) claim of a pedestrian easement access across a subdivision lot to a lake, the term "10' PEDESTRIAN ESMT" on the plat was void for uncertainty of description. The lot owners' counterclaims for trespass, theft by taking (for removal of a sign), interfering with the right of quiet enjoyment, attorney's fees, and punitive damages presented jury questions; however, their claim for intentional infliction of emotional distress was subject to summary judgment. The Plantation at Bay Creek Homeowners Association, Inc. v. Glasier, 349 Ga. App. 203, 825 S.E.2d 542 (2019).

Court's charge found not error. — The court did not err in the instructions to the jury as to the care and diligence required of one manufacturing bottled drinks for sale, or in charging that "if the defendant was not negligent and did exercise ordinary care, and any foreign substance got into the bottle notwithstanding ordinary care, that would be what the law designates as an unavoidable accident, for the occurrence of which the defendant would not be liable." Hathcox v. Atlanta Coca-Cola Bottling Co., 50 Ga. App. 410, 178 S.E. 404 (1935).

The testimony of the eyewitness, when considered together with that of the plaintiff, was sufficient to authorize the jury to find that there was no negligence on the part of the defendant railway which caused the plaintiff's injuries, and that the event was an "accident" as pled by the defendant; accordingly, the charge of the court on "accident" was adjusted to the pleadings and evidence, and was not error. Warren v. Georgia S. & F. Ry., 77 Ga. App. 886, 50 S.E.2d 128 (1948).

Charge on defense of accident in personal injury case in language of section is error. Cohran v. Douglasville Concrete Prods., Inc., 153 Ga. App. 8, 264 S.E.2d 507 (1980).

Charge not harmless error. — Unless there is evidence authorizing a finding that an occurrence was an "accident," a charge on that defense is error. Chadwick v. Miller, 169 Ga. App. 338, 312 S.E.2d 835 (1983).

Events underlying case against insured took place with insured's foresight, expectation, or design. — In a case in which an insured appealed a district court's entry of summary judgment in favor of an insurer in a declaratory judgment case, the insurer had no duty to defend the insured in the underlying civil suit alleging bodily injury and property damage because, while the policy did not define accident, the events underlying the complaint in the case against the insured did not take place without the insured's foresight, expectation, or design, and the homeowner's policy excluded expressly from coverage losses resulting from bodily injury which were expected or intended by the insured even if the bodily injury was of a different kind, quality, or degree than expected or intended. Meritplan Ins. Co. v. Leverette, 552 Fed. Appx. 900 (11th Cir. Jan. 13, 2014) (Unpublished).

"Act of God"

"Act of God" constitutes a defense in respect of which the burden of proof is on a defendant to establish. Eidson v. Mathews, 120 Ga. App. 711, 172 S.E.2d 144 (1969).

Term "act of God" in its legal sense applies only to events in nature so extraordinary that the history of climatic variations and other conditions in the particular locality affords no reasonable warning of them. Sampson v. General Elec. Supply Corp., 78 Ga. App. 2, 50 S.E.2d 169 (1948).

"Act of God" is an accident caused by physical causes which are irresistible or inevitable, such as lightning, storms, perils of the sea, earthquakes, inundations, sudden death, or illness. Uniroyal, Inc. v. Hood, 588 F.2d 454 (5th Cir. 1979).

Idea of human agency excluded. — "Act of God," in order to constitute a defense, must exclude idea of human agency. Sampson v. General Elec. Supply Corp., 78 Ga. App. 2, 50 S.E.2d 169 (1948).

The concept of an "act of God" excludes all idea of human agency. Uniroyal, Inc. v. Hood, 588 F.2d 454 (5th Cir. 1979).

An "act of God" means a casualty which is not only not due to human agency, but which is in no wise contributed to by human agency, and an act which may be prevented by the exercise of ordinary care is not an act of God. Central Ga. Elec. Membership Corp. v. Heath, 60 Ga. App. 649, 4 S.E.2d 700 (1939).

The trial court improperly injected consideration of human factors into the calculus when it charged that an act of God "is not due to any human agency" and added that "acts of God are events of nature, which are so extraordinary in character that human scale and foresight by the exercise of proper care and caution cannot provide against them." Strange v. Bartlett, 236 Ga. App. 686, 513 S.E.2d 246 (1999).

Genuine issues of fact remained for trial in a claim by homeowners against a

"Act of God" (Cont'd)

county for inverse condemnation arising out of an alleged continuing nuisance from the county's failure to maintain and repair storm water drainage systems, given expert and lay testimony regarding the flooding amounts. The trial court erred in concluding that the 2009 flooding was an act of God. Hayman v. Paulding County, 349 Ga. App. 77, 825 S.E.2d 482 (2019).

Casualty preventable by the exercise of ordinary care is not an act of God. Uniroyal, Inc. v. Hood, 588 F.2d 454 (5th Cir. 1979).

Whether particular casualty is "act of God" is a mixed question of law and fact. Uniroyal, Inc. v. Hood, 588 F.2d 454 (5th Cir. 1979).

Whether an extraordinary flood is an "act of God," as that expression is used in the law, is a mixed question of law and facts; the defining and limitation of the term, its several characteristics, and its possibilities as establishing and controlling an exemption from liability, are questions of law for the court, but the existence or nonexistence of the facts on which it is predicated is a question for the jury. Goble v. Louisville & N.R.R., 187 Ga. 243, 200 S.E. 259 (1938).

For circumstances justifying submission of charge on "act of God" defense to jury in suit for damages caused by rain-induced flooding of warehouse, see Uniroyal, Inc. v. Hood, 588 F.2d 454 (5th Cir. 1979).

Evidence not sufficient to authorize jury to find "act of God." — Where witnesses for both the plaintiff and defendants testified that the sewer which the lessor had contracted to keep in repair and which overflowed, causing damage to plaintiff's property, was partially stopped up, that the water was not passing through it as it normally did, and that large quantities of debris were cleaned out of it after this rain, and that previously there had been other rains there about as heavy as the one on the afternoon in question, the evidence as to the rain was not sufficient to authorize a jury to find that the rain was an "act of God," in the legal sense of this term. Sampson v. General Elec. Supply Corp., 78 Ga. App. 2, 50 S.E.2d 169 (1948).

Nonannual floods. — Some courts have attempted to fix the meaning of "extraordinary" in relation to the frequency of occurrence, holding that such floods as are not of annual occurrence are extraordinary and an "act of God"; but the true rule would seem to be that the mere fact that a flood does not occur annually will not make it an extraordinary one, if from the climatic conditions and the character of the country it is likely to occur, and has been known to occur, with sufficient frequency to warn nearby residents. Goble v. Louisville & N.R.R., 187 Ga. 243, 200 S.E. 259 (1938).

One obstructing natural watercourse not liable where flood sole cause of injury. — While it is the general rule that where rains are so unprecedented, and the flood caused thereby so extraordinary, that they are in legal contemplation an "act of God," one obstructing a natural watercourse will not be held liable only where the "act of God" is not only the proximate cause, but the sole cause, of the injury. Goble v. Louisville & N.R.R., 187 Ga. 243, 200 S.E. 259 (1938).

If person's negligence cooperating cause, obstructor held responsible. — Where an unprecedented flood is the cause of the injury, but the prior, coincident, or subsequent negligence of a person obstructing a natural watercourse so mingles with it as to be an efficient and cooperating cause, the obstructor will be held responsible, because one's act is causa sine qua non. Goble v. Louisville & N.R.R., 187 Ga. 243, 200 S.E. 259 (1938).

Utility's permitting lightning to travel into room. — While the striking of the main line of an electric utility by lightning was an "act of God," the utility's permitting it to travel across lateral wire into the plaintiff's room, instead of arranging for it to be conducted into the ground, was not an act free from human agency. Central Ga. Elec. Membership Corp. v. Heath, 60 Ga. App. 649, 4 S.E.2d 700 (1939).

Ordinary freshet is not the "act of God," in a legal sense which protects a man against the responsibility for the nonperformance of a contract. Sampson v. General Elec. Supply Corp., 78 Ga. App. 2, 50 S.E.2d 169 (1948).

Sudden loss of consciousness by itself may come within the definition of "act of God"; yet an "act of God" means a casualty which is not only not due to human agency, but is one which is in no wise contributed to by human agency, and an act which may be prevented by the exercise of ordinary care is not an "act of God." Jackson v. Co-op Cab Co., 102 Ga. App. 688, 117 S.E.2d 627 (1960).

To establish an "act of God" defense based on illness producing a loss of consciousness, the driver must show that the loss of consciousness produced the accident without any contributing negligence on the part of the driver. Lewis v. Smith, 238 Ga. App. 6, 517 S.E.2d 538 (1999).

Loss of consciousness by a driver would not be a complete defense if by the exercise of ordinary care it was foreseeable to the driver that the driver might lose consciousness while driving; even if loss of consciousness was not foreseeable, it would still not be a complete defense if the evidence showed the loss of consciousness occurred, not suddenly, but in a manner that would have allowed a reasonable driver to take some action to avoid the ensuing accident. Lewis v. Smith, 238 Ga. App. 6, 517 S.E.2d 538 (1999).

When the plaintiff failed to produce any specific facts rebutting the defendant's affirmative defense of sudden loss of consciousness and the plaintiff failed to show there was a genuine issue for trial, the trial court properly granted summary judgment in favor of the defendant. Lewis v. Smith, 238 Ga. App. 6, 517 S.E.2d 538 (1999).

When the uncontradicted evidence in a suit involving two drivers showed that just before running a red light, the second driver had suffered a sudden and unforeseeable loss of consciousness, the co-executor for the second driver had established a prima facie case of an "act of God" defense under O.C.G.A. § 1-3-3(3); as the first driver had not rebutted this defense, it was proper to enter summary judgment for the co-executor. Halligan v. Broun, 285 Ga. App. 226, 645 S.E.2d 581 (2007).

Truck driver's estate sufficiently established the affirmative defense of an "act of God" for purposes of a claim of negligence arising from a vehicle collision caused by the truck driver having a stroke and veering into a car in another lane of traffic; there was uncontradicted evidence that the truck driver had an unforeseeable loss of consciousness just prior to losing control of the truck. Eatmon v. Weeks, 323 Ga. App. 578, 746 S.E.2d 886 (2013).

Smoky fog maintainable as "act of God." — Evidence that fog on the morning of the accident was naturally dense enough to alone reduce visibility to dangerous levels, sufficed to allow a jury charge of "act of God", despite the combined presence of artificial smoke in the air. Mann v. Anderson, 206 Ga. App. 760, 426 S.E.2d 583 (1992).

"Lunatic," "Insane," or "Non Compos Mentis"

Condition of mind of persons "non compos mentis" of three degrees. — The Code defines "insane" persons, or persons "non compos mentis," or persons "mentally incompetent," as meaning persons with unsoundness of mind in many degrees, such condition of mind being of three degrees: (1) one who is so unsound as to be sent to an asylum; (2) another so unsound as to have a guardian of one's property and of one's person; and (3) another so unsound as to have a guardian only of one's property, to see that it is not wasted; that is, a trustee. Royal Indem. Co. v. Agnew, 66 Ga. App. 377, 18 S.E.2d 57 (1941).

When insured "non compos mentis," unable to make valid contract. — When a petition alleges that the insured, at the time the insured agreed with the company, was non compos mentis, it alleges that the insured was at the time unable to make any valid contract. Cason v. Owens, 100 Ga. 142, 28 S.E. 75 (1897).

"May"

True rule for the construction of the word "may" in a statute is, that when such statute concerns the public interest, or affects the rights of third persons, then the word "may" shall be construed to mean "must" or "shall." "May" is held to mean shall in two cases: (1) where the thing to be done is for the sake of

"May" (Cont'd)

justice; or (2) is for the public benefit. Jennings v. Suggs, 180 Ga. 141, 178 S.E. 282 (1935).

Where a statute in permissive terms provides for the performance of some act which justice or the public good requires, its terms will be construed as having an imperative significance, and the performance of the act permissively provided for is made mandatory. Prince v. Lee Roofing Co., 161 Ga. App. 181, 288 S.E.2d 135 (1982).

Where a statute in permissive terms authorizes the privation of a valuable right and the imposition of a penalty, the permissive terms are not mandatory, and the conferee of the power has a discretion in exercising it. Prince v. Lee Roofing Co., 161 Ga. App. 181, 288 S.E.2d 135 (1982).

Trial judge is not vested with discretion in matter of taxing costs against convicted defendant. There is no provision of law for the payment of the fees of the officers of the court where the judge in the judge's discretion fails to tax the costs against the convicted defendant, and it cannot be assumed that it was ever intended that the compensation of these officers should rest in the discretion of the judge. Pound v. Faulkner, 193 Ga. 413, 18 S.E.2d 749 (1942).

"Month"

Calendar month. — "Month" means a calendar month. Jobson v. Masters, 32 Ga. App. 60, 122 S.E. 724, cert. denied, 32 Ga. App. 807 (1924).

Three months did not mean 90 days. — The 1991 version of O.C.G.A. § 44-14-361.1, requiring a contractor to file a contractor's claim of lien three months from the completion of the work, governed and was satisfied by the contractor's filing the claim of lien on September 12 following the completion of work on June 13. The court rejected the owner's argument that "three months" meant 90 days. Fed. Trust Bank v. C. W. Matthews Contr. Co., 312 Ga. App. 200, 718 S.E.2d 63 (2011).

Current year. — When word "month" is referred to, it will be understood to be of current year, unless from the connection it appears that another is intended. Tipton v. State, 119 Ga. 304, 46 S.E. 436 (1904).

"Penitentiary"

Prior to November 1, 1982, a county correctional institute was not a "penitentiary" because it was not "exclusively" for the confinement of felony prisoners, as required by former Code 1933, § 102-103 (see now O.C.G.A. § 1-3-3). As a result, former Code 1933, § 26-9902 (see now O.C.G.A. § 17-8-50), which dealt with the trial of prisoners escaping from the "penitentiary," was inapplicable to a prisoner escaping from a county correctional institute. Accordingly, such a prisoner had no right, if one in fact existed under the inapplicable statute, to be returned to and to remain in the county correctional institute after the prisoner's apprehension. Mullins v. State, 167 Ga. App. 670, 307 S.E.2d 61 (1983).

"Person"

Ordinary signification of the word "person" is that it includes both sexes. Brown v. Hemphill, 74 Ga. 795 (1885).

"Person," when used in a restricted sense, means only an artificial person or corporation. Comer v. State, 103 Ga. 69, 29 S.E. 501 (1897).

It is well settled that corporation is included in word "person" in the criminal statutes. It is true that the doctrine of holding corporations responsible for the violation of penal laws is one developed by gradual evolution, but it is none the less the law, and it is of healthful necessity and utility. Southern Express Co. v. State, 1 Ga. App. 700, 58 S.E. 67 (1907) see also Collins Park & B.R.R. v. Short Elec. Ry., 98 Ga. 62, 25 S.E. 929 (1895).

Standing to attack a statute on constitutional grounds. — A private corporation may attack a state statute on the grounds that it violates due process and equal protection. Caldwell v. Hospital Auth., 248 Ga. 887, 287 S.E.2d 15 (1982).

A hospital authority has standing by statute to attack the state law on the grounds that it violates the due process

and equal protection clauses of the Georgia Constitution. Caldwell v. Hospital Auth., 248 Ga. 887, 287 S.E.2d 15 (1982).

Non-profit corporation without standing in quo warranto proceeding. — Non-profit association with the purpose of focusing on public interest matters of self-defense and gun laws of the State of Georgia was not a "person" which could claim to have an interest in the offices held by the Georgia Code Revision Commission members for purposes of pursuing a writ of quo warranto under O.C.G.A. § 9-6-60. No association standing was shown because the interests the association sought to protect were not shown to be germane to its purpose. Georgiacarry.org, Inc. v. Allen, 299 Ga. 716, 791 S.E.2d 800 (2016).

Railroad companies are included in word, "person." Western & Atl. R.R. v. Turner, 72 Ga. 292, 53 Am. R. 842 (1884). See also South-Western R.R. v. Paulk, 24 Ga. 356 (1858).

Bank. — Municipality may tax a bank as a "person". Mayor of Macon v. Macon Sav. Bank, 60 Ga. 133 (1878).

Right to obtain a supersedeas extends to insolvent corporations. Collins Park & B.R.R. v. Short Elec. Ry., 98 Ga. 62, 25 S.E. 929 (1895).

Corporation not "person" if not within provision's purpose and intent, or attempt to exclude appears. — A corporation is not impliedly within a statutory provision applicable to persons if it is not within the purpose and intent of the provision, or if an attempt to exclude it otherwise appears. Georgia R.R. Bank & Trust Co. v. Liberty Nat'l Bank & Trust Co., 180 Ga. 4, 177 S.E. 803 (1934).

Corporation was person for RICO purposes. — On remand from the U.S. Supreme Court, a class action suit filed by legal employees of a Georgia rug manufacturer, alleging state RICO violations based on the widespread hiring of illegal aliens in order to depress the hourly wages of its workers, survived a motion to dismiss for failure to state a claim; the federal appellate court deferred to the Supreme Court of Georgia's holding that O.C.G.A. § 16-14-4, when read in conjunction with O.C.G.A. §§ 1-3-3(14) and 16-1-3(12), provided that "any person" could be sued under the Georgia RICO statute, including corporations such as the rug manufacturer. Williams v. Mohawk Indus., 465 F.3d 1277 (11th Cir. 2006), cert. denied, mot. denied, 549 U.S. 1260, 127 S. Ct. 1381, 167 L. Ed. 2d 174 (2007).

Averment in an indictment that representations were made to a corporation is sufficient, for this was a representation to a person, although an artificial one. Turnipseed v. State, 53 Ga. App. 194, 185 S.E. 403 (1936).

Bank or trust company's authority to appear as next friend involves consideration of charter power. — While the term, "person" will ordinarily include a corporation, the question of the authority of a bank or trust company to appear as a next friend involves a consideration of the charter power, as well as the general law. Georgia R.R. Bank & Trust Co. v. Liberty Nat'l Bank & Trust Co., 180 Ga. 4, 177 S.E. 803 (1934).

"Preceding"

Different signification is given "preceding," "aforesaid," and "following," if required by context and facts of the case. Simpson v. Robert, 35 Ga. 180 (1866).

"Property"

"Estate" and "character of estate" have reference to the interest in the property, which shows that, while realty and personalty are different kinds of "property," they are not different kinds of estates. DeVaughn v. McLeroy, 82 Ga. 687, 10 S.E. 211 (1889).

Military salary not "present" in every state for child support purposes. — The salary of an armed forces member is not "property" which is constructively "present" in every state for purposes of 42 U.S.C. § 659(a). Williamson v. Williamson, 247 Ga. 260, 275 S.E.2d 42 (1981).

"Property" in apportionment statute included real, personal, tangible, and intangible property. — O.C.G.A. § 51-12-33, Georgia's apportionment statute, applied to tort claims for damage to tangible and intangible property and, therefore, applied to purely pecuniary

"Property" (Cont'd)

losses. FDIC v. Loudermilk, 305 Ga. 558, 826 S.E.2d 116 (2019).

"Road"

Inclusion of bridges. — "Road" includes all the bridges thereon, unless the context requires a different construction. Wright v. Floyd County, 1 Ga. App. 582, 58 S.E. 72 (1907).

"Seal"

Necessary recital and attachment. — To render a private writing an instrument under seal, it is only necessary that it recite in the body that a "seal" is used or contemplated, or that a scrawl or other mark intended as a "seal" be annexed or affixed. Stansell v. Corley, 81 Ga. 453, 8 S.E. 868 (1889).

To constitute a sealed instrument, it must contain a recital in the body of the instrument to the effect that it is given under seal, and the signature of the party to the instrument must have attached thereto a "seal" or scroll. In other words, the rule is that there must be both a recital in the body of the instrument of an intention to use a seal and the affixing of the "seal" or scroll after the signature. Chastain v. L. Moss Music Co., 83 Ga. App. 570, 64 S.E.2d 205 (1951).

Additional recital above signature of promissory note's accommodation endorser unnecessary. — Where the language in the face of a promissory note recites that it is a sealed instrument, and the signature of an accommodation endorser on the back of the note is accompanied by a "seal" or its equivalent, it is unnecessary for an additional recital to appear on the back of the note above the signature of the endorser that the endorser's obligation is one under seal in order to render it such, and this is for the reason that the endorser's endorsement under seal accepts and binds the endorser, as a surety, upon the contract of the maker on the face of the paper, which includes the recitals above the signature of the maker. Hamby v. Crisp, 48 Ga. App. 418, 172 S.E. 842 (1934).

"Witness our hand and seal" does not alone make a note a sealed instrument, without the addition of a seal or scroll. Willhelms v. Partoine, 72 Ga. 898 (1884).

Bond signed by executing party with written scroll. — Where a bond was signed by the party executing it, and opposite the party's name was an ink scroll with the word "seal" written within it, it was held that it was to be considered a sealed instrument. Williams v. Greer, 12 Ga. 459 (1853).

Scroll may be adopted by a corporation, either as a common "seal" or as a "seal" for a special purpose. Johnston v. Crawley, 25 Ga. 316, 71 Am. Dec. 173 (1858); American Inv. Co. v. Cable Co., 4 Ga. App. 106, 60 S.E. 1037 (1908).

"Sickness"

Definition of "sickness" is codification from the decision in Martin v. Waycross Coca-Cola Bottling Co., 18 Ga. App. 226, 89 S.E. 495 (1916), which was an action for damages based on the alleged negligence of the defendant causing the sickness of the plaintiff; that decision quotes the definition of "sickness" in Black's Law Dictionary as including "any morbid condition of the body … which for the time being hinders and prevents the organs from normally discharging their several functions." American Life Ins. Co. v. Stone, 78 Ga. App. 98, 50 S.E.2d 231 (1948).

"Illness" and "sickness or disease" are synonymous terms. American Life Ins. Co. v. Stone, 78 Ga. App. 98, 50 S.E.2d 231 (1948).

Popular meanings of "sickness" and "disease." — The words "sickness" and "disease" are technically synonymous, but when given the popular meaning, as required in construing a contract of insurance, "sickness" is a condition interfering with one's usual activities, whereas "disease" may exist without such result. Georgia Int'l Life Ins. Co. v. Harden, 158 Ga. App. 450, 280 S.E.2d 863 (1981).

"Sickness" requires incapacity. — One is not ordinarily considered sick who performs one's usual occupation, though some organ of the body may be affected, but is regarded as sick when such diseased condition has advanced far enough to incapacitate the person. Georgia Int'l

Life Ins. Co. v. Harden, 158 Ga. App. 450, 280 S.E.2d 863 (1981).

Construction of insurance policy. — In determining what losses are covered by policies insuring against losses on account of "disease" or "sickness," the general rule that ambiguous or uncertain provisions will be construed most favorably to the insured is applied. Georgia Int'l Life Ins. Co. v. Harden, 158 Ga. App. 450, 280 S.E.2d 863 (1981).

Hernia can result from "sickness" or "disease." — While a hernia is frequently caused by an accident or an injury, it does not follow that a hernia is never the result of a "sickness" or "disease." American Life Ins. Co. v. Stone, 78 Ga. App. 98, 50 S.E.2d 231 (1948).

It was jury question whether or not hernia not disabling to any extent was "sickness" within the meaning of an insurance policy. American Life Ins. Co. v. Stone, 78 Ga. App. 98, 50 S.E.2d 231 (1948).

"Signature"

"Signature" includes mark, even though the mark is not between the given name and surname. Horton v. Murden, 117 Ga. 72, 43 S.E. 786 (1903).

Entry of levy by another good where illiterate officer signs with mark. — Where an officer making a levy cannot write, an entry thereof written out by another, in the officer's presence and by the officer's procurement, and signed by the officer with the officer's mark is good. Cox v. Montford, 66 Ga. 62 (1880).

Witness who signs by mark, if capable of testifying, is just as competent a witness as one likewise capable of testifying who writes one's own name. Gillis v. Gillis, 96 Ga. 1, 23 S.E. 107, 51 Am. St. R. 121, 30 L.R.A. 143 (1895).

Evidence that attorney physically enabled testatrix to make mark sufficient to find that will "signed." — Where there was evidence that the attorney who prepared the will enabled the testatrix, who because of the testatrix's physical condition could not write, to make the testatrix's mark by placing the testatrix's hand upon the pen as the mark was made, this was sufficient to authorize the jury to find that the testatrix "signed" the will. Crutchfield v. McCallie, 188 Ga. 833, 5 S.E.2d 33 (1939).

"Then"

When used as adverb of time, Supreme Court has defined "then" as meaning "immediately afterwards." Evans v. Edenfield, 170 Ga. 805, 154 S.E. 257 (1930).

"Trespass"

Railroad blocking highway for unreasonable time. — Where a railroad company blocks with its cars a crossing on a public highway for a needless or unreasonable length of time, a pedestrian, after waiting a reasonable time for the cars to be removed, may turn aside to avoid the obstruction and pass over the property of the company without being a "trespasser" in so doing. Yarbrough v. Georgia R.R. & Banking Co., 48 Ga. App. 314, 172 S.E. 808 (1934).

Evidence insufficient to support "trespass" claim. — In an action against a utility and power company for damages on theories of "trespass" and nuisance arising from electromagnetic radiation, a grant of summary judgment on the trespass claim and directed verdict on the nuisance claim were proper for policy reasons since the scientific evidence was inconclusive regarding the invasive quality of magnetic fields from power lines. Jordan v. Georgia Power Co., 219 Ga. App. 690, 466 S.E.2d 601 (1995).

Summary judgment was properly entered for a realtor as to a landowner's trespass claim, as the landowner never determined that the silt fence was actually on the landowner's property, and the realtor testified that the fence was located on a public right-of-way. Sorrow v. Hadaway, 269 Ga. App. 446, 604 S.E.2d 197 (2004).

"Year"

Section has no application where the word "year" is used in a lease contract. Brooke v. Atlanta Woolen Mills, 18 Ga. App. 505, 89 S.E. 598 (1916).

Word "year," means a calendar year, unless a different meaning is apparent from the context. Dowling v. Lester,

"Year" (Cont'd)

74 Ga. App. 290, 39 S.E.2d 576 (1946).

Different meaning of "year" may appear from the context of an Act. Lane v. Tarver, 153 Ga. 570, 113 S.E. 452 (1922); Southerland v. Bradshaw, 255 Ga. 455, 339 S.E.2d 579 (1986).

Term "current year" refers to the calendar year, and not an arbitrary business year fixed by local custom or otherwise. King v. Johnson, 96 Ga. 497, 23 S.E. 500 (1895).

OPINIONS OF THE ATTORNEY GENERAL

Words "prison" and "penitentiary" are interchangeable and the variation, therefore, is legally insignificant. 1971 Op. Att'y Gen. No. 71-191.

Unauthorized anchoring of boats in a state park constitutes a "trespass" punishable as a misdemeanor. 1962 Op. Att'y Gen. p. 402.

RESEARCH REFERENCES

Am. Jur. 2d. — 1 Am. Jur. 2d, Act of God, § 1 et seq. 12 Am. Jur. 2d, Bonds, §§ 4 et seq., 15. 18 Am. Jur. 2d, Corporations, § 64 et seq., 65. 25 Am. Jur. 2d, Domicil, §§ 1, 5. 42 Am. Jur. 2d, Infants, § 1 et seq. 53 Am Jur. 2d, Mentally Impaired Persons, § 1 et seq. 57A Am. Jur. 2d, Negligence, §§ 15, 32 et seq. 58 Am. Jur. 2d, Oath and Affirmation, § 1 et seq. 59 Am. Jur. 2d, Parent and Child, § 4. 63C Am. Jur. 2d, Property, § 1 et seq. 68 Am. Jur. 2d, Seals, § 1 et seq. 75 Am. Jur. 2d, Trespass, § 1 et seq.

C.J.S. — § 1 et seq. 1 C.J.S., Abode. § 1 et seq. 1 C.J.S., Accident. § 1 et seq. 1A C.J.S., Act of God. § 1 et seq. 11 C.J.S., Bonds, § 10 et seq. 18 C.J.S., Corporations, §§ 2, 3. 28 C.J.S., Domicile, § 3. § 1 et seq. 44 C.J.S., Insane Persons, §§ 1, 2. § 1 et seq. 57 C.J.S., May. 65 C.J.S., Negligence, § 1. 67 C.J.S., Oaths and Affirmations, §§ 1, 2. 72 C.J.S., Prisons, § 2. 73 C.J.S., Property, § 1 et seq. 78A C.J.S., Seals, § 2. § 1 et seq. 80 C.J.S., Signatures, § 5. 82 C.J.S., Statutes, §§ 395 et seq., 402 et seq., 436 et seq. 86 C.J.S., Time, §§ 2, 5, 6, 13, 15. 87 C.J.S., Trespass, § 1 et seq.

ALR. — Domicile while in itinere from old to new home, 5 A.L.R. 296; 16 A.L.R. 1298.

Signature with lead pencil, 8 A.L.R. 1339.

Is "until" a word of inclusion or exclusion, 16 A.L.R. 1094.

Right of one injured while stopping or loitering in street, 24 A.L.R. 766.

Effect of absence of seal from execution, 28 A.L.R. 936.

"Property" as including business or profession, 34 A.L.R. 716.

Stamped, printed, or typewritten signature as compliance with requirement that process or document be "under his hand," 37 A.L.R. 87.

Title of statutes as an element bearing upon their construction, 37 A.L.R. 927.

Failure to stop, look, and listen at railroad crossing as negligence per se, 41 A.L.R. 405.

Insurance: death or injury resulting from insured's voluntary act as caused by accident or accidental means, 42 A.L.R. 243; 45 A.L.R. 1528; 71 A.L.R. 1437; 111 A.L.R. 628.

Trespass by acts above surface, 42 A.L.R. 945.

Formalities of administering or making oath, 51 A.L.R. 840.

Scope and import of term "owner" in statute relating to real property, 95 A.L.R. 1085.

Constitutionality, construction, and effect of statutes in relation to conduct of driver of automobile after happening of accident, 101 A.L.R. 911.

Liability for damage or injury by skidding motor vehicle, 113 A.L.R. 1002.

Inclusion or exclusion of the day of birth in computing one's age, 5 A.L.R.2d 1143.

Relationship between "residence" and "domicile" under venue statutes, 12 A.L.R.2d 757.

Construction and effect in civil actions of statute, ordinance, or regulation requir-

ing vehicles to be stopped or parked parallel with, and within certain distance of, curb, 17 A.L.R.2d 582.

Injury to or death of insured while assaulting another as due to accident or accidental means, 26 A.L.R.2d 399.

Computing interest on basis of 360 days in year, 30 days in month, or the like, as usury, 35 A.L.R.2d 842.

Rupture of blood vessel following exertion or exercise as within terms of accident provision of insurance policy, 35 A.L.R.2d 1105.

Repeated absorption of poisonous substance as "accident" within coverage clause of comprehensive general liability policy, 49 A.L.R.2d 1263.

Fingerprints as signature, 72 A.L.R.2d 1267.

What 12-month period constitutes "year" or "calendar year" as used in public enactment, contract, or other written instrument, 5 A.L.R.3d 584.

Liability insurance: "accident" or "accidental" as including loss resulting from ordinary negligence of insured or his agent, 7 A.L.R.3d 1262.

Discrimination on basis of illegitimacy as denial of constitutional rights, 38 A.L.R.3d 613.

Accident insurance: death or injury intentionally inflicted by another as due to accident or accidental means, 49 A.L.R.3d 673.

Validity and application of provisions governing determination of residency for purpose of fixing fee differential for out-of-state students in public college, 56 A.L.R.3d 641.

Insurance: term "children" as used in beneficiary clause of life insurance policy as including illegitimate child, 62 A.L.R.3d 1329.

Workers' compensation: coverage of employee's injury or death from exposure to the elements—modern cases, 20 A.L.R.5th 346.

Instructions on "unavoidable accident," "mere accident," or the like, in motor vehicle case — modern cases, 21 A.L.R.5th 82.

1-3-4. Effective date of legislative Acts.

(a) Unless a different effective date is specified in an Act:

(1) Any Act which is approved by the Governor or which becomes law without his approval on or after the first day of January and prior to the first day of July of a calendar year shall become effective on the first day of July; and

(2) Any Act which is approved by the Governor or which becomes law without his approval on or after the first day of July and prior to the first day of January of the immediately succeeding calendar year shall become effective on the first day of January.

(b) Subsection (a) of this Code section shall not apply to local legislation or to resolutions intended to have the effect of law. Such local legislation and resolutions intended to have the effect of law become effective immediately upon approval by the Governor or upon their becoming law without his approval, unless a different effective date is specified in the Act or resolution.

History. — Ga. L. 1968, p. 1364, § 1; Ga. L. 1969, p. 7, § 1; Ga. L. 1985, p. 984, § 1; Ga. L. 2002, p. 985, § 2.

Editor's notes. — Ga. L. 1985, p. 984, § 3, not codified by the General Assembly, provided that that Act would apply to general Acts affecting the compensation of the county officers listed in Ga. Const. 1983, Art. IX, Sec. I, Para. III which are enacted after January 1, 1986.

JUDICIAL DECISIONS

Effective date of amendment to kidnapping statute. — The amendment to the kidnapping statute, O.C.G.A. § 16-5-40, providing that slight movement is sufficient to prove kidnapping as long as the movement was not incidental to another offense, and defining what actions would not be incidental to another offense, applies to crimes committed on or after the revised statute's effective date, July 1, 2009, pursuant to O.C.G.A. § 1-3-4. Decoteau v. State, 302 Ga. App. 451, 691 S.E.2d 328 (2010).

Cited in Pruitt v. State, 123 Ga. App. 659, 182 S.E.2d 142 (1971); Lott v. State, 123 Ga. App. 781, 182 S.E.2d 546 (1971); Gunn v. Balkcom, 228 Ga. 802, 188 S.E.2d 500 (1972); J.C. Penney Co. v. Malouf Co., 125 Ga. App. 832, 189 S.E.2d 453 (1972); Coe & Payne Co. v. Wood-Mosaic Corp., 125 Ga. App. 845, 189 S.E.2d 459 (1972); J & L Oil Co. v. City of Carrollton, 230 Ga. 817, 199 S.E.2d 190 (1973); Jones v. Caldwell, 230 Ga. 775, 199 S.E.2d 248 (1973); Geiger v. State, 129 Ga. App. 488, 199 S.E.2d 861 (1973); Montaquila v. Cranford, 129 Ga. App. 787, 201 S.E.2d 335 (1973); Brinks v. State, 232 Ga. 13, 205 S.E.2d 247 (1974); DeKalb County v. Chapel Hill, Inc., 232 Ga. 238, 205 S.E.2d 864 (1974); Kenner v. MacDougall, 232 Ga. 273, 206 S.E.2d 519 (1974); White v. Liberty Mut. Ins. Co., 131 Ga. App. 630, 206 S.E.2d 576 (1974); Smith v. State, 132 Ga. App. 199, 207 S.E.2d 681 (1974); Johnson v. State, 134 Ga. App. 67, 213 S.E.2d 170 (1975); Brown v. Ricketts, 233 Ga. 809, 213 S.E.2d 672 (1975); Screamer Mt. Dev., Inc. v. Garner, 234 Ga. 590, 216 S.E.2d 801 (1975); Town of Lyerly v. Short, 234 Ga. 877, 218 S.E.2d 588 (1975); Lanthrip v. State, 235 Ga. 10, 218 S.E.2d 771 (1975); Whitehead v. Hasty, 235 Ga. App. 331, 219 S.E.2d 443 (1975); Fowler v. State, 235 Ga. 535, 221 S.E.2d 9 (1975); Carrindine v. Ricketts, 236 Ga. 283, 223 S.E.2d 627 (1976); Morris v. Morris, 244 Ga. 120, 259 S.E.2d 65 (1979); Searcy v. State, 162 Ga. App. 695, 291 S.E.2d 557 (1982); Shook & Fletcher Insulation Co. v. Central Rigging & Contracting Corp., 684 F.2d 1383 (11th Cir. 1982); American Booksellers Ass'n v. Webb, 590 F. Supp. 677 (N.D. Ga. 1984); Robinson v. State, 180 Ga. App. 43, 348 S.E.2d 662 (1986); Duke v. State, 298 Ga. App. 719, 681 S.E.2d 174 (2009); Smith v. State, 302 Ga. App. 222, 690 S.E.2d 867 (2010); Smith v. State, 312 Ga. App. 174, 718 S.E.2d 43 (2011); City of Brookhaven v. City of Chamblee, 329 Ga. App. 346, 765 S.E.2d 33 (2014); City of Atlanta v. Mays, 301 Ga. 367, 801 S.E.2d 1 (2017); Abrams v. Laughlin, 304 Ga. 34, 816 S.E.2d 26 (2018).

OPINIONS OF THE ATTORNEY GENERAL

Retroactive effective date clause in Act is void. — A retroactive effective date clause in an Act is meaningless and void, in which event this Code section supplies the effective date, the same as if no effective date had been specified in the Act. 1976 Op. Att'y Gen. No. 76-76.

RESEARCH REFERENCES

Am. Jur. 2d. — 73 Am. Jur. 2d, Statutes, § 245 et seq.

C.J.S. — 82 C.J.S., Statutes, § 548 et seq.

ALR. — At what stage does a statute or ordinance pass beyond the power of legislative body to reconsider or recall, 96 A.L.R. 1309.

Date or event contemplated by term "passage," "enactment," "effective date," etc., employed by statute in fixing time of facts or conditions within its operation, 132 A.L.R. 1048.

1-3-4.1. Effective date for general Acts requiring increases in compensation of certain county officials.

Notwithstanding the provisions of Code Section 1-3-4, no general Act which provides for an increase in compensation to one or more of the county officials listed in Article IX, Section I, Paragraph III of the Constitution or Chapter 10 of Title 15 shall be effective until the first day of January following passage of the Act.

History. — Code 1981, § 1-3-4.1, enacted by Ga. L. 1985, p. 984, § 2; Ga. L. 1990, p. 1397, § 1; Ga. L. 1996, p. 1197, § 1; Ga. L. 1997, p. 11, § 1; Ga. L. 2002, p. 985, § 2; Ga. L. 2003, p. 140, § 1.

Cross references. — Specific provisions regarding compensation of county officers listed in Ga. Const. 1983, Art. IX, Sec. I, Para. III, § 15-6-88 et seq. (clerk of the superior court), § 15-9-63 et seq. (judge of the probate court), § 15-16-20 et seq. (sheriff), §§ 48-5-180, 48-5-183 (tax receiver, tax collector, and tax commissioner).

Code Commission notes. — Pursuant to Code Section 28-9-5, in 2002, "Code Section" was substituted for "O.C.G.A.R.".

Editor's notes. — Ga. L. 1985, p. 984, § 3, not codified by the General Assembly, provided that that Act would apply to general Acts affecting the compensation of the county officers listed in Ga. Const. 1983, Art. IX, Sec. I, Para. III which are enacted after January 1, 1986.

1-3-5. Operation of laws generally; retrospective operation.

Laws prescribe only for the future; they cannot impair the obligation of contracts nor, ordinarily, have a retrospective operation. Laws looking only to the remedy or mode of trial may apply to contracts, rights, and offenses entered into, accrued, or committed prior to their passage; but in every case a reasonable time subsequent to the passage of the law should be allowed for the citizen to enforce his contract or to protect his right.

History. — Orig. Code 1863, § 7; Code 1868, § 6; Code 1873, § 6; Code 1882, § 6; Civil Code 1895, § 6; Penal Code 1895, § 3; Civil Code 1910, § 6; Penal Code 1910, § 3; Code 1933, § 102-104.

Cross references. — Restrictions upon powers of states, U.S. Const., Art. I, Sec. 10, Cl. 1. Bill of attainer; ex post facto laws; and retroactive laws, Ga. Const. 1983, Art. I, Sec. I, Para. X.

Law reviews. — For article, "Synopses of 1968 Amendments Appellate Procedure Act and Georgia Civil Practice Act," see 4 Ga. St. B. J. 503 (1968).

For comment on Griffin v. Air S., Inc., 324 F. Supp. 1284 (N.D. Ga. 1971), see 8 Ga. St. B. J. 414 (1972). For comment on statutes of limitations in medical malpractice actions in Georgia, see 33 Mercer L. Rev. 377 (1981).

JUDICIAL DECISIONS

Analysis

General Consideration
Impairing Obligation of Contracts
Retrospective Operation
Remedial Laws

General Consideration

This is the general rule of statutory construction. Focht v. American Cas. Co., 103 Ga. App. 138, 118 S.E.2d 737 (1961).

Legislative intent governs whether law prospective in application. — Where it is possible to determine the intent of the General Assembly, unless there are constitutional obstacles, the intent of the General Assembly will govern as to whether a law is prospective only in its application. Focht v. American Cas. Co., 103 Ga. App. 138, 118 S.E.2d 737 (1961).

Legislation affecting substantive rights operates prospectively only. — Although legislation which involves mere procedural or evidentiary changes may operate retrospectively, legislation which affects substantive rights may operate prospectively only. Enger v. Erwin, 245 Ga. 753, 267 S.E.2d 25 (1980).

Appellate courts must apply law as it exists at time of the appellate court judgment, even though it may change the judgment of the trial court which was correct at the time it was rendered. Clary v. State, 151 Ga. App. 301, 259 S.E.2d 697 (1979).

Cited in Hutchinson v. Brown, 47 Ga. App. 82, 169 S.E. 848 (1933); Hancock County v. Hancock Nat'l Bank, 67 F.2d 421 (5th Cir. 1933); Shaw v. National Life Ins. Co., 180 Ga. 755, 180 S.E. 721 (1935); Evans v. Evans, 190 Ga. 364, 9 S.E.2d 254 (1940); Renfroe v. Butts, 192 Ga. 720, 16 S.E.2d 551 (1941); Lowe v. City of Atlanta, 194 Ga. 317, 21 S.E.2d 171 (1942); Clarke v. Carlan, 196 Ga. 130, 26 S.E.2d 362 (1943); Jacobs v. State, 200 Ga. 440, 37 S.E.2d 187 (1946); Leathers v. Turner, 75 Ga. App. 62, 41 S.E.2d 921 (1947); Williams Bros. Lumber Co. v. Anderson, 210 Ga. 198, 78 S.E.2d 612 (1953); Lott v. Lott, 212 Ga. 672, 94 S.E.2d 869 (1956); Williams v. State, 213 Ga. 221, 98 S.E.2d 373 (1957); Sharpe v. Lowe, 214 Ga. 513, 106 S.E.2d 28 (1958); Thompson v. Metropolitan Life Ins. Co., 115 Ga. App. 724, 155 S.E.2d 728 (1967); F.H. Ross & Co. v. White, 224 Ga. 324, 161 S.E.2d 857 (1968); Hare v. United Airlines Corp., 295 F. Supp. 860 (N.D. Ga. 1968); Cohen v. Garland, 119 Ga. App. 333, 167 S.E.2d 599 (1969); Hawes v. National Serv. Indus., Inc., 121 Ga. App. 775, 175 S.E.2d 34 (1970); Elliott v. Leavitt, 122 Ga. App. 622, 178 S.E.2d 268 (1970); Southern Land, Timber & Pulp Corp. v. United States, 322 F. Supp. 788 (N.D. Ga. 1970); Todd v. State, 228 Ga. 746, 187 S.E.2d 831 (1972); Turner v. Bank of Zebulon, 128 Ga. App. 404, 196 S.E.2d 668 (1973); Montaquila v. Cranford, 129 Ga. App. 787, 201 S.E.2d 335 (1973); Nelson v. Bloodworth, 238 Ga. 264, 232 S.E.2d 547 (1977); Wansor v. George Hantscho Co., 243 Ga. 91, 252 S.E.2d 623 (1979); Insurance Co. of N. Am. v. Henson, 150 Ga. App. 788, 258 S.E.2d 706 (1979); Holley v. State, 157 Ga. App. 863, 278 S.E.2d 738 (1981); Smith v. Seaboard Coast Line R.R., 639 F.2d 1235 (5th Cir. 1981); Allrid v. Emory Univ., 248 Ga. 588, 285 S.E.2d 521 (1982); DOT v. Delta Mach. Prods. Co., 162 Ga. App. 252, 291 S.E.2d 104 (1982); Henderson v. State, 162 Ga. App. 320, 292 S.E.2d 77 (1982); Municipal & Indus. Pipe Serv., Ltd. v. Walter E. Heller & Co., 163 Ga. App. 677, 296 S.E.2d 68 (1982); Buckley v. Sears, Roebuck & Co., 165 Ga. App. 838, 299 S.E.2d 744 (1983); Synalloy Corp. v. Newton, 171 Ga. App. 194, 319 S.E.2d 32 (1984); Eig v. Savage, 177 Ga. App. 514, 339 S.E.2d 752 (1986); Dunn v. State, 177 Ga. App. 6, 341 S.E.2d 877 (1986); Godfrey v. State, 183 Ga. App. 183, 358 S.E.2d 264 (1987); A.H. Friedman, Inc. v. Augusta Burglar Alarm Co., 186 Ga. App. 769, 368 S.E.2d 534 (1988); LFE Corp. v. Edenfield, 187 Ga. App. 785, 371 S.E.2d 435 (1988); Department of Cors. v. Hicks, 209 Ga. App. 165, 433 S.E.2d 64 (1993); Bieling v. Battle, 209 Ga. App. 874, 434 S.E.2d 719 (1993); Sardy v. Hodge, 264 Ga. 548, 448 S.E.2d 355 (1994).

Impairing Obligation of Contracts

Repealing Act will not be given a retroactive operation, so as to divest previously acquired rights, or to impair the obligation of a contract lawfully made by virtue of and pending the existence of the law repealed. Bank of Norman Park v. Colquitt County, 169 Ga. 534, 150 S.E. 841 (1929).

Substantive right which has vested cannot be changed or impaired by a subsequent statute. Spengler v. Employers Com. Union Ins. Co., 131 Ga. App. 443,

206 S.E.2d 693 (1974).

Test is whether there was a vested right. If so, no subsequent legislative Act could impair it, but if not, there is no bar to a change or abolition of it at any time before it becomes fixed by a judgment. Spengler v. Employers Com. Union Ins. Co., 131 Ga. App. 443, 206 S.E.2d 693 (1974); Aetna Ins. Co. v. Windsor, 133 Ga. App. 159, 210 S.E.2d 373 (1974).

This section forbids the passage of laws which impair vested rights. The test is whether there was a vested right. If so, no subsequent legislative Act could impair it, but if not, there is no bar to a change or abolition of it at any time before it becomes fixed by a judgment. Goolsby v. Regents of Univ. Sys., 141 Ga. App. 605, 234 S.E.2d 165 (1977).

Subrogation rights. — Any subrogation rights are vested and therefore cannot be abrogated by a later statute. Blaylock v. Georgia Mut. Ins. Co., 239 Ga. 462, 238 S.E.2d 105 (1977).

Subsequent legislation cannot impair rights created by constitutional Act. — A constitutional Act of the General Assembly is equivalent to a contract, and when performed, is a contract executed; whatever rights are thereby created, subsequent legislation cannot impair. Spengler v. Employers Com. Union Ins. Co., 131 Ga. App. 443, 206 S.E.2d 693 (1974).

A constitutional Act of the General Assembly has been found to be the equivalent of a contract and the rights created thereby may not be impaired by subsequent legislation. Enger v. Erwin, 245 Ga. 753, 267 S.E.2d 25 (1980).

Section applicable to contracts existing at time of section's enactment. — This section, so far as it inhibits the state from passing a law impairing the obligation of contracts, applies to contracts existing at the time of the enactment of the section. Redd v. Hargroves, 40 Ga. 18 (1869) see also Bass v. Ware, 34 Ga. 386 (1866).

Legislative instructions to officer resorted to in determining Act's intention. — The General Assembly cannot, by resolution, change the obligation of a contract made under a previous Act. But if they instruct a public officer as to his duties under the contract, the resulting duties may be resorted to in determining the intention of the General Assembly in passing the Act. Georgia Penitentiary Co. No. 2 v. Nelms, 65 Ga. 67 (1880).

State's obligation to pay bonds not impaired by requiring registration. — An Act requiring registration of past matured bonds neither repudiates bonds, nor takes away any remedy from the holder, nor impairs the state's obligation to pay any valid bonds. Gurnee, Jr. & Co. v. Speer, 68 Ga. 711 (1882).

Employment contract not impaired by taking away employer's right against interfering parties. — An Act taking away the right of an employer against parties interfering with the contract of employment does not impair the obligation of the contract. Caldwell v. O'Neal, 117 Ga. 775, 45 S.E. 41 (1903).

Land purchaser under deed older than former provision may acquire title to growing crops. — Former Code 1910, § 3651 (1), which declares all crops to be personalty, does not prevent the purchaser of lands under a security deed older than the section from acquiring the title to crops growing in such lands. Chason v. O'Neal, 158 Ga. 725, 124 S.E. 519 (1924) (For present comparable provisions, see O.C.G.A. § 11-2-107).

Contract by county school superintendent in 1918 for school supplies not void. — A contract made and an indebtedness incurred by a county superintendent of schools in 1918, on behalf of the county board of education, for school supplies and furnishings, which were placed in the schoolhouses of the county and put to use by the pupils thereof, was prior to the enactment of former Code 1933, § 32-928 (see now O.C.G.A. § 20-2-504,) and therefore was not void under this provision, which was applicable to contracts made before its passage. Board of Educ. v. Southern Mich. Nat'l Bank, 184 Ga. 641, 192 S.E. 382 (1937).

Provisions on reversion of realty to guarantor unconstitutional as applied to prior executed deed. — Ga. L. 1953, Nov.-Dec. Sess., p. 313, § 1 (see now O.C.G.A. § 44-14-80), providing that title to real property conveyed to secure a debt should revert to the grantor when the debt

Impairing Obligation of Contracts (Cont'd)

becomes 20 years past due, imposed conditions upon a grantee not in existence at the time of the execution of the grantee's contract, divested the grantee of the grantee's vested right to the property, and impaired the obligation of the grantee's contract, and, as applied to the deed, which was executed prior to the passage and effective date of the section, is unconstitutional. Todd v. Morgan, 215 Ga. 220, 109 S.E.2d 803 (1959).

Application to O.C.G.A. § 16-17-1. — Request by creditors for a preliminary injunction blocking the enforcement of O.C.G.A. §§ 16-17-1 to 16-17-10 (the Act), which prohibited payday loans, did not address a case or controversy because the Act did not apply retroactively to loans made before its effective date; even if the Georgia Attorney General had not explicitly conceded this point, O.C.G.A. § 1-3-5 prohibited the retroactive application to impair the obligation of existing contracts. BankWest, Inc. v. Baker, 446 F.3d 1358 (11th Cir. 2006).

Retrospective Operation

What enactments are prohibited. — Only retrospective enactments which are ex post facto in their character, that is, those whose effect is to impair the obligation of contracts, or to divest vested rights, are within the constitutional prohibition against retroactive legislation. Hart v. Owens-Illinois, Inc., 161 Ga. App. 831, 289 S.E.2d 544, rev'd on other grounds, 250 Ga. 397, 297 S.E.2d 462 (1982).

Retrospective statutes are forbidden by the first principles of justice. Redd v. Hargroves, 40 Ga. 18 (1869); Jones v. Rountree, 96 Ga. 230, 23 S.E. 311 (1895); Bank of Norman Park v. Colquitt County, 169 Ga. 534, 150 S.E. 841 (1929).

Retroactive laws are prohibited. Anthony v. Penn, 212 Ga. 292, 92 S.E.2d 14 (1956).

Ex post facto laws are prohibited. Akins v. State, 231 Ga. 411, 202 S.E.2d 62 (1973).

Term "ex post facto" refers to criminal statutes. Goolsby v. Regents of Univ. Sys., 141 Ga. App. 605, 234 S.E.2d 165 (1977).

Settled rule for the construction of statutes, is not to give them a retrospective operation, unless the language so imperatively requires. Moore v. Gill, 43 Ga. 388 (1871); Bussey v. Bishop, 169 Ga. 251, 150 S.E. 78 (1929); Bank of Norman Park v. Colquitt County, 169 Ga. 534, 150 S.E. 841 (1929); Seaboard Air Line Ry. v. Benton, 175 Ga. 491, 165 S.E. 593 (1932); Walker County Fertilizer Co. v. Napier, 184 Ga. 861, 193 S.E. 770 (1937); National Sur. Corp. v. Gatlin, 192 Ga. 293, 15 S.E.2d 180 (1941); FDIC v. Beasley, 193 Ga. 727, 20 S.E.2d 23 (1942); Eibel v. Forrester, 194 Ga. 439, 22 S.E.2d 96 (1942); Jaro, Inc. v. Shields, 123 Ga. App. 391, 181 S.E.2d 110 (1971); Town of Lyerly v. Short, 234 Ga. 877, 218 S.E.2d 588 (1975); Watkins v. Barber-Colman Co., 625 F.2d 714 (5th Cir. 1980); Landmark Fin. Corp. v. Cox, 2 Bankr. 739 (S.D. Ga. 1980).

Laws prescribe only for the future. and generally have no retroactive operation, and the settled rule for the construction of statutes is not to give them a retrospective operation, unless the language imperatively requires such construction. London Guarantee & Accident Co. v. Pittman, 69 Ga. App. 146, 25 S.E.2d 60 (1943).

Laws prescribe for the future. Unless a statute, either expressly or by necessary implication, shows that the General Assembly intended that it operate retroactively, it will be given only prospective application. Anthony v. Penn, 212 Ga. 292, 92 S.E.2d 14 (1956).

Statutes operate retrospectively where legislative intent or purpose clear. — Statutes prescribe only for the future and generally do not have a retrospective operation. They shall be so construed as to give them a prospective operation only, and they shall be permitted to operate retrospectively only where the intention to have them so operate is clear and undoubted. Talmadge v. Cordell, 170 Ga. 13, 152 S.E. 91 (1930).

The general rule is that laws prescribe only for the future and usually will not be given a retrospective operation; however, they will be given a retrospective effect

when the language imperatively requires it, or when an examination of the Act as a whole leads clearly to the conclusion that such was the legislative purpose. Barnett v. D.O. Martin Co., 191 Ga. 11, 11 S.E.2d 210 (1940).

The general rule is that laws prescribe only for the future and usually will not be given a retrospective operation. They will be given a retrospective effect, however, when the language imperatively requires it, or when an examination of the Act as a whole leads clearly to the conclusion that such was the legislative purpose. It is at last and always a question of legislative intent. Biddle v. Moore, 87 Ga. App. 524, 74 S.E.2d 552 (1953).

O.C.G.A. § 1-3-5 expresses only a preference against retroactive applications. It does not absolutely forbid retroactive applications. Ferrero v. Associated Materials, Inc., 923 F.2d 1441 (11th Cir. 1991).

Where no express intent, presumed that legislation prospective. — Where the legislative intent as to whether a statute is to be given retrospective effect is not expressly stated, it is presumed that the intent was that the legislation be prospective in effect. Biddle v. Moore, 87 Ga. App. 524, 74 S.E.2d 552 (1953).

Amendments of previous statutes are construed as intended to have operation on future transactions only, and as having no retrospective purpose not plainly expressed in the amendment. FDIC v. Beasley, 193 Ga. 727, 20 S.E.2d 23 (1942).

It is a general rule applicable to amending statutes that they are to be construed as intended to have operation on future transactions only, and as having no retroactive purpose not plainly expressed. Layton v. Liberty Loans, 152 Ga. App. 504, 263 S.E.2d 167 (1979), rev'd on other grounds, Finance Am. Corp. v. Drake, 154 Ga. App. 811, 270 S.E.2d 449 (1980).

Trial court did not err when the court applied the 2006 version of O.C.G.A. § 9-11-68 in the property owners' action against the builders because inasmuch as the owners did not obtain any judgment amount in the owners favor it did not matter whether the original or amended version of the statute was applied, or whether the amendment was substantive or procedural in nature; under either version of the statute the owners were liable for the builders' reasonable fees and expenses from the date the offer of settlement was rejected. O'Leary v. Whitehall Constr., 288 Ga. 790, 708 S.E.2d 353 (2011).

Former O.C.G.A. 11-9-403 construed. — The legislature intended that the 1985 amendment of former O.C.G.A. § 11-9-403 (filing of financing statement) should apply to financing statements originally filed on or after July 1, 1985 and should not apply retroactively to prior filed financing statements. Rainbow Mfg. Co. v. Bank of Fitzgerald, 129 Bankr. 702 (Bankr. M.D. Ga. 1991), rev'd on other grounds, 150 Bankr. 857 (M.D. Ga. 1993).

Repealing Act will not be given a retrospective operation. Dennington v. Mayor of Roberta, 130 Ga. 494, 61 S.E. 20 (1908).

Statute creating new obligation, or destroying or impairing vested rights, deemed retroactive. — A statute is "retroactive" in the legal sense when it creates a new obligation on transactions or considerations already past, or destroys or impairs vested rights. Ross v. Lettice, 134 Ga. 866, 68 S.E. 734 (1910).

Upon principle, every statute which takes away or impairs vested rights acquired under existing laws, or creates a new obligation, imposes a new duty, or attaches a new disability, in respect to transactions or considerations already past, must be deemed retrospective. London Guarantee & Accident Co. v. Pittman, 69 Ga. App. 146, 25 S.E.2d 60 (1943).

Statute intending to affect antecedent transactions and rights. — A statute does not operate retrospectively because it relates to antecedent facts, but if it is intended to affect transactions which occurred or rights which accrued before it became operative as such, and ascribe to them essentially different effects, in view of the law at the time of their occurrence, it is retroactive in character. London Guarantee & Accident Co. v. Pittman, 69 Ga. App. 146, 25 S.E.2d 60 (1943).

A statute is "retroactive" in its legal sense which creates a new obligation on transactions or considerations already

Retrospective Operation (Cont'd)

past, or destroys or impairs vested rights. A statute does not operate retrospectively because it relates to antecedent facts, but if it is intended to affect transactions which occurred or rights which accrued before it became operative as such, and ascribe to them essentially different effects, in view of the law at the time of their occurrence, it is retroactive in character. Todd v. Morgan, 215 Ga. 220, 109 S.E.2d 803 (1959).

Section on "new county" not applicable to existing counties. — The words "new county," as used in a section which relates to charging the administration of an estate, did not apply to counties existing at the time the section became effective. Jones v. Rountree, 96 Ga. 230, 23 S.E. 311 (1895).

Legislative Acts will not be so construed where they would effect revocation of a will. Redd v. Hargroves, 40 Ga. 18 (1869).

Title 33 (Insurance) was not intended to and could not have had any retrospective effect. Chatham County Hosp. Auth. v. John Hancock Mut. Life Ins. Co., 325 F. Supp. 614 (S.D. Ga. 1971).

Georgia workers' compensation law that takes effect after an employment relationship is terminated should not be applied to determine the liability of a party to that relationship since such would constitute an impermissible retrospective application of the law. Hall v. Synalloy Corp., 540 F. Supp. 263 (S.D. Ga. 1982).

Product liability provision not given retroactive effect. — Since a new cause of action in tort has been established by the General Assembly by its amendment of former Code 1933, § 105-106 (see now O.C.G.A. § 51-1-11) in 1968, it follows that this provision may not be given retroactive effect. Wansor v. George Hantscho Co., 595 F.2d 218 (5th Cir. 1979).

O.C.G.A. § 13-8-2.1 construed. — Retroactive application of O.C.G.A. § 13-8-2.1, permitting contracts in partial restraint of trade, did not violate this Code section. Ferrero v. Associated Materials, Inc., 923 F.2d 1441 (11th Cir. 1991).

Criminal Justice Act construed. — Upon the defendant's constitutional challenge to the retrospective application of three provisions of the Criminal Justice Act, 2005 Ga. Laws 20 (Act), no reversible error resulted from challenges to the closing arguments and admission of character evidence, as: (1) the former was not distinctly ruled upon by the lower court; and (2) the lower court sustained objections to the admissibility of character evidence, and thus, the state could not introduce character evidence regarding the defendant's prior criminal convictions; moreover, a change in the number of the defendant's peremptory challenges by the Act did not affect any protected right by the application of the amended version of O.C.G.A. § 15-12-165, as strikes were procedural and not substantive in nature. Madison v. State, 281 Ga. 640, 641 S.E.2d 789 (2007).

Remedial Laws

Laws operating upon the remedy are not unconstitutional and void. Crawford v. Irwin, 211 Ga. 241, 85 S.E.2d 8 (1954).

Remedial change in the law may validly operate retroactively. Bryan v. Bryan, 242 Ga. 826, 251 S.E.2d 566 (1979).

Statutes which are merely remedial in nature may be applied to pending actions. Landmark Fin. Corp. v. Cox, 2 Bankr. 739 (S.D. Ga. 1980).

Mere remedial Acts may apply to rights accruing prior to their passage. Bauer Int'l Corp. v. Cagle's, Inc., 225 Ga. 684, 171 S.E.2d 314 (1969).

Georgia Whistleblower Act amendments not retroactive. — New remedies under O.C.G.A. § 45-1-4(e)(2) and (f), which were added by a 2005 amendment to the Georgia Whistleblower Act (GWA), do not apply retroactively under O.C.G.A. § 1-3-5; thus, a port authority officer who asserted claims under the GWA in connection with the officer's 2004 discharge was limited to the remedies provided by the GWA as the GWA existed in 2004. Pattee v. Ga. Ports Auth., 477 F. Supp. 2d 1253 (S.D. Ga. Dec. 18, 2006).

Curing remedy's defects, or conforming or enforcing rights. — Laws

curing defects in the remedy, or confirming rights already existing, or adding to the means of securing and enforcing the rights, may be passed and applied retroactively. Bituminous Cas. Corp. v. R.D.C., Inc., 334 F. Supp. 1163 (N.D. Ga. 1971).

State may vary or modify remedies if substantive character not destroyed. — So long as the state undertakes to furnish remedies, it may vary or modify them at pleasure, if the state does not destroy their substantive character. Cutts & Johnson v. Hardee, 38 Ga. 350 (1868) see also Gardner v. Georgia R.R. & Banking Co., 117 Ga. 522, 43 S.E. 863 (1903) (construing former Code 1895, § 4657 et seq.).

Retrospective statutes not void where they only confirm existing rights, cure defects, and enforce existing obligations. Remedial statutes, although retrospective, are not void, provided they do not impair contracts or disturb absolute vested rights, and only go to confirm rights already existing, and in furtherance of the remedy, by curing defects and adding to the means of enforcing existing obligations. Union Dry Goods Co. v. Georgia Pub. Serv. Corp., 142 Ga. 841, 83 S.E. 946, 1916E L.R.A. 358 (1914), aff'd, 248 U.S. 372, 39 S. Ct. 117, 63 L. Ed. 309, 9 A.L.R. 1420 (1919).

Remedial statutes are operative, although of a retrospective nature, provided they do not impair contracts, and only go to confirm rights already existing, and in furtherance of the remedy, by curing defects and adding to the means of enforcing existing obligations. Seaboard Air Line Ry. v. Benton, 175 Ga. 491, 165 S.E. 593 (1932).

Laws which act upon remedies alone, although retrospective, will be enforced, provided they do not impair the obligation of contracts or disturb absolutely vested rights, and only go to confirm rights already existing, and in furtherance of the remedy, by curing defects and adding to the means of enforcing existing obligations. Byers v. Black Motor Co., 65 Ga. App. 773, 16 S.E.2d 478 (1941).

Where new statute substantial reenactment of old, remedies remain in force. — As a general rule, the repeal of a statute without any reservation takes away all remedies given by the repealed statute. But where a new statute is a substantial reenactment of an old one, and expressly recognizes and makes provision in regard to the rights and remedies which accrued under it, the general rule is not applicable and the remedies remain in force. Lanham & Sons Co. v. City of Rome, 136 Ga. 398, 71 S.E. 770 (1911).

Statutes relating to remedies or procedure may be given retrospective construction. — A generally recognized exception to the rule that laws prescribe only for the future is that statutes relating to remedies or procedure may be given a retrospective or retroactive construction. Focht v. American Cas. Co., 103 Ga. App. 138, 118 S.E.2d 737 (1961).

The presumption against a retrospective construction has no application to enactments which affect only the procedure and practice of the courts, even where the alteration which the statutes make has been disadvantageous to one of the parties. Hart v. Owens-Illinois, Inc., 161 Ga. App. 831, 289 S.E.2d 544, rev'd on other grounds, 250 Ga. 397, 297 S.E.2d 462 (1982).

Prohibition of ex post facto laws applies only to substantive, but not procedural, rights. Cannon v. State, 246 Ga. 754, 272 S.E.2d 709 (1980).

Section distinguishes laws looking to remedy or mode of trial. — Georgia has a statutory policy disapproving the retroactive application of new statutes. However, this section expressly distinguishes laws looking only to the remedy or mode of trial. Sanks v. Georgia, 401 U.S. 144, 91 S. Ct. 593, 27 L. Ed. 2d 741 (1971).

Repealing statute regulating court procedure not within section's inhibition. — A repealing statute which did not deprive the defendant of any substantial right but only regulated the procedure of the court, in which the defendant could acquire no right, is not within the inhibition against the passage of retroactive laws. Pritchard v. Savannah St. & Rural Resort R.R., 87 Ga. 294, 13 S.E. 493, 14 L.R.A. 721 (1891); Baker v. Smith, 91 Ga. 142, 16 S.E. 967 (1893).

Statute void if it takes substantial right from accused. — While it is the rule that no one has a vested right in a

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mere mode of procedure, so that a statute merely regulating procedure and leaving untouched all the substantial protections with which existing law surrounds the person accused of a crime is not within the constitutional inhibition against ex post facto laws, yet a statute is void and ineffective as related to previous offenses if it takes from the accused a substantial right given to the accused by the law in force at the time to which the accused's guilt relates, and such a statute cannot be sustained simply because, in a general sense, it may be said to regulate procedure. Winston v. State, 186 Ga. 573, 198 S.E. 667 (1938).

Act which merely changes rule of evidence is within the sphere of ordinary legislative competency. Slaughter v. Culpepper, 35 Ga. 25 (1866).

There is no ground upon which to hold a statute to be ex post facto which does nothing more than admit evidence of a particular kind in a criminal case upon an issue of fact which was not admissible under the rules of evidence as enforced at the time the offense was committed. Bryan v. Bryan, 242 Ga. 826, 251 S.E.2d 566 (1979).

Procedure changed pending appeal. — Where the controlling procedural rule is changed pending appeal, the case must be concluded in the trial court pursuant to the changed provisions of the rule. Clary v. State, 151 Ga. App. 301, 259 S.E.2d 697 (1979).

Changing municipal tax laws. — The changing of municipal tax laws by an Act of the General Assembly is not contrary to this section because the change applies to taxes due at the time of the passage of the Act where the change only affects the remedy. DuBignon v. Mayor of Brunswick, 106 Ga. 317, 32 S.E. 102 (1898).

Act enforcing previously fixed stockholders' liability. — Where the stockholders' liability is fixed by one Act, and a subsequent Act provides that this liability shall be considered as an asset of the bank and enforced by the receiver, the latter Act is remedial in its nature, does not affect any vested right of the creditor, and is applicable. Moore v. Ripley, 106 Ga. 556, 32 S.E. 647 (1899).

Act providing for cost of paving, passed after Act providing for paving, is not unlawful or objectionable. Georgia Ry. & Elec. Co. v. Town of Decatur, 29 Ga. App. 653, 116 S.E. 645 (1923) see also Allen v. Schweigert, 110 Ga. 323, 35 S.E. 315 (1900); Mills v. Geer, 111 Ga. 275, 36 S.E. 673, 52 L.R.A. 934 (1900); Ross v. Lettice, 134 Ga. 866, 68 S.E. 734 (1910).

Doctrine of election of remedies. — Almost by definition, the doctrine of election of remedies is procedural and remedial in nature. Douglas County v. Abercrombie, 119 Ga. App. 727, 168 S.E.2d 870 (1969).

Statute of limitation is remedial in nature. Jaro, Inc. v. Shields, 123 Ga. App. 391, 181 S.E.2d 110 (1971).

Three-year statute of limitations that was added to the Georgia Whistleblower Act (GWA) in 2005 in O.C.G.A. § 45-1-4(e)(1) is prospective in nature pursuant to O.C.G.A. § 1-3-5; thus, a port authority officer's GWA claim, which related to the officer's 2004 discharge, was not affected by the amendment. Pattee v. Ga. Ports Auth., 477 F. Supp. 2d 1253 (S.D. Ga. Dec. 18, 2006).

Ga. L. 1968, p. 1419, § 2 (see now O.C.G.A. § 9-10-90), which specifically includes corporations in meaning of term "nonresident," may be applied retroactively. Griffin v. Air S., Inc., 324 F. Supp. 1284 (N.D. Ga. 1971), commented on in 8 Ga. St. B. J. 414 (1972).

Former paragraph (3) of Ga. L. 1966, p. 343, § 1 (see now O.C.G.A. § 9-10-91) may be applied retroactively. Griffin v. Air S., Inc., 324 F. Supp. 1284 (N.D. Ga. 1971), commented on in 8 Ga. St. B. J. 414 (1972).

Subjecting nonresident corporation to jurisdiction retroactively. — Nonresident corporation may be subjected retroactively to the jurisdiction of this state. Bituminous Cas. Corp. v. R.D.C., Inc., 334 F. Supp. 1163 (N.D. Ga. 1971).

Convictions occurring before sentencing provision's enactment. — The use of prior convictions which had occurred before the enactment of former Code 1933, § 27-2503 (see now O.C.G.A. § 17-10-2), in the sentencing phase of the

trial did not amount to an ex post facto application of law. Solomon v. State, 247 Ga. 27, 277 S.E.2d 1 (1980), cert. denied, 451 U.S. 1011, 101 S. Ct. 2348, 68 L. Ed. 2d 863 (1981).

Act denying all remedies on a contract would impair its obligation and be void. West v. Sansom, 44 Ga. 295 (1871).

Amendment to workers' compensation provision on modifying award. — The 1937 amendment to former Code 1933, § 114-709 (see now O.C.G.A. § 34-9-104), in which the time for filing applications to review an award on a change in condition is limited to two years from the date the Industrial Board (now State Board of Workers' Compensation) is notified of the final payment of the claim, does not cover a case where the employee was injured before the adoption of the amendment, although the report of final payment of the claim was made after the amendment. London Guarantee & Accident Co. v. Pittman, 69 Ga. App. 146, 25 S.E.2d 60 (1943).

Survival statutes. — A statute authorizing the recovery of medical and funeral expenses by the personal representative of the estate in cases of wrongful death and a statute providing for the survival of causes of action confers upon the personal representative a new substantive right and are not remedial only. Such statutes, therefore, may not be given a retrospective effect so as to apply to the estate of one who died prior to their passage. Biddle v. Moore, 87 Ga. App. 524, 74 S.E.2d 552 (1953).

Not reversible error for court to use term "prisoner at bar" instead of "accused." — Where the trial court uses the term "the prisoner at bar" instead of "the accused" in its first two voir dire questions in a case prior to the General Assembly changing the terms, it is not reversible error. Clary v. State, 151 Ga. App. 301, 259 S.E.2d 697 (1979).

Issue of attorney's fees in divorce cases is remedial and ought to be considered broadly by the trial court. Crecelius v. Brooks, 258 Ga. 372, 369 S.E.2d 743 (1988).

OPINIONS OF THE ATTORNEY GENERAL

Prospective construction. — In absence of imperative, contrary language, statute is construed to operate prospectively and not retrospectively. 1971 Op. Att'y Gen. No. U71-125.

Laws may apply retroactively when vested rights are not impaired and where intended to do so by the General Assembly. 1972 Op. Att'y Gen. No. 72-34.

Veterans taking state examination prior to 1960 cannot have preference points. — Applicants who took an examination and received their scores prior to the effective date of Ga. L. 1960, p. 1172, §§ 1 and 2 (see now O.C.G.A. §§ 43-1-9 and 43-1-10), cannot have veterans' preference points applied to those scores. 1972 Op. Att'y Gen. No. 72-119.

RESEARCH REFERENCES

Am. Jur. 2d. — 16A Am. Jur. 2d, Constitutional Law, §§ 382, 392 et seq. 73 Am. Jur. 2d, Statutes, § 231 et seq.

C.J.S. — 16A C.J.S., Constitutional Law, § 645 et seq. 82 C.J.S., Statutes, §§ 375 et seq., 394, 574 et seq.

ALR. — Unconstitutional statute or veto as protection against civil or criminal responsibility for act or omission in reliance thereon, 53 A.L.R. 268.

Retrospective operation of succession tax, 66 A.L.R. 404; 109 A.L.R. 858; 114 A.L.R. 518.

Construction of statutes of limitations as regards their retrospective application to causes of action already barred, 67 A.L.R. 297.

Applicability of constitutional provision requiring reenactment of altered or amended statute to one which leaves intact terms of original statute, but transfers or extends its operation to another field, 67 A.L.R. 564.

Retroactive effect of statutes relating to interest on or penalties in respect of delinquent taxes, 77 A.L.R. 1034.

Retrospective effect of statute relating to causes of action for death dependent upon prior statute, 77 A.L.R. 1338.

Retroactive effect of statutes regarding provisions with reference to avoidance of fire insurance policies, 78 A.L.R. 617.

Constitutional provision against impairing obligation of contract as applicable to statutes affecting rights or remedies of holders or owners of improvement bonds or liens, 85 A.L.R. 244; 97 A.L.R. 911.

Retroactive effect of statute relating to exemption of proceeds of life or benefit insurance, 92 A.L.R. 1388.

Debtor's exemption statutes as impairing obligations of existing contracts, 93 A.L.R. 177.

At what stage does a statute or ordinance pass beyond the power of legislative body to reconsider or recall, 96 A.L.R. 1309.

Retrospective operation of statutes relating to alimony or suit money in divorce, 97 A.L.R. 1188.

Retroactive effect of statute prescribing terms or rights under life insurance policies, 106 A.L.R. 46.

Retrospective operation of succession or estate tax, 114 A.L.R. 518.

Retroactive application of repeal of statute which operated as limitation of or exception to a substantive right of action in tort otherwise arising at common law, 120 A.L.R. 943.

Power of legislature to revive a right of action barred by limitation or to revive an action which has abated by lapse of time, 133 A.L.R. 384.

Validity and effect, as to previously recorded instrument, of statute which places or changes time limit on effectiveness of record of mortgages or other instruments, 133 A.L.R. 1325.

Price ceiling, adopted as a war measure, as affecting preexisting contracts, 147 A.L.R. 1286; 149 A.L.R. 1451; 151 A.L.R. 1450.

Constitutionality, construction, and application of statute or contract regarding deduction from, or adjustment of, wages in respect of defective workmanship, 153 A.L.R. 866.

Statute providing for apportionment between lessor and lessee of a tax imposed upon the producer of oil, gas, or other natural production as violation of the constitutional provisions against impairment of the obligation of contracts, 160 A.L.R. 980.

Effect, as to prior offenses, of amendment increasing punishment for crime, 167 A.L.R. 845.

Validity of curative statute impairing judgment or rendering it ineffective, 171 A.L.R. 1352.

Applicability of constitutional requirement that repealing or amendatory statute refer to statute repealed or amended, to repeal or amendment by implication, 5 A.L.R.2d 1270.

Retrospective operation of criminal negligence statute, 14 A.L.R.2d 726.

What law, in point of time, governs as to inheritance from or through adoptive parent, 18 A.L.R.2d 960.

Retrospective application of statutes relating to trust investments, 35 A.L.R.2d 991.

Retroactive effect of statute fixing minimum value of corporate stock shares or otherwise affecting power of corporation to change par value of existing shares, 54 A.L.R.2d 1289.

Retroactive effect of statute changing manner and method of distribution of recovery or settlement for wrongful death, 66 A.L.R.2d 1444.

Retroactive effect of statute which imposes, removes, or changes a monetary limitation of recovery for personal injury or death, 98 A.L.R.2d 1105.

Retrospective application of state statute substituting rule of comparative negligence for that of contributory negligence, 37 A.L.R.3d 1438.

Retroactive effect of zoning regulation, in absence of saving clause, on validly issued building permit, 49 A.L.R.3d 13.

Zoning provisions protecting land owners who applied for or received building permit prior to change in zoning, 49 A.L.R.3d 1150.

Validity of statute establishing or authorizing minimum price schedules for barbers, 54 A.L.R.3d 916.

Construction and effect of tenure provisions of contract or statute governing employment of college or university faculty member, 66 A.L.R.3d 1018.

Validity and construction of state or local regulation prohibiting off-premises advertising structures, 81 A.L.R.3d 486.

Validity and construction of state or local regulation prohibiting the erection or maintenance of advertising structures within a specified distance of street or highway, 81 A.L.R.3d 564.

Mandatory retirement of public officer or employee based on age, 81 A.L.R.3d 811.

Zoning: building in course of construction as establishing valid nonconforming use or vested right to complete construction for intended use, 89 A.L.R.3d 1051.

1-3-6. When laws become obligatory; effect of ignorance.

After they take effect, the laws of this state are obligatory upon all the inhabitants thereof. Ignorance of the law excuses no one.

History. — Orig. Code 1863, § 8; Code 1868, § 7; Code 1873, § 7; Code 1882, § 7; Civil Code 1895, § 7; Penal Code 1895, § 4; Civil Code 1910, § 7; Penal Code 1910, § 4; Code 1933, § 102-105.

Law reviews. — For annual survey of law on administrative law, see 62 Mercer L. Rev. 1 (2010).

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Section applies to attorneys. Crudup v. State, 106 Ga. App. 833, 129 S.E.2d 183 (1962), aff'd, 218 Ga. 819, 130 S.E.2d 733, cert. denied, 375 U.S. 829, 84 S. Ct. 74, 11 L. Ed. 2d 61 (1963).

Section applies to law enforcement officers. — Hameen v. State, 246 Ga. App. 599, 541 S.E.2d 668 (2000).

This principle of law has been applied to municipal ordinances. City Council v. Crump, 251 Ga. 594, 308 S.E.2d 180 (1983).

Ignorance of law no excuse for granting relief against consequences of voluntary actions. — Mere ignorance of law on the part of one who, with full knowledge of all the facts, voluntarily takes steps with regard thereto which operates to one's prejudice, affords no ground for granting one relief against the consequences of one's own folly, though one may in good faith have labored under a misapprehension as to the legal effect of the course one elected to pursue. Atlanta Trust & Banking Co. v. Nelms, 116 Ga. 915, 43 S.E. 380 (1903).

Where a plea amounts to nothing but ignorance of the law, the plea is bad. Jenkins v. German Lutheran Congregation, 58 Ga. 125 (1877).

Ignorance of the law does not commend a suitor in equity, especially where an injunction is sought. Moore v. City of Atlanta, 70 Ga. 611 (1883).

Failure to comprehend the legal effect of making an admission in judicio, in a motion for new trial or in the alternative motion to amend judgment, of the fact that the probate court entered a judgment styled "final order" provided no excuse for the maker, since ignorance of the law excuses no one. Jabaley v. Jabaley, 208 Ga. App. 179, 430 S.E.2d 119 (1993).

Ignorance of glazing requirements. — Fact that landlord was unaware that state law required safety glazing materials in doors under O.C.G.A. § 8-2-91 is no defense under O.C.G.A. § 1-3-6. Cornell v. Camellia Corp., 248 Ga. 449, 283 S.E.2d 264 (1981), appeal dismissed, 456 U.S. 901, 102 S. Ct. 1744, 72 L. Ed. 2d 157 (1982).

Defendant not relieved of criminal intent if intended to do prohibited act. — The fact that the defendant was ignorant of the fact that the defendant was violating the law would not relieve the defendant of criminal intent if the defendant intended to do the act which the General Assembly prohibited (carrying on a "clearinghouse" for the hazarding of money). Wilson v. State, 57 Ga. App. 839, 197 S.E. 48 (1938).

Amendment pleading Act approved after suit instituted. — Generally, laws

take effect from the date of their enactment and ignorance of the law is no excuse; thus, the contention of the petitioners that they were surprised by an amendment pleading an Act approved after the suit was instituted is without merit, and the trial judge did not abuse the judge's discretion in refusing to continue the case to the next term. Crawford v. Irwin, 211 Ga. 241, 85 S.E.2d 8 (1954).

Ignorance of ordinance limiting authority of city attorneys. — A public sector attorney's authority, like that of any other public officer, is defined and prescribed by law, including municipal ordinances; thus, a city and police officers who had entered a settlement agreement executed by city attorneys on their behalf were not estopped from challenging the agreement on the basis that a city ordinance restricted the apparent authority of the attorneys to execute the agreement, even though the ordinance was not specifically communicated to the opposing party. City of Atlanta v. Black, 265 Ga. 425, 457 S.E.2d 551 (1995).

Cited in Fulenwider v. Forrester, 64 Ga. App. 756, 14 S.E.2d 173 (1941); Cole v. Holland, 219 Ga. 227, 132 S.E.2d 657 (1963); Dyson v. Dixon, 219 Ga. 427, 134 S.E.2d 1 (1963); McRae v. State, 116 Ga. App. 407, 157 S.E.2d 646 (1967); A.M. Kidder & Co. v. Clement A. Evans & Co., 117 Ga. App. 346, 160 S.E.2d 869 (1968); Jones v. Caldwell, 230 Ga. 775, 199 S.E.2d 248 (1973); Shook & Fletcher Insulation Co. v. Central Rigging & Contracting Corp., 684 F.2d 1383 (11th Cir. 1982); Jenga v. State, 166 Ga. App. 36, 303 S.E.2d 170 (1983); North Fulton Community Hosp. v. State Health Planning & Dev. Agency, 168 Ga. App. 801, 310 S.E.2d 764 (1983); Hale v. State, 188 Ga. App. 524, 373 S.E.2d 250 (1988); Davenport v. Nance, 194 Ga. App. 313, 390 S.E.2d 281 (1990); Harris v. Boyd, 193 Ga. App. 467, 388 S.E.2d 60 (1989); Georgia Subsequent Injury Trust Fund v. ITT-Rayonier, Inc., 198 Ga. App. 467, 402 S.E.2d 54 (1991); Nix v. Long Mtn. Resources, Inc., 262 Ga. 506, 422 S.E.2d 195 (1992); Windermere v. Bettes, 211 Ga. App. 177, 438 S.E.2d 406 (1993); Black v. City of Atlanta, 61 F.3d 27 (11th Cir. 1995); Grisson v. State, 237 Ga. App. 559, 515 S.E.2d 857 (1999); Henry v. State, 295 Ga. App. 758, 673 S.E.2d 120 (2009); Ga. State Licensing Bd. for Residential & Gen. Contrs. v. Allen, 286 Ga. 811, 692 S.E.2d 343 (2010); Mecca Constr., Inc. v. Maestro Invs., LLC, 320 Ga. App. 34, 739 S.E.2d 51 (2013).

RESEARCH REFERENCES

Am. Jur. 2d. — 21 Am. Jur. 2d, Criminal Law, § 33 et seq. 27A Am. Jur. 2d, Equity, §§ 92, 93. 29 Am. Jur. 2d, Evidence, § 239.

C.J.S. — 22 C.J.S., Criminal Law, §§ 94, 95. 82 C.J.S., Statutes, § 393 et seq.

ALR. — Ignorance of legal right to avoid contract or conveyance made during infancy as affecting ratification thereof upon attaining majority, 5 A.L.R. 137.

Unconstitutionality of later statute as affecting provision purporting specifically to repeal earlier statute, 102 A.L.R. 802.

Misrepresentation as to tax law as within rule that party to contract or other instrument may not rely upon misrepresentations as to matters of law, 153 A.L.R. 538.

What law, in point of time, governs as to inheritance from or through adoptive parent, 18 A.L.R.2d 960.

Retrospective effect of statute prescribing grounds of divorce, 23 A.L.R.3d 626.

1-3-7. Abrogation of laws by agreement; waiver or renunciation of benefits established by law.

Laws made for the preservation of public order or good morals may not be dispensed with or abrogated by any agreement. However, a person may waive or renounce what the law has established in his favor when he does not thereby injure others or affect the public interest.

History. — Orig. Code 1863, § 11; Code 1868, § 10; Code 1873, § 10; Code 1882, § 10; Civil Code 1895, § 10; Penal Code 1895, § 5; Civil Code 1910, § 10; Penal Code 1910, § 5; Code 1933, § 102-106.

Law reviews. — For note, "The Scope and Meaning of Waiver in Section 2-209 of the Uniform Commercial Code," see 5 Ga. L. Rev. 783 (1971).

For comment on Ware v. State, 128 Ga. App. 407, 196 S.E.2d 896 (1973), discussing the right of an accused to retract guilty plea prior to judgment, see 10 Ga. St. B. J. 469 (1974). For comment, "Eleventh Circuit Survey: January 1, 2013 - December 31, 2013: Comment: Confirming the Enforceability of the Guaranty Agreement After Non-Judicial Foreclosure in Georgia," see 65 Mercer L. Rev. 1167 (2014).

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General Consideration

Section is applicable to all private relations in which men may place themselves towards each other. Western & A.R.R. v. Bishop, 50 Ga. 465 (1873).

One who voluntarily accepts an Act and the benefits it provides cannot question its constitutionality. Senters v. Wright & Lopez, Inc., 220 Ga. 611, 140 S.E.2d 904 (1965).

Principle of estoppel runs throughout law. — As between individuals, where no question of the general welfare of society or public policy is involved, the principle of estoppel runs throughout the law. Although an Act is unconstitutional and void, it will operate as an estoppel upon the party applying for it, and procuring its passage and accepting its benefits. Christopher v. Christopher, 198 Ga. 361, 31 S.E.2d 818 (1944).

Cited in Stephenson v. Kellett, 46 Ga. App. 27, 166 S.E. 457 (1932); Gettis v. Gormley, 49 Ga. App. 339, 175 S.E. 393 (1934); Myers v. Atlantic Greyhound Lines, 52 Ga. App. 698, 184 S.E. 414 (1936); Freeney v. Pape, 185 Ga. 1, 194 S.E. 515 (1937); Roberts v. State, 189 Ga. 36, 5 S.E.2d 340 (1939); Dunn v. Meyer, 193 Ga. 91, 17 S.E.2d 275 (1941); Buttersworth v. State, 200 Ga. 13, 36 S.E.2d 301 (1945); Jordan v. State, 75 Ga. App. 815, 44 S.E.2d 821 (1947); Tatum v. Tatum, 203 Ga. 406, 46 S.E.2d 915 (1948); Campbell v. Allen, 208 Ga. 274, 66 S.E.2d 226 (1951); Webb v. Henlery, 209 Ga. 447, 74 S.E.2d 7 (1953); Johnson v. Plunkett, 215 Ga. 353, 110 S.E.2d 745 (1959); Bankers Fid. Life Ins. Co. v. Morgan, 104 Ga. App. 894, 123 S.E.2d 433 (1961); Northeast Factor & Disct. Co. v. Mortgage Invs., Inc., 107 Ga. App. 705, 131 S.E.2d 221 (1963); Swint v. Smith, 219 Ga. 532, 134 S.E.2d 595 (1964); Timmons v. State, 223 Ga. 450, 156 S.E.2d 68 (1967); Arkwright v. State, 223 Ga. 768, 158 S.E.2d 370 (1967); Grizzard v. Grizzard, 224 Ga. 42, 159 S.E.2d 400 (1968); Brannan v. Kilpatrick, 225 Ga. 3, 165 S.E.2d 721 (1969); Steffner v. Steffner, 228 Ga. 189, 184 S.E.2d 575 (1971); Livsey v. Livsey, 229 Ga. 368, 191 S.E.2d 859 (1972); Grimes v. Community Loan & Inv. Corp., 130 Ga. App. 8, 202 S.E.2d 265 (1973); Garcia v. Garcia, 232 Ga. 869, 209 S.E.2d 201 (1974); Boyd v. State, 133 Ga. App. 431, 211 S.E.2d 387 (1974); United States Fire Ins. Co. v. Day, 136 Ga. App. 359, 221 S.E.2d 467 (1975); Phillips v. Meadow

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Garden Hosp., 139 Ga. App. 541, 228 S.E.2d 714 (1976); Daniel v. Daniel, 250 Ga. 849, 301 S.E.2d 643 (1983); Tedesco v. CDC Fed. Credit Union, 167 Ga. App. 337, 306 S.E.2d 397 (1983); Lovelace v. Figure Salon, Inc., 179 Ga. App. 51, 345 S.E.2d 139 (1986); Panfel v. Boyd, 187 Ga. App. 639, 371 S.E.2d 222 (1988); State Farm Mut. Auto. Ins. Co. v. Ainsworth, 198 Ga. App. 740, 402 S.E.2d 759 (1991); Morris v. Cowart, 201 Ga. App. 288, 411 S.E.2d 81 (1991).

Abrogation of Laws

1. In General

Where the public has an interest in a legal requirement, it may not be waived by the parties. Hilt v. Young, 116 Ga. 708, 43 S.E. 76 (1902).

While a person may generally waive or renounce what the law has established in the person's favor, the person cannot do so when the waiver affects the public interest. Georgia Fertilizer Co. v. Walker, 171 Ga. 734, 156 S.E. 820 (1931).

Public policy cannot be circumvented by the action of individuals. Christopher v. Christopher, 198 Ga. 361, 31 S.E.2d 818 (1944).

Courts' power to declare contract void exercised only in cases free from doubt. — The power of the courts to declare a contract void for being in contravention of a sound public policy is a very delicate and undefined power, and, like the power to declare a statute unconstitutional, should be exercised only in cases free from doubt. Porubiansky v. Emory Univ., 156 Ga. App. 602, 275 S.E.2d 163 (1980).

Contract not contrary to public policy unless declared so, or contrary to morals and law. — A contract cannot be said to be contrary to public policy unless the General Assembly has declared it to be so, or unless the consideration of the contract is contrary to good morals and contrary to law, or unless the contract is entered into for the purpose of effecting an illegal or immoral agreement or doing something which is in violation of law. Porubiansky v. Emory Univ., 156 Ga. App. 602, 275 S.E.2d 163 (1980), aff'd, 248 Ga. 391, 282 S.E.2d 903 (1981).

Provisions of former Code 1933, § 20-504 (see now O.C.G.A. § 13-8-2) should not be enlarged without convincing and conclusive reasons. Porubiansky v. Emory Univ., 156 Ga. App. 602, 275 S.E.2d 163 (1980), aff'd, 248 Ga. 391, 282 S.E.2d 903 (1981).

Only authentic and admissible evidence of state's public policy is constitution, laws, and judicial decisions. Porubiansky v. Emory Univ., 156 Ga. App. 602, 275 S.E.2d 163 (1980), aff'd, 248 Ga. 391, 282 S.E.2d 903 (1981).

2. Specific Illustrations

Pleadings cannot be waived by consent of the parties. This rule is applicable to courts of equity. Central Bank v. Johnson & Smith, 56 Ga. 225 (1876).

Law cannot be waived so as to make an experimental case. Habersham v. Wetter, 59 Ga. 11 (1877).

Waiver by relatives of notice of proceeding to inquire into sanity of party is ineffectual. Yeoman v. Williams, 117 Ga. 800, 45 S.E. 73 (1903).

Contract by which debtor attempts to waive garnishment exemption void. — A contract, either specific or general, by which a debtor attempts to waive the debtor's exemption and to make the debtor's wages earned as a laborer subject to garnishment is void and not enforceable. Traders Inv. Co. v. Macon Ry. & Light Co., 3 Ga. App. 125, 59 S.E. 454 (1907). See also Green v. Watson, 75 Ga. 471, 58 Am. R. 479 (1185).

Venue cannot be waived in divorce suit. — In a suit for divorce, jurisdiction of the court cannot be waived so as to permit a suit for divorce to be brought in a county other than that of the residence of the defendant. Watts v. Watts, 130 Ga. 683, 61 S.E. 593 (1908); Odum v. Odum, 132 Ga. 437, 64 S.E. 470 (1909); Haygood v. Haygood, 190 Ga. 445, 9 S.E.2d 834 (1940).

Neither can notice required as condition precedent to recovery of attorney's fees. — Where a promissory note contains an obligation to pay attorney's fees, the statutory notice which the plaintiff is required to give to the defendant as

a condition precedent to the defendant's right to recover these fees cannot be waived in the note, and the attempt to waive it therein is unenforceable and of no effect. Miller v. Roberts, 9 Ga. App. 511, 71 S.E. 927 (1911).

One responsible for acts of criminal negligence, or, where gratuitous bailment created, gross negligence. — One may not be released by agreement or waiver from responsibility for acts of criminal negligence, nor, where the status of the parties creates a bailment as to the injured property, from acts or omissions caused by gross negligence, under the measure of liability controlling a gratuitous bailee. King v. Smith, 47 Ga. App. 360, 170 S.E. 546 (1933).

Public officer cannot take less than full statutory salary. — Since an agreement by a public officer to accept less than the fees or salary allowed the officer by law is contrary to public policy and void, a public officer cannot bind oneself to take less than the statute provides for the officer's salary, by silently accepting less than the full amount provided by law. MacNeill v. Steele, 186 Ga. 792, 199 S.E. 99 (1938).

Ante litem notice to city. — The statutory requirements for ante litem notice to the governing authority of the city generally may not be waived by the city or by an individual, even if that individual is the official directly responsible for the injury or for claims adjustment. City of LaGrange v. USAA Ins. Co., 211 Ga. App. 19, 438 S.E.2d 137 (1993).

Section does not authorize murder defendant to demand that case be tried by judge. Palmer v. State, 195 Ga. 661, 25 S.E.2d 295 (1943).

Contempts affecting public policy cannot be extinguished by settlement. — Where contempts were matters affecting the public interest, being thus quasi-criminal in nature, they could not be extinguished or rendered moot by any settlement between the parties. Alred v. Celanese Corp. of Am., 205 Ga. 371, 54 S.E.2d 240 (1949), cert. denied, 338 U.S. 937, 70 S. Ct. 346, 94 L. Ed. 578 (1950).

Section inapplicable to attempt to release party from liability for gas safety regulation violations. — The exception in this section, that "a person may waive or renounce what the law has established in his favor, when he does not thereby injure others or affect the public interest," has no application where the contract attempts to release a party from liability for acts violating liquefied gas safety regulations. Bishop v. Act-O-Lane Gas Serv. Co., 91 Ga. App. 154, 85 S.E.2d 169 (1954).

Exculpation from liability for negligence generally. — One may exculpate oneself from liability for one's own simple negligence, but not for gross negligence. Wade v. Watson, 527 F. Supp. 1049 (N.D. Ga. 1981), aff'd, 731 F.2d 890 (11th Cir. 1984).

The general rule in Georgia is that one may by careful language exculpate oneself even from liability for one's own negligence, but not from one's own gross negligence or intentional act. Wade v. Watson, 527 F. Supp. 1049 (N.D. Ga. 1981), aff'd, 731 F.2d 890 (11th Cir. 1984).

Informed consent document signed by a decedent before using a fitness facility's pool was valid and enforceable because: (1) the document was clear and unambiguous; (2) the document was not void as against public policy; and (3) the document contained a covenant not to sue, a disclaimer of liability, and an assumption of risk clause wherein the decedent agreed to hold the facility and its employee harmless from any lawsuits for decedent's death, accidental or otherwise, that arose from any exercise program, whether formal or self-directed. Flood v. Young Woman's Christian Ass'n of Brunswick, Ga., Inc., 398 F.3d 1261 (11th Cir. 2005).

Exculpatory clauses are valid and binding, and are not void as against public policy when a business relieves itself from its own negligence. My Fair Lady of Ga., Inc. v. Harris, 185 Ga. App. 459, 364 S.E.2d 580 (1987), cert. denied, 185 Ga. App. 910, 364 S.E.2d 580 (1988); Hembree v. Johnson, 224 Ga. App. 680, 482 S.E.2d 407 (1997).

Exculpatory provision in contract does not relieve one from liability for willful or wanton conduct. Hawes v. Central of Ga. Ry., 117 Ga. App. 771, 162 S.E.2d 14 (1968).

Witness offered is permitted to testify, unless objection or exception dis-

Abrogation of Laws (Cont'd)
2. Specific Illustrations (Cont'd)

tinctly raises question of competency. Sumter County v. Pritchett, 125 Ga. App. 222, 186 S.E.2d 798 (1971).

Defendant's waiver not permitted to injure insurer's right to defend action in own name. — Although a named, served defendant may waive the defendant's right to defend against an action, the defendant's waiver and default cannot be permitted to injure the statutory right of the defendant's insurer to defend the action in its own name, which would be the result if the insurer were held to be bound by the defendant's admissions. Glover v. Davenport, 133 Ga. App. 146, 210 S.E.2d 370 (1974).

Although the named, served uninsured motorist defendant could and did waive the defendant's right to defend against the action, the defendant's waiver and default cannot be permitted to injure the statutory right of the defendant's insurer to defend the action in its own name, which would be the result if the insurer were held to be bound by the defendant's admissions. Georgia Mut. Ins. Co. v. Willis, 140 Ga. App. 225, 230 S.E.2d 363 (1976).

Parent not authorized to waive child support. — The right to child support belongs to the child, not the mother, and after the award has become part of the court's judgment she has no authority to waive it. Johnson v. Johnson, 233 Ga. 664, 212 S.E.2d 835 (1975).

A mother has no right to barter away child support in return for a relinquishment of visitation privileges. Similarly, a father has no right to make a similar arrangement with a third party. Culpepper v. Brewer, 242 Ga. 210, 248 S.E.2d 619 (1978).

Plaintiff's acquiescence in defendant's summary judgment motion not permitted to prevail over defendant insurer. — Even though the plaintiff acquiesced in the defendant's motion for summary judgment, and a person may waive or renounce what the law has established in one's favor when one does not thereby injure others or affect the public interest, the acquiescence injured the defendant insurer and the plaintiff's nonfeasance will not be permitted to prevail — just as a defendant's voluntary default will not be permitted to prejudice the defendant insurer. J.C. Penny Cas. Ins. Co. v. Williams, 149 Ga. App. 258, 253 S.E.2d 878 (1979).

Contract limiting innkeeper's statutory liability unenforceable. — A special contract between an innkeeper and a guest purporting to limit the innkeeper's liability to an amount less than that authorized by former Code 1933, § 52-111 (see now O.C.G.A. § 43-21-12) was unenforceable as contrary to public interest and policy. Porubiansky v. Emory Univ., 156 Ga. App. 602, 275 S.E.2d 163 (1980), aff'd, 248 Ga. 391, 282 S.E.2d 903 (1981).

Exculpatory provision nullifying landlord's warranty concerning latent defects unenforceable. — A landlord's implied warranty concerning latent defects existing at the inception of the lease was sufficiently analogous to a contract for maintenance or repair, so that an exculpatory provision purporting to nullify the effect of the implied warranty was void and unenforceable. The landlord's warranty exists by operation of law in the interest of public safety, and was provided for by former Code 1933, § 61-111 (see now O.C.G.A. § 44-7-13). Porubiansky v. Emory Univ., 156 Ga. App. 602, 275 S.E.2d 163 (1980), aff'd, 248 Ga. 391, 282 S.E.2d 903 (1981).

Exculpatory clause signed as condition of receiving dental treatment invalid. — An exculpatory clause in the consent form signed by a patient as a condition of receiving treatment at a dental school clinic is invalid as contrary to public policy. Porubiansky v. Emory Univ., 156 Ga. App. 602, 275 S.E.2d 163 (1980), aff'd, 248 Ga. 391, 282 S.E.2d 903 (1981).

Simulated aircraft aerial combat. — Where a parent brought suit to recover the benefits under a policy of life insurance insuring the life of the parent's adult son, the trial court erred in only partially denying the insurer's motion for summary judgment by holding that it had waived the statutory requirement prohibiting the issuance of a valid life insurance policy without the written consent of the insured; under circumstances not qualifying for an exception pursuant to O.C.G.A.

§ 33-24-6(a)(1)-(4), the policy was void ab initio, and unenforceable by the courts; written consent of the insured may not be waived. Time Ins. Co. v. Lamar, 195 Ga. App. 452, 393 S.E.2d 734 (1990).

Although exculpatory clauses signed by a pilot and a safety pilot who flew an aircraft company's plane and engaged in simulated aerial combat were not against public policy under O.C.G.A. § 1-3-7, the clauses were not enforceable if the company was found to have been grossly negligent or to have engaged in willful misconduct, which was an issue to be resolved by the jury; additionally, a jury issue remained as to whether one of the pilots was an independent contractor for purposes of the company's liability under O.C.G.A. § 51-2-5(5), and, accordingly, a grant of summary judgment pursuant to O.C.G.A. § 9-11-56 to the company was error. McFann v. Sky Warriors, Inc., 268 Ga. App. 750, 603 S.E.2d 7 (2004).

Waiver of Benefits

1. In General

"Waiver" defined. — "Waiver" is a voluntary relinquishment of some known right, benefit or advantage, which, except for the waiver, the party otherwise would have enjoyed. City of Albany v. Mitchell, 81 Ga. App. 408, 59 S.E.2d 37 (1950).

Person may waive statutory benefit where others or public policy not involved. — A person may lawfully waive the benefit of a statutory provision where the rights of third parties are not involved, unless the waiver violates public policy. Southern Ry. v. Turner, 75 Ga. App. 219, 42 S.E.2d 790 (1947).

Contracting parties may waive or renounce what the law has established in their favor, provided the waiver or renunciation does not thereby injure others or affect the public interest. Young v. John Deere Plow Co., 102 Ga. App. 132, 115 S.E.2d 770 (1960).

A party may waive that which the law provides for one's benefit unless to permit one to do so would injure others or be contrary to public policy. Pfeffer v. Arrendale, 114 Ga. App. 684, 152 S.E.2d 651 (1966).

It is clearly established state law that one may waive a constitutional right. Senters v. Wright & Lopez, Inc., 220 Ga. 611, 140 S.E.2d 904 (1965).

Subrogation may be expressly waived by an insurer pursuant to agreement. — Homeowners retained the right to sue for damage done to their property, despite payment from their insurer, because language in proof of loss forms granted the insurer subrogation to the homeowners' rights, title, and interest in the property that was damaged, but not to the claim, and in any event the insurer expressly waived its right to subrogation in the release and settlement agreement executed contemporaneously with the issuance of the settlement payment. Rabun & Assocs. Constr., Inc. v. Berry, 276 Ga. App. 485, 623 S.E.2d 691 (2005).

There is an effective waiver only when it is wholly voluntary and comes from the defendant without any solicitation or coercion whatsoever from either the state or the court. Farmer v. State, 128 Ga. App. 416, 196 S.E.2d 893 (1973).

Necessary elements. — Waiver need not be supported by consideration, is unilateral in character, must be made with knowledge and intent, and can be established by a certain course of conduct. Aaron Rents, Inc. v. Corr, 133 Ga. App. 296, 211 S.E.2d 156 (1974).

Waiver is a matter of intent. — The evidence must so clearly indicate an intent to relinquish a known right as to exclude any other reasonable explanation. Allstate Fin. Corp. v. Dundee Mills, Inc., 800 F.2d 1073 (11th Cir. 1986).

Implied waiver is not more efficacious, nor more highly regarded, than express waiver in writing. Pittman v. Elder, 76 Ga. 371 (1886).

Question of whether one has waived right upon which one relies is matter of fact to be determined by a jury or the trier of the facts upon all the evidence. City of Albany v. Mitchell, 81 Ga. App. 408, 59 S.E.2d 37 (1950).

Children's support rights nonwaivable. — Children, legitimate or illegitimate, are not property, and absent a clear legislative declaration otherwise their support rights may not be bartered away by their parents. Worthington v.

Waiver of Benefits (Cont'd)
1. In General (Cont'd)

Worthington, 250 Ga. 730, 301 S.E.2d 44 (1983).

2. Waivable Rights

Right to have a receipt of an insurance company under seal may be waived. American Life Ins. Co. v. Green, 57 Ga. 469 (1876).

Although time is of the essence of the contract, it may be waived. Moody v. Griffin, 60 Ga. 459 (1878) see also Moxley v. Kinloch, 80 Ga. 46, 7 S.E. 123 (1887).

Homestead waiver is good in a mortgage by the husband as against the wife. Burns v. State, 61 Ga. 192 (1878) see also dissenting opinion Allen v. Frost, 59 Ga. 558 (1877); Mathis v. Western Union Tel. Co., 94 Ga. 338, 21 S.E. 564, 21 S.E. 1039, 47 Am. St. R. 167 (1894), dissenting opinion.

Defendant has right to waive jury trial in misdemeanor case. — Whatever may be the decisions in other states as to the right to waive trial by jury in cases of misdemeanor, the Georgia Supreme Court does not think there can be any doubt that the defendant had this right under our law. Logan v. State, 86 Ga. 266, 12 S.E. 406 (1890).

Defendant may waive every minor right and privilege. — As the prisoner may waive even a trial itself, and be capitally punished upon the defendant's own confession of guilt, the defendant may waive every minor right or privilege. The greater includes the less, or the whole the parts. Logan v. State, 86 Ga. 266, 12 S.E. 406 (1890); Vaughn v. State, 88 Ga. 731, 16 S.E. 64 (1892).

Person instituting action may settle with defendant where fine or penalty goes to person alone. — The rule seems to be that where the public, or a portion thereof, are interested in a fine or penalty, the person or informer who brings the action cannot settle or compound with the defendant so as to deprive the public of its interest therein. But where the penalty or fine goes alone to the informer or person who institutes the action therefor, one may settle or compound with the defendant, or withdraw one's suit, or waive one's right to recover the penalty or fine. Mathis v. Western Union Tel. Co., 94 Ga. 338, 21 S.E. 564, 21 S.E. 1039, 47 Am. St. R. 167 (1894).

Parties to nonstatutory arbitration agreement may waive that arbitrator be sworn. — The parties to an agreement to submit their differences to nonstatutory arbitration may expressly waive that the arbitrator be sworn, even if, under the terms of the submission, the arbitrator is required to be sworn. Southern Live Stock Ins. Co. v. Benjamin, 113 Ga. 1088, 39 S.E. 489 (1901).

Materialman not required to obtain personal judgment against owner in order to maintain foreclosure proceedings. — Where materials are sold to an owner either directly or through another as one's agent, the materialman may, upon proper pleadings and evidence, obtain a personal judgment against the owner for the price or value of the materials, but the materialman is not obliged to seek or obtain such a judgment in order to maintain foreclosure proceedings. Robinson v. Reese, 175 Ga. 574, 165 S.E. 744 (1932).

Nonliability agreement not void, except where statutorily prohibited or public duty owed. — Except in cases prohibited by statute, or where a public duty is owed, as by a common carrier of goods or passengers, a party may by a valid contract relieve oneself from liability to another party for particular injuries or damages and for ordinary negligence, and such an agreement is not void as against public policy. King v. Smith, 47 Ga. App. 360, 170 S.E. 546 (1933).

Except in cases prohibited by statute and cases where a public duty is owed, the general rule is that a party may exempt oneself by contract from liability to the other party for injuries caused by negligence; and the agreement is not void for contravening public policy. Hawes v. Central of Ga. Ry., 117 Ga. App. 771, 162 S.E.2d 14 (1968).

A party may exempt oneself by contract from liability to another party for injuries caused by negligence, and the agreement is not void for contravening public policy. Porubiansky v. Emory Univ., 156 Ga. App.

602, 275 S.E.2d 163 (1980), aff'd, 248 Ga. 391, 282 S.E.2d 903 (1981).

Warranty of suitability in bailment for hire. — A bailee may renounce the warranty of suitability established in the bailee's favor by O.C.G.A. § 44-12-63 by use of an exculpatory clause in the contract for bailment for hire. Hall v. Gardens Servs., Inc., 174 Ga. App. 856, 332 S.E.2d 3 (1985).

Where public policy does not absolutely bar or disqualify inadmissible testimony, inadmissibility may be waived. Albany Fed. Sav. & Loan Ass'n v. Henderson, 198 Ga. 116, 31 S.E.2d 20 (1944).

Required written notice to damage recovery for livestock loss or injury waivable. — A contract requiring notice in writing as a condition precedent to the recovery of damages for loss or injury to a shipment of livestock may be waived by the conduct of the carrier. Southern Ry. v. Turner, 75 Ga. App. 219, 42 S.E.2d 790 (1947).

Party can waive hearing. — Although a party is entitled to an opportunity for a hearing, there is no requirement that there must be a hearing. The party can waive the hearing. Scocca v. Wilt, 243 Ga. 2, 252 S.E.2d 401 (1979).

Consequential damages. — To the extent that consequential damages are recoverable in breach of contract actions, a clause excluding such damages is valid and binding unless prohibited by statute or public policy. Mark Singleton Buick, Inc. v. Taylor, 194 Ga. App. 630, 391 S.E.2d 435 (1990).

Waiver of right to jury trial in probate proceeding. — Trial court had subject matter jurisdiction to review the probate court's decision under Ga. Const. 1983, Art. VI, Sec. IV, Para. I and O.C.G.A. § 15-6-8(4)(E) to deny probate of the decedent's 1988 will and the parties' waiver of the statutory right to a jury trial did not deprive the trial court of subject matter jurisdiction to deny probate of the will. Mosley v. Lancaster, 296 Ga. 862, 770 S.E.2d 873 (2015).

Jury trial. — Before a defendant could effectively waive the right to a jury trial and demand a bench trial, the state's consent had to be obtained, in addition to the trial court's agreement to conduct a bench trial pursuant to the defendant's demand. Zigan v. State, 281 Ga. 415, 638 S.E.2d 322 (2006).

3. Actions Amounting to Waiver

Obtaining Sunday hearing waives legal hearing. — To insist on a hearing upon Sunday, and to obtain it and then give bail, is to waive a legal hearing. Weldon v. Colquitt, 62 Ga. 449, 35 Am. R. 128 (1879).

Failure to object waives personal jurisdiction. — Where the justice of a district in which the defendant resided was disqualified, and suit was brought without objection in another district, the presiding justice of which had jurisdiction of the subject matter, the defendant thereby waived objection to the jurisdiction of the defendant's person. Dozier v. Allen, 65 Ga. 254 (1880).

Failure to object to a motion for a new trial amounts to a waiver. Moore v. Rosser, 76 Ga. 329 (1886).

Any point of practice which, if sound, would be fatal to a motion for a new trial should be presented to the trial court by a motion to dismiss the application for a new trial, and if not so presented will be considered as having been waived. Walker v. Neil, 117 Ga. 733, 45 S.E. 387 (1903); Hopkins v. Jackson, 147 Ga. 821, 95 S.E. 675 (1918); Town of Fairburn v. Brantley, 161 Ga. 199, 130 S.E. 67 (1925).

Where evidence brief is not filed by day set, subsequent acts of parties may waive. Moxley v. Kinloch, 80 Ga. 46, 7 S.E. 123 (1887) see also Hilt v. Young, 116 Ga. 708, 43 S.E. 76 (1902).

Tax return irregularities are waivable by identifying property on which fieri facias will be levied. National Bank v. Danforth, 80 Ga. 55, 7 S.E. 546 (1887).

Refusal of telegraph company to pay damages on oral demand waives formal demand in writing. Hill v. Western Union Tel. Co., 85 Ga. 425, 11 S.E. 874, 21 Am. St. R. 166 (1890).

Agent of the company is a competent party to waive. Hill v. Western Union Tel. Co., 85 Ga. 425, 11 S.E. 874, 21 Am. St. R. 166 (1890).

Waiver of Benefits (Cont'd)
3. Actions Amounting to Waiver (Cont'd)

Arraignment and plea rights are waived when defendant goes to trial before jury on merits, and fails, until after the verdict, to bring to the attention of the court that the defendant has not been formally called upon to enter a plea to the indictment. Waller v. State, 2 Ga. App. 636, 58 S.E. 1106 (1907); Harris v. State, 11 Ga. App. 137, 74 S.E. 895 (1912); Perry v. State, 19 Ga. App. 619, 91 S.E. 939 (1917); Brown v. State, 19 Ga. App. 619, 91 S.E. 939 (1917); Caswell v. State, 27 Ga. App. 76, 107 S.E. 560, cert. denied, 27 Ga. App. 835 (1921).

Omission to take an exception to a ruling amounts to a waiver. Hunt v. Travelers Ins. Co., 136 Ga. 766, 72 S.E. 32 (1911).

Person may waive service of the original suit by appearing and pleading to the merits. Town of Fairburn v. Brantley, 161 Ga. 199, 130 S.E. 67 (1925).

Stipulation in deed securing debt that grantees may sell property upon default waives redemption right. — A stipulation in a deed to secure debt, that upon a default in the payment of the indebtedness thereby secured the grantees may enter upon the premises and collect the rents and profits thereof, and may sell the property at auction to the highest bidder for cash, first giving four weeks notice of the time, terms, and place of the sale by advertisement, constitutes a waiver by the borrower, the grantor in the deed, of the right of redemption given to mortgagors by former Code 1933, § 67-115 (see now O.C.G.A. § 44-14-42.1). Livingston v. Hirsch, 172 Ga. 854, 159 S.E. 253 (1931) (see § 11-9-506).

If carrier's agent acts upon oral notice of damaged shipment, required written notice waived. — Where a contract of shipment requires the owner or shipper to give notice in writing of any damage to the shipment before it is unloaded, such stipulation may be waived. If the carrier's agent, without objection to the form of the notice, receives and acts upon an oral notice, a waiver of the requirement as to its being in writing results. Southern Ry. v. Turner, 75 Ga. App. 219, 42 S.E.2d 790 (1947).

Party signing contract stipulating seller makes no warranty waives implied warranty. — Where a contract sued on expressly stipulates that the seller makes no warranty, a party who signs the contract will be deemed to have waived the benefits of the statutory law respecting implied warranties in sales contracts. Seigler v. Barrow, 83 Ga. App. 406, 63 S.E.2d 708 (1951).

Debtor under contract may waive defenses to action brought by contract's assignee. — A debtor under a conditional sale contract, by expressly agreeing not to set up as a defense to an action on the contract by an assignee thereof any claim the assignee may have had against the assignor, waived the assignee's right to plead failure of consideration in an action on the contract by the assignee. Jones v. Universal C.I.T. Credit Corp., 88 Ga. App. 24, 75 S.E.2d 822 (1953); Young v. John Deere Plow Co., 102 Ga. App. 132, 115 S.E.2d 770 (1960).

Demurrer or special pleas not made preliminary to trial deemed waived. — Under the law of this state, a prisoner, upon being arraigned, may demur to the indictment, plead to the jurisdiction of the court, or file a plea in abatement, or in bar, but if such pleas are not made preliminary to the trial, they are held to be waived in contemplation of law. Jones v. Mills, 216 Ga. 616, 118 S.E.2d 484 (1961).

Rights of accused may be waived voluntarily, or by counsel's failure to act. — Generally, all rights can be waived. This may be done by one accused of a criminal offense where this is done voluntarily, knowingly, and intelligently. It may be done by counsel for the accused by counsel's failure to act timely or by counsel's not acting at all. Mingo v. State, 133 Ga. App. 385, 210 S.E.2d 835 (1974).

Stipulating waiver of prior jeopardy. — Although the trial court ruled on the motion to suppress after the jury had been sworn and excused, where the record showed that, in the trial court, the appellee stipulated in writing that a jury had never been placed upon the appellee and, consequently, that he had not been placed in jeopardy, the result of such stipulation

is that the motion to suppress had, in effect, been ruled upon prior to the impanelling of the jury, and the case was properly before the appellate court. State v. Chumley, 164 Ga. App. 828, 299 S.E.2d 564 (1982).

Contracting to abide by restrictive covenants. — Because a landowner was at liberty to waive a constitutional as well as a legal right, the superior court did not abuse its discretion in restraining the landowner's continuing violation of restrictive covenants by hanging an unapproved non-commercial sign from the landowner's residence after the landowner had validly contracted to abide by the covenants which were mutually applicable to all lot owners. Bryan v. MBC Partners, L.P., 246 Ga. App. 549, 541 S.E.2d 124 (2000).

4. Actions Not Amounting to Waiver

Filing of motion for new trial is not waived by consent to continuance of hearing. Hilt v. Young, 116 Ga. 708, 43 S.E. 76 (1902).

The creditor's release of the principal debtor without the consent of the surety does not discharge the surety if the creditor, in the instrument of release, reserved its rights against the surety. However, the debtor's waiver of its claims in consideration of that release may not defeat the surety's right to assert those claims to reduce its liability to the creditor. Hardaway Co. v. Amwest Sur. Ins. Co., 263 Ga. 697, 436 S.E.2d 642 (1993).

5. Effect of Waiver

Defendant acknowledging service and waiving filing cannot object that writ not filed. — A defendant when sued may acknowledge service, and waive copy, process, and filing before the session of the court, and the defendant will not afterwards as against the plaintiff be heard to object that the writ was not filed before the court. Steadman v. Simmons, 39 Ga. 591 (1869).

Contract exemption releases landlord from liability for all acts, except those willful and wanton. — A valid exemption in a lease contract effectively released the landlord from all liability for injury to the tenant's goods on account of ordinary negligence, including all acts and omissions as charged in the petition, except those which constituted willfulness and wantonness. To make an act willful and wanton, specific facts must be alleged and proven. King v. Smith, 47 Ga. App. 360, 170 S.E. 546 (1933).

Acknowledgment that checks in full settlement of salary due estops recovery of deductions made. — The plaintiff's written acknowledgment that the plaintiff's pay checks were in full settlement of the salary due the plaintiff, and that any deductions from the full amount due were made in accordance with the payee's written request, not having been made under duress, constituted a waiver which did not adversely affect the public interest or violate public policy, and estopped the plaintiff from recovering the deductions so made. Barfield v. City of Atlanta, 53 Ga. App. 861, 187 S.E. 407 (1936).

Where accused assents to juror excuse, no error committed, though verdict rendered by 11 jurors. — Where the evidence in a criminal trial, though partly circumstantial, was sufficient to authorize a finding that at the time one of the original 12 jurors was excused by the court, and in the presence of the court, the accused was consulted by his counsel, and expressly assented, as the accused had the right to do, no error was committed, even though the verdict was rendered by 11 jurors. Coates v. Lawrence, 193 Ga. 379, 18 S.E.2d 685 (1942).

Too late to attack defective indictment in habeas corpus proceedings if defendant pled guilty. — If the defendant pleads guilty to a defective indictment in which the defendant has incriminated oneself, and the defendant's spouse has testified, it is too late afterwards, in proceedings instituted to secure the release of the defendant by a writ of habeas corpus, to attack the indictment upon that ground. Bradford v. Mills, 208 Ga. 198, 66 S.E.2d 58 (1951).

One going to trial without objection cannot question the constitutionality of the Act creating court which tried the defendant. Senters v. Wright & Lopez, Inc., 220 Ga. 611, 140 S.E.2d 904 (1965).

Waiver of Benefits (Cont'd)
5. Effect of Waiver (Cont'd)

By pleading to merits of case defendant waives right to object to jurisdiction of court to render a judgment in personam against the defendant and converts an attachment proceeding into an ordinary common-law action. Parker v. Mercer, 111 Ga. App. 108, 140 S.E.2d 915 (1965).

When no objection to evidence when offered, not considered on appeal. — The failure to object at the time evidence is offered is a waiver of the objection and this ground of the appeal could not be considered. Sumter County v. Pritchett, 125 Ga. App. 222, 186 S.E.2d 798 (1971).

Once incidental right or contractual benefit has been waived or relinquished it cannot be reclaimed. Aaron Rents, Inc. v. Corr, 133 Ga. App. 296, 211 S.E.2d 156 (1974).

OPINIONS OF THE ATTORNEY GENERAL

Person may not waive coverage under Trial Judges and Solicitors Retirement Fund. — It is the intention of the General Assembly that any person whose office is within the ambit of the statutory provisions, creating and governing the Trial Judges and Solicitors Retirement Fund, shall participate in this retirement system commencing with the time provided in the provisions and continuing until one ceases to hold the position or office covered by the fund; such a person may not waive or renounce such coverage. 1968 Op. Att'y Gen. No. 68-475.

RESEARCH REFERENCES

Am. Jur. 2d. — 17A Am. Jur. 2d, Contracts, § 247 et seq.

C.J.S. — 17 C.J.S., Contracts, § 212.

ALR. — Waiver of benefit of statute or rule by which allegation in pleading of execution or of consideration of written instrument must be taken as true unless met by verified denial, 67 A.L.R. 1283.

Stipulation of parties as to the law, 92 A.L.R. 663.

Waiver of statutory right to minimum wage or benefit of regulation as to hours of labor, 102 A.L.R. 842; 129 A.L.R. 1145.

Right of employee of public contractor to maintain action against latter based upon statutory obligation as to rate of wages or upon provisions in that regard in the contract between contractor and the public, 144 A.L.R. 1035.

Agreement by a member or members of a class for whose protection a bond is required by statute, to indemnify surety, as contrary to public policy, 154 A.L.R. 838.

Acceptance by building or construction contractor of payments under his contract as a waiver of right of action upon implied warranty as to conditions affecting cost, 173 A.L.R. 308.

Estoppel to assert invalidity of decree of divorce for lack of domicile at the divorce forum or failure to obtain jurisdictions of person, 175 A.L.R. 538.

Validity of contractual stipulation or provision waiving debtor's exemption, 94 A.L.R.2d 967.

Validity, in contract for installment sale of consumer goods, or commercial paper given in connection therewith, of provision waiving, as against assignee, defenses good against seller, 39 A.L.R.3d 518.

Validity of exculpatory clause in lease exempting lessor from liability, 49 A.L.R.3d 321.

Right of accused, in state criminal trial, to insist, over prosecutor's or court's objection, on trial by court without jury, 37 A.L.R.4th 304.

1-3-8. Binding effect of legislation upon state.

The state is not bound by the passage of a law unless it is named therein or unless the words of the law are so plain, clear, and

unmistakable as to leave no doubt as to the intention of the General Assembly.

History. — Civil Code 1895, § 3; Civil Code 1910, § 3; Code 1933, § 102-109.

History of Code section. — The language of this Code section is derived in part from the decision in Lingo v. Harris, 73 Ga. 28 (1884), and Mayor of Brunswick v. King, 91 Ga. 524, 17 S.E. 940 (1892).

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Section applicable to General Assembly. — Like the state, the General Assembly, including its committees, commissions, and offices, is not subject to a law unless named therein or the intent that it be included be clear and unmistakable. Harrison Co. v. Code Revision Com., 244 Ga. 325, 260 S.E.2d 30 (1979).

University trustees (now regents) are not a sovereignty. Trustees of Univ. of Ga. v. Denmark, 141 Ga. 390, 81 S.E. 238 (1914), overruled on other grounds, Hood v. First Nat'l Bank, 219 Ga. 283, 133 S.E.2d 19 (1963).

Later court decisions indicate disposition not to broaden or increase the exceptions to this section. Butler v. Merritt, 113 Ga. 238, 38 S.E. 751 (1901); Fowler v. Rome Dispensary, 5 Ga. App. 36, 62 S.E. 660 (1908).

Statute providing for condemnation of property for public use is applicable only to private property, and not to property owned by the state. Western Union Tel. Co. v. Western & A.R.R., 142 Ga. 532, 83 S.E. 135 (1914).

Municipal building ordinance ultra vires insofar as affects state. — Where repairs are being made upon a building owned by the state, on state property, it is wholly a matter of state concern, and a municipal building ordinance is ultra vires insofar as it affects the state. City of Atlanta v. State, 181 Ga. 346, 182 S.E. 184 (1935).

Cited in Wilson v. City of Eatonton, 180 Ga. 598, 180 S.E. 227 (1935); Kirk v. Bray, 181 Ga. 814, 184 S.E. 733 (1935); Jones v. Staton, 78 Ga. App. 890, 52 S.E.2d 481 (1949); Anderson v. Department of Family & Children Servs., 118 Ga. App. 318, 163 S.E.2d 328 (1968); Fuqua Television, Inc. v. Fleming, 134 Ga. App. 731, 215 S.E.2d 694 (1975); Elbert County v. Georgia Insurers Insolvency Pool, 185 Ga. App. 803, 366 S.E.2d 153 (1988); Moreland v. State, 304 Ga. App. 468, 696 S.E.2d 448 (2010).

OPINIONS OF THE ATTORNEY GENERAL

Section applicable to municipal corporations and state instrumentalities. — This section not only applies to municipal corporations, but also applies to public corporations that are an instrumentality of the state. 1958-59 Op. Att'y Gen. p. 5.

Nothing in lien laws in former Code 1933, §§ 67-1701 and 67-2001 et seq. (see now O.C.G.A. § 44-14-360 et seq.) indicate intention to bind the state thereby; these laws are in derogation of the common law, must be strictly construed, and one claiming thereunder must bring oneself clearly within the law. 1957 Op. Att'y Gen. p. 179.

State property is not subject to regulation by lesser governmental authorities, for the reason that such lesser governments exercise only the powers delegated to them by the state, and any general delegation of power does not apply to the state or its instrumentalities in the absence of express language or clear implication in the statutes. 1971 Op. Att'y Gen. No. 71-113.

City cannot affect property owned by the State of Georgia or the state's agencies and any ordinance affecting such property would be ultra vires and of no effect as far as the state and the state's property are concerned. 1967 Op. Att'y Gen. No. 67-73.

State park authority not required to obtain dairy processing plant license. — A state park authority, created

as a body corporate and politic and deemed to be an instrumentality of the state and a public corporation, is not required to obtain a dairy processing plant license to operate an ice cream parlor. 1958-59 Op. Att'y Gen. p. 5.

Lobbying registering provisions not applicable to state or political subdivisions. — State, county, and city officials, employees, and their representatives who intend, in their official capacities, to aid or oppose the enactment of any bill by either house of the General Assembly were not required to register with the Secretary of State pursuant to former Code 1933, § 47-1001 et seq. since nothing in the law specifically made the provisions applicable to the state or its political subdivisions. 1975 Op. Att'y Gen. No. 75-28.

RESEARCH REFERENCES

C.J.S. — 82 C.J.S., Statutes, §§ 84 et seq., 389 et seq.

ALR. — Applicability of constitutional provision requiring reenactment of altered or amended statute to one which leaves intact terms of original statute, but transfers or extends its operation to another field, 67 A.L.R. 564.

Applicability of constitutional requirement that repealing or amendatory statute refer to statute repealed or amended, to repeal or amendment by implication, 5 A.L.R.2d 1270.

1-3-9. Effect and enforcement of foreign laws.

The laws of other states and foreign nations shall have no force and effect of themselves within this state further than is provided by the Constitution of the United States and is recognized by the comity of states. The courts shall enforce this comity, unless restrained by the General Assembly, so long as its enforcement is not contrary to the policy or prejudicial to the interests of this state.

History. — Orig. Code 1863, § 10; Code 1868, § 9; Code 1873, § 9; Code 1882, § 9; Civil Code 1895, § 9; Civil Code 1910, § 9; Code 1933, § 102-110.

Cross references. — Rights of citizens of other states or nations to sue or give evidence, § 1-2-10. Uniform Foreign-Country Money Judgments Recognition Act, § 9-12-110 et seq. Judicial enforcement of taxes imposed by other states, § 48-2-80.

Law reviews. — For article discussing convergence of standards governing limits of state's personal jurisdiction and applicability of state substantive law, see 9 J. of Pub. L. 282 (1960). For article advocating replacement of the lex loci delicti doctrine in Georgia with a national interest analysis approach, see 20 Mercer L. Rev. 1 (1969). For articles on conflict of law, see 34 Mercer L. Rev. 469 (1983) and 35 Mercer L. Rev. 417 (1984). For article discussing recent developments in the area of conflict of laws, see 39 Mercer L. Rev. 411 (1987). For article comparing "rules" and "analysis" approaches to choice of law, see 40 Mercer L. Rev. 869 (1989).

For note, "Interstitial Lawmaking: Uniformity or Conformity?" see 32 Mercer L. Rev. 1235 (1981).

JUDICIAL DECISIONS

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General Consideration

Laws of other states have no force in Georgia except on principles of comity. Gulf Collateral, Inc. v. Morgan, 415 F. Supp. 319 (S.D. Ga. 1976).

Nature of comity. — Comity is reciprocity. It cannot be that the laws of the several states of the union differ so materially in policy or in the nature of their institutions as to require that unquestionable defensive right of every sovereignty, that of protecting its citizens against the operation of the laws or doctrines of another state, incompatible with their safety, or injurious to their interest. Jackson v. Johnson, 34 Ga. 511, 89 Am. Dec. 263 (1866).

Comity requires that state courts be afforded opportunity to perform duties. — Although the states are sovereign entities, they are bound along with their officials, including their judges, by the United States Constitution and the federal statutory law. Principles of comity in the United States federal system require that the state courts be afforded the opportunity to perform their duty, which includes responding to attacks on state authority based on the federal law, or, if the litigation is wholly private, construing and applying the applicable federal requirements. Webb v. Webb, 451 U.S. 493, 101 S. Ct. 1889, 68 L. Ed. 2d 392 (1981).

Public policy controlled over contract terms. — In answering a question certified from a federal appeals court in an action concerning a noncompetition agreement, the Georgia Supreme Court held that, based on O.C.G.A. § 1-3-9, the law of the jurisdiction chosen by the parties to a contract to govern their contractual rights would not be applied by Georgia courts where application of the chosen law would contravene the policy of, or would be prejudicial to the interests of Georgia, and that covenants against disclosure and competition affected the interests of Georgia, namely the flow of information needed for competition among businesses, and hence their validity would be determined by the public policy of Georgia. Convergys Corp. v. Keener, 276 Ga. 808, 582 S.E.2d 84 (2003).

Workers' compensation. — Employer who paid a workers' compensation claimant workers' compensation benefits under Texas law was not entitled to a subrogation claim to the proceeds of a tort settlement against the alleged tortfeasors under the full faith and credit and comity provisions of the U.S. Constitution. Tyson Foods, Inc. v. Craig, 266 Ga. App. 443, 597 S.E.2d 520 (2004).

Cited in Shore Acres Properties, Inc. v. Morgan, 44 Ga. App. 128, 160 S.E. 705 (1931); Patterson v. Patterson, 208 Ga. 7, 64 S.E.2d 441 (1951); R. & J. Dick Co. v. Bass, 295 F. Supp. 758 (N.D. Ga. 1968); Roadway Express, Inc. v. Warren, 163 Ga. App. 759, 295 S.E.2d 743 (1982); CS-Lakeview at Gwinnett, Inc. v. Simon Prop. Group, Inc., 283 Ga. 426, 659 S.E.2d 359 (2008); Global Link Logistics, Inc. v. Briles, 296 Ga. App. 175, 674 S.E.2d 52 (2009).

When Doctrine of Comity Invoked

1. General Rule

In enforcing comity, Georgia does so where not contrary to state policy. — In enforcing comity in respect to the laws of sister states, Georgia does so only so long as its enforcement is not contrary to the policy of this state. Gulf Collateral, Inc. v. Morgan, 415 F. Supp. 319 (S.D. Ga. 1976).

When Doctrine of Comity Invoked (Cont'd)

2. Right to Sue

State courts will not exclude Alabama suitors where Alabama courts do not exclude Georgia suitors. — Only in this sense is the expression "reciprocity is comity" applicable to causes of action springing from wrongful deaths occurring in Alabama. Southern Ry. v. Decker, 5 Ga. App. 21, 62 S.E. 678 (1908).

If foreign appointed administrator becomes state resident, liable to be sued here. — If an administrator appointed in Alabama, together with the securities on the administrator's bond, become residents of this state, they are liable to be sued here on a decree rendered in this state on a bill filed by the distributees for an account and settlement. Johnson v. Jackson, 56 Ga. 326, 21 Am. R. 285 (1876).

When receiver may sue in foreign jurisdiction. — While a chancery or statutory receiver cannot sue in the courts of a foreign jurisdiction by virtue of the receiver appointment alone, the receiver can do so when the receiver is expressly authorized by statute to sue, or when the receiver is expressly or by necessary implication vested with title, or when the receiver is made a quasi-assignee or representative of creditors. Bullock v. Oliver, 155 Ga. 151, 116 S.E. 293, 29 A.L.R. 1484, answer conformed to, 30 Ga. App. 91, 117 S.E. 112 (1923).

3. Statutes, Laws, and Judgments

Foreign citizen cannot claim local garnishment exemption when property seized here. — Under the comity of states, a citizen and resident of Alabama cannot claim the benefit of our exemption laws as against a garnishment when one's property happens to be seized on process here. In this respect "reciprocity is comity" according to this section. Kyle & Co. v. Montgomery, 73 Ga. 337 (1884).

Courts of Georgia will not be bound by interpretations of foreign state upon common law. Krogg v. Atlanta & W. Point R.R., 77 Ga. 202, 4 Am. St. R. 79 (1886).

Georgia must give full faith and credit to sister state's judgment. — Even if the statutory law of this state is different from that of a sister state, and even if this would prevent recovery, the forum state (Georgia) must give full faith and credit to a judgment rendered by the sister state. Colodny v. Krause, 136 Ga. App. 379, 221 S.E.2d 239 (1975).

Judgment of foreign state construing corporate charter followed by state courts. — A judgment rendered by the courts of a state in which a corporation is chartered, construing the charter with respect to the powers conferred therein, will be followed by the courts of this state. Clark v. Turner, 73 Ga. 1 (1884).

Georgia courts recognize and prospectively enforce foreign alimony or child support decree. — Although a foreign decree may be nonfinal because it can be prospectively modified, for reasons of comity Georgia courts will recognize and give prospective enforcement to a foreign alimony or child support decree by establishing it as the decree of a Georgia court through domestication and treating it as though it were a local decree. Williamson v. Williamson, 247 Ga. 260, 275 S.E.2d 42, cert. denied, 454 U.S. 1097, 102 S. Ct. 669, 70 L. Ed. 2d 638 (1981).

Comity is not applied where foreign divorce is obtained under circumstances offending state's public policy as found in its Constitution and statutes and the decisions of its courts. Christopher v. Christopher, 198 Ga. 361, 31 S.E.2d 818 (1944).

4. Contracts

Law applicable in governing contracts. — Contracts are to be governed as to their nature, validity, and interpretation by the law of the place where they were made, except where it appears from the contract that it is to be performed in a state other than that in which it was made, in which case the laws of that sister state will be applied in the enforcement of any contract to be there performed, so long as such laws do not conflict with the statute, powers, or rights of the state wherein it was executed and sought to be enforced. Tillman v. Gibson, 44 Ga. App. 440, 161 S.E. 630 (1931).

The conflicts rule in this state is that where a contract is made and is to be performed in another state, the laws of the latter state will govern as to the validity, nature, obligation, and construction of the contract, where they are duly pleaded and proved, and such laws will be enforced by comity in this state unless they are contrary to public policy or prejudicial to the interests of this state. Rohner, Gehrig & Co. v. Capital City Bank, 655 F.2d 571 (5th Cir. 1981).

Contracts made and performed in another state will be enforced unless such state's laws are contrary to Georgia public policy. Nationwide Gen. Ins. Co. v. Parnham, 182 Ga. App. 823, 357 S.E.2d 139 (1987).

Law applicable to contracts affecting property. — As to contracts affecting realty, the law of the state where the land lies will be applied, and to all kinds of personal property, it is governed by the lex domicili of the owner. Clark v. Baker, 186 Ga. 65, 196 S.E. 750 (1938).

Foreign contract and laws enforced in this state. — Whenever a contract made in a place outside of the territorial jurisdiction of this state is sought to be enforced in this state, courts here will enforce the contract and give effect to the laws of the place in which it was executed, so far as that can be done without violating the law of this state or its established policy. Massachusetts Benefit Life Ass'n v. Robinson, 104 Ga. 256, 30 S.E. 918, 42 L.R.A. 261 (1898).

Contracts made and performed in another state will be enforced unless such state's laws are contrary to the public policy of the enforcing state. Terry v. Mays, 161 Ga. App. 328, 291 S.E.2d 44 (1982).

Contract executed in foreign state, not intended as Georgia contract, treated as foreign contract. — Where a contract not only is executed in a foreign state, but contains nothing to indicate by the place of performance or otherwise that it was intended to be construed as a Georgia contract, it will be treated as a contract of the foreign state and governed by its laws. Trustees of Jesse Parker Williams Hosp. v. Nisbet, 189 Ga. 807, 7 S.E.2d 737 (1940); Terry v. Mays, 161 Ga. App. 328, 291 S.E.2d 44 (1982).

Foreign marriage settlement applicable to Georgia lands. — A marriage settlement executed between persons who were then and continued to be citizens of South Carolina applied to lands situated in Georgia according to South Carolina inheritance laws. Brown v. Ransey, 74 Ga. 210 (1884).

State's public policy is generally limited to enforcement of money contracts performed in this state, and public policy does not extend to the enforcement of valid contracts made in other states, for which the rules of comity will be observed. Commercial Credit Plan, Inc. v. Parker, 152 Ga. App. 409, 263 S.E.2d 220 (1979).

Effect of statutory prohibition in enforcing state. — A contract is not necessarily contrary to the public policy of the enforcing state merely because it could not validly have been made there, notwithstanding the making of such contracts in the place of the forum is expressly prohibited by statute. Terry v. Mays, 161 Ga. App. 328, 291 S.E.2d 44 (1982).

Contract provision regarding support following artificial insemination. — A Florida contract under which a mother relinquished her right to hold a sperm donor responsible for any resulting child was not unenforceable under O.C.G.A. § 1-3-9 as contrary to public policy. The contract was authorized by Florida law, and Georgia had held that paternity through artificial insemination did not confer responsibility for support. Brown v. Gadson, 288 Ga. App. 323, 654 S.E.2d 179 (2007), cert. denied, No. S08C0456, 2008 Ga. LEXIS 236 (Ga. 2008).

5. Property

Assets of deceased distributed according to law of state where representatives appointed. — The assets of the deceased should be applied to the payment of debts, or be distributed amongst the next of kin, by the courts of this state according to the law of the state where the representatives were appointed. This is the comity of states as recognized by this section. Johnson v.

When Doctrine of Comity Invoked (Cont'd)
5. Property (Cont'd)

Jackson, 56 Ga. 326, 21 Am. R. 285 (1876).

Right and disposition of personalty is to be governed by the law of the domicile of the owner, and not the law of the location of the property. Grote v. Pace, 71 Ga. 231 (1883).

When Doctrine of Comity Not Invoked

1. General Rule

Our courts are not required by comity to enforce what is not law in other state. Tennessee v. Virgin, 36 Ga. 388 (1867).

Foreign law not enforced if penal only, or if contravenes established public policy. — A foreign law will not be enforced if it is penal only and relates to the punishing of public wrongs as contradistinguished from the redressing of private injuries, or if it contravenes our established public policy, or the recognized standards of civilization and good morals. Eubanks v. Banks, 34 Ga. 407 (1866); Reeves v. Southern Ry., 121 Ga. 561, 49 S.E. 674, 70 L.R.A. 513, 2 Ann. Cas. 207 (1905); Southern Ry. v. Decker, 5 Ga. App. 21, 62 S.E. 678 (1908).

Foreign law will not be enforced if it is penal only and relates to the punishing of public wrongs as contradistinguished from the redressing of private injuries. Laminoirs-Trefileries-Cableries de Lens, S.A. v. Southwire Co., 484 F. Supp. 1063 (N.D. Ga. 1980).

Foreign laws not enforced if immoral or violative of conscience. — Where the law of a sister state contravenes the public policy of Georgia or is immoral or violative of conscience, it will not be enforced in this state. Gulf Collateral, Inc. v. Morgan, 415 F. Supp. 319 (S.D. Ga. 1976).

In diversity cases, governing law that of state in which federal court sits. — There has been no repeal or modification of the principle that enforcement of the laws of another state is not required where they run counter to the public policy of Georgia. In diversity cases involving that issue, the governing law is that of the state in which the federal court is sitting. Gulf Collateral, Inc. v. Morgan, 415 F. Supp. 319 (S.D. Ga. 1976).

2. Statutes and Judgments

Foreign legislature cannot prescribe laws to be recognized and enforced in courts of this state, even though the law as to which cognizance is sought to be excluded is a statute of the state whose legislature seeks to create the exclusion. Southern Ry. v. Decker, 5 Ga. App. 21, 62 S.E. 678 (1908).

Comity cannot be invoked to give extraterritorial effect to a judgment procured by fraudulent representations in order to obtain jurisdiction of the court. Christopher v. Christopher, 198 Ga. 361, 31 S.E.2d 818 (1944).

Indiana products liability law contravened Georgia public policy. — Public policy exception to lex loci delicti applied and Georgia law should have been applied in a design defect products liability case because Georgia recognized strict liability in such cases, pursuant to O.C.G.A. § 51-1-11, whereas Indiana law required a showing that the manufacturer failed to exercise reasonable care under the circumstances. Bailey v. Cottrell, Inc., 313 Ga. App. 371, 721 S.E.2d 571 (2011).

3. Contracts

Law chosen by parties not applied where contravenes state interests. — The law of the jurisdiction chosen by the parties to a contract to govern their contractual rights will not be applied by the Georgia courts where the application of the chosen law would contravene the policy of, or would be prejudicial to, the interests of this state. Dothan Aviation Corp. v. Miller, 620 F.2d 504 (5th Cir. 1980).

Comity cannot be invoked in aid of award, where illegal transaction was submitted to arbitrators. Benton & Brother v. Singleton, 114 Ga. 548, 40 S.E. 811, 58 L.R.A. 181 (1902).

Stipulations in foreign contract arbitrarily limiting negligence liability of common carrier not enforced. — So far as stipulations of a contract limit the

common-law liability of the carrier as an insurer, or for losses occurring by unavoidable accident, they will be enforced by the courts of this state; but in such a case, it being contrary to the public policy of this state to allow a common carrier, even by express contract, to make an arbitrary limitation upon its liability for negligence of its agents or servants, stipulations to that effect will not be enforced. Southern Express Co. v. Hanaw, 134 Ga. 445, 67 S.E. 944, 137 Am. St. R. 227 (1910).

Neither is foreign law providing married woman liable upon suretyship contract. — The law of a foreign state providing that a married woman is liable upon her contract of suretyship will not be enforced in this state under this section. Sally v. Bank of Union, 25 Ga. App. 509, 103 S.E. 798 (1920); Ulman, Magill & Jordan Woolen Co. v. Magill, 155 Ga. 555, 117 S.E. 657 (1923).

Foreign carriage contract not necessarily governed by foreign laws where partly performed in state. — Though a contract of carriage is made in a foreign state, it is not necessarily governed in matters of construction and effect by the laws of that state, where the contract is to be partly performed in this state. Myers v. Atlantic Greyhound Lines, 52 Ga. App. 698, 184 S.E. 414 (1936).

Foreign provision providing that surety or obligor not released along with cosurety or coobligor unenforceable. — A Tennessee statute providing that the release of a cosurety or coobligor does not release the other surety or obligor when the parties, other than those not released, stipulate that the other surety or obligor is not released is contrary to the public policy of this state and will not be enforced. Kent v. Hair, 60 Ga. App. 652, 4 S.E.2d 703 (1939).

Gambling transactions contravene the public policy of Georgia and constitute obligations unenforceable in its courts. Gulf Collateral, Inc. v. Morgan, 415 F. Supp. 319 (S.D. Ga. 1976).

Validity of covenants against disclosure determined by state's public policy. — Covenants against disclosure, like covenants against competition, affect the interests of this state, namely the flow of information needed for competition among businesses, and hence their validity is determined by the public policy of this state. Nasco, Inc. v. Gimbert, 239 Ga. 675, 238 S.E.2d 368 (1977).

Validity of covenants against competition determined by state's public policy. — Covenants against competition affect the interests of this state, hence their validity is determined by the public policy of this state. Dothan Aviation Corp. v. Miller, 620 F.2d 504 (5th Cir. 1980).

4. Property

Comity not applicable to suit by receiver unless appointment provision vests property title in receiver. — The principles of comity do not apply to a suit by a chancery receiver in a foreign jurisdiction, nor to a suit by a statutory receiver, unless the statute under which the receiver is appointed vests title in the receiver to the property the receiver represents. Oliver v. Bullock, 28 Ga. App. 446, 111 S.E. 680 (1922), rev'd on other grounds, 155 Ga. 151, 116 S.E. 293, 29 A.L.R. 1484, answer conformed to, 30 Ga. App. 91, 117 S.E. 112 (1923).

State has no jurisdiction to bring foreign administrator to account where the administrator is visiting here on business. Jackson v. Johnson, 34 Ga. 511, 89 Am. Dec. 263 (1866).

Provisions of foreign will contrary to state policy not enforced. — Our laws will not enforce the provisions of a will made in another state which are directly contrary to the declared policy of this state, but the judgment of a competent tribunal as to the will, where the will was executed, will be respected by the courts of this state. Caruthers v. Corbin, 38 Ga. 75 (1868).

Pleading and Proving Foreign Law

Foreign law must be pled and proved. — Where a party seeks to rely on the law of another state as furnishing the basis for a right of recovery or defense different from what it would be under the laws of this state, or the common law, the law of the foreign state should be pled and proved. Southern Express Co. v. Hanaw, 134 Ga. 445, 67 S.E. 944, 137 Am. St. R. 227 (1910).

Pleading and Proving Foreign Law (Cont'd)

Where pled, decisions of foreign courts of last resort adopted in construing statute. — Where a statute of a foreign state is pled as being the basis of a cause of action arising in that state, in a suit instituted in this state, and a construction of the statute becomes necessary, the decisions of the courts of last resort of the foreign state in construing the statute will be adopted; and where it appears that there are no decisions of the courts in that state construing the statute, but that the statute was verbally adopted from the statute of another state, the decisions of the state from which it was adopted will be considered in construing the statute, especially those decisions construing it which had been made prior to the adoption of the statute in the latter state. Lee v. Lott, 50 Ga. App. 39, 177 S.E. 92 (1934).

Foreign judgment, if proved, may have effect of former local adjudication. — Under the full faith and credit clause of the Constitution, a judgment of a court of competent jurisdiction in Tennessee, if properly proved, may have the effect of a former adjudication in matters pending in the courts of this state. Roadway Express, Inc. v. McBroom, 61 Ga. App. 223, 6 S.E.2d 460 (1939).

Laws of state of contract's performance, where proved, govern validity, nature, obligation, and construction. — Where a contract is made in one state to be performed in another, the laws of the latter state will govern as to the validity, nature, obligation, and construction of the contract, where they are duly pleaded and proved, and such laws will be enforced by comity in this state unless they are contrary to public policy or prejudicial to the interests of this state. Pratt v. Sloan, 41 Ga. App. 150, 152 S.E. 275 (1930).

Where a contract is made in one state to be performed in another, the laws of the latter state will govern as to the validity, nature, obligation, and construction of the contract, when they are pleaded and proved, and this general rule is particularly applicable to liability for a passenger's baggage. Myers v. Atlantic Greyhound Lines, 52 Ga. App. 698, 184 S.E. 414 (1936).

Contract of foreign state originally part of colonies governed by common law, absent contrary pleading. — A contract of a foreign state which constituted one of the original 13 colonies, or which was derived from territory included in one of the colonies, will be construed and governed by the common law, in the absence of any pleading to the contrary, and in such a case, the construction of the common law given by the courts of this state will control, in preference to the construction given by the courts of the state of the contract. Trustees of Jesse Parker Williams Hosp. v. Nisbet, 189 Ga. 807, 7 S.E.2d 737 (1940).

Foreign law must be pleaded where state never part of English territory. — In an action on a contract of a state that was never a part of English territory, embraced in one of the original 13 colonies or belonging thereto, the law of the foreign state must be pleaded, in the absence of which it will be presumed that the law of this state obtains therein. Trustees of Jesse Parker Williams Hosp. v. Nisbet, 189 Ga. 807, 7 S.E.2d 737 (1940).

RESEARCH REFERENCES

Am. Jur. 2d. — 16 Am. Jur. 2d, Conflict of Laws, § 7 et seq. 16B Am. Jur. 2d, Constitutional Law, § 1025 et seq. 44B Am. Jur. 2d, International Law, §§ 1 et seq., 13 et seq.

C.J.S. — 15A C.J.S., Conflict of Laws, §§ 1 et seq., 6 et seq. 48 C.J.S., International Law, §§ 5 et seq., 22 et seq., 26 et seq.

ALR. — Statute relating to liability of officers or directors of private corporation as penal within principle that penal laws will not be enforced extraterritorially, 25 A.L.R. 1428.

Conflict of laws as to contributory negligence, 32 A.L.R. 796.

Extraterritorial effect of confiscations of property and nationalization of corporations, 37 A.L.R. 726; 41 A.L.R. 745; 65 A.L.R. 1494; 139 A.L.R. 1209.

Reciprocity as affecting comity, 50 A.L.R. 30; 87 A.L.R. 973.

Inhibition by decree of divorce or statute of state or country in which it is granted, against remarriage, as affecting a marriage celebrated in another state or country, 51 A.L.R. 325.

Effect in third state of marriage valid where celebrated but void by law of domicile of parties, 51 A.L.R. 1412.

Applicability to contracts made or to be performed in another state or country, of a statute of the forum permitting persons injured to maintain action directly against indemnity insurer, 54 A.L.R. 515; 120 A.L.R. 855.

Death statute as a penal law within the rule that courts of one state or country will not enforce penal laws of another, 62 A.L.R. 1330.

Limitation applicable to cause of action created by statute of another state which allows a longer period than the statute of the forum, 68 A.L.R. 217; 146 A.L.R. 1356.

Bar of statute of nonclaim of decedent's domicile as affecting assertion of claim elsewhere, 72 A.L.R. 1030.

Duty of courts to follow decisions of other states, on questions of common law or unwritten law, in which the cause of action had its situs, 73 A.L.R. 897.

Conflict of laws as to character, form, and nature of action that may be brought upon a foreign contract, 74 A.L.R. 1331.

Nature of differences between lex loci and lex fori which will sustain or defeat jurisdiction of a cause of action for death arising under the law of another state or country, 77 A.L.R. 1311.

Conflict of laws as to construction and effect of will devising real property, 79 A.L.R. 91.

Action in one state or country on bond given pursuant to statute of another, 85 A.L.R. 847.

Jurisdiction of federal court or court of sister state of proceedings pursuant to state or foreign statute to compel arbitration, 85 A.L.R. 1124.

Right of personal representative appointed at the forum or in a jurisdiction where decedent was domiciled or where the tort occurred, to maintain action for death under foreign statute which provides that the action shall be brought by executor or administrator, 85 A.L.R. 1231; 52 A.L.R.2d 1170.

Conflict of laws as regards survival of cause of action and revival of pending action upon death of party, 87 A.L.R. 852; 42 A.L.R.2d 1170.

Conflict of laws as to conditional sale of chattels, 87 A.L.R. 1308; 13 A.L.R.2d 1312.

Assumption of or refusal to assume jurisdiction by court of one state or country, of action on contract involving foreign elements, 87 A.L.R. 1425; 90 A.L.R.2d 1109.

Lex loci or lex fori as the governing law as to whether the case or question is to be submitted to the jury or determined by the court, 89 A.L.R. 1278; 149 A.L.R. 775.

Conflict of laws as to period of limitation to enforce stockholders' statutory liability, 113 A.L.R. 510; 143 A.L.R. 1442.

Recognition of foreign marriage as affected by policy in respect of incestuous marriages, 117 A.L.R. 186.

Conflict of laws as to usury, 125 A.L.R. 482.

Constitutionality, construction, and application of compacts and statutes involving co-operation between states, 134 A.L.R. 1411.

Conflict of laws regarding deficiency in respect of debt secured by mortgage or deed of trust, 136 A.L.R. 1057.

Conflict of laws as to trusts inter vivos, 139 A.L.R. 1129.

Duty of courts of one state to recognize and give effect to decrees of divorce rendered in other states, as affected by constructive service of process or lack of domicile at divorce forum, 143 A.L.R. 1294; 1 A.L.R.2d 1385; 28 A.L.R.2d 1303.

Conflict of laws as to exercise of power of appointment, 150 A.L.R. 519.

Recognition of status created by foreign adoption or legitimation for purposes of testate or intestate distribution of decedent's estate in a jurisdiction in which such status could not have been created even in the case of one domiciled there, 153 A.L.R. 199.

Conflict of laws as regards brokerage contracts, 159 A.L.R. 266.

Enforceability of federal penal statutes in state courts, 162 A.L.R. 373; 172 A.L.R. 231.

Estoppel to assert invalidity of decree of divorce for lack of domicile at the divorce forum or failure to obtain jurisdiction of person, 175 A.L.R. 538.

Inclusion in domestic judgment or record, in action upon a judgment of a sister state, of findings respecting the cause of action on which the judgment in the sister state was rendered, 10 A.L.R.2d 435.

Conflict of laws as to chattel mortgages and conditional sales of chattels, 13 A.L.R.2d 1312.

Law governing validity and construction of, and rights and obligations arising under, a lease of real property, 15 A.L.R.2d 1199.

Conflict of laws as to survival or revival of wrongful death actions against estate or personal representative of wrongdoer, 17 A.L.R.2d 690.

Stay of civil proceedings pending determination of action in another state or country, 19 A.L.R.2d 301.

Conflict of laws as to partnership matters, 29 A.L.R.2d 295.

Conflict of laws as to elements and measure of damages recoverable for breach of contract, 50 A.L.R.2d 227.

Enforceability of provision in agreement for attorney's fees, valid in state of its execution or performance, but invalid under law of forum, 54 A.L.R.2d 1053.

What law governs employee's right to damages for wrongful discharge, 61 A.L.R.2d 917.

What law governs as to proper party plaintiff in contract action, 62 A.L.R.2d 486.

Right of state or its political subdivision to maintain action in another state for support and maintenance of defendant's child, parent, or dependent in plaintiff's institution, 67 A.L.R.2d 771.

Conflict of laws as to interest recoverable as part of the damages in a tort action, 68 A.L.R.2d 1337.

What law governs effect of release of one tort-feasor upon liability of another tort-feasor, 69 A.L.R.2d 1034.

Conflict of laws as to group insurance, 72 A.L.R.2d 695.

Extraterritorial recognition of, and propriety of counterinjunction against, injunction against actions in courts of other states, 74 A.L.R.2d 828.

Presumption as to law of foreign countries, 75 A.L.R.2d 529.

Choice of law in application of automobile guest statutes, 95 A.L.R.2d 12.

Law governing assignment of wages or salary, 1 A.L.R.3d 927.

Modern status of rule that substantive rights of parties to a tort action are governed by the law of the place of the wrong, 29 A.L.R.3d 603; 63 A.L.R.4th 167.

Conflict of laws as to presumptions and burden of proof concerning facts of civil case, 35 A.L.R.3d 289.

Conflict of laws as to right of action for loss of consortium, 46 A.L.R.3d 880.

Choice of law as to application of comparative negligence doctrine, 86 A.L.R.3d 1206.

Modern status of choice of law in application of automobile guest statutes, 63 A.L.R.4th 167.

1-3-10. Execution of writings and contracts.

Except for wills of personalty of persons domiciled in another state or country, when writings or contracts are intended to have effect in this state they must be executed in conformity to the laws of this state.

History. — Orig. Code 1863, § 9; Code 1868, § 8; Code 1873, § 8; Code 1882, § 8; Civil Code 1895, § 8; Civil Code 1910, § 8; Code 1933, § 102-108; Ga. L. 1962, p. 156, § 1; Ga. L. 1963, p. 188, § 38.

Cross references. — Required writing; signing; witnesses; codicil, § 53-4-20.

Law reviews. — For article criticizing Georgia's traditional rules for determining choice of law questions and discussing available alternatives, see 34 Mercer L. Rev. 787 (1983).

For comment on Guy F. Atkinson Co. v. Fimian, 85 Ga. App. 200, 68 S.E.2d 236 (1951), as to choice of law governing a contract made in a different state than that in which it was to be performed, see 3 Mercer L. Rev. 346 (1952). For comment

on Fimian v. Guy F. Atkinson Co., 209 Ga. 113, 70 S.E.2d 762 (1952), see 15 Ga. B. J. 217 (1952).

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General Consideration

Editor's notes. — In light of the similarity of the statutory provisions, annotations decided under former Code 1933, § 102-108, prior to amendment by Ga. L. 1962, p. 156, § 1, effective January 1, 1964, which read, in part, "The validity, form, and effect of writings or contracts are determined by the law of the place where executed." are included in the annotations for this Code section.

Laws of other states have no force in Georgia except on the principles of comity. Gulf Collateral, Inc. v. Morgan, 415 F. Supp. 319 (S.D. Ga. 1976).

Foreign laws not enforced if contravenes public policy or conscience, or immoral. — Where the law of a sister state contravenes the public policy of Georgia or is immoral or violative of conscience, it will not be enforced in this state. Gulf Collateral, Inc. v. Morgan, 415 F. Supp. 319 (S.D. Ga. 1976).

Cited in Reliance Realty Co. v. Mitchell, 41 Ga. App. 124, 152 S.E. 295 (1930); Franklin Fire Ins. Co. v. Shahan, 46 Ga. App. 181, 167 S.E. 194 (1932); Fidelity & Deposit Co. v. Howard, 67 F.2d 961 (5th Cir. 1933); Lefkoff v. Sicro, 189 Ga. 554, 6 S.E.2d 687 (1939); Fenn v. Castelanna, 196 Ga. 22, 25 S.E.2d 796 (1943); Mutual Benefit Health & Accident Ass'n v. Brunke, 276 F.2d 53 (5th Cir. 1960); Union Camp Corp. v. Dyal, 460 F.2d 678 (5th Cir. 1972); Putnam v. Williams, 652 F.2d 497 (5th Cir. 1981).

Choice of Law

Application in tort cases of lex loci delicto commissi. — A state court ought to apply the substantive law of the state or county in which the tort occurred under the lex loci delicto commissi doctrine. However, if the application of foreign law would prove insurmountably difficult, state substantive law may govern given both parties' concurrence. Lavine v. General Mills, Inc., 519 F. Supp. 332 (N.D. Ga. 1981).

Lex loci governs as to the nature, construction and obligation of contracts. Missouri State Life Ins. Co. v. Lovelace, 1 Ga. App. 446, 58 S.E. 93 (1907).

The conflicts rule in this state is that where a contract is made and is to be performed in another state, the laws of the latter state will govern as to the validity, nature, obligation, and construction of the contract, where they are duly pleaded and proved, and such laws will be enforced by comity in this state unless they are contrary to public policy or prejudicial to the interests of this state. Rohner, Gehrig & Co. v. Capital City Bank, 655 F.2d 571 (5th Cir. 1981).

Law of the place where contract is made is prima facie that which parties intended and that such law ought, therefore, to prevail. King v. King, 218 Ga. 534, 129 S.E.2d 147 (1962), appeal dismissed, 375 U.S. 17, 84 S. Ct. 101, 11 L. Ed. 2d 45 (1963).

Rule of the lex loci will be applied in the federal courts sitting in Georgia and acting upon an instrument made and to be performed in this state. Martin v. Bartow Iron Works, 35 Ga. 320, 16 F. Cas. 888 (N.D. Ga. 1867).

Lex loci not enforced where contrary to morals, general policy, or conscience. — While the lex loci, as a general rule, governs the construction of contracts, it is subject, in practice, to the great controlling idea that they will not be

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enforced, by comity, if they involve anything immoral, contrary to general policy, or violative of the conscience of the state called on to give them effect. Eubanks v. Banks, 34 Ga. 407 (1866).

Where enforcement of a contract in Georgia draws public policy considerations into question, those public policy considerations will be determined according to laws of Georgia. Scherer v. Scherer, 249 Ga. 635, 292 S.E.2d 662 (1982).

In choice of law, Georgia follows the "grouping of contacts" or "center of gravity" theory on which law should govern contracts. A-T-O, Inc. v. Stratton & Co., 486 F. Supp. 1323 (N.D. Ga. 1980).

Local law, not lex loci, applicable to remedy on contracts. — As a general principle, the lex loci applies only to the interpretation of contracts, and the remedy on them must be prosecuted according to the laws of the country in which the action is brought. Davis v. DeVaughn, 7 Ga. App. 324, 66 S.E. 956 (1910); Chamblee v. Colt Co., 31 Ga. App. 34, 119 S.E. 438 (1923).

This rule applies only to the interpretation of the contract touching its validity, and does not apply to the question of the remedy thereon. Gaffe v. Williams, 194 Ga. 673, 22 S.E.2d 512, answer conformed to, 68 Ga. App. 299, 22 S.E.2d 765 (1942).

Local limitation laws applicable. — Where a suit upon a written contract executed and to be performed in another state is brought in a court of this state, the question whether or not the plaintiff's right of action is barred, being one relating exclusively to the remedy, must be determined with reference to the limitation laws of Georgia. Obear v. First Nat'l Bank, 97 Ga. 587, 25 S.E. 335, 33 L.R.A. 384 (1895).

While the validity and form of a contract executed and to be performed in another state must be determined by the laws of that state, yet when suit is brought thereon in a Georgia court, the limitation statutes of Georgia must be applied. Gaffe v. Williams, 194 Ga. 673, 22 S.E.2d 512, answer conformed to, 68 Ga. App. 299, 22 S.E.2d 765 (1942).

Where parties contemplate another place of performance, latter laws preferred. — The place where the contract is entered into is not to be exclusively considered, if the parties had in contemplation another place at the time of the contract, the laws of the latter will be preferred in the construction of the contract. Dunn v. Welsh, 62 Ga. 241 (1879).

Contracts are to be governed as to their nature, validity, and interpretation by the law of the place where they were made, except where it appears from the contract that it is to be performed in a state other than that in which it was made, in which case the laws of that sister state will be applied in the enforcement of any contract to be there performed, so long as such laws do not conflict with the statute, powers, or rights of the state wherein it was executed and sought to be enforced. Tillman v. Gibson, 44 Ga. App. 440, 161 S.E. 630 (1931).

Contract's construction governed by lex loci, unless intended to have effect within Georgia. — The construction of a contract is to be governed by the law of the place of its making, unless it shall appear that the writing or contract is intended to have effect principally within the State of Georgia. Old Hickory Prods. Co. v. Hickory Specialties, Inc., 366 F. Supp. 913 (N.D. Ga. 1973).

Existing laws part of contract. — The laws which exist at the time and place of the making of a contract enter into and form a part of it. West End & A. St. R.R. v. Atlanta St. R.R., 49 Ga. 151 (1873).

Courts presume common law in force in foreign state. — In the absence of allegations as to what the law of a foreign state is, our courts will presume that the common law is of force in that state. Selma, R. & D.R.R. v. Lacy, 43 Ga. 461 (1871).

Common law determined by looking at Georgia case law. — Georgia courts then go through a two-step process: (1) in the absence of pleading and proof of foreign law, the courts presume that the common law is in effect in the foreign state; and (2) in determining what this "presumed" common law is, the Georgia courts, rather than looking to the foreign case law, look to Georgia case law. Budget

Rent-A-Car Corp. v. Fein, 342 F.2d 509 (5th Cir. 1965).

Local case law consulted to interpret foreign statute where no applicable statute. — The case law of the locus will be consulted only when it is interpretive of a foreign statute and where there is no applicable foreign statute. Budget Rent-A-Car Corp. v. Fein, 342 F.2d 509 (5th Cir. 1965).

Foreign contract occupies foreign legal status, but foreign law must be put in evidence. — A contract made and to be performed in another state will be enforced by the courts of this state according to the legal status it would occupy in that state. But the law of that state must be put in evidence before it can be applied in this state. Champion v. Wilson & Co., 64 Ga. 184 (1879).

Specific Illustrations

When note is made in another state, payable there, it is governed by foreign law. Goodrich v. Williams, 50 Ga. 425 (1873).

Note signed in one state and accepted in other made in other. — Where a note is signed in one state, but is not completed until accepted in another state, it is made in that other state. Peretzman v. Borochoff, 58 Ga. App. 838, 200 S.E. 331 (1938).

Note made upon Sunday not enforced. — As the laws of this state formerly forbid any transaction of any business, trade, or calling on Sunday, a note made upon that day, in pursuance of trade or business, will not be enforced by the courts of this state under the laws of this state, as such a contract is void. Hill v. Wilker, 41 Ga. 449, 5 Am. R. 540 (1871).

Foreign judgment on foreign note conclusive. — Where a judgment was obtained in a foreign state on a note signed in that state, the judgment is conclusive in a subsequent suit commenced in Georgia by attachment, as to the indebtedness of the defendants. Hope v. First Nat'l Bank, 142 Ga. 310, 82 S.E. 929 (1914).

Foreign arbitration agreement's validity and construction depends on foreign law. — An agreement for arbitration being made in another state, its validity and construction in the courts of Georgia depend on the laws of that state. Green v. East Tenn. & Ga. R.R., 37 Ga. 456 (1867).

Shipping contract's validity, form, and effect determined by state where made and performed. — If goods are shipped in one state on a through contract, to be transported by a common carrier and delivered in another (omitting any question of public policy), the general rule is, in the absence of anything to show a contrary intent, the validity, form, and effect of the contract will be determined by the laws of the state where the contract was made and partly to be performed. Southern Express Co. v. Hanaw, 134 Ga. 445, 67 S.E. 944, 137 Am. St. R. 227 (1910).

Validity and effect of foreign, oral child custody contract determined by foreign law. — Where the defendants in a habeas corpus proceeding relied on an oral contract as and for their right to have and retain custody and care of a child, which contract was made with the plaintiffs while all of them resided in another state, the validity and effect of the contract must be determined by the laws of that state, especially since the parties did not contemplate performance of the contract elsewhere. Rodale v. Grimes, 211 Ga. 50, 84 S.E.2d 68 (1954).

Foreign assignments of local assets contravening state law or policy not regarded. — The courts of Georgia will not regard an assignment made in another state which, as to assets here, contravenes the law or declared public policy of this state. S. Stricker & Co. v. Tinkham, 35 Ga. 176, 89 Am. Dec. 280 (1866); Miller v. Kernaghan, 56 Ga. 155 (1876); Birdseye v. Underhill, 82 Ga. 142, 7 S.E. 863, 14 Am. St. R. 142, 2 L.R.A. 99 (1888).

Georgia courts refuse to recognize or enforce any gambling or wagering contract. — Georgia courts regard statutes declaring gambling contracts and transactions illegal or void as embodying a distinctive public policy which requires the courts of this state to refuse to recognize or enforce any contract or transaction in violation of their terms, even though such contract or transaction may have had its situs outside the Georgia forum, by

Specific Illustrations (Cont'd)

the laws of which situs it is valid, and therefore does not come within the direct operation of the Georgia statutes. The practical result of this view is that a gambling or wagering contract, in order to be upheld or enforced, must be valid both by its proper law — that is, by the law of its situs — and by the law of Georgia. Gulf Collateral, Inc. v. Morgan, 415 F. Supp. 319 (S.D. Ga. 1976).

Lex fori governs remedy in suit to enforce surety's contract. — The lex fori, and not the lex loci, governs as to the remedy in the courts of this state in a suit to enforce the performance of a contract made in another state against a surety thereon. Toomer v. Dickerson, 37 Ga. 428 (1867).

Manner of determining materiality of representations in insurance contract controlled by lex fori. — The materiality of representations made by the insured in the insured's application, under the laws of Georgia, is a question for the jury to decide. The manner in which this question shall be determined, being a matter affecting the remedy only, and not the validity, form, or effect of the contract, is to be controlled by the lex fori, and not by the lex loci contractus. Massachusetts Benefit Life Ass'n v. Robinson, 104 Ga. 256, 30 S.E. 918, 42 L.R.A. 261 (1898).

Alabama statute of limitations is not applied in Georgia to a note made in Alabama. Thomas v. Clarkson, 125 Ga. 72, 54 S.E. 77, 6 L.R.A. (n.s.) 658 (1906).

Law of state where contract performed governs interest rate. — On contracts made in one state, to be performed in another, if they bear interest, the law of the state where they are to be performed governs the rate of interest to be paid. Thomas v. Clarkson, 125 Ga. 72, 54 S.E. 77, 6 L.R.A. (n.s.) 658 (1906).

If no foreign usury law, common law, as construed in this state, governs. — Where a promissory note is both executed and to be performed in another state, in an attack by the maker upon the note for usury brought in this state, where the laws of the foreign state regulating interest charges and usury do not appear, the common law will be presumed to be there in force, and the right to collect interest in such a suit, unless contrary to the public policy or specific statutes of this state, will be governed by the common law as it has been construed and applied in this state. Folsom v. Continental Adjustment Corp., 48 Ga. App. 435, 172 S.E. 833 (1934).

Contract between foreign manufacturer and Georgia dealer is Georgia contract. — A contract between a foreign manufacturer and a Georgia dealer, whereby the former was to ship goods to the dealer, was a Georgia, and not a foreign contract, and it must be executed in accordance with the laws of Georgia to be valid there against the trustee of the dealer for bankruptcy. In re Bondurant Hdwe. Co., 231 F. 247 (N.D. Ga. 1916).

Whether sale within Georgia securities provisions' meaning occurred in Georgia is decided on basic principles. Allen v. Smith & Medford, Inc., 129 Ga. App. 538, 199 S.E.2d 876 (1973).

Situs of a debt follows the creditor, and where the debtor and creditor reside in different states, the law of the domicile of the creditor prevails. Birdseye v. Underhill, 82 Ga. 142, 7 S.E. 863, 14 Am. St. R. 142, 2 L.R.A. 99 (1888).

Character of foreign instrument conveying property in this state determined by local law. — Where an instrument is executed and payable in a foreign state by parties all residing in that state, purporting to convey certain standing timber in this state to one of the parties to the contract, the law of the place where the property is situated (the lex loci rei sitae) controls, in order to determine the character of the instrument, whether it is a deed to secure a debt or whether it is a mortgage. Sims v. Jones, 158 Ga. 384, 123 S.E. 614 (1924).

Wills

Will of land is governed by the lex loci. Key v. Harlan, 52 Ga. 476 (1874); Mechanics' & Traders' Bank v. Harrison, 68 Ga. 463 (1882); Guerard v. Guerard, 73 Ga. 506 (1884).

Wills of personalty are governed by the party's domicile. Latine v.

Clements, 3 Ga. 426 (1874); Grote v. Pace, 71 Ga. 231 (1883).

Foreign will conveying both realty and personalty admitted to probate. — A will conveying both realty and personalty, executed in a foreign state according to its laws and there admitted to probate, may in like manner be admitted to probate in this state upon production of an exemplification of the probate proceedings duly certified, notwithstanding the will may not have been executed in conformity to the laws of this state. Such an instrument, however, is not a good will insofar as it attempts a devise of realty located in this state. Knight v. Wheedon, 104 Ga. 309, 30 S.E. 794 (1898).

Will probated in foreign state, treated as valid bequest of personalty. — Where a will bequeathing realty and personalty was executed according to the law of the state where the testator resided, and was duly probated in that state, it may be treated in this state as a valid bequest of the personalty, although it was not attested by as many witnesses as required by the law of Georgia. Fraser v. Rummele, 195 Ga. 839, 25 S.E.2d 662 (1943).

RESEARCH REFERENCES

Am. Jur. 2d. — 16 Am. Jur. 2d, Conflict of Laws, §§ 48, 50, 52, 70, 78 et seq.

C.J.S. — 15A C.J.S., Conflict of Laws, §§ 1 et seq., 6 et seq., 21 et seq., 29 et seq. 94 C.J.S., Wills, § 219 et seq.

ALR. — Conflict of laws as to capacity of married women to contract, 18 A.L.R. 1516; 71 A.L.R. 744.

Enforcing foreign contract, valid where made for sale of intoxicating liquor, 49 A.L.R. 1002.

Inhibition by decree of divorce or statute of state or country in which it is granted, against remarriage, as affecting a marriage celebrated in another state or country, 51 A.L.R. 325.

Applicability to contracts made or to be performed in another state or country, of a statute of the forum permitting person injured to maintain action directly against indemnity insurer, 54 A.L.R. 515; 120 A.L.R. 855.

Law of place of performance, other than that of place where contract is made and transportation commences, as the governing law of carrier's contract, 72 A.L.R. 250.

Conflict of laws as to character, form, and nature of action that may be brought upon a foreign contract, 74 A.L.R. 1331.

Law of the forum as governing the right to and rate of interest as damages for delay in payment of money or discharge of other obligations, 78 A.L.R. 1047.

Conflict of laws as regards rights of creditors in respect of proceeds of life insurance, 79 A.L.R. 809.

Action in one state or country on bond given pursuant to statute of another, 85 A.L.R. 847.

Conflict of laws as to conditional sale of chattels, 87 A.L.R. 1308; 13 A.L.R.2d 1312.

Lex loci or lex fori as the governing law as to whether the case or question is to be submitted to the jury or determined by the court, 89 A.L.R. 1278; 149 A.L.R. 775.

Conflict of laws as regards title to commercial paper and right of holder to enforce it as against the drawer or primary obligor, 95 A.L.R. 658.

Conflict of laws as to whether an instrument is to be regarded as one under seal and as to effect of seal, 109 A.L.R. 479.

Validity and effect of stipulation in contract to effect that it shall be governed by law of particular state which is neither place where contract is made nor place where it is to be performed, 112 A.L.R. 124; 16 A.L.R.4th 967.

Full faith and credit provision as affecting insurance contracts, 119 A.L.R. 483; 173 A.L.R. 1138.

Conflict of laws as to usury, 125 A.L.R. 482.

Conflict of laws as to chattel mortgages and conditional sales of chattels, 148 A.L.R. 375; 13 A.L.R.2d 1312.

Conflict of laws as to exercise of power of appointment, 150 A.L.R. 519.

Conflict of laws as regards brokerage contracts, 159 A.L.R. 266.

Governing law as regards presumption and burden of proof, 168 A.L.R. 191.

Law of state where ticket was pur-

chased, rather than law of state where accident occurred, as governing in action against carrier for death of passenger, 13 A.L.R.2d 650.

Law governing validity and construction of, and rights and obligations arising under, a lease of real property, 15 A.L.R.2d 1199.

What law governs validity, effect, and construction of separation or property settlement agreements, 18 A.L.R.2d 760.

Conflict of laws as to partnership matters, 29 A.L.R.2d 295.

Conflict of laws as to clauses in contract for carriage of passengers limiting carrier's liability for injury or death, or time within which action may be brought, 30 A.L.R.2d 1398.

Conflict of laws as to elements and measure of damages recoverable for breach of contract, 50 A.L.R.2d 227.

What law governs in determining whether facts and circumstances operate to terminate, breach, rescind, or repudiate a contract, 50 A.L.R.2d 254.

Enforceability of provision in agreement for attorney's fees, valid in state of its execution or performance, but invalid under law of forum, 54 A.L.R.2d 1053.

Conflict of laws as to usage and custom, with respect to interpretation or performance of a contract, 60 A.L.R.2d 467.

What law governs employee's right to damages for wrongful discharge, 61 A.L.R.2d 917.

What law governs as to proper party plaintiff in contract action, 62 A.L.R.2d 486.

Conflict of laws as to Sunday contracts, 67 A.L.R.2d 694.

Conflict of laws as to group insurance, 72 A.L.R.2d 695.

Conflict of laws as to contract to adopt, 81 A.L.R.2d 1128.

What law governs validity and enforceability of contract made for support of illegitimate child, 87 A.L.R.2d 1306.

Choice of law in construction of insurance policy originally governed by law of one state as affected by modification, renewal, exchange, replacement, or reinstatement in different state, 3 A.L.R.3d 646.

Conflict of laws as to application of statute proscribing or limiting availability of action for deficiency after sale of collateral real estate, 44 A.L.R.3d 922.

Statute of frauds and conflict of laws, 47 A.L.R.3d 137.

Conflict of laws: what law governs validity and construction of written guaranty, 72 A.L.R.3d 1180.

Choice of law as to applicable statute of limitations in contract actions, 78 A.L.R.3d 639.

Choice of law as to application of comparative negligence doctrine, 86 A.L.R.3d 1206.

Conflict of laws as to validity and effect of arbitration provision in contract for purchase or sale of goods, products, or services, 95 A.L.R.3d 1145.

1-3-11. Local referenda on abolishing offices or shortening or lengthening term.

No office to which a person has been elected shall be abolished nor the term of the office shortened or lengthened by local or special Act during the term for which such person was elected unless the same shall be approved by the people of the jurisdiction affected in a referendum on the question.

History. — Code 1981, § 1-3-11, enacted by Ga. L. 1983, p. 685, § 1.

Editor's notes. — This Code section continues in effect a similar provision which was contained in Art. III, Sec. VII, Para. IX of the Constitution of Georgia of 1976.

Law reviews. — For annual survey of local government law, see 58 Mercer L. Rev. 267 (2006).

JUDICIAL DECISIONS

In light of the similarity of the statutory provisions, decisions under former Art. III, Sec. VII, Para. IX of the Constitution of Georgia of 1976 are included in the annotations for this Code section.

Local deannexation statute that included the area of the city in which the mayor resided, making the mayor ineligible to hold office, did not violate O.C.G.A. § 1-3-11 because it neither abolished the office of mayor nor shortened nor lengthened the term of office. Lee v. City of Villa Rica, 264 Ga. 606, 449 S.E.2d 295 (1994).

Power of the General Assembly. — Provision prohibiting the abolishing of elective office during term without a referendum submitted to the people of the area affected may not be extended by implication to place a restraint upon the general power of the General Assembly to create or abolish the charters of municipal corporations. Mountain View v. Clayton County, 242 Ga. 163, 249 S.E.2d 541 (1978).

Change in mayor's duties. — Because the legislature, at the request of a city council, passed legislation authorizing the city to change its form of government from a strong mayor/weak council system to a weak mayor/strong council system employing a city manager, this did not violate O.C.G.A. § 1-3-11, as the mayor's office continued to exist, albeit with largely ceremonial duties; the mayor's duties could be altered as long as the remaining duties were appropriate to the office, which they were. Griffin v. City Council, 279 Ga. 835, 621 S.E.2d 734 (2005).

Referendum not required. — Because the legislature, at the request of a city council, passed legislation authorizing the city to change its form of government from a strong mayor/weak council system to a weak mayor/strong council system employing a city manager, no referendum was required under O.C.G.A. § 1-3-11 because the mayor's office was not abolished. Griffin v. City Council, 279 Ga. 835, 621 S.E.2d 734 (2005).

Referendum improper where voters not informed that bill shortened member's term. — Referendum changing the number of members on a board of education did not comply with O.C.G.A. § 1-3-11 because the voters were not informed that approval of the bill would shorten a board member's term by two years, but, instead, the bill and notice of intention to introduce local legislation incorrectly stated that it would provide for the continuation in office of current members. Burton-Callaway v. Carroll County Bd. of Elections, 279 Ga. 590, 619 S.E.2d 634 (2005).

OPINIONS OF THE ATTORNEY GENERAL

Local law cannot extend tenure in office of an elected official who would otherwise immediately vacate that office when qualifying to run for another elected position. 2000 Op. Att'y Gen. No. 2000-3.

CHAPTER 4

HOLIDAYS AND OBSERVANCES

Sec.
1-4-1. Public and legal holidays; leave for observance of religious holidays not specifically provided for.
1-4-2. Religious holidays.
1-4-3. Designation of "American History Month".
1-4-4. Declaration of "Wildflower Week".
1-4-5. Declaration of "Bird Day".
1-4-6. Declaration of "Law Enforcement Officer Appreciation Day".
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1-4-9. Designation of "Former Prisoners of War Recognition Day".
1-4-10. Designation of "Girls and Women in Sports Day".
1-4-11. Designation of "Clean Water Week".
1-4-12. Designation of "Firefighter Appreciation Day".
1-4-13. Designation of "Bill of Rights Day".
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1-4-15. Designation of "Bill Elliott Day."
1-4-15.1. Designation of "Ronald Reagan Day."
1-4-16. Designation of "Prison Chaplains Appreciation Day."
1-4-17. Declaration of "Georgia Day."
1-4-18. Designation of "School Bus Drivers Appreciation Day."
1-4-19. Designation of "School Bus Safety Week."
1-4-20. Designation of Confederate History and Heritage Month.
1-4-21. Designation of "Purple Heart Day."
1-4-22. Designation of "Water Professionals Appreciation Day."

Cross references. — Designation of Retired Teachers' Day, § 20-1-6.

Editor's notes. — By resolution (see Ga. L. 1982, p. 1317), the General Assembly declared its support for the establishment of the third week of November every year as "Georgia Motor Vehicle Safety Week."

By resolution (see Ga. L. 1982, p. 1319), the General Assembly designated the second Saturday in May of each year as "Armadillo Olympics Day" in Georgia.

By resolution (Ga. L. 1984, p. 1277), the General Assembly designated 1984 as "The Year of the Disabled Voter in Georgia."

By resolution (Ga. L. 1985, p. 256), the General Assembly designated the week beginning with the first Sunday of June each year as "Garden Week."

By resolution (Ga. L. 1990, p. 1732), the General Assembly created the Georgia 1992 Commission, to be abolished December 31, 1992.

1-4-1. Public and legal holidays; leave for observance of religious holidays not specifically provided for.

(a) The State of Georgia shall recognize and observe as public and legal holidays:

(1) All days which have been designated as of January 1, 1984, as public and legal holidays by the federal government; and

(2) All other days designated and proclaimed by the Governor as public and legal holidays or as days of fasting and prayer or other religious observance. In such designation, the Governor shall include at least one of the following dates: January 19, April 26, or June 3, or a suitable date in lieu thereof to commemorate the event or events now observed by such dates.

(b) The Governor shall close all state offices and facilities a minimum of 12 days throughout the year and not more than 12 days in observance of the public and legal holidays and other days set forth in subsection (a) of this Code section and shall specify the days state offices and facilities shall be closed for such observances.

(c) Employees of any state department or agency shall, upon request to their appointing authority or his or her designee at least seven days in advance, be given priority consideration for time away from work for observance of religious holy days not otherwise provided for in this Code section. Any paid leave time for such religious holy day observance shall be charged to accrued compensatory leave or accrued annual leave credits available to the employee at the time of the holy day observance. No employee may claim priority consideration for more than three work days each calendar year. A request by an employee for time away from work to observe a religious holy day shall not be denied unless the employee has inadequate accrued compensatory or annual leave credits to cover such period of absence or the duties performed by the employee are urgently required and the employee is the only person available who can perform the duties as determined by the appointing authority or his or her designee. The State Personnel Board shall provide by rule and regulation a procedure to be followed by agencies and departments in the granting of such holy days.

History. — Laws 1850, Cobb's 1851 Digest, p. 522; Code 1863, § 2733; Code 1868, § 2741; Ga. L. 1870, p. 69, § 1; Ga. L. 1871-72, p. 23, § 1; Code 1873, § 2783; Ga. L. 1874, p. 19, § 1; Code 1882, § 2783; Ga. L. 1889, p. 72, §§ 1, 2; Ga. L. 1893, p. 115, § 1; Ga. L. 1894, p. 47, § 1; Civil Code 1895, § 3692; Ga. L. 1897, p. 119, § 1; Civil Code 1910, § 4284; Ga. L. 1929, p. 211, § 1; Code 1933, § 14-1808; Ga. L. 1935, p. 350, § 1; Ga. L. 1943, p. 331, § 1; Ga. L. 1945, p. 123, § 1; Ga. L. 1968, p. 986, § 1; Ga. L. 1969, p. 9, § 1; Ga. L. 1972, p. 363, § 1; Ga. L. 1975, p. 368, § 1; Ga. L. 1982, p. 986, §§ 1, 2; Ga. L. 1984, p. 22, § 1; Ga. L. 1984, p. 1274, § 1; Ga. L. 2009, p. 745, § 1/SB 97; Ga. L. 2012, p. 446, § 2-1/HB 642; Ga. L. 2016, p. 864, § 1/HB 737.

Cross references. — Distribution of federal funds; combined purchase of supplies and equipment; minimum school year; summer school programs; year-round operation, § 20-2-168. Place and time for holding probate court, § 15-9-82. State Merit System of Personnel Administration, T. 45, C. 20.

Editor's notes. — As of January 1, 1984, the days which have been "designated" as public and legal holidays by the federal government (see 5 U.S.C. § 6103(a), as amended by P.L. 98-144) are as follows: New Year's Day; Birthday of Martin Luther King, Jr.; Washington's Birthday; Memorial Day; Independence Day; Labor Day; Columbus Day; Veterans' Day; Thanksgiving Day; and Christmas Day. See subsection (b) of this Code section for powers of Governor to specify the days state offices and facilities shall be

closed for observance of public and legal holidays.

Ga. L. 2012, p. 446, § 3-1/HB 642, not codified by the General Assembly, provides that: "Personnel, equipment, and facilities that were assigned to the State Personnel Administration as of June 30, 2012, shall be transferred to the Department of Administrative Services on the effective date of this Act." This Act became effective July 1, 2012.

Ga. L. 2012, p. 446, § 3-2/HB 642, not codified by the General Assembly, provides that: "Appropriations for functions which are transferred by this Act may be transferred as provided in Code Section 45-12-90."

JUDICIAL DECISIONS

While January 1 is legal holiday, it is not dies non juridicus (a nonjudicial day). Parker v. Mayor of Savannah, 216 Ga. 210, 115 S.E.2d 555 (1960).

An advertisement which appeared on January 1, 1960, was valid; and, accordingly, the house bill which extended the city's corporate limits was properly advertised as required by the Constitution. Parker v. Mayor of Savannah, 216 Ga. 210, 115 S.E.2d 555 (1960).

Labor Day not dies non juridicus. — While this section establishes the first Monday in September as a public and legal holiday, it does not by its terms declare Labor Day dies non juridicus. Moore v. Dearing, 216 Ga. 596, 118 S.E.2d 366 (1961).

Section does not make Labor Day probate invalid. Moore v. Dearing, 216 Ga. 596, 118 S.E.2d 366 (1961).

Thanksgiving Day and day after Thanksgiving. — Superior court improperly dismissed as untimely appellant city's petition for a writ of certiorari challenging a civil service board's decision, as the petition was timely filed for purposes of O.C.G.A. § 5-4-6(a) since: (1) the last day to file the petition fell on Thanksgiving Day; (2) the Friday after Thanksgiving day, like Thanksgiving day, was a legal holiday as set forth in O.C.G.A. § 1-4-1; and (3) the petition was filed on the very next business day, as allowed by O.C.G.A. § 1-3-1(d)(3). City of Atlanta v. Hector, 256 Ga. App. 665, 569 S.E.2d 600 (2002).

No relief for late filed notice. — Father's notice of appeal was not timely, filed more than 30 days after the final order was entered by the trial court, and O.C.G.A. § 1-4-1 provided no relief to the father because the day in question was not a federal holiday or declared a public and legal holiday by the Governor of Georgia such that the time for filing the notice would have been extended. Smith v. McTaggart, 343 Ga. App. 144, 806 S.E.2d 229 (2017).

Cited in Herrin v. Herrin, 224 Ga. 579, 163 S.E.2d 713 (1968); Jesup Carpet Factory Outlet, Inc. v. Ken Carpets of LaGrange, Inc., 142 Ga. App. 301, 235 S.E.2d 684 (1977); Ausburn v. Anthony, 173 Ga. App. 505, 326 S.E.2d 588 (1985); Dental One Assocs. v. JKR Realty Assocs., 228 Ga. App. 307, 491 S.E.2d 414 (1997); McKenzie v. State, 250 Ga. App. 277, 549 S.E.2d 774 (2001); Morrell v. W. Servs., LLC, 291 Ga. App. 369, 662 S.E.2d 215 (2008).

OPINIONS OF THE ATTORNEY GENERAL

Saturdays are not regarded per se as legal holidays. 1971 Op. Att'y Gen. No. 71-56.

Georgia Day is not a legal holiday. 1976 Op. Att'y Gen. No. 76-112.

Sunday in this state is a nonjudicial day (dies non juridicus). 1980 Op. Att'y Gen. No. U80-39.

Legal holidays are not dies non juridicus. 1980 Op. Att'y Gen. No. U80-39.

Retail stores are not required to close during or on part of any legal holiday, the entire matter of holiday observance of retail stores seems to be a matter of custom and good taste without

any state law other than the above laws which merely designate the legal holiday. 1957 Op. Att'y Gen. p. 204.

State salaried employee who works during legal holiday not entitled to pay. — A salaried employee of the state, classified under the state merit system, who has worked during a legal and public holiday and is separated or resigns before the executive authorizes a compensatory nonwork day, is not entitled to an extra day's pay. 1969 Op. Att'y Gen. No. 69-191.

RESEARCH REFERENCES

Am. Jur. 2d. — 73 Am. Jur. 2d, Sundays and Holidays, § 3 et seq.

C.J.S. — 40 C.J.S., Holidays, § 2 et seq.

ALR. — Right of public officers or employees as regards vacations and holidays, 134 A.L.R. 195.

1-4-2. Religious holidays.

The only days to be declared, treated, and considered as religious holidays shall be the first day of each week, called Sunday.

History. — Ga. L. 1943, p. 331, § 2.

Cross references. — Requirement that businesses and industries operating on either Saturday or Sunday accommodate religious, social, and physical needs of employees on those days, § 10-1-573. Prohibition against requiring inmates to do nonessential work on Sunday, § 42-5-40.

JUDICIAL DECISIONS

Sunday, a religious holiday, is dies non juridicus (a nonjudicial day). Parker v. Mayor of Savannah, 216 Ga. 210, 115 S.E.2d 555 (1960).

Cited in Cain v. Lumpkin County, 229 Ga. 274, 190 S.E.2d 910 (1972); In re Estate of Dasher, 259 Ga. App. 201, 575 S.E.2d 921 (2002).

RESEARCH REFERENCES

Am. Jur. 2d. — 73 Am. Jur. 2d, Sundays and Holidays, §§ 1, 2, 4, 11 et seq.

C.J.S. — 83 C.J.S., Sunday, §§ 1, 3.

ALR. — Power of municipal corporation to legislate as to Sunday observance, 37 A.L.R. 575.

1-4-3. Designation of "American History Month".

(a) The State of Georgia recognizes the importance to the citizens of this state of the principles upon which the United States of America was founded and of an understanding of the history of our nation. To encourage the study of American history by the citizens of this state, the month of February of each year is designated as "American History Month" in Georgia. The citizens of this state are encouraged to observe "American History Month" with appropriate observances and programs.

(b) The month of February of each year is also designated as Georgia History Month in special tribute to the founders, builders, and preservers of this state.

History. — Ga. L. 1963, p. 386, § 1; Ga. L. 1974, p. 329, § 1.

1-4-4. Declaration of "Wildflower Week".

The fourth week in the month of March of each year is declared to be "Wildflower Week" in Georgia.

History. — Ga. L. 1981, p. 1849.

1-4-5. Declaration of "Bird Day".

The second Thursday in October of each year is declared to be "Bird Day" in Georgia.

History. — Ga. L. 1981, p. 1849.

1-4-6. Declaration of "Law Enforcement Officer Appreciation Day".

The second Monday in February of each year is declared to be "Law Enforcement Officer Appreciation Day" in Georgia.

History. — Code 1981, § 1-4-6, enacted by Ga. L. 1985, p. 658, § 1.

1-4-7. Declaration of "Peace Officer Memorial Day"; declaration of "Police Week".

May 15 of each year is declared to be "Peace Officer Memorial Day" and the calendar week in which it falls is declared as "Police Week."

History. — Code 1981, § 1-4-7, enacted by Ga. L. 1987, p. 869, § 1.

1-4-8. Declaration of "Children's Day".

The first Sunday in October of each year, beginning in 1990, is declared to be "Children's Day" in Georgia.

History. — Code 1981, § 1-4-8, enacted by Ga. L. 1990, p. 175, § 1.

1-4-9. Designation of "Former Prisoners of War Recognition Day".

The day of April 9 of each year is designated as "Former Prisoners of War Recognition Day" in Georgia.

History. — Code 1981, § 1-4-9, enacted by Ga. L. 1990, p. 1061, § 1.
Code Commission notes. — Pursuant to Code Section 28-9-5, in 1990, this Code Section enacted as Code Section 1-4-8 was redesignated as Code Section 1-4-9.

1-4-10. Designation of "Girls and Women in Sports Day".

The first Thursday in February of each year is designated as "Girls and Women in Sports Day" in Georgia.

History. — Code 1981, § 1-4-10, enacted by Ga. L. 1991, p. 788, § 1.

1-4-11. Designation of "Clean Water Week".

The third week in October of each year is designated and shall be observed as "Clean Water Week" in Georgia.

History. — Code 1981, § 1-4-11, enacted by Ga. L. 1994, p. 1403, § 1.

1-4-12. Designation of "Firefighter Appreciation Day".

The first Tuesday in February of each year is designated as "Firefighter Appreciation Day" in Georgia.

History. — Code 1981, § 1-4-12, enacted by Ga. L. 1996, p. 836, § 1.

1-4-13. Designation of "Bill of Rights Day".

(a) The State of Georgia recognizes the first ten amendments to the Constitution of the United States as vitally important in articulating and ensuring fundamental human rights. These first ten amendments, known collectively as the Bill of Rights, were ratified on December 15, 1791.

(b) To affirm the fundamental freedoms embodied in the Bill of Rights, celebrate the anniversary of ratification, and commemorate the sacrifices made to preserve these essential rights, December 15 of each year is designated "Bill of Rights Day" in Georgia. The citizens of this state are encouraged to observe the day by reflecting upon the meaning and importance of the Bill of Rights.

History. — Code 1981, § 1-4-13, enacted by Ga. L. 1998, p. 743, § 1.
Cross references. — Bill of Rights, see the Amendments to the U.S. Constitution.
Code Commission notes. — Both Ga. L. 1998, p. 743, § 1 and Ga. L. 1998, p. 1014, § 1 enacted Code Section 1-4-13. Pursuant to Code Section 28-9-5, in 1998, Code Section 1-4-13 as enacted by Ga. L. 1998, p. 1014, § 1 was redesignated as Code Section 1-4-14.

1-4-14. Declaration of "Home Education Week".

The first week in February of each year is declared to be "Home Education Week" in Georgia.

History. — Code 1981, § 1-4-14, enacted by Ga. L. 1998, p. 1014, § 1.

Cross references. — School attendance and home study programs, § 20-2-690 et seq.

Code Commission notes. — Pursuant to Code Section 28-9-5, in 1998, this Code section, enacted by Ga. L. 1998, p. 1014 as Code Section 1-4-13, was redesignated as Code Section 1-4-14.

1-4-15. Designation of "Bill Elliott Day."

(a) The General Assembly finds that a Georgia family's proud tradition of racing began in Dawsonville, Georgia, under the tutelage and guiding hand of George Elliott. George's young son Bill began to demonstrate at an early age a natural skill and competitive racing instinct at Dixie Speedway in Woodstock, and in 1976, at the tender age of 20, Bill Elliott entered his first Winston Cup race and launched a career that would span decades. Awesome Bill from Dawsonville, a modest, unassuming, and unpretentious man, has become a household name in NASCAR racing and has been selected Most Popular Driver an unprecedented 16 times, Georgia Professional Athlete of the Year twice, National Motorsports Driver of the Year 14 times, and in 1998, was inducted into the Georgia Sports Hall of Fame. It is virtually impossible to list all of the honors and awards Million Dollar Bill has garnered over his incandescent career, but perhaps his most acclaimed accomplishment is his support, love, and respect from racing fans. He has given unstintingly of his time, talents, energy, and financial resources to numerous charities including the Special Olympics, the M.D. Anderson Cancer Center, and the Make-A-Wish Foundation and it is abundantly fitting and proper that this extraordinary Georgian be recognized in a special and lasting manner.

(b) The members of the General Assembly commend Bill Elliott for his over 30 years of outstanding contributions to the sport of racing and designate October 8 of each year as "Bill Elliott Day" in Georgia.

History. — Code 1981, § 1-4-15, enacted by Ga. L. 2005, p. 1159, § .1/SB 168; Ga. L. 2006, p. 72, § 1/SB 465.

1-4-15.1. Designation of "Ronald Reagan Day."

(a) The General Assembly recognizes that:

(1) President Ronald Wilson Reagan, a man of humble background, worked throughout his life serving freedom and advancing the public good, having been employed as an entertainer, Union

leader, corporate spokesman, Governor of California, and President of the United States;

(2) Ronald Reagan served with honor and distinction for two terms as the fortieth President of the United States of America, and in his reelection he earned the confidence of three-fifths of the electorate and was victorious in 49 of the 50 states in the general election, a record unsurpassed in the history of American presidential elections;

(3) During Mr. Reagan's presidency he worked in a bipartisan manner to enact his bold agenda of restoring accountability and common sense to government which led to an unprecedented economic expansion and opportunity for millions of Americans;

(4) Mr. Reagan's commitment to an active social policy agenda for the nation's children helped lower crime rates and drug use in our neighborhoods;

(5) President Reagan's commitment to our armed forces contributed to the restoration of pride in America, her values and those cherished by the free world, and prepared America's armed forces to meet twenty-first century challenges;

(6) President Reagan's vision of "peace through strength" led to the end of the Cold War and the ultimate demise of the Soviet Union, guaranteeing basic human rights for millions of people; and

(7) February 6, 2005, will be the ninety-fourth anniversary of Ronald Reagan's birth, and the first since his passing.

(b) February 6 of each year is designated "Ronald Reagan Day" in Georgia.

History. — Code 1981, § 1-4-15.1, enacted by Ga. L. 2006, p. 139, § 1/HB 713; Ga. L. 2007, p. 47, § 1/SB 103.

Code Commission notes. — Pursuant to Code Section 28-9-5, in 2006, Code Section 1-4-15, as enacted by Ga. L. 2006, p. 139, § 1/HB 713, was redesignated as Code Section 1-4-15.1.

1-4-16. Designation of "Prison Chaplains Appreciation Day."

The fourth Monday in March of each year is designated and shall be observed as "Prison Chaplains Appreciation Day" in all state and private correctional institutions in Georgia.

History. — Code 1981, § 1-4-16, enacted by Ga. L. 2006, p. 484, § 1/HB 1292.

1-4-17. Declaration of "Georgia Day."

The twelfth day of February in each year is declared to be "Georgia Day," as the anniversary of the landing of the first colonists in Georgia under Oglethorpe.

History. — Code 1981, § 1-4-17, enacted by Ga. L. 2008, p. 2, § 1/HB 387.

Editor's notes. — This Code section formerly pertained to the designation of the year of the museum. The former Code section was based on Code 1981, § 1-4-17, enacted by Ga. L. 2006, p. 720, § 1/SB 195.

Code Commission notes. — Pursuant to Code Section 28-9-5, in 2006, Code Section 1-4-16, as enacted by Ga. L. 2006, p. 720, § 1, was redesignated as Code Section 1-4-17.

Pursuant to Code Section 28-9-5, in 2008, Code Section 1-4-17, as enacted by Ga. L. 2008, p. 563, § 2, was redesignated as Code Section 1-4-18, and Code Section 1-4-17, as enacted by Ga. L. 2008, p. 566, § 2, was redesignated as Code Section 1-4-19.

1-4-18. Designation of "School Bus Drivers Appreciation Day."

The third Monday in October of every year is designated "School Bus Drivers Appreciation Day" in Georgia.

History. — Code 1981, § 1-4-18, enacted by Ga. L. 2008, p. 563, § 2/HB 791.

Code Commission notes. — Pursuant to Code Section 28-9-5, in 2008, Code Section 1-4-17, as enacted by Ga. L. 2008, p. 563, § 2, was redesignated as Code Section 1-4-18.

Editor's notes. — Ga. L. 2008, p. 563, § 1/HB 791, not codified by the General Assembly, provided legislative findings related to the enactment of this Code section.

1-4-19. Designation of "School Bus Safety Week."

The third week in October of every year is designated "School Bus Safety Week" in Georgia.

History. — Code 1981, § 1-4-19, enacted by Ga. L. 2008, p. 566, § 2/HB 790.

Code Commission notes. — Pursuant to Code Section 28-9-5, in 2008, Code Section 1-4-17, as enacted by Ga. L. 2008, p. 566, § 2, was redesignated as Code Section 1-4-19.

Editor's notes. — Ga. L. 2008, p. 566, § 1/HB 790, not codified by the General Assembly, provided legislative findings related to the enactment of this Code section.

1-4-20. Designation of Confederate History and Heritage Month.

(a) The General Assembly hereby finds and determines that tourism is a great economic resource in Georgia; and historical, heritage, and cultural inheritance are among the tourism industry's most popular attractions. Georgia's Confederate heritage, physical artifacts and battle sites, and historic events and persons not only attract visitors,

they are potentially of even greater importance and benefit to our state's economy. Increased development of our state's Confederate history and heritage as part of the tourism industry will be enhanced through recognizing, celebrating, and advertising that heritage and history.

(b) The month of April of each year is hereby designated as Confederate History and Heritage Month and shall be set aside to honor, observe, and celebrate the Confederate States of America, its history, those who served in its armed forces and government, and all those millions of its citizens of various races and ethnic groups and religions who contributed in sundry and myriad ways to the cause which they held so dear from its founding on February 4, 1861, in Montgomery, Alabama, until the Confederate ship CSS *Shenandoah* sailed into Liverpool Harbor and surrendered to British authorities on November 6, 1865.

(c) Officials and departments of state, county, and municipal governments, boards of education, elementary and secondary schools, colleges and universities, businesses, and all citizens are encouraged to participate in programs, displays, and activities that commemorate and honor our shared history and cultural inheritance throughout each April during Confederate History and Heritage Month.

History. — Code 1981, § 1-4-20, enacted by Ga. L. 2009, p. 207, § 2/SB 27.

Cross references. — Official Georgia Historical Civil Rights Museum, § 50-3-85.

1-4-21. Designation of "Purple Heart Day."

(a) August 7 of every year is designated as "Purple Heart Day."

(b) The Governor may annually issue a proclamation designating August 7 as "Purple Heart Day." Public officials, schools, private organizations, and all residents of this state are encouraged to commemorate Purple Heart Day and honor those wounded or killed while serving in any branch of the United States Armed Services.

History. — Code 1981, § 1-4-21, enacted by Ga. L. 2014, p. 758, § 1/SB 276.

Cross references. — License plates for veterans awarded Purple Heart, § 40-2-84. Purple Heart state designation, § 50-3-86.

1-4-22. Designation of "Water Professionals Appreciation Day."

The first Monday in May of each year is designated as "Water Professionals Appreciation Day" in Georgia.

History. — Code 1981, § 1-4-22, enacted by Ga. L. 2015, p. 108, § 2/SB 119.

Editor's notes. — Ga. L. 2015, p. 108, § 1/SB119, not codified by the General

Assembly, provides: "The General Assembly finds that:

"(1) The Georgia Water Quality Control Act was passed by the Georgia General Assembly and signed into law in 1964 by Governor Carl Sanders;

"(2) At that time, there were 25 communities in Georgia which had no public sewer systems, 40 communities with a sewer system but no treatment facilities, 60 communities with a sewer system but only primary treatment facilities, 50 communities with a sewer system and secondary treatment facilities which were in need of improvement, and 395 industries which had documented untreated or inadequately treated discharges to Georgia's surface waters;

"(3) At the time of passage of the Act, many of Georgia's surface waters were extremely polluted, and serious water quality problems existed all over the State of Georgia;

"(4) The state established the Georgia Water Quality Control Board (later reconstituted as the Georgia Environmental Protection Division as a result of the 1972 Reorganization of State Government under Governor Jimmy Carter), and Governor Sanders appointed R.S. 'Rock' Howard to be the board's executive secretary;

"(5) By the time the Federal Water Quality Control Act was passed in 1972, most of Georgia's industries had been brought into compliance with the initial requirements of the federal Act;

"(6) Over the ensuing four decades, billions of federal, state, and local dollars have been invested in planning, designing, and constructing modern publicly owned wastewater treatment facilities throughout this state;

"(7) Georgia's water professionals are committed to operating these facilities to maintain consistent compliance with extremely stringent standards;

"(8) Both publicly and privately owned facilities have performed so well that they are no longer the most significant threat to Georgia's waters;

"(9) The quality of Georgia's waters has improved dramatically throughout this great state over the years since the passage of the original Act;

"(10) It is imperative that these improvements be sustained while continuing our efforts to educate Georgians of their growing responsibility in the reduction of non-point sources of pollution to Georgia's waters;

"(11) The success that we have experienced thus far and the success that we will have is due to the tremendous dedication and efforts of Georgia's water professionals; and

"(12) It is fitting and proper that these individuals and their efforts be appropriately recognized."

CHAPTER 5

CHANGE OF NAME OF RAPID TRANSIT AUTHORITIES, PORT AUTHORITIES, AND INDUSTRIAL AREAS

Sec.
1-5-1. Power of board of directors to change name and style under which an authority operates.

1-5-1. Power of board of directors to change name and style under which an authority operates.

The board of directors of any public authority created by a constitutional amendment, which amendment was continued in force as a part of the 1983 Constitution pursuant to the provisions of subparagraph (d) of Article XI, Section I, Paragraph IV, shall be empowered to change the name and style under which the authority operates by adopting an appropriate resolution by a majority vote at any regular or special meeting of the authority. If the board of directors changes the name and style under which an authority operates in accordance with the provisions of this Code section, such action shall in no way alter or restrict the character or nature of the authority and the authority shall be recognized and declared to be one and the same continuing body corporate and politic with all the powers heretofore or hereafter granted to said authority; and any acts done under the new name and style so adopted shall be for all intents and purposes equally as valid and effective as if done under the original name and style of the authority.

History. — Code 1981, § 1-5-1, enacted by Ga. L. 1989, p. 47, § 1.

TITLE 2

AGRICULTURE

Chap.

1. General Provisions, 2-1-1 through 2-1-6.
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Cross references. — Criminal penalty for livestock theft, § 16-8-20. Appointment of director of agricultural matters by board of regents, § 20-3-73. Conducting of farmers' institutes by board of regents, § 20-10-1. Sale of farm tractors, § 40-4-45. Provision that agricultural or farming operations, places, establishments, or facilities shall not become a nuisance as result of changed conditions in vicinity of such operations, places, establishments, or facilities, § 41-1-7. Exemption of agricultural products and machinery from sales and use taxes, §§ 48-8-3 through 48-8-5.

Editor's notes. — By resolution (Ga. L. 1994, p. 1219), the General Assembly created the GA 96 AG Joint Steering Committee to guide the involvement of the agricultural industry in activities for and surrounding the 1996 Centennial Olympic Games, which committee was abolished on December 31, 1994.

CHAPTER 1

GENERAL PROVISIONS

Sec.		Sec.	
2-1-1.	Definitions.		administrative and judicial review; filing of final order; payment of penalty.
2-1-1.1.	Policy of state to promote sustainable agriculture.	2-1-5.	Annual license fee for grain dealers, commercial feed dealers, grain warehousemen, and qualified agricultural producers; retention of funds.
2-1-2.	Verification of certain licenses by inspectors.	2-1-6.	Preemption of local ordinances relating to production of agricultural or farm products.
2-1-3.	Sales of farm products, plants, and seed on Sunday.		
2-1-4.	Anti-siphon devices for irrigation systems; rules and regulations as to such devices; hearings on violations;		

Administrative rules and regulations. — Organization, Official Compilation of the Rules and Regulations of the State of Georgia, Rules of Georgia Department of Agriculture, Administration, Subject 40-1-1.

2-1-1. Definitions.

As used in this title, the term:

(1) "Commissioner" means the Commissioner of Agriculture.

(2) "Department" means the Department of Agriculture of this state.

(3) "Sustainable agriculture" or "sustainable agricultural practices" means science-based agricultural practices, technologies, or biological systems supported by research or otherwise demonstrated to lead to broad outcomes-based improvements, which may include but not be limited to such critical outcomes as increasing agricultural productivity and improving human health through access to safe, nutritious, affordable food and other agricultural products, while enhancing agricultural and surrounding environmental conditions through the stewardship of water, soil, air quality, biodiversity, and wildlife habitat, so as to meet the needs of the present and improve the ability for future generations to meet their own needs while advancing progress toward environmental, social, and economic goals and the well-being of agricultural producers and rural communities.

History. — Code 1981, § 2-1-1; Ga. L. 2011, p. 248, § 1/HB 225.

Editor's notes. — This Code section was created as part of the Code revision and was thus enacted by Ga. L. 1981, Ex. Sess., p. 8 (Code enactment Act).

2-1-1.1. Policy of state to promote sustainable agriculture.

It shall be the policy of this state to promote sustainable agriculture.

History. — Code 1981, § 2-1-1.1, enacted by Ga. L. 2011, p. 248, § 2/HB 225.

2-1-2. Verification of certain licenses by inspectors.

The inspectors of the department, in the regular course of their duties, shall verify that each facility they inspect has proper state licenses for the sale of cigarettes, malt beverages, and wine. Should any facility not have such state licenses as required by law, the state revenue commissioner shall be notified of such fact immediately, so that he can take such action as is required by law.

History. — Ga. L. 1972, p. 1015, § 506.

2-1-3. Sales of farm products, plants, and seed on Sunday.

It shall be lawful to sell or offer for sale perishable farm products, growing plants, and perishable seed on Sunday.

History. — Ga. L. 1953, Jan.-Feb. Sess., p. 202, § 1.

JUDICIAL DECISIONS

Cited in Evans v. Evans, 229 Ga. 418, 192 S.E.2d 158 (1972).

RESEARCH REFERENCES

ALR. — Power of municipal corporation to legislate as to Sunday observance, 37 A.L.R. 575.

Power to extend Sunday observance laws beyond Sunday hours, 50 A.L.R. 628.

Validity, construction, and effect of "Sunday closing" or "blue" laws — modern status, 10 A.L.R.4th 246.

2-1-4. Anti-siphon devices for irrigation systems; rules and regulations as to such devices; hearings on violations; administrative and judicial review; filing of final order; payment of penalty.

(a) Any irrigation system which is designed or used for the application of fertilizer, pesticide, or chemicals must be equipped with an anti-siphon device adequate to protect against contamination of the water supply. Such anti-siphon device shall consist of a check valve and low pressure drain in the irrigation supply line located between the

irrigation pump and the point of injection of fertilizer, pesticide, or chemicals. Any system which complied with the law in effect on January 1, 1982, shall be deemed to be in compliance with the provisions of this subsection.

(b) It shall be unlawful for any person to use any irrigation system designed or used for the application of fertilizer, pesticide, or chemicals, which system is not equipped as required by this Code section.

(c) The Commissioner shall make and publish in print or electronically such rules and regulations as he deems necessary to carry out this Code section, which rules and regulations are not inconsistent with this Code section. Such rules and regulations may specify requirements to be met by anti-siphon devices and the placement of such devices to provide adequate protection.

(d) The Commissioner, in order to enforce this Code section or any orders, rules, and regulations promulgated pursuant thereto, may issue an administrative order imposing a penalty not to exceed $1,000.00 for each violation whenever the Commissioner, after a hearing, determines that any person has violated any provision of this Code section, or any regulation or order promulgated hereunder. The hearing and any administrative review thereof shall be conducted in accordance with the procedure for contested cases under Chapter 13 of Title 50, the "Georgia Administrative Procedure Act." Any person who has exhausted all administrative remedies available and who is aggrieved or adversely affected by a final order or action of the Commissioner shall have the right of judicial review thereof in accordance with Chapter 13 of Title 50. All penalties recovered under this Code section shall be paid into the state treasury. The Commissioner may file in the superior court wherein the person under order resides, or, if the person is a corporation, in the county wherein the corporation maintains its principal place of business, or in the county wherein the violation occurred, a certified copy of a final order of the Commissioner unappealed from, or of a final order of the Commissioner affirmed upon appeal, whereupon such court shall render judgment in accordance therewith and notify the parties. Such judgment shall have the same effect, and proceedings in relation thereto shall thereafter be the same, as though such judgment has been rendered in a suit duly heard and determined by such court. The penalty prescribed in this Code section shall be concurrent, alternative, and cumulative with any and all other civil, criminal, or alternative rights, remedies, forfeitures, or penalties provided, allowed, or available to the Commissioner with respect to any violation of this Code section or any orders, rules, or regulations promulgated pursuant thereto.

History. — Ga. L. 1981, p. 1256, §§ 1-4; Ga. L. 1982, p. 1232, §§ 1, 2; Ga. L. 1984, p. 22, § 2; Ga. L. 1989, p. 14, § 2; Ga. L. 2010, p. 838, § 10/SB 388.

Cross references. — Control of water pollution and surface-water use, § 12-5-20 et seq. Wells and drinking water, § 12-5-70 et seq.

2-1-5. Annual license fee for grain dealers, commercial feed dealers, grain warehousemen, and qualified agricultural producers; retention of funds.

(a) An individual conducting business as a grain dealer, commercial feed dealer, and grain warehouseman shall pay an annual license fee in an amount not less than $1,500.00 nor more than $3,000.00. Any fees collected pursuant to this Code section shall be retained pursuant to the provisions of Code Section 45-12-92.1.

(b) A qualified agricultural producer, as defined in Code Section 48-8-3.3, shall pay an annual license fee in an amount not less than $15.00 nor more than $25.00, but in no event shall the total amount of the proceeds from such fees exceed the cost of administering Code Section 48-8-3.3.

History. — Code 1981, § 2-1-5, enacted by Ga. L. 1992, p. 2553, § 2.5; Ga. L. 2001, p. 1070, § 1; Ga. L. 2010, p. 9, § 1-1/HB 1055; Ga. L. 2012, p. 257, § 5-7/HB 386; Ga. L. 2014, p. 288, § 2/HB 983.

Cross references. — License required, § 2-9-31. Issuance, renewal, and expiration of license, § 2-9-33. License required for distribution; product registration; fees; refusal or cancellation of license or registration, § 2-13-6.

Editor's notes. — Ga. L. 2012, p. 257, § 7-1(h)/HB 386, not codified by the General Assembly, provides: "Tax, penalty, and interest liabilities and refund eligibility for prior taxable years shall not be affected by the passage of this Act and shall continue to be governed by the provisions of general law as it existed immediately prior to the effective date of the relevant portion of this Act." The amendment to this Code section became effective January 1, 2013.

Ga. L. 2012, p. 257, § 7-1(i)/HB 386, not codified by the General Assembly, provides: "This Act shall not abate any prosecution, punishment, penalty, administrative proceedings or remedies, or civil action related to any violation of law committed prior to the effective date of the relevant portion of this Act." The amendment to this Code section became effective January 1, 2013.

Ga. L. 2012, p. 257, § 7-2/HB 386, not codified by the General Assembly, provides for severability.

Ga. L. 2014, p. 288, § 3/HB 983, not codified by the General Assembly, provides that: "This Act shall become effective on January 1, 2015, and shall be applicable to all taxable years beginning on or after January 1, 2015."

Law reviews. — For article, "Revenue and Taxation: Amend Titles 48, 2, 28, 33, 36, 46, and 50 of the Official Code of Georgia Annotated, Relating Respectively to Revenue and Taxation, Agriculture, the General Assembly, Insurance, Local Government, Public Utilities, and State Government," see 28 Ga. St. U. L. Rev. 217 (2011). For article on the 2012 amendment of this Code section, see 29 Ga. St. U. L. Rev. 112 (2012).

2-1-6. Preemption of local ordinances relating to production of agricultural or farm products.

(a) No county, municipality, consolidated government, or other political subdivision of this state shall adopt or enforce any ordinance, rule,

regulation, or resolution regulating crop management or animal husbandry practices involved in the production of agricultural or farm products on any private property.

(b) Subsection (a) of this Code section shall not prohibit or impair the power of any local government to adopt or enforce any zoning ordinance or make any other zoning decision. As used in this subsection, the terms "local government", "zoning decision", and "zoning ordinance" have the same meanings provided by Code Section 36-66-3.

(c) Subsection (a) of this Code section shall not prohibit or impair any existing power of a county, municipality, consolidated government, or other political subdivision of this state to adopt or enforce any ordinance, rule, regulation, or resolution regulating land application of human waste.

History. — Code 1981, § 2-1-6, enacted by Ga. L. 2009, p. 444, § 1/HB 529.

CHAPTER 2

DEPARTMENT OF AGRICULTURE

Sec.
2-2-1. Department of Agriculture established.
2-2-2. Commissioner of Agriculture — Qualifications; election; location of office.
2-2-3. Commissioner of Agriculture — Term of office; removal.
2-2-4. Commissioner of Agriculture — Salary and expenses; compensation of employees.
2-2-5. Commissioner of Agriculture — Bond.
2-2-6. Commissioner of Agriculture — Acceptance of cash, government bonds, treasury notes, or equivalency in lieu of bond.
2-2-7. Commissioner of Agriculture — Powers and duties.
2-2-8. Educational exhibits promoting state resources at agricultural fairs authorized.
2-2-8.1. Contributions for Farmers and Consumers Market Bulletin and Poultry Market News.
2-2-9. Rules and regulations.
2-2-9.1. "Aggrieved or adversely affected" defined; administrative authority of Commissioner; hearing for individuals adversely affected; penalties; final decisions; judicial review of final decisions.
2-2-10. Imposition of penalty authorized in lieu of other action; funding to general treasury.
2-2-11. Inspection warrants.
2-2-12. Assistance to United States Department of Agriculture in inspection, certification, and identification of agricultural products and collection of fees.
2-2-13. Enforcement of laws and rules within jurisdiction of Commissioner; employment of investigators.

Cross references. — Power of department as to animals, T. 4 generally. Power of department as to petroleum products, T. 10, C. 1, Art. 8. Power of department as to weights and measures, T. 10, C. 2. Power of department as to warehousemen, T. 10, C. 4. Power of department as to food, T. 26, C. 2. Powers and duties of Department of Agriculture regarding manufacture, reupholstering, or renovation of articles of bedding, T. 31, C. 25.

Administrative rules and regulations. — Organization, Official Compilation of the Rules and Regulations of the State of Georgia, Rules of Georgia Department of Agriculture, Administration, Subject 40-1-1.

Milk and milk products, Official Compilation of the Rules and Regulations of the State of Georgia, Rules of Georgia Department of Agriculture, Chapter 40-2.

2-2-1. Department of Agriculture established.

There is established a Department of Agriculture for this state.

History. — Ga. L. 1874, p. 5, § 1; Code 1882, § 1465a; Civil Code 1895, § 1789; Civil Code 1910, § 2065; Code 1933, § 5-101.

RESEARCH REFERENCES

Am. Jur. 2d. — 3 Am. Jur. 2d, Agriculture, § 19 et seq.

C.J.S. — 3 C.J.S., Agriculture, §§ 3 et seq., 10 et seq.

ALR. — Constitutionality and construction of state farm aid laws, 92 A.L.R. 768.

2-2-2. Commissioner of Agriculture — Qualifications; election; location of office.

The department shall be under the control and management of the Commissioner of Agriculture, who shall be a practical farmer, elected by qualified voters at the same time, in the same manner, and under the same rules and regulations as the Governor and statehouse officers are elected. The office of the Commissioner shall be at the capital of the state.

History. — Ga. L. 1874, p. 5, § 2; Code 1882, § 1465b; Ga. L. 1889, p. 63, § 2; Civil Code 1895, § 1790; Civil Code 1910, § 2066; Code 1933, §§ 5-102, 5-103, 5-104; Ga. L. 1943, p. 126, § 1.

Cross references. — Qualifications of Commissioner, Ga. Const. 1983, Art. V, Sec. III, Para. II.

JUDICIAL DECISIONS

Cited in Georgia Fertilizer Co. v. Walker, 45 Ga. App. 68, 163 S.E. 277 (1932); Talmadge v. Sutton, 175 Ga. 811, 166 S.E. 240 (1932).

2-2-3. Commissioner of Agriculture — Term of office; removal.

The term of office of the Commissioner shall be for four years or until his successor is elected and qualified, unless he is removed in the manner prescribed by law for the removal of officers of the state government.

History. — Ga. L. 1874, p. 5, § 7; Code 1882, § 1465g; Ga. L. 1889, p. 63, § 1; Civil Code 1895, § 1790; Civil Code 1910, § 2066; Ga. L. 1927, p. 207, §§ 1, 2; Code 1933, § 5-103; Ga. L. 1935, p. 98, § 1; Ga. L. 1984, p. 1152, § 2.

2-2-4. Commissioner of Agriculture — Salary and expenses; compensation of employees.

(a) The annual salary of the Commissioner shall be as provided in Code Sections 45-7-3 and 45-7-4. The Commissioner shall be entitled to reimbursement of expenses as provided by Code Section 45-7-20.

(b) The Commissioner is authorized to employ personnel for the department, to prescribe their duties, and to fix the compensation of such personnel; provided, however, that such compensation shall be in accordance with the rules and regulations of the State Personnel Board.

History. — Ga. L. 1874, p. 5, § 3; Code 1882, § 1465c; Civil Code 1895, § 1791; Ga. L. 1905, p. 73, § 1; Ga. L. 1906, p. 110, § 1; Civil Code 1910, § 2067; Ga. L. 1919, p. 75, § 1; Ga. L. 1919, p. 92, § 1; Code 1933, § 5-105; Ga. L. 1947, p. 673, § 1; Ga. L. 1956, p. 376, § 1; Ga. L. 1960, p. 106, § 1; Ga. L. 1963, p. 586, § 1A; Ga. L. 2009, p. 745, § 2/SB 97; Ga. L. 2012, p. 446, § 2-2/HB 642.

Editor's notes. — Ga. L. 2012, p. 446, § 3-1/HB 642, not codified by the General Assembly, provides that: "Personnel, equipment, and facilities that were assigned to the State Personnel Administration as of June 30, 2012, shall be transferred to the Department of Administrative Services on the effective date of this Act." This Act became effective July 1, 2012.

Ga. L. 2012, p. 446, § 3-2/HB 642, not codified by the General Assembly, provides that: "Appropriations for functions which are transferred by this Act may be transferred as provided in Code Section 45-12-90."

RESEARCH REFERENCES

C.J.S. — 3 C.J.S., Agriculture, § 27 et seq.

2-2-5. Commissioner of Agriculture — Bond.

The Commissioner shall give a bond of $50,000.00 as a guaranty of the faithful performance of the duties of his office and for the proper accounting for all moneys, fees, etc., received by his office. The bond shall be furnished by a surety company authorized to do business in Georgia by the laws of this state. The premium on the bond shall be paid by the state.

History. — Ga. L. 1927, p. 206, § 1; Code 1933, § 5-106.

Cross references. — Official bonds generally, T. 45, C. 4.

JUDICIAL DECISIONS

Cited in Talmadge v. McDonald, 44 Ga. App. 728, 162 S.E. 856 (1932); Talmadge v. Sutton, 175 Ga. 811, 166 S.E. 240 (1932); National Sur. Co. v. Seymour, 46 Ga. App. 109, 166 S.E. 777 (1932); National Sur. Co. v. Seymour, 177 Ga. 735, 171 S.E. 380 (1933).

2-2-6. Commissioner of Agriculture — Acceptance of cash, government bonds, treasury notes, or equivalency in lieu of bond.

In all cases where a licensee or an applicant for a license is required to post a bond with the Commissioner, the Commissioner is authorized to accept cash, government bonds, treasury notes, or their equivalent in lieu of the bond where the licensee or applicant cannot obtain the prescribed bond. All such funds shall be held in trust by the Commissioner and shall be subject to the payment by the Commissioner of all claims to which the bond would be subject.

History. — Ga. L. 1958, p. 630, § 1.

2-2-7. Commissioner of Agriculture — Powers and duties.

The Commissioner of Agriculture shall serve as the chief administrative officer of the Department of Agriculture. The Commissioner shall be responsible for the enforcement of all duties imposed upon him by law. In addition to any other powers which may be conferred upon him, the Commissioner may:

(1) Examine and investigate any matter relating to or affecting the welfare of farmers and consumers of the state;

(2) Gather, formulate, and disseminate, in such form and in such manner as he shall deem advisable, information which may benefit the farmers and consumers of this state;

(3) Participate in any show, fair, or exhibit in order to advance the agricultural industry in this state and make the public aware of the services offered by the Department of Agriculture;

(4) Promulgate rules and regulations concerning the operations of the department and such rules and regulations as may be necessary to carry out and enforce the duties and responsibilities imposed upon him by law;

(5) Secure the cooperation and assistance of the other departments and agencies of this state, or the other states, any department or agency of the United States, or any other organization that may be of assistance; and

(6) Participate as a member of, or in an advisory capacity to, any organization or association which is of benefit to the agricultural community or consumers of the state.

History. — Ga. L. 1874, p. 5, § 4; Code 1882, § 1465d; Ga. L. 1893, p. 136, § 1; Civil Code 1895, § 1792; Civil Code 1910, § 2068; Code 1933, § 5-107.

Cross references. — Power of Commissioner to employ a state veterinarian, § 4-1-2. Powers and duties of Commissioner in regard to prevention and control of disease in cattle, horses, and other livestock, T. 4, C. 4. Powers and duties of Commissioner with regard to sale of petroleum products, brake fluid, and antifreeze, § 10-1-140 et seq. Powers and duties of Commissioner with regard to enforcement of laws and regulations pertaining to weights and measures, T. 10, C. 2. Designation of Commissioner as state warehouse commissioner, § 10-4-50.

JUDICIAL DECISIONS

Cited in Talmadge v. Sutton, 175 Ga. 811, 166 S.E. 240 (1932).

OPINIONS OF THE ATTORNEY GENERAL

Duties of Commissioner were not all included in the statutory provisions on agriculture (see now O.C.G.A. T. 2) and may be found in the statutory provisions on animals and commerce and trade (see now O.C.G.A. T. 4 and 10). 1958-59 Op. Att'y Gen. p. 4.

Purchase of protective outergarments authorized. — The Department may lawfully purchase protective smocks for use by employees if these protective outergarments are considered reasonably necessary and proper for the conduct of an inspectors' official activities. 1968 Op. Att'y Gen. No. 68-94.

RESEARCH REFERENCES

C.J.S. — 3 C.J.S., Agriculture, § 27 et seq.

ALR. — State statute in relation to inspection and grading of grain as unlawful burden on interstate commerce, 19 A.L.R. 164.

Constitutionality, construction, and application of statutes relating to testing or sampling of agricultural fertilizers, 105 A.L.R. 348; 147 A.L.R. 765.

2-2-8. Educational exhibits promoting state resources at agricultural fairs authorized.

(a) The Commissioner is authorized to advertise and promote the agricultural resources of this state through the use of educational exhibits at agricultural fairs. When he so desires, the Commissioner is authorized to establish such exhibits in cooperation with the College of Agricultural and Environmental Sciences of the University of Georgia, the Cooperative Extension Service of the University of Georgia, and other departments of this state.

(b) For an event to qualify as an agricultural fair, the organization sponsoring such fair must:

(1) Be able to show that at least 10 percent of the total receipts thereof are paid out in the form of premiums, scholarships, or agricultural programs; and

(2) Be a nonprofit organization, spending the profits of the fair on the enterprise or paying them out in the form of premiums, scholarships, or educational programs.

(c) Transportation costs, space rental, and utility costs at any agricultural fair shall be borne by the organization sponsoring such fair.

(d) Nothing in this Code section shall be construed to prohibit governmental agencies from participating in or exhibiting the resources of this state at any agricultural fair.

History. — Ga. L. 1958, p. 197, §§ 1-3; Ga. L. 1995, p. 10, § 2.

RESEARCH REFERENCES

Am. Jur. 2d. — 3 Am. Jur. 2d, Agriculture, §§ 19 et seq, 35 et seq.

ALR. — Exemption from taxation of property of agricultural fair society or association, 89 A.L.R.2d 1104.

2-2-8.1. Contributions for Farmers and Consumers Market Bulletin and Poultry Market News.

The Commissioner is authorized to publicize and request, by means of publication of appropriate notices in the *Farmers and Consumers Market Bulletin* and the *Poultry Market News*, contributions to be used exclusively for the compilation, publication, printing, and distribution of the *Farmers and Consumers Market Bulletin* and the *Poultry Market News*.

History. — Code 1981, § 2-2-8.1, enacted by Ga. L. 1995, p. 353, § 1; Ga. L. 2010, p. 9, § 1-2/HB 1055.

Information and Education. Farmers and Consumers Market Bulletin, Official Compilation of the Rules and Regulations of the State of Georgia, Rules of Georgia Department of Agriculture, Chapter 40-8.

2-2-9. Rules and regulations.

The Commissioner is empowered to make all necessary rules and regulations for the purpose of carrying out the purposes of this title.

History. — Ga. L. 1874, p. 5, § 5; Code 1882, § 1465e; Civil Code 1895, § 1793; Civil Code 1910, § 2083; Code 1933, § 5-108.

Cross references. — Procedures for adoption of rules and regulations, T. 50, C. 13.

OPINIONS OF THE ATTORNEY GENERAL

Commissioner not obliged to provide formal means of administrative appeal. — The Commissioner has neither a statutory nor a constitutional obligation to provide a formal means of administratively appealing a decision to bar a party from a state-owned and regulated farmers' market. 1965-66 Op. Att'y Gen. No. 66-217.

2-2-9.1. "Aggrieved or adversely affected" defined; administrative authority of Commissioner; hearing for individuals adversely affected; penalties; final decisions; judicial review of final decisions.

(a) As used in this Code section, the term "aggrieved or adversely affected" means that the challenged action has caused or will cause the person injury in fact, and the injury is to an interest within the zone of interests to be protected or regulated by the statute that the Commissioner is empowered to administer and enforce.

(b) The Commissioner shall issue all orders and perform actions to include impoundments; quarantine; the issuance, suspension, denial, or revocation of registrations, licenses, or permits; or approval or denial of applications for registrations, licenses, or permits provided for in such federal and state laws as are to be enforced by the Department of Agriculture.

(c) Any administrative order issued by the Commissioner shall specify the alleged violation, monetary penalty, or other sanction; prescribe a reasonable time for some type of action to be accomplished; and provide notice of the right to a hearing. Any order issued pursuant to this Code section shall become final unless the aggrieved or adversely affected registrant, licensee, permittee, applicant, equine owner, livestock owner, dog or cat owner, exotic and pet bird owner, or farmer of crops or livestock, chickens, or other animals timely requests a hearing in writing as provided by this Code section.

(d) Any registrant, licensee, permittee, applicant, equine owner, livestock owner, dog or cat owner, exotic and pet bird owner, or farmer of crops or livestock, chickens, or other animals aggrieved or adversely affected by any order or action of the Commissioner to include the issuance, suspension, denial, or revocation of a registration, license, permit, or application; impoundment; quarantine; or stop sale, stop use, or stop removal order; upon petition within 30 days after the issuance of such order or the taking of such action, shall have a right to a hearing before a hearing officer appointed or designated for such purpose by the Commissioner. The decision of the hearing officer shall constitute an initial decision of the Department of Agriculture, and any party to the hearing, including the Commissioner, shall have the right to final agency review before the Commissioner in accordance with Chapter 13 of Title 50, the "Georgia Administrative Procedure Act," and the provisions of this chapter.

(e) Where a statute for which the Commissioner has responsibility for administration or enforcement or a provision of Article 1 of Chapter 13 of Title 50 provides for different administrative procedures in providing for a notice and opportunity to be heard other than those specified in this Code section, the Commissioner may elect which procedure to be used on a case-by-case basis.

(f) In the event the Commissioner asserts in response to the petition before the hearing officer that the petitioner is not aggrieved or adversely affected, the hearing officer shall take evidence and hear arguments on such issue and thereafter make a ruling on such issue before continuing with the hearing. The burden of going forward with evidence on such issue shall rest with the petitioner. The decision of the hearing officer shall constitute the initial decision of the Commissioner; and any party to the hearing, including the Commissioner, shall have

the right for final agency review before the Commissioner in accordance with Chapter 13 of Title 50.

(g) Prior to notice, hearing, or determination, the Commissioner is authorized to impose civil penalties in settlement of contested cases through administrative consent orders. The Commissioner is authorized to impose through administrative consent orders civil penalties of up to and including the applicable maximum amounts provided by paragraph (1) of subsection (h) of this Code section. Any civil penalties recovered shall be paid over into the general fund of the state treasury in accordance with Code Section 45-12-92.

(h)(1) The Commissioner may seek civil penalties for the violation of those laws to be enforced by the Department of Agriculture; and where the imposition of such civil penalties is provided for therein, the Commissioner upon written request may cause a hearing to be conducted before a hearing officer appointed or designated by the Commissioner for the purpose of determining whether such civil penalties should be imposed in accordance with the applicable law; and where the imposition of such civil penalties is not provided for therein but violation of such law is punishable as a criminal offense, the Commissioner upon written request may cause a hearing to be conducted before a hearing officer appointed or designated by the Commissioner for the purpose of determining whether civil penalties in an amount not to exceed $1,000.00 per violation should be imposed. Any civil penalties recovered shall be paid over into the general fund of the state treasury in accordance with Code Section 45-12-92. The Commissioner may require any person to obtain a surety bond on the balance of a monetary penalty or suspended portion of a monetary penalty imposed on such person pursuant to a consent order or final decision from which no further review is taken or allowed. If any aggrieved or adversely affected party fails to follow the terms of such consent order or final decision, the Commissioner may commence and maintain an action against the principal and surety on the bond.

(2) The decision of the hearing officer shall constitute the initial decision of the Commissioner; and any party to the hearing, including the Commissioner, shall have the right of final agency review before the Commissioner in accordance with Chapter 13 of Title 50.

(3) In rendering a decision on a requested civil penalty, the hearing officer shall consider all relevant factors including, but not limited to, the following:

(A) The amount of civil penalty necessary to ensure immediate and continued compliance and the extent to which the violator may have profited by failing or delaying to comply;

(B) The conduct of the person incurring the civil penalty in promptly taking all feasible steps or procedures necessary or appropriate to comply with or to correct the violation or failure to comply;

(C) Any prior violations of, or failures by, such person to comply with statutes, rules, regulations, or orders administered, adopted, or issued by the Commissioner;

(D) The character and degree of injury to or interference with public health or safety which is caused or threatened to be caused by such violation or failure to comply;

(E) The character and degree of injury to or interference with reasonable use of property which is caused or threatened to be caused by such violation or failure to comply; and

(F) The character and degree of intent with which the conduct of the person incurring the civil penalty was carried out.

(i)(1) Once the hearing officer issues an initial decision, that decision may be appealed by any party to the Commissioner for final agency review. The party requesting final agency review shall have 30 days from notice of the initial decision to file an application for final agency review. If the initial decision is not appealed within 30 days by any party, it shall be deemed final without need of any further proceedings.

(2) In application, the party requesting final agency review from the Commissioner shall include a short and plain statement of:

(A) The reasons for seeking review; and

(B) Any alleged errors in the initial decision.

(3) The Commissioner may in his or her discretion seek review on his or her own motion pursuant to subsection (a) of Code Section 50-13-17.

(4) Opposing parties may submit statements in response within 20 days of service of an application for final agency review.

(5) A copy of any application for final agency review or in opposition of application for review shall be served on all parties and their counsel as well as the Commissioner.

(j)(1) The standard for final agency review of the initial decision shall be de novo review.

(2) The Commissioner may only review the record considered by the hearing officer in the initial decision hearing. The Commissioner shall not rely on investigative files.

(3) The Commissioner shall possess all the powers that the hearing officer had during the initial decision hearing.

(4) There shall be a presumption of correctness for the hearing officer's credibility determination of witnesses appearing before the hearing officer.

(5) The Commissioner shall not base his or her decision on conjecture, speculation, or impermissible inferences.

(k)(1) The hearing officer shall forward to the Commissioner prior to review:

(A) A copy of the record of the case including the initial decision;

(B) All pleadings;

(C) Transcripts of the hearing; and

(D) All exhibits.

(2) During the final agency review, the Commissioner may hear or take testimony from any party, including the registrant, licensee, permittee, applicant, equine owner, livestock owner, dog or cat owner, exotic and pet bird owner, or farmer of crops or livestock, chickens, or other animals based on such authority as existed during the initial decision hearing.

(3) A party may file a motion not less than 14 days prior to the date of the final agency review to introduce evidence not submitted at the initial decision hearing. Additional evidence may be admitted only if it is material and if good cause exists for not presenting the evidence at the initial decision hearing. Opposing parties may submit responding motions in support of suppression of additional evidence seven days prior to the final agency review. Copies of all motions shall be served on the other party and its counsel as well as the Commissioner.

(l)(1) The final decision shall be in writing, and if an initial decision is modified, the Commissioner shall give his or her reasons therefor in the form of findings of fact and conclusions of law, separately stated, along with the effective date of the final decision. If the Commissioner does not issue a final decision within 30 days, the initial decision shall be deemed final without need of further proceedings. Further, once the initial decision is final, a party's right to judicial review shall be extinguished.

(2) The Commissioner's final decision shall be rendered not later than 30 days from the date of the filing of an application for final agency review unless such period is extended pursuant to paragraph (4) of this subsection.

(3) The Commissioner may modify sanctions after review of an initial decision on appeal, stating the sanctions in the final decision. The Commissioner shall not have to make separate findings of fact to justify modified sanctions.

(4) The period of decision may be extended due to complexity of issues or volume of record materials. All parties involved shall be notified of any extension. A decision shall be rendered as soon as practicable.

(5) The Commissioner shall serve on the:

(A) Opposing party;

(B) Opposing party's counsel;

(C) Agency counsel; and

(D) Original hearing officer

any resulting decision or notify the above parties if there is no change to the initial decision along with a statement of rights on appeal to the opposing party and counsel within 30 days of any such decision.

(m)(1) A party, or the Commissioner on his or her own motion, may seek reconsideration by the Commissioner of a final agency decision.

(2) A party's written request for reconsideration must be submitted to the Commissioner within ten days of service of the final decision. The request shall include a short and plain statement of:

(A) All matters alleged to have been erroneously decided; and

(B) Any newly discovered factual matters and the reasons why any matters were not raised previously.

(3) Opposing parties may submit statements in response within 20 days of service of the request of the consideration.

(4) All requests for reconsideration and statements in opposition shall be served on all parties and the Commissioner.

(5) If the final agency decision is modified, the Commissioner shall give his or her reasons therefor in the form of findings of fact and conclusions of law along with the effective date of the decision.

(6) The Commissioner's reconsideration decision shall be rendered within 30 days following the latest filing deadline.

(n) Judicial review of the Commissioner's final decision may be had in accordance with Code Section 50-13-19.

(o)(1) Any order issued by the Commissioner under the laws of this state to be enforced by the Department of Agriculture pursuant to a

final decision, either unappealed from as provided by law or affirmed or modified on any review or appeal, and from which no further review is taken or allowed, may be filed, by certified copy of the order or final decision from the department, in the superior court of the county wherein the person under order resides, or if such person is a corporation in the county wherein the corporation maintains its principal place of business, or in the county wherein the violation occurred or in which jurisdiction is appropriate; whereupon such superior court shall render judgment in accordance therewith and notify the parties. Such judgment shall have the same effect, and all proceedings in relation thereto shall thereafter be the same, as though such judgment had been rendered in an action duly heard and determined by such court.

(2) The Commissioner may commence an action in any superior court of proper venue to enforce any order issued by him or her and made an order of the superior court pursuant to this Code section.

(p)(1) If a judicial review of the Commissioner's final decision is sought in accordance with Code Section 50-13-19, and the matter involves the impoundment of equines under Chapter 13 of Title 4, the "Georgia Humane Care for Equines Act," the Commissioner shall, along with his or her answer to the petition, include a statement of the costs incurred in the impoundment and care of the impounded animal or animals and an estimate of the future costs expected to be incurred in the care of the impounded animal or animals. The judge of the superior court may then require the petitioner to submit a surety bond to the court in an amount necessary to provide for the reasonable costs of care for the impounded animal or animals. In lieu of a surety bond, the court may accept a cash bond or property bond, which shall in all respects be subject to the same claims and actions as would exist against a surety bond.

(2) Upon the entering of a final adverse decision against an aggrieved party by the superior court, the Commissioner shall within 15 days deliver to the court and to the aggrieved party a statement of the costs incurred in the impoundment and care of the impounded animal or animals. The aggrieved party shall then render payment of such costs to the Commissioner within 15 days after the service of the statement of the costs. If the aggrieved party fails to render payment to the Commissioner within the time period required in this paragraph, the Commissioner may commence and maintain an action against the principal and surety on the bond of the aggrieved party as in any civil action.

History. — Code 1981, § 2-2-9.1, enacted by Ga. L. 2004, p. 598, § 1; Ga. L. 2009, p. 446, § 1/SB 152; Ga. L. 2012, p. 698, § 1/HB 746; Ga. L. 2012, p. 1116, § 1/SB 367.

Code Commission notes. — Pursuant

to Code Section § 28-9-5, in 2004, "section" was substituted for "Section" in subsection (a), punctuation was revised in subsections (b) and (d), and "for" was inserted after "statute" in subsection (e).

Editor's notes. — Ga. L. 2009, p. 446, § 7/SB 152, not codified by the General Assembly, provided that the amendment to this Code section shall apply to violations occurring on or after May 1, 2009.

Law reviews. — For annual survey on administrative law, see 64 Mercer L. Rev. 39 (2012).

JUDICIAL DECISIONS

Hearing held not required before impounding horses under the Georgia Humane Care for Equines Act. — Requiring hearings before impounding horses under the Georgia Humane Care for Equines Act, O.C.G.A. § 4-13-1 et seq., could cause further harm to animals being deprived of adequate food and water, thus, there was no due process violation and defendant agency officials had qualified immunity on the plaintiff animal owner's claim; the safeguards of O.C.G.A. §§ 4-13-3 and 4-13-4, in connection with any seizure, and the procedure for requesting a hearing under O.C.G.A. § 2-2-9.1(d) after any seizure, were adequate. Reams v. Irvin, 561 F.3d 1258 (11th Cir. 2009).

Because the plaintiff equine owner could, pursuant to O.C.G.A. § 2-2-9.1(n), seek judicial review of the defendant Georgia Department of Agriculture Commissioner's final decision as to the seizure of defendant's animals, and O.C.G.A. § 50-13-19(a) and (h), provided a judicial safety valve for review, the owner had no constitutional challenge to the procedural adequacy of the hearing-and-appeal procedure set forth in the Georgia Humane Care for Equines Act, O.C.G.A. § 4-13-1 et seq., and the Commissioner thus had qualified immunity on a due process claim. Reams v. Irvin, 561 F.3d 1258 (11th Cir. 2009).

2-2-10. Imposition of penalty authorized in lieu of other action; funding to general treasury.

(a) In any proceeding before the Commissioner involving a license, certificate, or registration issued by the Commissioner or a violation of the laws administered and enforced by the Commissioner and the rules and regulations promulgated thereunder, after notice, hearing, and a determination by him or her as provided by law that there are sufficient grounds to revoke, suspend, or cancel the license, certificate, or registration involved or to take any other action authorized by law in regard to the violation in question, the Commissioner may impose a reasonable penalty for each offense in lieu of a revocation, suspension, cancellation, or other authorized action. Except as provided in subsection (b) of this Code section, such a penalty shall be imposed only with the consent of the affected party; and except as provided in subsection (b) of this Code section, the amount of any such penalty shall not exceed $1,000.00.

(b) In any case subject to this Code section which involves a violation or attempted violation of the "Georgia Food Act," Article 2 of Chapter 2 of Title 26, the maximum penalty shall not exceed the greater of $1,000.00 or the amount of gain realized or sought to be realized through such violation, but in no event shall such penalty exceed

$20,000.00; and in any case involving a violation or attempted violation of the "Georgia Food Act," the written consent of the person against whom the penalty is to be imposed shall not be required.

(c) Any civil penalties recovered shall be paid over into the general fund of the state treasury in accordance with Code Section 45-12-92.

History. — Ga. L. 1960, p. 245, § 1; Ga. L. 1985, p. 1444, § 1; Ga. L. 2000, p. 1300, § 1; Ga. L. 2003, p. 838, § 1; Ga. L. 2009, p. 446, § 2/SB 152.

2-2-11. Inspection warrants.

Whenever the Constitution or laws of the United States or the State of Georgia require the issuance of a warrant to make an inspection under any law administered by the Commissioner of Agriculture or the Department of Agriculture, the procedure set forth in paragraphs (1) through (7) of this Code section shall be employed.

(1) The Commissioner or any person authorized to make inspections for the Commissioner shall make application for an inspection warrant to a person who is a judicial officer within the meaning of Code Section 17-5-21.

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

(3) An inspection warrant shall be effective for the time specified therein, but not for a period of more than 14 days, unless extended or renewed by the judicial officer who signed and issued the original warrant, upon satisfying himself that such extension or renewal is in the public interest. Such inspection warrant must be executed and returned to the judicial officer by whom it was issued within the time specified in the warrant or within the extended or renewed time. After the expiration of such time, the warrant, unless executed, is void.

(4) An inspection pursuant to an inspection warrant shall be made between 8:00 A.M. and 6:00 P.M. of any day or at any time during operating or regular business hours. An inspection should not be

performed in the absence of an owner or occupant of the particular place, dwelling, structure, premises, or vehicle unless specifically authorized by the judicial officer upon a showing that such authority is reasonably necessary to effectuate the purpose of the regulation being enforced. An inspection pursuant to a warrant shall not be made by means of forcible entry, except that the judicial officer may expressly authorize a forcible entry where facts are shown which are sufficient to create a reasonable suspicion of a violation of this title or any other law administered by the Commissioner or the department, which, if such violation existed, would be an immediate threat to health or safety, or where facts are shown establishing that reasonable attempts to serve a previous warrant have been unsuccessful. Where prior consent has been sought and refused and a warrant has been issued, the warrant may be executed without further notice to the owner or occupant of the particular place, dwelling, structure, premises, or vehicle to be inspected.

(5) It shall be unlawful for any person to refuse to allow an inspection pursuant to an inspection warrant issued as provided in this Code section. Any person violating this paragraph shall be guilty of a misdemeanor.

(6) Under this Code section, an inspection warrant is an order, in writing, signed by a judicial officer, directed to the Commissioner or any person authorized to make inspections for the Commissioner, and commanding him or her to conduct any inspection required or authorized by this title or any other law administered by the Commissioner or the department or regulations promulgated pursuant to this title or any other law administered by the Commissioner or the department.

(7) Nothing in this Code section shall be construed to require an inspection warrant when a warrantless inspection is authorized by law or a permit issued under this title or any other law administered by the Commissioner or the department.

History. — Code 1981, § 2-2-11, enacted by Ga. L. 1989, p. 390, § 1.

Law reviews. — For note on 1989 enactment of this Code section, see 6 Ga. St. U. L. Rev. 253 (1989).

JUDICIAL DECISIONS

Cited in Bramblett v. Habersham County, 346 Ga. App. 511, 816 S.E.2d 446 (2018).

2-2-12. Assistance to United States Department of Agriculture in inspection, certification, and identification of agricultural products and collection of fees.

(a) It is the intent of this Code section to authorize the department to assist the United States Department of Agriculture, pursuant to the federal Agricultural Marketing Act of 1946, 7 U.S.C. Sections 1621-1627, in the inspection and certification of products in commerce to the end that agricultural products may be marketed to the best advantage, that trading may be facilitated, and that consumers may be able to obtain the quality product which they desire.

(b) The department is authorized to assist the United States Department of Agriculture in the inspection, certification, and identification of the class, quality, quantity, and condition of agricultural products when shipped or received in commerce, under such rules as the secretary of agriculture may prescribe, including collection of such fees as will be reasonable and as will cover the cost of the service rendered. Such fees shall not be considered taxes, fees, or assessments for state purposes but shall be collected under authority of the federal Agricultural Marketing Act of 1946 for purposes of assisting the United States Department of Agriculture in carrying out its mission under said act.

(c) The department may enter into cooperative agreements with the United States Department of Agriculture and with any firm, corporation, association, or organization having the capacity to contract for the purpose of assisting the United States Department of Agriculture in the inspection, certification, and identification of the class, quality, quantity, and condition of agricultural products when shipped or received in commerce and in the collection of such fees as will be reasonable and as will cover the cost of the service rendered.

History. — Code 1981, § 2-2-12, enacted by Ga. L. 1993, p. 327, § 1.

2-2-13. Enforcement of laws and rules within jurisdiction of Commissioner; employment of investigators.

(a) The Commissioner shall be vested with police powers to enforce those laws governing matters within the jurisdiction of the Commissioner or the department as provided by this title and Titles 4, 10, 26, and 43 and the rules and regulations adopted pursuant thereto and to prevent, detect, and respond to acts of bioterrorism, other terroristic acts or threats, or natural disasters affecting or potentially affecting plants, animals, products, or facilities that are subject to regulation by the department.

(b) The Commissioner shall be authorized to employ, designate, and deputize investigators and to delegate to such employees of the depart-

ment the necessary authority to enforce those laws governing matters within the jurisdiction of the Commissioner or the department as provided by this title and Titles 4, 10, 26, and 43 and the rules and regulations adopted pursuant thereto and to prevent, detect, and respond to acts of bioterrorism, other terroristic acts or threats, or natural disasters affecting or potentially affecting plants, animals, products, or facilities that are subject to regulation by the department. Employees who have been so designated by the Commissioner and who have been certified by the Georgia Peace Officer Standards and Training Council as having successfully completed the course of training required by Chapter 8 of Title 35, the "Georgia Peace Officer Standards and Training Act," shall be authorized:

(1) To carry firearms authorized or issued by the Commissioner while in the performance of their duties;

(2) To inspect plants, animals, products, or facilities when the same are subject to regulation by the department;

(3) To stop and inspect any vehicle transporting plants, animals, or products when the same are subject to regulation by the department;

(4) To inspect and require the production of health certificates, waybills, permits, or other documents required by federal or state laws, rules, regulations, or orders for the transportation of plants, animals, or products when the same are subject to regulation by the department;

(5) To protect any life or property when the circumstances demand action; and

(6) To arrest any person found to be in violation of a criminal law when enforcement of such law is authorized under this subsection.

(c) From funds appropriated or available to the department, the Commissioner shall be authorized to provide motor vehicles, uniforms, firearms, and any other equipment and supplies needed by employees of the department to carry out this Code section.

(d) This Code section shall not repeal, supersede, alter, or affect the power of any other law enforcement officer of this state or of any county, municipality, or other political subdivision of this state. At the request of the Commissioner of Agriculture, it shall be the duty of all state, county, municipal, and other law enforcement officers in this state to enforce and to assist the Commissioner and the employees and agents of the department in the enforcement of those laws governing matters within the jurisdiction of the Commissioner or the department as provided by this title and Titles 4, 10, 26, and 43.

History. — Code 1981, § 4-4-5, enacted by Ga. L. 1986, p. 425, § 2; Ga. L. 1990, p. 572, § 1; Code 1981, § 2-2-13, as redesignated by Ga. L. 2008, p. 575, § 1/SB 429.

CHAPTER 3

GEORGIA AGRICULTURAL EXPOSITION AUTHORITY

Sec.
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2-3-13. Conflict of interest; full disclosure.
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2-3-15. Authorization for department construction and acquisition of projects.

Editor's notes. — Ga. L. 2001, p. 894, § 1, repealed and reserved this chapter, relating to the Georgia Agrirama Development Authority, effective July 1, 2001. The former chapter was based on Ga. L. 1970, p. 568, §§ 1-3; Ga. L. 1972, p. 1161, §§ 1-11; Ga. L. 1975, p. 523, § 1; Ga. L. 1975, p. 713, § 1; Ga. L. 1975, p. 842, § 1; Ga. L. 1976, p. 698, § 1; Ga. L. 1980, p. 598, § 1; Ga. L. 1980, p. 788; Ga. L. 1984, p. 898, § 1; Ga. L. 1988, p. 200, § 1; Ga. L. 1989, p. 1641, § 1; Ga. L. 1990, p. 872, § 1; Ga. L. 1995, p. 10, § 2. For comparable provisions, see Code Sections 12-3-650 through 12-3-661. Ga. L. 2011, p. 261, § 1, repealed the reservation of Code Sections 2-3-1 through 2-3-12.

2-3-1. Short title.

This chapter shall be known and may be cited as the "Georgia Agricultural Exposition Authority Act."

History. — Code 1981, § 12-3-470, enacted by Ga. L. 1985, p. 801, § 1; Ga. L. 1996, p. 6, § 12; Code 1981, § 2-3-1, as redesignated by Ga. L. 2011, p. 261, § 4/HB 125.

Code Commission notes. — Pursuant to Code Section 28-9-5, in 2011, "This chapter" was substituted for "This part" at the beginning of this Code section.

RESEARCH REFERENCES

Am. Jur. 2d. — 63C Am. Jur. 2d, Public Lands, §§ 1 et seq., 38 et seq.

C.J.S. — 3 C.J.S., Agriculture, § 156 et seq. 81A C.J.S., States, § 269 et seq.

2-3-2. Definitions.

As used in this chapter, the term:

(1) "Authority" means the Georgia Agricultural Exposition Authority.

(2) "Cost of the project" means the cost of construction; the cost of all lands, properties, rights, easements, and franchises acquired; the cost of all machinery and equipment; financing charges; interest prior to and during construction and for one year after completion of construction; the cost of engineering, architectural, and legal expenses and of plans and specifications and other expenses necessary or incident to determining the feasibility or practicability of the project; administrative expense; and such other expenses as may be necessary or incident to the financing authorized in this chapter, the construction of any project, the placing of the same in operation, and the condemnation of property necessary for such construction and operation. Any obligation or expense incurred for any of the foregoing purposes shall be regarded as a part of the cost of the project and may be paid or reimbursed as such out of such bonds or obligations as may be issued by any authority, department, commission, or agency of the State of Georgia.

(3) "Project" means and includes one or a combination of two or more of the following: buildings, facilities, and all structures; electric, gas, steam, water, and sewerage utilities; and improvements of every kind and character deemed by the authority necessary or convenient for its purposes.

History. — Code 1981, § 12-3-471, enacted by Ga. L. 1985, p. 801, § 1; Ga. L. 1992, p. 6, § 12; Code 1981, § 2-3-2, as redesignated by Ga. L. 2011, p. 261, § 4/HB 125.

Code Commission notes. — Pursuant to Code Section 28-9-5, in 2011, "this chapter" was substituted for "this part" in the introductory language and in the middle of the first sentence of paragraph (2).

2-3-3. Creation of authority; membership; vacancies; compensation and reimbursement; record keeping.

(a) There is created a body corporate and politic to be known as the Georgia Agricultural Exposition Authority which shall be deemed to be an instrumentality of the State of Georgia and a public corporation; and by that name, style, and title such body may contract and be contracted with, sue and be sued, implead and be impleaded, and complain and defend in all courts of this state.

(b) The authority shall consist of ten members, including nine appointed members and the Commissioner of Agriculture, ex officio. Initially, appointed members shall serve staggered terms of office as

follows: two members for one year, two members for two years, two members for three years, and three members for four years. Thereafter, each appointed member shall serve for a term of four years. All appointed members shall be appointed by the Governor, confirmed by the Senate, and shall serve until the appointment and qualification of a successor. The members appointed by the Governor shall be selected from the state at large but shall be representative of all of the geographic areas of the state. Such members also shall represent the state's agriculture and business interests. The Governor is authorized to appoint any elected or appointed state, county, municipal, or school board official or employee, except officials and employees of the legislative or judicial branches of state government, as members of the authority, and any person so appointed is authorized to serve as a member of the authority.

(c) All successors to appointed members shall be appointed in the same manner as original appointments. Vacancies in office of appointed members shall be filled in the same manner as original appointments. An appointment to fill a vacancy shall be for the unexpired term. The authority shall elect its own officers. No vacancy on the authority shall impair the right of the quorum to exercise all rights and perform all duties of the authority.

(d) The appointed members of the authority shall receive a daily expense allowance and reimbursement for transportation costs as provided for in Code Section 45-7-21; and the members of the authority shall not receive any other compensation for their services as such.

(e) The authority shall have perpetual existence. Any change in name or composition of the authority shall in no way affect the vested rights of any person under this chapter or impair the obligations of any contracts existing under this chapter.

(f) The members of the authority shall be accountable in all respects as trustees. The authority shall keep suitable and proper books and records of all receipts, income, and expenditures of every kind and shall submit for inspection all the books, together with the proper statement of the authority's financial position, to the state auditor.

(g) The authority is assigned to the Department of Agriculture for administrative purposes only.

History. — Code 1981, § 12-3-472, enacted by Ga. L. 1985, p. 801, § 1; Ga. L. 1990, p. 6, § 1; Ga. L. 2011, p.261, § 2/HB 125; Code 1981, § 2-3-3, as redesignated by Ga. L. 2011, p. 261, § 4/HB 125.

Code Commission notes. — Pursuant to Code Section 28-9-5, in 2011, "this chapter" was substituted for "this part" twice in the last sentence of subsection (e).

2-3-4. Purpose and general business of authority.

The corporate purpose and the general nature of the business of the authority shall be:

(1) The provision of a facility for the agricultural community to present, exhibit, and promote its products and livestock to agribusiness persons and the public in an effort to boost the state's economy;

(2) The exhibition and promotion of agricultural accomplishments by the youth of this state;

(3) The provision of facilities and programs for public events, exhibits, and other activities, such as, but not limited to, fairs, nonagricultural exhibits, concerts, rodeos, flea markets, and auctions, which will make the authority as financially self-supporting as possible, benefit the state's economy, and attract the traveling public; and

(4) The promotion and staging of a state-wide fair at least once a year to accomplish one or more of the above purposes.

History. — Code 1981, § 12-3-473, enacted by Ga. L. 1985, p. 801, § 1; Code 1981, § 2-3-4, as redesignated by Ga. L. 2011, p. 261, § 4/HB 125.

Editor's notes. — By resolution (Ga. L. 1986, p. 1197), the General Assembly authorized the designation of the main exhibition building at the Georgia Agricultural Exposition Center as the "Sam P. McGill Exhibition Building."

By resolution (Ga. L. 1986, p. 1198), the General Assembly authorized the designation of the show arena at the Georgia Agricultural Exposition Center as the "Henry L. Reaves Arena."

OPINIONS OF THE ATTORNEY GENERAL

Authority not entitled to recreational exemption from federal overtime requirements. — Since it was clear from former O.C.G.A. § 12-3-473 (see now O.C.G.A. § 2-3-4) that the Georgia Agricultural Exposition Authority's principal activity was not that of an amusement park, recreational establishment, organized camp, or nonprofit educational conference center, the authority cannot qualify for the recreational exemption from the overtime requirements of the federal Fair Labor Standards Act, 29 U.S.C. § 213(a)(3). 1989 Op. Att'y Gen. No. 89-8.

2-3-5. Powers of authority generally.

The authority is authorized:

(1) To have a seal and alter it at pleasure;

(2) To acquire, hold, and dispose of personal property for its corporate purposes;

(3) To appoint, select, and employ officers, agents, and employees, including engineering, architectural, and construction experts and fiscal agents; to contract for the services of individuals or organiza-

tions not employed full time by the authority who or which are engaged primarily in the rendition of personal services rather than the sale of goods or merchandise, such as, but not limited to, the services of accountants, engineers, architects, consultants, and advisors, and to allow suitable compensation for such services; and to make provisions for group insurance, retirement, or other employee benefit arrangements, provided that no part-time or contract employees shall participate in group insurance or retirement benefits;

(4) To make contracts and to execute all instruments necessary or convenient, including contracts for construction of projects or contracts with respect to the leasing or use of projects which the authority causes to be subdivided, erected, or acquired;

(5) To plan, survey, subdivide, administer, construct, erect, acquire, own, repair, remodel, maintain, add to, extend, improve, equip, operate, and manage projects as defined in this chapter, such projects to be located on property owned or leased by the authority or the State of Georgia or under the control and management of the authority. The cost of any such project shall be paid from its income, from the proceeds of revenue anticipation certificates of the authority, or from such proceeds and any loan, gift, or grant from the United States of America or any agency or instrumentality thereof, or the State of Georgia, or any county, municipal corporation, authority, or local government or governing body;

(6) To accept loans or grants, or both, of money, materials, or property of any kind from the United States of America or any agency or instrumentality thereof upon such terms and conditions as the United States of America or such agency or instrumentality may impose;

(7) To borrow money for any of its corporate purposes, to issue negotiable revenue anticipation certificates from earnings of such projects, and to provide for the payment of the same and for the rights of the holders thereof;

(8) To exercise any power which is usually possessed by private corporations performing similar functions and which is not in conflict with the Constitution and laws of this state;

(9) To act as agent for the United States of America or any agency, department, corporation, or instrumentality thereof, in any manner within the purposes or powers of the authority;

(10) To adopt, alter, or repeal its own bylaws, rules, and regulations governing the manner in which its business may be transacted and in which the power granted to it may be enjoyed as the authority may deem necessary or expedient in facilitating its business;

(11) To receive and accept loans, gifts, grants, donations, or contributions of property, facilities, or services, with or without consideration, from any person, firm, or corporation or from the State of Georgia, or any agency or instrumentality thereof, or from any county, municipal corporation, or local government or governing body;

(12) To hold, use, administer, and expend such sum or sums as may hereafter be received as income, as gifts, or as appropriations by authority of the General Assembly for any of the purposes of this authority;

(13) To do all things necessary or convenient to carry out the powers and purposes of the authority;

(14) To acquire, lease (as lessee), purchase, hold, own, and use any franchise or any property, real or personal, tangible or intangible, or any interest therein; and to sell, lease (as lessor), transfer, or dispose thereof whenever the same is no longer required for purposes of the authority or exchange the same for other property or rights which are useful for the purposes of the authority;

(15) To fix, alter, charge, and collect fares, rates, rentals, and other charges for its facilities and for admission to its grounds at reasonable rates to be determined by the authority;

(16) To contract with the Georgia State Financing and Investment Commission for the construction of the project as provided for in Article 2 of Chapter 17 of Title 50; or to contract with other authorities, departments, or agencies of the State of Georgia for the construction of the project;

(17) To invest and reinvest any or all idle funds or moneys, including, but not limited to, funds held in reserve or debt retirement or received through the issuance of revenue certificates or from contributions, gifts, or grants, which cannot be immediately used for the purpose for which received, such investment to be made in any security or securities which are legal investments for executors or trustees; provided, however, that investments in such securities will at all times be held for and, when sold, used for the purposes for which the money was originally received;

(18) To grant, on an exclusive or nonexclusive basis, the right to use and occupy streets, roads, sidewalks, and other public places for the purpose of rendering utility services, upon such conditions and for such time as the authority may deem wise;

(19) To appoint special advisory committees and panels of citizens to advise the authority of certain issues and to reimburse the

individuals appointed for actual expenses incurred in performing their tasks;

(20) To select a site for the building of a state agricultural exposition and state fair center; and

(21) To sell, upon obtaining a license from the Department of Revenue, alcoholic beverages for consumption on the premises only upon property operated and controlled by the authority.

History. — Code 1981, § 12-3-474, enacted by Ga. L. 1985, p. 801, § 1; Ga. L. 2001, p. 4, § 12; Code 1981, § 2-3-5, as redesignated by Ga. L. 2011, p. 261, § 4/HB 125.

Code Commission notes. — Pursuant to Code Section 28-9-5, in 2011, "this chapter" was substituted for "this part" in the middle of the first sentence of paragraph (5).

2-3-6. Public purpose of authority; tax and assessment exemptions.

It is found, determined, and declared that the creation of the authority and the carrying out of its corporate purposes are in all respects for the benefit of the people of this state and constitute a public purpose and that the authority will be performing an essential governmental function in the exercise of the powers conferred upon it by this chapter. The State of Georgia covenants that the authority shall be required to pay no taxes or assessments upon any of the property acquired by it or under its jurisdiction, control, possession, or supervision or upon its activities in the operation or maintenance of the facilities erected, maintained, or acquired by it or any fees, rentals, or other charges for the use of such facilities or other income received by the authority; provided, however, in no event shall the exemptions granted in this Code section extend to any lessee or other private person or entity.

History. — Code 1981, § 12-3-475, enacted by Ga. L. 1985, p. 801, § 1; Code 1981, § 2-3-6, as redesignated by Ga. L. 2011, p. 261, § 4/HB 125.

Code Commission notes. — Pursuant to Code Section 28-9-5, in 2011, "this chapter" was substituted for "this part" at the end of the first sentence.

2-3-7. Exercise of police powers by authority.

The authority is authorized to exercise such of the police powers of the state as may be necessary to maintain peace and order and to enforce any and all zoning, use, and personal conduct restrictions upon the properties, facilities, and persons under its jurisdiction to the extent that such is lawful under the laws of the United States and this state. The authority may delegate all or any part of the performance of these functions temporarily or permanently to the state or to the county in which its facilities are located.

History. — Code 1981, § 12-3-476, enacted by Ga. L. 1985, p. 801, § 1; Ga. L. 1992, p. 6, § 12; Code 1981, § 2-3-7, as redesignated by Ga. L. 2011, p. 261, § 4/HB 125.

2-3-8. Authorization for security force.

The authority is authorized to contract for or to provide for and maintain a security force with respect to the facilities and property owned, leased, operated, or under the control of the authority and within the territory thereof. The security force shall have the duty to protect persons and property, disperse unlawful or dangerous assemblages, control pedestrian and vehicular traffic, and otherwise preserve and protect the public peace, health, and safety. For these purposes, a member of such force shall be a peace officer and, as such, shall have authority equivalent to the authority of a policeman or law enforcement officer of the county in which he is discharging his duties.

History. — Code 1981, § 12-3-477, enacted by Ga. L. 1985, p. 801, § 1; Code 1981, § 2-3-8, as redesignated by Ga. L. 2011, p. 261, § 4/HB 125.

2-3-9. Receipts deemed trust funds.

All moneys received pursuant to the authority of this chapter, whether as grants or other contributions or as revenues, rents, and earnings, shall be deemed to be trust funds to be held and applied solely as provided in this chapter.

History. — Code 1981, § 12-3-478, enacted by Ga. L. 1985, p. 801, § 1; Code 1981, § 2-3-9, as redesignated by Ga. L. 2011, p. 261, § 4/HB 125.

Code Commission notes. — Pursuant to Code Section 28-9-5, in 2011, "this chapter" was substituted for "this part" twice in this Code section.

2-3-10. Setting rentals and other charges.

The authority is authorized to fix rentals and other charges which any user, exhibitor, concessionaire, franchisee, or vendor shall pay to the authority for the use of the project or part thereof or combination thereof, and to charge and collect the same, and to lease and make contracts with political subdivisions and agencies with respect to use of any part of the project. The rentals and other charges shall be so fixed and adjusted in respect to the aggregate thereof from the project or any part thereof so as to provide a fund sufficient with other revenues of such project, if any, to pay the cost of maintaining, repairing, and operating the project, including the reserves for extraordinary repairs and insurance, unless such cost shall be otherwise provided for, which cost shall be deemed to include the expenses incurred by the authority on account of the project for water, light, sewer, and other services furnished by other facilities at the project.

History. — Code 1981, § 12-3-479, enacted by Ga. L. 1985, p. 801, § 1; Code 1981, § 2-3-10, as redesignated by Ga. L. 2011, p. 261, § 4/HB 125.

2-3-11. Legal services of Attorney General.

The Attorney General shall provide legal services for the authority and in connection therewith the provisions of Code Sections 45-15-13 through 45-15-16 shall be fully applicable.

History. — Code 1981, § 12-3-480, enacted by Ga. L. 1985, p. 801, § 1; Code 1981, § 2-3-11, as redesignated by Ga. L. 2011, p. 261, § 4/HB 125.

2-3-12. Venue and jurisdiction for actions under chapter or against authority.

Any action to protect or enforce any rights under this chapter shall be brought in the Superior Court of Houston County, Georgia; and such court shall have exclusive, original jurisdiction of such actions. Furthermore, the venue for actions brought against the authority shall be in the Superior Court of Houston County, Georgia; and such court shall have exclusive, original jurisdiction of such actions. Nothing contained in this chapter shall be construed to impair any rights afforded the state under the Constitution of the United States.

History. — Code 1981, § 12-3-481, enacted by Ga. L. 1985, p. 801, § 1; Ga. L. 1994, p. 590, § 1; Code 1981, § 2-3-12, as redesignated by Ga. L. 2011, p. 261, § 4/HB 125.

Code Commission notes. — Pursuant to Code Section 28-9-5, in 2011, "this chapter" was substituted for "this part" in the first and last sentences of this Code section.

Editor's notes. — Ga. L. 1994, p. 590, § 2, not codified by the General Assembly, provides in part that this Act shall apply with respect to all actions filed on or after March 29, 1994.

2-3-13. Conflict of interest; full disclosure.

(a) Every member of the authority and every employee of the authority who knowingly has any interest, direct or indirect, in any contract to which the authority is or is about to become a party, or in any other business of the authority, or in any firm or corporation doing business with the authority shall make full disclosure of such interest to the authority. Failure to disclose such an interest shall constitute cause for which a member of the authority may be removed or an employee discharged or otherwise disciplined at the discretion of the authority.

(b) The provisions of Article 1 of Chapter 10 of Title 16 and Code Sections 16-10-21, 16-10-22, 16-10-92, and 16-10-93, regulating the conduct of officers, employees, and agents of political subdivisions, municipal and other public corporations, and other public organiza-

tions, shall be applicable to the conduct of members, officers, employees, and agents of the authority.

(c) Any contract or transaction of the authority involving a conflict of interest which is not disclosed under subsection (a) of this Code section, or involving a violation of Article 1 of Chapter 10 of Title 16 or Code Section 16-10-21, 16-10-22, 16-10-92, or 16-10-93, or involving a violation of any other provision of law regulating conflicts of interest which is applicable to the authority or its members, officers, or employees shall be voidable by the authority.

History. — Code 1981, § 12-3-482, enacted by Ga. L. 1985, p. 801, § 1; Code 1981, § 2-3-13, as redesignated by Ga. L. 2011, p. 261, § 4/HB 125.

Code Commission notes. — Pursuant to Code Section 28-9-5, in 1985, "Code Section" was substituted for "Code Sections" in subsection (c).

2-3-14. Power of authority to issue revenue bonds.

(a) The authority or any authority or body which may succeed to the powers, duties, and liabilities vested in the authority is authorized at one time, or from time to time, to provide by resolution for the issuance of revenue bonds for the purpose of paying all or any part of the cost, as defined in this chapter, of any one project or a combination of projects. The principal and interest of such revenue bonds shall be payable solely from the special fund provided in subsection (n) of this Code section for such payment. The bonds of each issue shall be dated and shall mature at such times and bear interest at such rates as may be determined by the authority, payable in such medium of payment as to both principal and interest as may be determined by the authority, and may be made redeemable before maturity, at the option of the authority, at such price or prices and under such terms and conditions as may be fixed by the authority in the resolution providing for the issuance of the bonds.

(b) The authority shall determine the form of the bonds, including any interest coupons to be attached thereto, and shall fix the denomination or denominations of the bonds and the place or places of payment of principal and interest thereof, which may be at any bank or trust company inside or outside the state. The bonds may be issued in coupon or registered form, or both, as the authority may determine, and provision may be made for the registration of any coupon bond as to principal alone and also as to both principal and interest.

(c) In case any officer whose signature appears on any bonds or whose facsimile signature appears on any coupon ceases to be such officer before the delivery of such bonds, such signature shall nevertheless be valid and sufficient for all purposes the same as if he had remained in office until such delivery. All such bonds shall be signed by the chairman or vice chairman of the authority, and the official seal of

the authority shall be affixed thereto and attested by the secretary or assistant secretary of the authority; and any coupons attached thereto shall bear the signature or facsimile signature of the chairman or vice chairman of the authority. Any coupon may bear the facsimile signature of such person, and any bond may be signed, sealed, and attested on behalf of the authority by such persons as at the actual time of the execution of such bonds shall be duly authorized or hold the proper office, although at the date of such bonds such persons may not have been so authorized or shall not have held such office.

(d) All revenue bonds issued under this chapter shall have and are declared to have all the qualities and incidents of negotiable instruments. Such bonds and the income therefrom shall be exempt from all taxation within the state.

(e) The authority may sell bonds in such manner and for such price as it may determine to be for the best interests of the authority.

(f) The proceeds of bonds shall be used solely for the payment of the cost of the project and shall be disbursed upon requisition or order of the chairman or vice chairman of the authority under such restrictions, if any, as provided by the resolution authorizing the issuance of the bonds or by the trust indenture mentioned in subsection (k) of this Code section.

(g) Prior to the preparation of definitive bonds, the authority may, under like restrictions, issue interim receipts, interim certificates, or temporary bonds, with or without coupons, exchangeable for definitive bonds upon the issuance of the latter.

(h) The authority may provide for the replacement of any bond which becomes mutilated or is destroyed or lost.

(i) Revenue bonds may be issued without the conducting of any proceedings, the existence of any conditions, or the happening of any events other than those proceedings, conditions, and events which are specified or required by this chapter. In the discretion of the authority, revenue bonds of a single issue may be issued for the purpose of paying the cost of any one or more, including a combination of, projects at any one institution or any number of institutions. Any resolution providing for the issuance of revenue bonds under this chapter shall become effective immediately upon its passage and need not be published or posted. Any such resolution may be passed at any regular, special, or adjourned meeting of the authority by a majority of its members.

(j) Revenue bonds issued under this chapter shall not be deemed to constitute a debt of the State of Georgia or a pledge of the faith and credit of the state. Such bonds shall be payable solely from the fund provided for in subsections (m) through (p) of this Code section, and the

issuance of such revenue bonds shall not directly, indirectly, or contingently obligate the state to levy or to pledge any form of taxation whatever therefor or to make any appropriation for their payment. All such bonds shall contain recitals on their faces covering substantially the foregoing provisions of this Code section. Anything in this Code section to the contrary notwithstanding, such funds as may be received from state appropriations or from any other source are declared to be available and may be used by any department, board, commission, or agency of the State of Georgia for the performance of any lease contract entered into by such department, board, commission, or agency with the authority.

(k)(1) In the discretion of the authority, any issue of revenue bonds may be secured by a trust indenture by and between the authority and a corporate trustee, which may be any trust company or bank having the powers of a trust company inside or outside of the state. Such trust indenture may pledge or assign rents, revenues, and earnings to be received by the authority.

(2) Either the resolution providing for the issuance of revenue bonds or the trust indenture may contain such provisions for protecting and enforcing the rights and remedies of the bondholders as may be reasonable and proper and not in violation of law, including covenants setting forth the duties of the authority in relation to the acquisition of property, the construction of the project, the maintenance, operation, repair, and insurance of the project, and the custody, safeguarding, and application of all moneys. The resolution or indenture may also provide that any project shall be constructed and paid for under the supervision and approval of consulting engineers or architects employed or designated by the authority and satisfactory to the original purchasers of the bonds issued therefor. The resolution or indenture may also require that the security given by contractors and by any depository of the proceeds of the bonds or revenues or other moneys be satisfactory to such purchasers and may also contain provisions concerning the conditions, if any, upon which additional revenue bonds may be issued.

(3) The indenture may set forth the rights and remedies of the bondholders and of the trustee and may restrict the individual right of action of bondholders as is customary in trust indentures securing bonds and debentures of corporations. In addition to the foregoing provisions of this Code section, the trust indenture may contain such other provisions as the authority may deem reasonable and proper for the security of the bondholders.

(4) It shall be lawful for any bank or trust company incorporated under the laws of this state to act as such depository and to furnish such indemnifying bonds or pledge such securities as may be required by the authority.

(5) All expenses incurred in carrying out the trust indenture may be treated as a part of the cost of maintenance, operation, and repair of the project and of the cost of the project affected by such indenture.

(l) The authority shall, in the resolution providing for issuance of revenue bonds or in the trust indenture, provide for the payment of the proceeds of the sale of the bonds to any officer or person who, or any agency, bank, or trust company which, shall act as trustee of such funds and shall hold and apply the same to the purposes expressed in this chapter, subject to such regulations as this chapter and such resolution or trust indenture may provide.

(m) Unless otherwise pledged and allocated, any and all revenues, rents, and earnings received by the authority, regardless of whether or not such revenues, rents, and earnings were produced by a particular project for which bonds have been issued, may be pledged and allocated by the authority to the payment of the principal and interest on revenue bonds of the authority as the trust indenture or the resolution authorizing the issuance of the bonds may provide.

(n) Such funds so pledged from whatever source received, which pledge may include funds received from one or more or all sources, shall be set aside at regular intervals, as may be provided in the resolution or trust indenture, into a sinking fund which shall be pledged to and charged with the payment of:

(1) The interest upon such revenue bonds as such interest shall fall due;

(2) The principal of the bonds as the same shall fall due;

(3) The necessary charges of paying agents for paying principal and interest; and

(4) Any premium upon bonds retired by call or purchase.

(o) The use and disposition of such sinking fund shall be subject to such regulations as may be provided in the resolution authorizing the issuance of the revenue bonds or in the trust indenture, but, except as may otherwise be provided in such resolution or trust indenture, such sinking fund shall be a fund for the benefit of all revenue bonds without distinction or priority of one over another.

(p) Subject to the provisions of the resolution authorizing the issuance of the bonds, or subject to the trust indenture, surplus moneys in the sinking fund may be applied to the purchasing or redemption of bonds, and any such bonds so purchased or redeemed shall forthwith be canceled and shall not again be issued.

(q) Except to the extent the rights given in this Code section may be restricted by resolution passed before the issuance of bonds or by a trust

indenture, any holder of revenue bonds or interest coupons issued under this chapter, any receiver for such holders, or any indenture trustee, if any, may either at law or in equity, by action, mandamus, or other proceedings, protect and enforce any and all rights under the laws of the State of Georgia or granted by this chapter or under such resolution or trust indenture. Such holder, receiver, or trustee may enforce and compel performance of all duties required by this chapter, or by resolution or trust indenture, to be performed by the authority or any officer thereof, including the fixing, charging, and collecting of revenues, rents, and other charges for the use of the project or projects. In the event of default of the authority upon the principal and interest obligations of any revenue bond issue, such holder, receiver, or trustee shall be subrogated to each and every right which the authority may possess and, in the pursuit of his or its remedies as subrogee, may proceed either at law or in equity, by action, mandamus, or other proceedings to collect any sums by such proceedings due and owing to the authority and pledged or partially pledged directly or indirectly to the benefit of the revenue bond issue of which such holder, receiver, or trustee is representative. No holder, receiver, or trustee shall have the right to compel any exercise of the taxing power of the state to pay any such bond or the interest thereon, or to enforce the payment thereof against any property of the state, nor shall any such bond constitute a charge, lien, or encumbrance, legal or equitable, upon the property of the state.

(r) The authority is authorized to provide by resolution for the issuance of revenue refunding bonds of the authority for the purpose of refunding any revenue bonds issued under this chapter and then outstanding, together with accrued interest thereon. The issuance of such revenue refunding bonds, the maturities, and all other details thereof, the rights of the holders thereof, and the duties of the authority in respect to the same shall be governed by the foregoing provisions of this chapter insofar as the same may be applicable.

(s) While any of the bonds issued by the authority remain outstanding, the powers, duties, or existence of the authority, or of its officers, employees, or agents, or of any department, board, commission, or agency of the state shall not be diminished or impaired in any manner that will affect adversely the interests and rights of the holders of such bonds. This chapter shall be for the benefit of the state, the authority, and the holders of any such bonds and, upon the issuance of bonds under this chapter, shall constitute a contract with the holders of such bonds.

(t) Bonds of the authority shall be confirmed and validated in accordance with the procedure of Article 3 of Chapter 82 of Title 36. The petition for validation shall also make party defendant to such action

any authority, division, subdivision, instrumentality, or agency of the State of Georgia which, or any person who, has contracted with the Georgia Agricultural Exposition Authority for the use of any building, structure, or facilities for which bonds have been issued and sought to be validated. Such authority, division, subdivision, instrumentality, agency, or person shall be required to show cause, if any, why such contract or contracts and the terms and conditions thereof should not be inquired into by the court, the validity of the terms thereof determined, and the contract adjudicated as security for the payment of any such bonds of the authority. The bonds when validated and the judgment of validation shall be final and conclusive with respect to such bonds and against the authority issuing the same and against any authority, division, subdivision, instrumentality, department, agency, or person contracting with the authority.

(u) No bonds shall be issued by the authority under this chapter unless the issuance of such bonds has been reviewed and approved by the Georgia State Financing and Investment Commission.

(v) The bonds authorized by this chapter are made securities in which all public officers and bodies of this state; all municipalities and all municipal subdivisions; all insurance companies and associations and other persons carrying on an insurance business; all banks, bankers, trust companies, savings banks, and savings associations, including savings and loan associations, building and loan associations, investment companies, and other persons carrying on a banking business; all administrators, guardians, executors, trustees, and other fiduciaries; and all other persons whatsoever who are now or may hereafter be authorized to invest in bonds or other obligations of the state may properly and legally invest funds, including capital in their control or belonging to them. The bonds are also made securities which may be deposited with and shall be received by all public officers and bodies of this state and all municipalities and municipal subdivisions for any purpose for which the deposit of the bonds or other obligations of this state is now or may hereafter be authorized.

History. — Code 1981, § 12-3-483, enacted by Ga. L. 1985, p. 801, § 1; Ga. L. 1996, p. 6, § 12; Code 1981, § 2-3-14, as redesignated by Ga. L. 2011, p. 261, § 4/HB 125.

Code Commission notes. — Pursuant to Code Section 28-9-5, in 1985, "subsection (n)" was substituted for "subsection (b)" in the second sentence of subsection (a).

Pursuant to Code Section 28-9-5, in 2011, "chapter" was substituted for "part" throughout this Code section.

2-3-15. Authorization for department construction and acquisition of projects.

The Department of Agriculture is authorized to construct, erect, acquire, and own the project, as defined in this chapter. The costs of any

such project may be paid from the proceeds of state general obligation or guaranteed revenue debt. The department is authorized to contract with the authority, the State Properties Commission, the Georgia State Financing and Investment Commission, or with any other department, agency, commission, board, official, or person for the construction, operation, maintenance, funding, design, or use of such project.

History. — Code 1981, § 12-3-484, enacted by Ga. L. 1985, p. 801, § 1; Ga. L. 2011, p. 261, § 3/HB 125; Code 1981, § 2-3-15, as redesignated by Ga. L. 2011, p. 261, § 4/HB 125.

Code Commission notes. — Pursuant to Code Section 28-9-5, in 2011, "this chapter" was substituted for "this part" at the end of the first sentence.

CHAPTER 4

GEORGIA SEED DEVELOPMENT COMMISSION

Sec.		Sec.	
2-4-1.	Short title.	2-4-6.	Seed Development Commission — Operation on nonprofit basis.
2-4-2.	Seed Development Commission — Creation; corporate powers.	2-4-7.	Advisory board created; members; function.
2-4-3.	Seed Development Commission — Composition; officers; bylaws; quorum; compensation; records; audit; bonds.	2-4-8.	Terms of office of appointed members of commission and board.
2-4-4.	Seed Development Commission — Powers and duties generally.	2-4-9.	Conveyance of state property to commission; consideration; reversion for nonuse.
2-4-5.	Seed Development Commission — Purchase contracts.	2-4-10.	Debt or pledge of credit of state not authorized.

Administrative rules and regulations. — Seed Division, Official Compilation of the Rules and Regulations of the State of Georgia, Rules of Georgia Department of Agriculture, Chapter 40-12.

OPINIONS OF THE ATTORNEY GENERAL

Funds accumulated by commission may be utilized for initiating seed research program at the College of Agriculture of the University of Georgia. 1975 Op. Att'y Gen. No. 75-57.

2-4-1. Short title.

This chapter may be cited as the "Georgia Seed Development Act."

History. — Ga. L. 1959, p. 83, § 1.

2-4-2. Seed Development Commission — Creation; corporate powers.

(a) As used in this chapter, the term "commission" means the Georgia Seed Development Commission.

(b) There is created a body corporate and politic and an instrumentality and public corporation of this state, to be known as the Georgia Seed Development Commission. It shall have perpetual existence. In such name, it may contract and be contracted with, sue and be sued, implead and be impleaded, and complain and defend in all courts.

(c) The commission is assigned to the Department of Agriculture for administrative purposes only, as prescribed in Code Section 50-4-3.

History. — Ga. L. 1959, p. 83, § 2; Ga. L. 1972, p. 1015, § 508.

2-4-3. Seed Development Commission — Composition; officers; bylaws; quorum; compensation; records; audit; bonds.

(a) As used in this Code section, the term "licensee" means the designee of a holder of a license authorizing the production, conditioning, propagation, or marketing of crops, seed, turfgrass, or horticultural plants developed by the College of Agricultural and Environmental Sciences of the University of Georgia, where such license grants rights to intellectual property owned by the University of Georgia or a formally designated cooperative organization thereof.

(b) The commission shall be composed of the following 11 members:

(1) Two members to be appointed by the Governor, each of whom shall be a licensee or shall be otherwise involved in the production, conditioning, or marketing of crops, seed, turfgrass, or horticultural plants;

(2) One member who shall be a licensee or shall be otherwise involved in the production, conditioning, or marketing of crops, seed, turfgrass, or horticultural plants, to be appointed by the Lieutenant Governor;

(3) One member who shall be a licensee or shall be otherwise involved in the production, conditioning, or marketing of crops, seed, turfgrass, or horticultural plants, to be appointed by the Speaker of the House of Representatives;

(4) The Commissioner of Agriculture;

(5) Two representatives of the crop, seed, turfgrass, or horticultural plant industry or of farm related organizations, one of whom shall be appointed by the Senate Agriculture and Consumer Affairs Committee, and one of whom shall be appointed by the House Committee on Agriculture and Consumer Affairs. Such representatives shall be licensees or shall otherwise have knowledge of the production, conditioning, or marketing of crops, seed, turfgrass, or horticultural plants. Each committee shall make its appointment with a quorum present and a majority of those present concurring;

(6) One member who shall be a licensee or shall be otherwise involved in the production, conditioning, or marketing of crops, seed, turfgrass, or horticultural plants, to be appointed by the Commissioner of Agriculture;

(7) The dean of the College of Agricultural and Environmental Sciences of the University of Georgia;

(8) The associate dean for research of the College of Agricultural and Environmental Sciences of the University of Georgia, as a nonvoting member; and

(9) An additional nonvoting member who is a crop, seed, turfgrass, or horticultural plant breeder employed by the College of Agricultural and Environmental Sciences of the University of Georgia, appointed by the dean of the College of Agricultural and Environmental Sciences of the University of Georgia, after consultation with the commission.

(c) The members of the commission shall enter upon their duties without further act or formality. The commission shall organize each even-numbered year at the meeting next following July 1 of such year, at which time the commission shall elect one of its members as chairperson and another as vice chairperson. It shall also elect a secretary and a treasurer, who need not be members. The offices of secretary and treasurer may be combined in one person. The commission may make such bylaws for its government as it deems necessary but is under no duty to do so.

(d) Five voting members of the commission shall constitute a quorum necessary for the transaction of business, and a majority vote of those present at any meeting at which there is a quorum shall be sufficient to do and perform any action permitted the commission by this chapter. No vacancy on the commission shall impair the right of a quorum to transact any and all business of the commission.

(e) The members shall not receive compensation for their services but shall be reimbursed for actual expenses incurred in the performance of their duties.

(f) Members of the commission shall be accountable as trustees. They shall cause adequate books and records of all transactions of the commission, including records of income and disbursements of every nature, to be kept. The books and records shall be inspected and audited by the state auditor at least once in each year. The commission may require that an employee, an officer, member of the commission, or any person doing business with the commission post a bond, in an amount to be determined by the commission, for the faithful performance of the duties imposed upon such employee, officer, member of the commission, or person doing business with the commission. The principal of such bond of an officer, employee, or member of the commission shall be paid by the commission.

History. — Ga. L. 1959, p. 83, § 3; Ga. L. 1980, p. 348, § 1; Ga. L. 1988, p. 426, § 1; Ga. L. 1995, p. 10, § 2; Ga. L. 2008, p. 309, § 1/SB 515; Ga. L. 2016, p. 742, § 1/HB 1030.

2-4-4. Seed Development Commission — Powers and duties generally.

The commission shall have, in addition to any other powers conferred in this chapter, the following powers:

(1) To have a seal and to alter it at its pleasure;

(2) To acquire by purchase, lease, gift, or otherwise and to hold, lease, and dispose of, in any manner, real and personal property of every kind and character for its corporate purposes;

(3) To appoint such additional officers, who need not be members of the commission, as the commission deems advisable; to employ such experts, agents, and employees as in its judgment may be necessary to carry on properly the business of the commission; to fix the compensation for such officers, experts, agents, and employees; and to promote and discharge them;

(4) To make such contracts and agreements as are legitimate and necessary for the purposes of this chapter and to make all other contracts and agreements as may be necessary to the proper performance of any action permitted by this chapter;

(5) To exercise any power granted to private corporations which is not in conflict with the Constitution and laws of this state nor with other provisions of this chapter;

(6) To do and perform all things necessary or convenient to carry out the powers conferred upon the commission by this chapter;

(7) To promote scientific and educational objectives in connection with the production and distribution of foundation seed stocks;

(8) To cooperate and contract with the experiment stations of the College of Agricultural and Environmental Sciences of the University of Georgia, the Department of Agriculture of this state, the United States Department of Agriculture, and any other agency of the state or federal government in making foundation seeds of superior varieties and hybrids available in adequate quantities, according to the requirements and needs of the farmers of this state;

(9) To receive and to be the agent for breeder's seed and other parent material distributed from the experiment stations of the College of Agricultural and Environmental Sciences of the University of Georgia and other sources;

(10) To contract for the production and promotion of foundation seed from breeder's seed;

(11) To purchase, process, and resell breeder's and foundation seeds from contract growers, the United States Department of

Agriculture, experiment stations of the College of Agricultural and Environmental Sciences of the University of Georgia, and other breeders or from other sources, as the commission may deem necessary;

(12) To use the net proceeds from the sale of seed for necessary buildings, equipment, supplies, and expenses, as directed by the commission;

(13) To solicit, receive, collect, and disburse dues, funds, pledges, and other subscriptions of value in connection with carrying out the purposes of this chapter;

(14) To receive real and personal property, either by gift, grant, devise, or will, and to hold and dispose of the same in carrying out the purposes of the commission; and

(15) To buy, sell, and trade in all the elements necessary for the successful administration of the purposes of the commission.

History. — Ga. L. 1959, p. 83, § 5; Ga. L. 1995, p. 10, § 2.

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Overall intent and purpose of paragraph (8) of this section is to aid in the production and promotion of foundation seed from breeder seed. 1967 Op. Att'y Gen. No. 67-60.

Agent for experiment stations producing items other than breeder's seed or parent material. — The commission is the exclusive agent for any breeder's seed or parent material distributed by the agricultural experiment stations. However, if the agricultural experiment stations are producing items other than breeder's seed or parent material, the present Act does not require that the commission be the agent. 1989 Op. Att'y Gen. No. 89-2.

Seed Commission as "handler" for purposes of Peanut Commission assessment. — Inasmuch as the Seed Commission is a public corporation and state instrumentality which engages in the operation of selling peanuts which it has purchased from a producer, the commission is a "handler" to whom the Peanut Commission may look for payment of the assessment under Marketing Order 3. 1990 Op. Att'y Gen. No. 90-33.

2-4-5. Seed Development Commission — Purchase contracts.

All contracts for the purchase of supplies or equipment by the commission for any purpose whatever shall be made only after competitive sealed bids have been received.

History. — Ga. L. 1959, p. 83, § 7.

2-4-6. Seed Development Commission — Operation on nonprofit basis.

It is the intent and purpose of the General Assembly that the commission shall be operated on a nonprofit basis. Any and all profits earned, beyond those required as a reasonable reserve for the future operations of the commission, shall be transmitted to the state treasury.

History. — Ga. L. 1959, p. 83, § 9.

2-4-7. Advisory board created; members; function.

The commission may appoint an advisory board, consisting of such number and qualifications of members as the commission may determine, to advise and consult with the commission in the performance of the commission's duties. The function of such a board shall be advisory only.

History. — Ga. L. 1959, p. 83, § 4; Ga. L. 1995, p. 10, § 2; Ga. L. 2008, p. 309, § 2/SB 515.

2-4-8. Terms of office of appointed members of commission and board.

The appointed members of the commission shall serve for terms of two years each commencing on July 1 of each even-numbered year; and the appointed members of the advisory board, if any, shall serve at the pleasure of the commission.

History. — Ga. L. 1960, p. 1106, § 1; Ga. L. 2008, p. 309, § 3/SB 515.

Code Commission notes. — Pursuant to Code Section 28-9-5, in 2016, "appointed" was substituted for "appointive" in this Code section.

2-4-9. Conveyance of state property to commission; consideration; reversion for nonuse.

The Governor is authorized to convey to the commission on behalf of the state any real or personal property or interest therein owned by the state in furtherance of this chapter. The consideration for such conveyance shall be determined by the Governor and expressed in the conveyance, provided that such consideration shall be nominal, the benefits going to the state and its citizens constituting full and adequate consideration. If, within one year after a conveyance by the Governor, use of the property conveyed has not been made by the commission, such property or interest shall revert to the state.

History. — Ga. L. 1959, p. 83, § 6.

2-4-10. Debt or pledge of credit of state not authorized.

Nothing contained in this chapter shall be construed in any manner as authorizing the creation of a debt of the State of Georgia or a pledge of the credit of this state.

History. — Ga. L. 1959, p. 83, § 8.

CHAPTER 5

REGISTRATION, LICENSES, AND PERMITS GENERALLY

Sec.		Sec.	
2-5-1.	Short title.	2-5-5.	Grounds for denial of registration, license, or permit; hearing.
2-5-2.	Applicability of chapter.	2-5-6.	Grounds for revocation; hearing.
2-5-3.	Applications — Designation of address or agent for service of process; forwarding to Secretary of State.	2-5-7.	Registration, license, or permit certificates as evidence thereof; republication and reissuance unnecessary.
2-5-4.	Applications — Admission that applicant is doing business in state.	2-5-8.	Rules and regulations.
2-5-4.1.	Applications — Form of submission; payment of fees.		

2-5-1. Short title.

This chapter may be cited as the "Department of Agriculture Registration, License, and Permit Act."

History. — Ga. L. 1966, p. 307, § 1.

2-5-2. Applicability of chapter.

This chapter shall apply to all applications to the department for registrations, licenses, or permits required by law or regulation.

History. — Ga. L. 1966, p. 307, § 2.

2-5-3. Applications — Designation of address or agent for service of process; forwarding to Secretary of State.

(a) All applications to the department for registrations, licenses, or permits shall:

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

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

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

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

History. — Ga. L. 1966, p. 307, § 3.

2-5-4. Applications — Admission that applicant is doing business in state.

The filing of an application with the department for registration, a license, or a permit shall constitute an admission by the applicant that the applicant is doing business in this state.

History. — Ga. L. 1966, p. 307, § 4.

2-5-4.1. Applications — Form of submission; payment of fees.

The department is authorized to accept applications either in writing or through available electronic media approved by the Commissioner. The payment of fees and the acceptance of such fees by the department may be accomplished in any manner, including electronic fund transfers, approved by the Commissioner.

History. — Code 1981, § 2-5-4.1, enacted by Ga. L. 1997, p. 401, § 1.

2-5-5. Grounds for denial of registration, license, or permit; hearing.

(a) The Commissioner may deny registration, a license, or a permit to:

(1) Any applicant with a criminal record;

(2) Any applicant who is found by the Commissioner to have violated any law administered by the department or any regulation or quarantine of the department;

(3) A corporation, when any of its officers has a criminal record or is found by the Commissioner to have violated any law administered by the department or any regulation or quarantine of the department; or

(4) Any person who is less than 18 years of age on the date of his or her application.

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

(c) No registration, license, or permit shall be denied under this Code section without opportunity for hearing in accordance with Chapter 13 of Title 50, the "Georgia Administrative Procedure Act."

History. — Ga. L. 1966, p. 307, § 5; Ga. L. 1997, p. 401, § 2.

2-5-6. Grounds for revocation; hearing.

The Commissioner may revoke any outstanding registration, license, or permit where the holder of the same or any officer or agent of the holder is found by the Commissioner to have violated any law administered by the department or any regulation or quarantine of the department, provided that no registration, license, or permit shall be revoked under this Code section without opportunity for hearing in accordance with Chapter 13 of Title 50, the "Georgia Administrative Procedure Act."

History. — Ga. L. 1966, p. 307, § 6.
Cross references. — Authority of Commissioner to impose penalty in lieu of other action, § 2-2-10.

2-5-7. Registration, license, or permit certificates as evidence thereof; republication and reissuance unnecessary.

All license, registration, and permit certificates published by the department shall, upon issuance, be permanent evidence of the pertinent licenses, registrations, and permits they are published for, until their surrender, abandonment, revocation, cancellation, or nonrenewal. No subsequent republication and reissuance of certificates for periodically renewable licenses, registrations, and permits by the department shall be necessary; provided, however, that all conditions and fees required by law for sustained effectiveness and renewal must be satisfied for continued enjoyment of the pertinent license, registration, or permit.

History. — Ga. L. 1976, p. 187, § 1.

2-5-8. Rules and regulations.

The Commissioner shall make and publish in print or electronically such rules and regulations, not inconsistent with law, as he deems necessary to carry out the purposes of this chapter.

History. — Ga. L. 1966, p. 307, § 7; Ga. L. 2010, p. 838, § 10/SB 388.

CHAPTER 6

SOIL AND WATER CONSERVATION

Article 1

Soil Conservation Generally

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2-6-8. Reports; investigations.
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2-6-10. State advisory board.

Article 2

Soil and Water Conservation Districts

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2-6-29. District supervisors — Number; appointment, qualifications, and terms of appointive supervisors; county basis of election of elected supervisors.
2-6-30. District supervisors — Election procedure for elected supervisors.
2-6-31. District supervisors — Chairman; terms of office of elected supervisors; filling vacancies; quorum; compensation and expenses.
2-6-32. District supervisors — Services of county agricultural agents; employees and agents; copies of rules, orders, and other documents; surety bonds; removal of supervisor; consultation.
2-6-33. Powers of districts and supervisors; prerequisites to exercise.
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2-6-35. Land use regulations — Adoption authorized; public hearings.
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2-6-38. Land use regulations — Binding effect.
2-6-39. Land use regulations — Inspections to determine observance; petition; judicial proceedings; costs and expenses.
2-6-40. Land use regulations — Amendment or repeal.
2-6-41. Right of eminent domain for small watershed project; conditions precedent; procedure.
2-6-42. Cooperation between districts.
2-6-43. State agencies to cooperate with districts and observe land use regulations.
2-6-44. Exemption from taxation.
2-6-45. Discontinuance of district — Petition of landowners; hearings.
2-6-46. Discontinuance of district — Referendum.
2-6-47. Discontinuance of district — Publication of referendum results; determination of feasibility of continuance.
2-6-48. Discontinuance of district — Certification from committee; termination of affairs; application for dissolution; certificate of dissolution.
2-6-49. Discontinuance of district — Effect of dissolution.
2-6-50. Discontinuance of district — Frequency of discontinuance attempts.
2-6-51. District not liable for loss, damage, injury, or death.
2-6-52. Creation of Agricultural Water Conservation Incentive Program; purpose; participation; funding.

Cross references. — Applicability of "Ground Water Use Act of 1972" (§ 12-5-90 et seq.) to water used for agricultural or poultry-processing purposes, § 12-5-105. Construction of dams, § 12-5-370 et seq. Regulation of clearing, dredging, excavating, and other activities of land by Department of Natural Resources and local governing authorities, T. 12, C. 7. Tax credit for donation of real property to be used for conservation purposes, § 48-7-29.12.

ARTICLE 1

SOIL CONSERVATION GENERALLY

Law reviews. — For article, "Selected Oddities in Georgia Municipal Law," see 9 Ga. L. Rev. 783 (1975).

For note, "Land Use Decisions and the Property Tax," see 11 Ga. St. B. J. 103 (1974).

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Agricultural extension work is public in character and is not in the nature of private enterprise. 1958-59 Op. Att'y Gen. p. 6.

State not liable for damages resulting from insect control recommendations. — As agents and employees of the state performing public functions, Cooperative Extension Service personnel are not suable without express consent; therefore, neither the state itself nor the Board of Regents would be liable for damages suffered by farmers as the result of following insect control recommendations. 1958-59 Op. Att'y Gen. p. 6.

RESEARCH REFERENCES

C.J.S. — 3 C.J.S., Agriculture, § 44 et seq.

ALR. — Constitutionality and construction of state farm aid laws, 92 A.L.R. 768.

Federal and state Agricultural Adjustment Acts, 98 A.L.R. 1195; 102 A.L.R. 937; 114 A.L.R. 136.

Validity and construction of statutes regulating strip mining, 86 A.L.R.3d 27.

2-6-1. Short title.

This article may be known and cited as the "Georgia Agricultural Conservation and Adjustment Act."

History. — Ga. L. 1937, p. 538, § 1.

2-6-2. Purpose of article; legislative findings; acceptance of federal Soil Conservation and Domestic Allotment Act.

(a) It is recognized and declared:

(1) That the soil resources and fertility of the land of this state and the economic use thereof, the prosperity of the farming population of this state, the navigability of the rivers and harbors of this state, and the prevention of floods in this state are matters affected with a public interest;

(2) That the welfare of this state has been impaired and is in danger of being further impaired by destruction of its soil fertility, by uneconomic use and waste of its land, by exploitation and wasteful and unscientific use of its soil resources, by floods and impairment of its rivers and harbors and of the navigability of its waters and water courses as a result of soil erosion, and by the decrease in the purchasing power of the net income per person on farms in the state as compared with the net income per person in the state not on farms;

(3) That such evils have been augmented and are likely to be augmented by similar conditions in other states and are so interrelated with such conditions in other states that the remedying of such conditions in this state requires action by this state in cooperation with the governments and agencies of other states and of the United States and requires assistance therein by the government and agencies of the United States; and

(4) That the formulation and effectuation by this state of state plans in conformity with Section 7 of the federal Soil Conservation and Domestic Allotment Act is calculated to remedy such conditions and will tend to advance the public welfare of this state.

(b) Therefore, in order to promote the welfare of the people of this state by aiding in the preservation and improvement of soil fertility, in

the promotion of the economic use and conservation of land, in the diminution of exploitation and wasteful and unscientific use of soil resources, in the protection of rivers and harbors against the results of soil erosion, and in the reestablishment, at as rapid a rate as is practicable and in the general public interest, of the ratio between the purchasing power of the net income per person on farms and that of the net income per person not on farms that prevailed during the five-year period beginning August, 1909, and ending July, 1914, as determined from statistics available in the United States Department of Agriculture, and the maintenance of such ratio, this state assents to and accepts the federal Soil Conservation and Domestic Allotment Act and adopts the policy and purpose of cooperating with the government and agencies of other states and of the United States in the accomplishment of the policy and purposes specified in Section 7 of such act, subject, however, to the following limitations:

(1) The powers conferred in this article shall be used to assist voluntary action calculated to effectuate such purposes;

(2) Such powers shall not be used to discourage the production of supplies of foods and fibers in this state which are sufficient, when taken together with the production thereof in other states of the United States, to maintain normal domestic human consumption, as determined by the secretary of agriculture of the United States from the records of consumption in the years 1920 to 1929, inclusive, taking into consideration increased population, quantities of any commodities that were forced into domestic consumption by a decline in exports of particular commodities, and the quantities of substitutes available for domestic consumption within any general class of food commodities; and

(3) In carrying out the purposes specified in this Code section, due regard shall be given to the maintenance of a continuous and stable national supply of agricultural commodities, adequate to meet consumer demand at prices fair to both producers and consumers.

History. — Ga. L. 1937, p. 538, § 2.

U.S. Code. — The federal Soil Conservation and Domestic Allotment Act, referred to in this Code section, is codified principally at 16 U.S.C. § 590a et seq. Section 7 of the Act is codified at 16 U.S.C. § 590g.

2-6-3. Definitions.

As used in this article, the term:

(1) "Other states of the United States" includes Puerto Rico.

(2) "Person" means an individual, corporation, partnership, firm, business trust, joint-stock company, association, syndicate, group,

pool, joint venture, and any other unincorporated association or group.

History. — Ga. L. 1937, p. 538, § 3.

2-6-4. Designation of state agency.

The Cooperative Extension Service of the University of Georgia, hereinafter called the Cooperative Extension Service, is designated and authorized as the agency of this state to carry out the policy and purposes of this article and to formulate and administer state plans pursuant to the terms of this article.

History. — Ga. L. 1937, p. 538, § 4.

2-6-5. Formulation and administration of state plans; investigations.

(a) The Cooperative Extension Service is authorized and directed to formulate for each calendar year and to submit to the secretary of agriculture of the United States for and in the name of this state, a state plan for carrying out the purposes of this article during such calendar year.

(b) The Cooperative Extension Service is authorized to modify or revise any such plan in whatever manner, consistent with the terms of this article, it finds necessary to provide for the more substantial accomplishment of the purposes of this article.

(c) Each such plan shall provide for such participation in its administration by such voluntary county and community committees or associations of agricultural producers, organized for such purposes, as the Cooperative Extension Service determines to be necessary or proper for the effective administration of the plan.

(d) Each such plan shall provide, through agreements with agricultural producers or through other voluntary methods:

(1) For such adjustments in the utilization of land, in farming practices, and in the acreage or in the production for market, or both, of agricultural commodities as the Cooperative Extension Service determines to be calculated to effectuate as substantial an accomplishment of the purposes of this article as may reasonably be achieved through action of this state; and

(2) For payments to agricultural producers, in connection with such agreements or methods, in such amounts as the Cooperative Extension Service determines to be fair, reasonable, and calculated to promote such accomplishment of the purposes of this article without

depriving such producers of a voluntary and uncoerced choice of action.

(e) Any such plan shall provide for such educational programs as the Cooperative Extension Service determines to be necessary or proper to promote the more substantial accomplishment of the purposes of this article.

(f) Each such plan shall contain an estimate of expenditures necessary to carry out such plan, together with a statement of such amount as the Cooperative Extension Service determines to be necessary to be paid by the secretary of agriculture of the United States as a grant in aid of such plan under Section 7 of the federal Soil Conservation and Domestic Allotment Act, in order to provide for the effective carrying out of such plan and shall designate the amount and due date of each installment of such grant, the period to which such installment relates, and the amount determined by the Cooperative Extension Service to be necessary for carrying out such plan during such period.

(g) The Cooperative Extension Service shall provide for such investigations as it finds to be necessary for the formulation and administration of such plans.

History. — Ga. L. 1937, p. 538, § 5.

Cross references. — Employment and payment of county agricultural and home demonstration agents, § 20-2-62.

U.S. Code. — Section 7 of the federal Soil Conservation and Domestic Allotment Act, referred to in this Code section, is codified at 16 U.S.C. § 590g.

2-6-6. Receipt and disbursement of funds; accounts; auditing; bonds.

(a) The Cooperative Extension Service is authorized to receive, on behalf of this state, all grants of money or other aid made available from any source to assist the state in carrying out the policy and purposes of this article. All such moneys or other aid, together with any moneys appropriated or other provision made by this state for such purpose, shall be forthwith available to the Cooperative Extension Service as the agency of the state, subject, in the case of any funds or other aid received upon conditions, to the conditions upon which such funds or other aid have been received, for the purpose of administering this article. Such moneys or aid may be expended by the Cooperative Extension Service in carrying out the state plans provided for in Code Section 2-6-5 or in otherwise effectuating the purposes and policies of this article.

(b) Subject to any conditions upon which any such money or other aid is made available to the state and subject to the terms of any applicable plan made effective pursuant to this article, such expenditures may include, but need not be limited to, expenditures for:

(1) Administration expenses;

(2) Equipment;

(3) Cost of research and investigation;

(4) Cost of educational activities;

(5) Compensation and expenses of members of the state advisory board provided for in Code Section 2-6-10;

(6) Reimbursement to other state agencies or to voluntary committees or associations of agricultural producers for the costs to such agencies, committees, or associations of assisting in the administration of this article when assistance is requested in writing by the Cooperative Extension Service and rendered to the Cooperative Extension Service;

(7) Reimbursement of any other fund from which the Cooperative Extension Service has made expenditures in providing services in the administration of this article;

(8) Payments to agricultural producers provided for in any plan made effective pursuant to this article;

(9) Salaries of employees; and

(10) All other expenditures requisite to carrying out the provisions and purposes of this article.

(c) The Cooperative Extension Service shall provide for the keeping of full and accurate accounts as such state agency, showing all receipts and expenditures of moneys, securities, or other property received, held, or expended under this article, and shall provide for the auditing of all such accounts and for the execution of surety bonds for all employees entrusted with moneys or securities under this article.

History. — Ga. L. 1937, p. 538, § 6.

2-6-7. Assistance of other agencies and associations; rules and regulations; lease or purchase of equipment, facilities, and supplies; employment of personnel.

(a) The Cooperative Extension Service shall utilize such available services and assistance of other state agencies and of voluntary county and community committees and associations of agricultural producers as it determines to be necessary or calculated to assist substantially in the effective administration of this article.

(b) The Cooperative Extension Service shall have the authority to make such rules and regulations consistent with this article and to do

any and all other acts consistent with this article which it finds to be necessary or proper for the effective administration of this article.

(c) The Cooperative Extension Service shall have the power and authority to obtain, by lease or purchase, such equipment, office accommodations, facilities, services, and supplies and to employ and determine the qualifications, duties, and compensation of such technical or legal experts or assistants and such other employees, including clerical and stenographic help, as it determines to be necessary or proper to carry out this article.

History. — Ga. L. 1937, p. 538, § 7.

2-6-8. Reports; investigations.

The Cooperative Extension Service shall compile or require to be made such reports as it determines to be necessary or proper in order to ascertain whether any plans provided for in this article are being carried out according to their terms. The Cooperative Extension Service shall provide for compliance with such requirements on the part of all persons and agencies participating in the administration of any such plan and may make or cause to be made such investigations as it determines to be necessary or proper to assure the correctness of such reports and to make possible the verification of the reports.

History. — Ga. L. 1937, p. 538, § 10.

2-6-9. Community associations; community and county committees.

The Cooperative Extension Service, by regulation, shall provide for the organization within each community of a voluntary association in which all agricultural producers who are citizens of this state and residents in such community shall be entitled to equal participation; for the selection by each such association of a community committee, which shall be composed of three members of such association; and for a chairman to be chosen for each such community committee. The Cooperative Extension Service shall also provide for the selection by the members of such community committees within each county of a county committee for such county, to be composed of three members of such community committees, and for the selection of a chairman of each such county committee.

History. — Ga. L. 1937, p. 538, § 8.

2-6-10. State advisory board.

(a) The Cooperative Extension Service shall, by regulation, provide for the selection of five persons of legal age, resident in this state, to act as farmer members of a state advisory board. Such members shall be selected from the standpoint of their actual farming experience and comprehensive understanding of the agricultural problems of this state and shall represent, as nearly as possible, all sections of the state and all major types of farming.

(b) The state advisory board, upon the request of the Cooperative Extension Service, shall advise the Cooperative Extension Service with regard to all matters of major importance in carrying out this article and may, in the absence of such request, submit advice and information to the Cooperative Extension Service with respect to the administration of this article.

History. — Ga. L. 1937, p. 538, § 9.

ARTICLE 2

SOIL AND WATER CONSERVATION DISTRICTS

Cross references. — Construction of dams, § 12-5-370 et seq.

Law reviews. — For article, "Selected Oddities in Georgia Municipal Law," see 9 Ga. L. Rev. 783 (1975).

For comment, "The Right to Rainwater: An Unlikely Fairy Tale," see 69 Mercer L. Rev. 575 (2018).

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Soil and Water Conservation Districts are agencies of this state. 1969 Op. Att'y Gen. No. 69-319.

Merit system rules violated by employee elected as supervisor. — A state merit system employee holding public office as an elected Soil and Water Conservation District supervisor would be in violation of the merit system rules. 1975 Op. Att'y Gen. No. 75-45.

Soil and water conservation district supervisors are eligible for comprehensive general liability insurance through the Department of Administrative Services. 1981 Op. Att'y Gen. No. 81-35.

RESEARCH REFERENCES

ALR. — Validity and construction of statutes regulating strip mining, 86 A.L.R.3d 27.

2-6-20. Short title.

This article may be known and cited as the "Soil and Water Conservation Districts Law."

History. — Ga. L. 1937, p. 377, § 1; Ga. L. 1962, p. 116, § 1.

2-6-21. Legislative determinations and declarations of policy.

(a) **Legislative determinations.** It is declared, as a matter of legislative determination:

(1) **The condition.** That:

(A) The farm, forest, and grazing lands of this state are among the basic assets of this state and the preservation of these lands is necessary to protect and promote the health, safety, and general welfare of its people;

(B) Improper land use practices have caused and have contributed to and are now causing and contributing to a progressively more serious erosion of the farm and grazing lands of this state by wind and water;

(C) The breaking of natural grass, plant, and forest cover has interfered with the natural factors of soil stabilization, causing loosening of soil and exhaustion of humus and developing a soil condition that favors erosion;

(D) The topsoil is being washed and blown out of fields and pastures;

(E) There has been an accelerated washing of sloping fields;

(F) These processes of erosion by wind and water speed up with removal of absorptive topsoil, causing exposure of less absorptive and less protective, but more erosive, subsoil; and

(G) Failure by any landowner or occupier of land to conserve the soil and control erosion upon his lands causes a washing and blowing of soil and water from his lands onto other lands and makes the conservation of soil and control of erosion on such other lands difficult or impossible;

(2) **The consequences.** That the consequences of such soil erosion in the form of soil washing and soil blowing are:

(A) The silting and sedimentation of stream channels, reservoirs, dams, ditches, and harbors;

(B) The loss of fertile soil material in dust storms;

(C) The piling up of soil on lower slopes and its deposit over alluvial plains;

(D) The reduction in productivity or outright ruin of rich bottom lands by overwash of poor subsoil material, sand, and gravel swept out of the hills;

(E) The deterioration of the soil and its fertility, the deterioration of the crops grown thereon, and declining acre yields despite development of scientific processes for increasing such yields;

(F) The loss of soil and water, which causes destruction of food and cover for wildlife;

(G) A blowing and washing of soil into streams, which silts over spawning beds and destroys water plants, diminishing the food supply of fish;

(H) A diminishing of the underground water reserve, which causes water shortages, intensifies periods of drought, and causes crop failures;

(I) An increase in the speed and volume of rainfall runoff, causing severe and increasing floods which bring suffering, disease, and death;

(J) The impoverishment of families attempting to farm eroding and eroded lands;

(K) Damage to roads, highways, railways, farm buildings, and other property from floods and from dust storms; and

(L) Losses in navigation, hydroelectric power, municipal water supply, irrigation developments, farming, and grazing; and

(3) **The appropriate corrective methods.** That to conserve soil resources and control or prevent soil erosion, it is necessary that land use practices contributing to soil wastage and soil erosion be discouraged and discontinued and that appropriate soil-conserving land use practices be adopted and carried out and that among the procedures necessary for widespread adoption are:

(A) The carrying on of engineering operations, such as the construction of terraces, terrace outlets, check dams, dikes, ponds, ditches, and the like;

(B) The utilization of strip cropping, lister furrowing, contour cultivating, and contour furrowing;

(C) Land irrigation;

(D) The seeding and planting of waste, sloping, abandoned, or eroded lands with water-conserving and erosion-preventing plants, trees, and grasses;

(E) Forestation and reforestation;

(F) The rotation of crops;

(G) Soil stabilization with trees, grasses, legumes, and other thick-growing, soil-holding crops;

(H) The addition of soil amendments, manurial materials, and fertilizers for the correction of soil deficiencies or for the promotion of increased growth of soil-protecting crops;

(I) The retardation of runoff by increasing the absorption of rainfall; and

(J) The retirement from cultivation of steep, highly erosive areas and areas badly gullied or otherwise eroded.

(b) **Declaration of policy.** It is declared to be the policy of the General Assembly to provide for the conservation of the soil and soil resources of this state and for the control and prevention of soil erosion and thereby to preserve natural resources; control floods; prevent impairment of dams and reservoirs; assist in maintaining the navigability of rivers and harbors; preserve wildlife; protect the tax base; protect public lands; and protect and promote the health, safety, and general welfare of the people of this state.

History. — Ga. L. 1937, p. 377, § 2.

RESEARCH REFERENCES

ALR. — Liability of one who diverts stream into new channel for overflow, 12 A.L.R. 187.

2-6-22. Definitions.

As used in this article, the term:

(1) "Commission" or "State Soil and Water Conservation Commission" means the agency created in Code Section 2-6-23.

(2) "District" or "soil and water conservation district" means an agency of this state organized in accordance with this article for the purposes, with the powers, and subject to the restrictions set forth in this article.

(3) "Due notice" means notice published at least twice, with an interval of at least seven days between the two publication dates, in a newspaper or other publication of general circulation within the appropriate area or, if no such publication of general circulation is available, notice given by posting at a reasonable number of conspicuous places within the appropriate area, including, where possible, public places where it is customary to post notices concerning county or municipal affairs generally. At any hearing held pursuant to such notice, at the time and place designated in such notice, adjournment may be made from time to time without the necessity of renewing such notice for such adjourned dates.

(4) "Land occupier" or "occupier of land" means any person, firm, or corporation, other than the owner, who is in possession of any lands lying within a soil and water conservation district, whether as lessee, renter, tenant, or otherwise.

(5) "Landowner" or "owner of land" means any person, firm, or corporation who holds legal or equitable title to any lands lying within a soil and water conservation district.

(6) "Qualified elector" means any person qualified to vote in elections by the people under the Constitution of this state.

(7) "Supervisor" means one of the members of the governing body of a soil and water conservation district, elected or appointed in accordance with this article.

History. — Ga. L. 1937, p. 377, § 3; Ga. L. 1962, p. 116, §§ 2, 3; Ga. L. 1988, p. 269, § 1.

Cross references. — Construction of dams, § 12-5-370 et seq.

OPINIONS OF THE ATTORNEY GENERAL

Utilization of convict labor for soil conservation project authorized. — In constructing water impounding structures and flooding pools, it would be legal to utilize convict labor to remove buildings on private land in connection with soil conservation projects being conducted by soil conservation district supervisors since soil conservation districts are expressly declared to be agencies of the state government. 1958-59 Op. Att'y Gen. p. 250.

Districts authorized to expend funds for liability insurance for state vehicles. — While normally state agencies are not authorized to expend funds for liability insurance covering damage by state vehicles, there is an exception to this prohibition with respect to soil conservation districts. 1962 Op. Att'y Gen. p. 17.

Districts' tax exempt status excludes payment of motor vehicle license fees. — Soil conservation districts of this state are expressly exempt from all taxation, but they are not exempt from the payment of license fees such as the license fee required of motor vehicles. 1952-53 Op. Att'y Gen. p. 454.

2-6-23. State Soil and Water Conservation Commission — Established; composition; terms of office; ex officio advisers; seal; rules and regulations.

(a) There is established, to serve as an agency of the state and to perform the functions conferred upon it in this article, the State Soil and Water Conservation Commission. The commission shall be assigned to the Department of Agriculture for administrative purposes only, as prescribed in Code Section 50-4-3.

(b) Commencing with appointments for the year 2015, the Governor shall appoint one at-large member from each of the five soil and water conservation district regions to serve on the commission. Such initial appointments shall be for terms of office of one, two, three, four, and five

years, respectively. Thereafter, successors shall be appointed for terms of office of five years and until their successors are duly appointed.

(c) The following persons shall serve ex officio in an advisory capacity to the State Soil and Water Conservation Commission:

(1) The associate dean for extension of the College of Agricultural and Environmental Sciences of the University of Georgia;

(2) The commissioner of natural resources;

(3) The associate dean of research of the College of Agricultural and Environmental Sciences of the University of Georgia;

(4) The executive director of the Agricultural Stabilization Conservation Service;

(5) The Georgia state director of the Farmer's Home Administration;

(6) The director of the Southern Piedmont Conservation Research Center;

(7) The president of the Georgia Association of Conservation District Supervisors;

(8) The director of the State Forestry Commission;

(9) The Georgia supervisor of national forests of the U.S. Forestry Service;

(10) The state conservationist of the U.S. Natural Resources Conservation Service;

(11) The dean and director of the College of Agricultural and Environmental Sciences of the University of Georgia;

(12) The state program manager of agricultural education;

(13) The Commissioner of Agriculture; and

(14) Such other representatives of state or federal agencies as the commission deems desirable.

(d) The commission shall adopt a seal, which shall be judicially noticed. It may perform such acts, hold such public hearings, and promulgate such rules and regulations as may be necessary for the execution of its functions under this article.

History. — Ga. L. 1937, p. 377, § 4; Ga. L. 1945, p. 190, § 2; Ga. L. 1949, p. 584, § 1; Ga. L. 1962, p. 116, § 2; Ga. L. 1973, p. 929, § 1; Ga. L. 1988, p. 269, § 2; Ga. L. 1995, p. 10, § 2; Ga. L. 2015, p. 35, § 1/HB 397.

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Committee (now commission) coordinates and supervises watershed and flood prevention programs in the State of Georgia. 1975 Op. Att'y Gen. No. 75-29.

2-6-24. State Soil and Water Conservation Commission — Chairperson; quorum; compensation; surety bonds; records; audits.

The commission shall designate one of its members as chairperson and may, from time to time, change such designation. A member of the commission shall hold office so long as he or she retains the office by virtue of which he or she is serving on the commission. A majority of the commission shall constitute a quorum, and the concurrence of a majority shall be required for the determination of any matter within its duties. The members of the commission shall receive for each day of actual attendance of meetings of the commission a daily expense allowance in the amount specified in subsection (b) of Code Section 45-7-21 and shall be entitled to expenses, including traveling expenses, necessarily incurred in the discharge of their duties on the commission. The commission shall provide for the execution of surety bonds for all employees and officers who are entrusted with funds or property. It shall provide for the keeping of a full and accurate record of all proceedings and of all resolutions, regulations, and orders issued or adopted and shall provide for an annual audit of the accounts of receipts and disbursements.

History. — Ga. L. 1937, p. 377, § 4; Ga. L. 1988, p. 269, § 3; Ga. L. 2002, p. 951, § 1.

2-6-25. State Soil and Water Conservation Commission — Employment of administrative officer, experts, agents, and employees; legal services; delegation of powers and duties; furnishing of information; agency cooperation.

The commission may employ an administrative officer and such technical experts and other agents and employees, permanent and temporary, as it may require. It shall determine their qualifications, duties, and compensation. The commission may call upon the Attorney General of this state for such legal services as it may require. It shall have authority to delegate, to one or more of its members or to one or more agents or employees, such powers and duties as it may deem proper. The commission is authorized to furnish information and to call upon any or all state or local agencies for cooperation in carrying out this article.

History. — Ga. L. 1937, p. 377, § 4; Ga. L. 1975, p. 724, § 1; Ga. L. 1988, p. 269, § 4.

2-6-26. State Soil and Water Conservation Commission — Merit and retirement systems for employees.

All employees of the State Soil and Water Conservation Commission, not including members of the commission, shall be subject to a merit system of employment as promulgated by the commission, under which all such employees shall be selected on a basis of merit, fitness, and efficiency, according to law. All such employees are authorized to become and be members of the Employees' Retirement System of Georgia, as established by Chapter 2 of Title 47. There shall be paid from the funds appropriated for the operation of the State Soil and Water Conservation Commission all employer contributions required by Chapter 2 of Title 47 creating the Employees' Retirement System of Georgia. All rights, credits, and funds in such retirement system which were possessed by persons at the time of their employment by the commission are continued and preserved, it being the intention of the General Assembly that such persons shall not lose any rights, credits, or funds to which they may be entitled prior to becoming employees of the commission.

History. — Ga. L. 1973, p. 908, § 1; Ga. L. 1988, p. 269, § 5.

2-6-27. State Soil and Water Conservation Commission — Additional duties and powers.

In addition to the duties and powers otherwise conferred upon the commission, it shall have the following duties and powers:

(1) To offer such assistance as may be appropriate to the supervisors of the soil and water conservation districts in the carrying out of any of their powers and programs;

(2) To keep the supervisors of each of the districts informed of the activities and experiences of all the other districts and to facilitate an interchange of advice, experience, and cooperation between such districts;

(3) To coordinate the programs of the districts so far as this may be done by advice and consultation;

(4) To secure the cooperation and assistance of the United States and any of its agencies and of the agencies and counties of this state in the work of such districts;

(5) To disseminate information throughout this state concerning the activities and programs of the districts and to encourage the formation of such districts in areas where their organization is desirable;

(6) To receive gifts, appropriations, materials, equipment, land, and facilities and to manage, operate, and disperse the same;

(7) To formulate such rules and regulations, to exercise such powers, and to perform such duties as are necessary to implement the administration of the federal Watershed Protection and Flood Prevention Act;

(7.1) To formulate such rules and regulations in consultation with the Environmental Protection Division of the Department of Natural Resources, to exercise such powers, and to perform such duties as are necessary to implement the administration of the education and training program established under Code Section 12-7-19;

(8) To enter into contracts and agreements with the districts, municipalities, and counties of this state, other agencies of this state, the United States and any agencies thereof, any association, any landowner or land occupier, or any person in order to carry out the purposes of this article; and

(9) To receive grants from any agency of the United States government or any agency of this state, and to make grants to districts, municipalities, or counties in this state, or other state agencies in order to:

(A) Fund up to 20 percent of the cost of obtaining permits for and constructing improvements to any dam that was originally constructed or financially assisted by the Natural Resources Conservation Service, formerly known as the Soil Conservation Service, of the United States Department of Agriculture; or

(B) Carry out other purposes of this article.

History. — Ga. L. 1937, p. 377, § 4; Ga. L. 1949, p. 584, § 2; Ga. L. 1955, p. 257, § 1; Ga. L. 1962, p. 116, § 3; Ga. L. 1988, p. 269, § 6; Ga. L. 1988, p. 1336, § 1; Ga. L. 2003, p. 224, § 1; Ga. L. 2003, p. 813, § 1; Ga. L. 2008, p. 644, § 1-2/SB 342; Ga. L. 2015, p. 35, § 2/HB 397; Ga. L. 2018, p. 974, § 1/SB 451.

The 2018 amendment, effective July 1, 2018, deleted former paragraph (7.2), which read: "To formulate such rules and regulations and to exercise such powers as are necessary to perform its duties under subsection (m.1) of Code Section 12-5-31 and subsection (b.1) of Code Section 12-5-105;".

Editor's notes. — Ga. L. 2008, p. 644, § 1-1/SB 342, not codified by the General Assembly, provides that: "This part shall be known and may be cited as the 'Water Conservation and Drought Relief Act.'"

Ga. L. 2008, p. 644, § 5-1/SB 342, not codified by the General Assembly, provides, in part, that the amendment to this Code section shall apply to all applications pending on or after the effective date thereof. The effective date was July 1, 2008.

Law reviews. — For article on the 2003 amendment of this Code section, see 21 Ga. St. U. L. Rev. 1 (2004).

U.S. Code. — The federal Watershed Protection and Flood Prevention Act, referred to in paragraph (7), is codified at 16 U.S.C. § 1001 et seq. and 33 U.S.C. § 701b.

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Committee must approve request for federal administration of construction contracts. — Counties of this state may request federal administration of construction contracts under Pub. L. No. 566 if such request is first approved by the committee. 1969 Op. Att'y Gen. No. 69-344.

2-6-28. Number and boundaries of soil and water conservation districts; alteration of existing districts or formation of new districts.

(a) The number and geographical boundaries of the several soil and water conservation districts shall remain as they existed on July 1, 1973, unless changed as provided in this Code section.

(b) If two-thirds of the supervisors within each of the affected districts, each of the governing authorities of each county within any affected district, and the State Soil and Water Conservation Commission agree to the alteration of any district or the formation of any new district, the alteration or formation may be effected if all such approvals are filed with the commission along with the description of the altered boundaries or the boundaries of the new districts. The alteration of existing districts or formation of new districts may not be effected so that the boundaries of any such district will traverse the boundaries of any regional commission within the district or districts. All of the property and assets of any altered district shall be distributed among the affected districts in accordance to the same ratio used in the distribution of state appropriated funds to the affected districts.

History. — Ga. L. 1937, p. 377, § 5; Ga. L. 1973, p. 929, § 2; Ga. L. 1988, p. 269, § 7; Ga. L. 1989, p. 1317, § 6.1; Ga. L. 2008, p. 181, § 11/HB 1216.

Code Commission notes. — Pursuant to Code Section 28-9-5, in 1988, the hyphen in "state appropriated" near the end of subsection (b) was deleted.

OPINIONS OF THE ATTORNEY GENERAL

Federal funds finance construction of watershed projects. — The local soil and water conservation districts carry out the construction of watershed projects financed in whole or in part by federal funds. 1975 Op. Att'y Gen. No. 75-29.

2-6-29. District supervisors — Number; appointment, qualifications, and terms of appointive supervisors; county basis of election of elected supervisors.

(a) The governing body of each district shall consist of not less than five supervisors. Two supervisors shall be appointed by the commission, provided that in those districts which contain three or more counties or portions of three or more counties, the commission shall appoint one supervisor for each county in the district. Appointments by the commission shall be made from a list submitted to the commission by the elected supervisors of the district, containing three nominees for each appointive position. The supervisors appointed by the commission shall be persons who are qualified by training and experience to perform the specialized, skilled services which will be required of them in the performance of their duties under this article. Appointed supervisors shall serve for terms of office of two years and until their successors are appointed.

(b) Elected supervisors shall be elected upon a county basis, as provided in Code Section 2-6-30. Not more than one elected supervisor shall be elected from each county within a district, except in districts consisting of less than three counties.

History. — Ga. L. 1937, p. 377, § 7; Ga. L. 1949, p. 584, § 5; Ga. L. 1973, p. 929, § 3; Ga. L. 1988, p. 269, § 8.

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Nominees grouped on ballot by counties. — The elected supervisors of soil conservation districts continue to be elected by the voters of the whole district, but the nominees are to be grouped on the ballot by counties; the nominee receiving the largest number of votes cast from one's county in one's group shall be elected to represent one's county. 1948-49 Op. Att'y Gen. p. 458.

Elected soil and water district supervisors. — Elected soil and water district supervisors are elected state officials and are thus subject to the constitutional provision that their office is vacated when they qualify for another state, county or municipal office. 1992 Op. Att'y Gen. No. 92-28.

2-6-30. District supervisors — Election procedure for elected supervisors.

(a) Within 30 days after the date of issuance by the Secretary of State of a certificate of organization for a soil and water conservation district, nominating petitions may be filed with the commission to nominate candidates for supervisors of such district. The commission shall have authority to extend the time within which nominating petitions may be filed. No such nominating petition shall be accepted by the commission

unless it is subscribed by 25 or more qualified electors of the county in which the nominee resides. Qualified electors may sign more than one such nominating petition to nominate more than one candidate for supervisor.

(b) The commission shall be required to give due notice of an election only in the particular county in which an election is to be held. The ballot for each county shall contain only the names of the nominees from that county and the electors of each county shall be eligible to vote only for the nominees of their particular county. The names of all nominees within the county on behalf of whom nominating petitions have been filed within the time designated shall appear upon the ballots arranged in the alphabetical order of their surnames, with a square before each name and a direction to insert an "X" in the square appearing before the name of the person for whom the elector desires to vote. The nominee receiving the highest number of votes shall be declared the duly elected district supervisor from that county.

(c) The commission shall pay all the expenses of such election, shall supervise the conduct thereof, shall prescribe regulations governing the conduct of such election and the determination of the eligibility of voters therein, and shall publish the results thereof.

History. — Ga. L. 1937, p. 377, § 6; Ga. L. 1949, p. 584, § 6; Ga. L. 1950, p. 293, § 1; Ga. L. 1988, p. 269, § 9.

Cross references. — Definition of public office, § 21-2-2. Disclosure reports, § 21-5-34.

2-6-31. District supervisors — Chairman; terms of office of elected supervisors; filling vacancies; quorum; compensation and expenses.

(a) The supervisors shall designate a chairman and from time to time may change such designation.

(b)(1) The term of office of each elected supervisor shall be four years, except as otherwise provided by paragraph (2) of this subsection. An elected supervisor shall hold office until his or her successor has been elected and has qualified. Successors to elected supervisors shall be elected at the general election immediately preceding the expiration of terms and shall take office the first day of January immediately following that election.

(2)(A) The terms of those persons elected as supervisors in 2003 and whose terms have not expired as of the date that implementation of this paragraph is permissible under the Voting Rights Act of 1965, as amended, shall expire on December 31, 2008.

(B) The terms of those persons elected as supervisors in 2004 and whose terms have not expired as of the date that implemen-

tation of this paragraph is permissible under the Voting Rights Act of 1965, as amended, shall expire on December 31, 2008.

(C) The terms of those persons elected as supervisors in 2005 shall expire on December 31, 2010.

(D) The terms of those persons elected as supervisors in 2006 shall expire on December 31, 2010.

(E) If any persons were elected as supervisors on or after January 1, 2007, but prior to the date that implementation of this paragraph is permissible under the Voting Rights Act of 1965, as amended, then the terms of such persons shall expire on December 31, 2012.

(c)(1) Any vacancy in the office an appointed supervisor shall be filled for the unexpired term. The selection of any person to fill an unexpired term of an appointed supervisor shall be made in the same manner in which the original appointment was made.

(2) Any vacancy occurring in the office of an elected supervisor shall be filled as follows:

(A) If the vacancy occurs more than 90 days prior to the date of a general election preceding the general election at which a successor will be elected to a new full term of office, then such vacancy shall be filled for the unexpired term of office at a special election to be held on the same date as said general election preceding the general election at which a successor will be elected to a new full term of office; and in such case the Governor shall select a qualified person from among two persons nominated by the remaining supervisors of the district to fill the vacancy until the person elected at such special election takes office; and

(B) If the vacancy does not occur more than 90 days prior to the date of a general election preceding the general election at which a successor will be elected to a new full term of office, then the Governor shall select a qualified person from among two persons nominated by the remaining supervisors of the district to fill the vacancy for the unexpired term.

(d) A majority of the supervisors shall constitute a quorum; and the concurrence of a majority of the supervisors in any matter within their duties shall be required for its determination.

(e) The commission is authorized to fix a per diem payment for supervisors; in addition thereto, such supervisors shall be entitled to the regular mileage allowances provided for state employees if such supervisors travel by private conveyance and to their actual travel expenses if they travel by public conveyance.

History. — Ga. L. 1937, p. 377, § 7; Ga. L. 1951, p. 695, § 1; Ga. L. 1973, p. 929, § 3; Ga. L. 1988, p. 269, § 10; Ga. L. 2007, p. 276, § 1/SB 263.

Editor's notes. — Ga. L. 2007, p. 276, § 2/SB 263, not codified by the General Assembly, provides: "The Attorney General of Georgia shall cause this Act to be submitted for preclearance under the federal Voting Rights Act of 1965, as amended, and such submission shall be made to the United States Department of Justice or filed with the appropriate court no later than 45 days after the date on which this Act is approved by the Governor or becomes law without such approval. If as of June 30, 2008, implementation of this Act is not permissible under the Voting Rights Act of 1965, as amended, then as of such date this Act shall be void and shall stand repealed in its entirety." The United States Department of Justice precleared the Act under Section 5 of the Voting Rights Act, 42 U.S.C. 1973c, on December 20, 2007.

2-6-32. District supervisors — Services of county agricultural agents; employees and agents; copies of rules, orders, and other documents; surety bonds; removal of supervisor; consultation.

(a) The supervisors of a district may utilize the services of the county agricultural agents and the facilities of the county agricultural agents' offices insofar as practicable and feasible. With the approval of the commission they may employ additional employees and agents, permanent and temporary, as they may require and may determine their qualifications, duties, and compensation. The supervisors may delegate to their chairman, to one or more supervisors, or to one or more agents or employees such powers and duties as they may deem proper.

(b) The supervisors shall furnish to the commission, upon request, copies of such rules, regulations, orders, contracts, forms, and other documents as they shall adopt or employ and such other information concerning their activities as the commission may require in the performance of its duties under this article.

(c) The supervisors shall provide for the execution of surety bonds for all employees and officers who are entrusted with funds or property. They shall provide for the keeping of a full and accurate record of all proceedings and of all resolutions, regulations, and orders issued or adopted and shall provide to the commission summary financial data listing cash receipts and disbursements for each state fiscal year.

(d) Any supervisor may be removed by the commission, upon notice and hearing, for neglect of duty or malfeasance in office, but for no other reason.

(e) The supervisors of a district may invite the legislative body of any municipality or county located near the territory comprised within the district to designate a representative to advise and consult with the supervisors on all questions of program and policy which may affect the property, water supply, or other interests of such municipality or county.

History. — Ga. L. 1937, p. 377, § 7; Ga. L. 1988, p. 269, § 11; Ga. L. 1998, p. 206, § 1.

2-6-33. Powers of districts and supervisors; prerequisites to exercise.

A soil and water conservation district shall be an agency of this state. Such district and the supervisors thereof shall have, in addition to other powers granted in this article, the following powers; provided, however, that before the supervisors shall have the authority to exercise any of the powers conferred in this Code section, they shall formulate and submit to the commission for its approval a program or programs of projects and operations, proposed changes in which may be submitted for the approval of the commission from time to time, and shall not undertake any of such work until after such program or programs shall have been approved in writing by the commission; and provided, further, that no provision with respect to the acquisition, operation, or disposition of property by public bodies of this state shall be applicable to a district unless the General Assembly shall specifically so state:

(1) To conduct surveys, investigations, and research relating to the character of soil erosion and the preventive and control measures needed; to publish the results of such surveys, investigations, or research; and to disseminate information concerning such preventive and control measures, provided that in order to avoid duplication of research activities, no district shall initiate any research program except in cooperation with the government of this state or any of its agencies or with the government of the United States or any of its agencies;

(2) To conduct demonstrational projects within the district on lands owned or controlled by this state or any of its agencies, with the cooperation of the agency administering and having jurisdiction thereof, and on any other lands within the district, upon obtaining the consent of the owner and occupiers of such lands or the necessary rights or interests in such lands, in order to demonstrate by example the means, methods, and measures by which soil and soil resources may be conserved and soil erosion in the form of soil blowing and soil washing may be prevented and controlled;

(3) To carry out preventive and control measures within the district, including, but not limited to, engineering operations, methods of cultivation, the growing of vegetation, changes in the use of land, and the measures listed in paragraph (3) of subsection (a) of Code Section 2-6-21, on lands owned or controlled by this state or any of its agencies, with the cooperation of the agency administering and having jurisdiction thereof, and on any other lands within the

district, upon obtaining the consent of the owner and the occupiers of such lands or the necessary rights or interests in such lands;

(4) To cooperate and enter into agreements with and, within the limits of appropriations duly made available to the district by law, to furnish financial or other aid to any agency, governmental or otherwise, or any owner or occupier of lands within the district, in the carrying on of erosion control or prevention operations within the district, subject to such conditions as the supervisors may deem necessary to advance the purposes of this article;

(5) To obtain options upon and to acquire, by purchase, exchange, lease, gift, grant, bequest, devise, or otherwise, any property, real or personal, or any rights or interests therein; to maintain, administer, and improve any properties acquired; to receive income from such properties and to expend such income in carrying out the purposes and provisions of this article; and to sell, lease, or otherwise dispose of any of its property or interests therein, in furtherance of the purposes and provisions of this article, provided that title to all property acquired shall be taken in the name of the State of Georgia;

(6) To make available to landowners and occupiers of land within the district, on such terms as it prescribes, agricultural and engineering machinery and equipment, fertilizer, seeds and seedlings, and such other material or equipment as will assist such landowners and occupiers of land to carry on operations upon their lands for the conservation of soil resources and for the prevention or control of soil erosion;

(7) To construct, improve, and maintain such structures as may be necessary or convenient for the performance of any of the operations authorized in this article;

(8) To develop comprehensive plans for the conservation of soil resources and for the control and prevention of soil erosion within the district, which plans shall specify, in such detail as may be possible, the acts, procedures, performances, and avoidances which are necessary or desirable for the effectuation of such plans, including engineering operations, methods of cultivation, the growing of vegetation, cropping programs, tillage practices, and changes in the use of land; and to publish such plans and information and bring them to the attention of owners and occupiers of lands within the district;

(9) To take over, by purchase, lease, or otherwise, and to administer any soil conservation, erosion control, or erosion prevention project located within its boundaries which was first undertaken by the United States or any of its agencies or by this state or any of its agencies; to manage, as agent of the United States or any of its agencies or of this state or any of its agencies, any soil conservation,

erosion control, or erosion prevention project within its boundaries; to act as agent for the United States or any of its agencies or for this state or any of its agencies, in connection with the acquisition, construction, operation, or administration of any soil conservation, erosion control, or erosion prevention project within its boundaries; to accept donations, gifts, and contributions in money, services, materials, or otherwise from the United States or any of its agencies, from this state or any of its agencies, or from others and to use or expend such money, services, materials, or other contributions in carrying on its operations, including promotion of conservation and conservation education;

(10) To have a seal, which shall be judicially noticed; to have perpetual succession unless terminated as provided in this article; to make and execute contracts and other instruments necessary or convenient to the exercise of its powers; and to make, amend, and repeal rules and regulations not inconsistent with this article, in order to carry into effect its purposes and powers.

History. — Ga. L. 1937, p. 377, § 8; Ga. L. 1962, p. 116, § 3; Ga. L. 1988, p. 269, § 12; Ga. L. 1998, p. 207, § 1.

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Disposition of formerly condemned land authorized. — In the event the fee simple title to land is condemned as necessary to a watershed project, and subsequently it should become surplusage to the project, the district could dispose of it in accordance with this section. 1967 Op. Att'y Gen. No. 67-108.

Expenditure of funds for liability insurance authorized. — While normally state agencies are not authorized to expend funds for liability insurance covering damage by state vehicles, there is an exception to this prohibition with respect to soil conservation districts. 1962 Op. Att'y Gen. p. 17.

Utilization of convict labor for soil conservation projects authorized. — In constructing water impounding structures and flooding pools, it would be legal to utilize convict labor to remove buildings on private land in connection with soil conservation projects being conducted by soil conservation district supervisors. 1958-59 Op. Att'y Gen. p. 250.

2-6-34. Conditions to extending benefits or performing work.

As a condition to the extending of any benefits under this article to or the performance of any work upon any lands not owned or controlled by this state or any of its agencies, the supervisors of a district may require contributions in money, services, materials, or otherwise to any operations conferring such benefits and may require landowners and occupiers of land to enter into and perform such agreements or covenants as to the permanent use of such lands as will tend to prevent or control erosion thereon.

History. — Ga. L. 1937, p. 377, § 8.

2-6-35. Land use regulations — Adoption authorized; public hearings.

The supervisors of each district shall have authority to formulate regulations governing the use of lands within the district, in the interest of conserving soil and soil resources and preventing and controlling soil erosion. The supervisors may conduct such public meetings and public hearings upon proposed regulations as may be necessary to assist them in this work.

History. — Ga. L. 1937, p. 377, § 9.
Cross references. — Rules, regulations, and ordinances adopted by Board of Natural Resources and local governments for purpose of governing certain land-disturbing activities, § 12-7-6.

2-6-36. Land use regulations — Referendum.

(a) The supervisors shall not have the authority to adopt land use regulations until after they shall have caused due notice to be given of their intention to conduct a referendum for submission of such regulations to the owners of lands lying within the boundaries of the district, for their indication of approval or disapproval of such proposed regulations, and until after the supervisors have considered the result of such referendum. No proposed regulations shall be submitted in a referendum until after they have been submitted to and approved in writing by the commission. Copies of such proposed regulations shall be available for the inspection of all eligible voters during the period between the publication of the notice and the date of the referendum. The notice of the referendum shall recite the contents of the proposed regulations or shall state where copies of such proposed regulations may be examined.

(b) The question shall be submitted by ballots, upon which the words:

"[ ] YES Shall the proposed land use regulations for conservation of soil and prevention of erosion be approved?"
[ ] NO

shall appear, with directions that all persons desiring to vote for approval of the regulations shall vote "Yes" and all persons desiring to vote against the regulations shall vote "No."

(c) The supervisors shall supervise such referendum, shall prescribe appropriate regulations governing the conduct thereof, and shall publish the result thereof.

(d) All owners of lands within the district, and only such landowners, shall be eligible to vote in the referendum.

(e) No informalities in the conduct of the referendum or in any matters relating thereto shall invalidate the referendum or the result thereof, if notice thereof was given substantially as provided in this Code section and if the referendum was conducted fairly.

(f) The supervisors shall not have the authority to adopt proposed regulations unless at least a majority of the votes cast in the referendum were cast for approval of the proposed regulations. However, the approval of the proposed regulations by a majority of the votes cast in such referendum shall not be deemed to require the supervisors to adopt such proposed regulations.

History. — Ga. L. 1937, p. 377, § 9; Ga. L. 1988, p. 269, § 13.

Code Commission notes. — Pursuant to Code Section 28-9-5, in 1988, the comma after "'erosion be approved?'" in subsection (b) was deleted.

RESEARCH REFERENCES

ALR. — Referendum of general legislative act to people in absence of constitutional requirement in that regard, 76 A.L.R. 1053.

2-6-37. Land use regulations — Provisions authorized; uniformity required; availability of copies.

(a) The regulations to be adopted by the supervisors under this article may include:

(1) Provisions requiring the carrying out of necessary engineering operations, including the construction of terraces, terrace outlets, check dams, dikes, ponds, ditches, and other necessary structures, having due regard to the legislative findings set forth in Code Section 2-6-21;

(2) Provisions requiring the observance of particular methods of cultivation, including: contour cultivating; contour furrowing; lister furrowing; sowing; planting; strip cropping, changes in cropping systems, seeding, and planting of lands to water-conserving and erosion-preventing plants, trees, and grasses; forestation; and reforestation; having due regard to the legislative findings set forth in Code Section 2-6-21; and

(3) Provisions requiring the retirement from cultivation of highly erosive areas or of areas on which erosion may not be adequately controlled if cultivation is carried on, having due regard to the legislative findings set forth in Code Section 2-6-21.

(b) The regulations shall be uniform throughout the territory within the district, provided that the supervisors may classify the lands within the district with reference to such factors as soil type, degree of slope, degree of erosion threatened or existing, cropping and tillage practices

in use, and other relevant factors and may provide regulations varying with the type or class of land affected but uniform as to all lands within each class or type.

(c) Copies of land use regulations adopted under this article shall be printed and made available to all owners and occupiers of lands lying within the district.

History. — Ga. L. 1937, p. 377, § 9.

2-6-38. Land use regulations — Binding effect.

Land use regulations adopted pursuant to Code Sections 2-6-35 and 2-6-36 by the supervisors of any district shall be binding and obligatory upon all owners and occupiers of land within such districts.

History. — Ga. L. 1937, p. 377, § 9.

2-6-39. Land use regulations — Inspections to determine observance; petition; judicial proceedings; costs and expenses.

(a) The supervisors shall have authority to go upon any lands within the district to determine whether land use regulations adopted under this article are being observed.

(b) Where the supervisors of any district find that any of the provisions of land use regulations adopted in accordance with this article are not being observed on particular lands and that such nonobservance tends to increase erosion on such lands and is interfering with the prevention or control of erosion on other lands within the district, the supervisors may present a petition to the superior court of the county or counties within which the lands of the defendant lie. The petition shall set forth the adoption of the land use regulations, the failure of the defendant landowner or occupier of the land to observe such regulations and to perform particular work, operations, or avoidances as required thereby, and that such nonobservance tends to increase erosion on such lands and is interfering with the prevention or control of erosion on other lands within the district. It shall ask the court to require the defendant to perform the work, operations, or avoidances within a reasonable time and to order that if the defendant fails to do so, the supervisors may go on the land, perform the work or other operations or otherwise bring the condition of the land into conformity with the requirements of such regulations, and recover the costs and expenses thereof, with interest, from the owner or occupier of such land.

(c) Upon the presentation of the petition, the court shall cause process to be issued against the defendant and shall hear the case. If it

appears to the court that testimony is necessary for the proper disposition of the matter, it may take evidence or appoint a referee to take such evidence as it may direct and report the same to the court with his findings of fact and conclusions of law, which report shall constitute a part of the proceedings upon which the determination of the court shall be made. The court may dismiss the petition or it may require the defendant to perform the work, operations, or avoidances and may provide that upon the failure of the defendant to initiate such performance within the time specified in the order of the court and to prosecute the same to completion with reasonable diligence, the supervisors may enter upon the land involved, perform the work or operations or otherwise bring the conditions of the land into conformity with the requirements of the regulations, and recover the costs and expenses thereof, with interest at the rate of 5 percent per annum, from the owner or occupier of such land.

(d) The court shall retain jurisdiction of the case until after the work has been completed. Upon completion of the work by the supervisors pursuant to the order of the court, the supervisors may file a petition with the court, a copy of which shall be served upon the defendant in the case, stating the costs and expenses sustained by them in the performance of the work and seeking judgment therefor with interest. The court shall have jurisdiction to enter judgment for the amount of such costs and expenses, with interest at the rate of 5 percent per annum until paid, together with the costs of the action, including a reasonable attorney's fee to be fixed by the court.

History. — Ga. L. 1937, p. 377, § 10.

2-6-40. Land use regulations — Amendment or repeal.

(a) Any owner of land within a district may at any time file a petition with the supervisors asking that any or all of the land use regulations adopted by the supervisors under Code Sections 2-6-35 and 2-6-36 be amended, supplemented, or repealed.

(b) Such land use regulations shall not be amended, supplemented, or repealed except in accordance with the procedure prescribed in Code Section 2-6-36 for adoption of land use regulations.

(c) Referenda on adoption, amendment, supplementation, or repeal of land use regulations shall not be held more often than once in six months.

History. — Ga. L. 1937, p. 377, § 9.

2-6-41. Right of eminent domain for small watershed project; conditions precedent; procedure.

(a) When a small watershed project is instituted under the sponsorship of a duly constituted district alone or under cosponsorship with any political subdivision of this state and is approved by the state and federal governments for construction thereof, and when, as a condition precedent to the exercise of the rights conferred in this Code section, 90 percent or more of the separate property owners have gratuitously given in writing and delivered to such district the necessary easements and land rights, for the purpose of the small watershed project, and when the governing board of the district finds that it cannot acquire by voluntary contract the remaining necessary easements and land rights, the sponsoring district, upon such showing incorporated in a condemnation proceeding, is granted the right of eminent domain for the purpose of acquiring the remaining necessary easements and land rights to enable it to accomplish the completion of the small watershed project.

(b) Upon compliance with the conditions precedent set forth in subsection (a) of this Code section, a district may proceed to condemn such land in accordance with the procedure set forth by Code Sections 22-2-130 through 22-2-142 and other pertinent eminent domain statutes to acquire the remaining easements and land rights necessary. In any such proceeding, the condemnor shall be required to condemn the fee simple title to all land not otherwise acquired which will be covered by permanent ponding or permanent flooding. The condemnor shall tender to the condemnee the full sum awarded in the condemnation proceedings or shall pay the same into court, in the event of the refusal of the condemnee to accept the same, before entering upon, occupying, or subjecting to its use, by flooding or otherwise, any part of the lands or rights in land sought to be condemned.

History. — Ga. L. 1960, p. 973, §§ 1, 2.

Cross references. — Condemnation proceedings before assessors, § 22-2-1 et seq. Condemnation proceedings before special master, § 22-2-100 et seq. Authority of counties to exercise power of eminent domain for construction and operation of watershed projects, flood-control projects and other projects, § 22-3-100 et seq.

OPINIONS OF THE ATTORNEY GENERAL

Condemnation permitted by district or county under cosponsored project. — Either the district or the county may condemn property for a small watershed project instituted under the cosponsorship of a soil and water conservation district and a county or counties. 1967 Op. Att'y Gen. No. 67-108.

Condemnor cannot appeal award without tendering amount of award to condemnee. — It is not necessary for the agency bringing condemnation proceedings to place any appraised amount in trust prior to a court ruling; however, if assessors are appointed, the condemning authority cannot appeal the assessors'

award without tender of the amount of the award to the condemnee or payment into the registry of the court. 1967 Op. Att'y Gen. No. 67-108.

RESEARCH REFERENCES

ALR. — Condemnation of premises or part thereof as affecting rights of landlord and tenant inter se, 163 A.L.R. 679.

Condemner's waiver, surrender, or limitation, after award, of rights or part of property acquired by condemnation, 5 A.L.R.2d 724.

Admissibility, in eminent domain proceeding, of evidence as to price paid for condemned real property during pendency of the proceeding, 55 A.L.R.2d 781.

Admissibility, in eminent domain proceeding, of evidence as to price paid for condemned real property on sale prior to the proceeding, 55 A.L.R.2d 791.

Eminent domain: right of owner of land not originally taken or purchased as part of adjacent project to recover, on enlargement of project to include adjacent land, enhanced value of property by reason of proximity to original land—state cases, 95 A.L.R.3d 752.

Eminent domain: recovery of value of improvements made with knowledge of impending condemnation, 98 A.L.R.3d 504.

Eminent domain: possibility of overcoming specific obstacles to contemplated use as element in determining existence of necessary public use, 22 A.L.R.4th 840.

State statute of limitations applicable to inverse condemnation or similar proceedings by landowner to obtain compensation for direct appropriation of land without the institution or conclusion of formal proceedings against specific owner, 26 A.L.R.4th 68.

2-6-42. Cooperation between districts.

The supervisors of any two or more districts may cooperate with one another in the exercise of any or all powers conferred in this article.

History. — Ga. L. 1937, p. 377, § 11.

2-6-43. State agencies to cooperate with districts and observe land use regulations.

Agencies of this state which have jurisdiction over or are charged with the administration of any state-owned lands lying within the boundaries of any district and agencies of any county or other governmental subdivision of the state which have jurisdiction over or are charged with the administration of any county-owned or other publicly owned lands lying within the boundaries of any such district shall cooperate to the fullest extent with the supervisors of such districts in the effectuation of programs and operations undertaken by the supervisors under this article. The supervisors of such districts shall be given free access to enter and perform work upon such publicly owned lands. The provisions of land use regulations adopted pursuant to Code Sections 2-6-35 through 2-6-38 shall be in all respects observed by the agencies administering such publicly owned lands.

History. — Ga. L. 1937, p. 377, § 12.

Cross references. — Authority of State Properties Commission to grant revocable licenses to persons to have access

to property under custody and control of commission, § 50-16-42.

2-6-44. Exemption from taxation.

The property and property rights of every kind and nature acquired in the name of the State of Georgia by any district shall be exempt from state, county, and other taxation.

History. — Ga. L. 1937, p. 377, § 8.

OPINIONS OF THE ATTORNEY GENERAL

Soil conservation districts of this state are expressly exempt from all taxation, but they are not exempt from the payment of license fees, such as the license fee required of motor vehicles. 1952-53 Op. Att'y Gen. p. 454.

2-6-45. Discontinuance of district — Petition of landowners; hearings.

Following the expiration of five years from the organization of a district, any 25 owners of land lying within the boundaries of such district may file a petition with the commission seeking to have the operations of the district terminated and the existence of the district discontinued. The commission may conduct such public meetings and public hearings upon the petition as may be necessary to assist it in the consideration thereof.

History. — Ga. L. 1937, p. 377, § 13; Ga. L. 1988, p. 269, § 14.

2-6-46. Discontinuance of district — Referendum.

(a) Within 60 days after a petition has been received by the commission, it shall hold a referendum on the issue. The commission shall give due notice of the holding of the referendum, shall supervise such referendum, and shall issue appropriate regulations governing the conduct thereof. The question shall be submitted by ballots, upon which the words:

"[ ] YES Shall the existence of the (name of
[ ] NO district) be terminated?"

shall appear, with directions that all persons desiring to vote for termination of the district shall vote "Yes" and all persons desiring to vote against termination of the district shall vote "No."

(b) All owners of lands lying within the boundaries of the district, and only such landowners, shall be eligible to vote in the referendum.

(c) No informalities in the conduct of the referendum or in any matters relating thereto shall invalidate the referendum or the result thereof, if notice thereof was given substantially as provided in this Code section and if the referendum was conducted fairly.

History. — Ga. L. 1937, p. 377, § 13; Ga. L. 1988, p. 269, § 15.

RESEARCH REFERENCES

ALR. — Referendum of general legislative act to people in absence of constitutional requirement in that regard, 76 A.L.R. 1053.

2-6-47. Discontinuance of district — Publication of referendum results; determination of feasibility of continuance.

The commission shall publish the result of the referendum. It shall consider and determine whether the continued operation of the district within the defined boundaries is administratively practicable and feasible. If the commission determines that the continued operation of such district is administratively practicable and feasible, it shall record such determination and deny the petition; provided, however, that the commission shall not have the authority to determine that the continued operation of the district is administratively practicable and feasible unless at least a majority of the votes cast in the referendum were cast in favor of the continuance of such district. If the commission determines that the continued operation of such district is not administratively practicable and feasible, it shall record such determination and shall certify such determination to the supervisors of the district. In making its determination, the commission shall give due regard and weight to the attitudes of the owners and occupiers of lands lying within the district, the number of landowners eligible to vote in such referendum who voted, the proportion of the votes cast in such referendum in favor of the discontinuance of the district to the total number of votes cast, the approximate wealth and income of the landowners and occupiers of land of the district, the probable expense of carrying on erosion control operations within such district, and such other economic and social factors as may be relevant to such determination, having due regard to the legislative findings set forth in Code Section 2-6-21.

History. — Ga. L. 1937, p. 377, § 13; Ga. L. 1988, p. 269, § 16.

RESEARCH REFERENCES

Am. Jur. Pleading and Practice Forms. — 14A Am. Jur. Pleading and Practice Forms, Initiative and Referendum, § 2.

2-6-48. Discontinuance of district — Certification from committee; termination of affairs; application for dissolution; certificate of dissolution.

(a) Upon receipt from the commission of a certification that the commission has determined that the continued operation of the district is not administratively practicable and feasible, the supervisors shall proceed forthwith to terminate the affairs of the district. The supervisors shall dispose of all property belonging to the district at public auction and shall pay the proceeds of such sale into the state treasury.

(b) The supervisors shall thereupon file an application, duly verified, with the Secretary of State for the discontinuance of such district and shall transmit with such application the certificate of the commission setting forth the determination of the commission that the continued operation of such district is not administratively practicable and feasible. The application shall recite that the property of the district has been disposed of and that the proceeds were paid as provided in this Code section and shall set forth a full accounting of such properties and of the proceeds of the sale.

(c) The Secretary of State shall issue a certificate of dissolution to the supervisors and shall record such certificate in an appropriate book of record in his office.

History. — Ga. L. 1937, p. 377, § 13;
Ga. L. 1988, p. 269, § 17.

2-6-49. Discontinuance of district — Effect of dissolution.

(a) Upon issuance of a certificate of dissolution under Code Section 2-6-48, all land use regulations theretofore adopted by a district and in force therein shall be of no further force and effect.

(b) All contracts entered into prior to the dissolution of a district, to which the district or supervisors are parties, shall remain in force and effect for the period provided in such contracts. The commission shall be substituted for the district or supervisors as party to such contracts. The commission shall be entitled to all benefits and subject to all liabilities under such contracts and shall have the same rights and liability to perform, to require performance, and to modify or terminate such contracts by mutual consent or otherwise as the supervisors of the district would have had.

(c) Such dissolution shall not affect the lien of any judgment entered under Code Section 2-6-39 nor the pendency of any action instituted under such Code section. The commission shall succeed to all the rights and obligations of the district or supervisors as to such liens and actions.

History. — Ga. L. 1937, p. 377, § 13; Ga. L. 1988, p. 269, § 18.

2-6-50. Discontinuance of district — Frequency of discontinuance attempts.

The commission shall not be required to entertain petitions for the discontinuance of any district, to conduct referenda upon such petitions, or to make determinations pursuant to such petitions more often than once in five years.

History. — Ga. L. 1937, p. 377, § 13; Ga. L. 1988, p. 269, § 19.

2-6-51. District not liable for loss, damage, injury, or death.

Notwithstanding any other provision of law to the contrary, no district shall have any liability for loss, damage, injury, or death resulting from the location of structures or dwellings on state owned or controlled property in violation of properly recorded easements when all legal recourse to remove such structures or dwellings has been exhausted and property rights in favor of the person infringing upon the easement have been upheld on a final judgment with no appeal or review pending. The provisions of this section shall only apply to soil and water conservation districts and their easements.

History. — Code 1981, § 2-6-51, enacted by Ga. L. 2000, p. 420, § 1.

2-6-52. Creation of Agricultural Water Conservation Incentive Program; purpose; participation; funding.

(a) There is created the Agricultural Water Conservation Incentive Program. The program shall be developed, implemented, and supervised by the State Soil and Water Conservation Commission.

(b) The purpose of the program shall be to provide incentives to agricultural producers to foster water conservation and enhance water quality.

(c) Participation in the program shall be voluntary.

(d) The program shall include all 159 counties and 40 soil and water conservation districts.

(e) Priority designations for inclusion in the program shall be under the authority of the State Soil and Water Conservation Commission.

(f) Areas shall be included in the program as the funds are appropriated and the technical assistance becomes available from the local

soil and water conservation district or the State Soil and Water Conservation Commission.

(g) Funding may be provided to assist practices including but not limited to diversions, filter strips, fencing along streams, field borders, alternative watering systems, critical area plantings, grassed waterways, terraces, surface-water retention structures, heavy-use areas, closures of farm animal manure lagoons, riparian buffers or equivalent controls, animal manure waste systems and application, manure stack houses and other manure-holding structures, irrigation system enhancements, and other projects that foster water conservation and enhance water quality.

(h) Priority designation for inclusion in this program for state funding shall be given to projects that foster water conservation and enhance water quality. To be eligible for cost share funds under this Code section, a project shall be evaluated before funding is awarded and after the project is completed to determine the impact on water quality.

History. — Code 1981, § 2-6-52, enacted by Ga. L. 2004, p. 341, § 1.

CHAPTER 7

PLANT DISEASE, PEST CONTROL, AND PESTICIDES

Article 1

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Cross references. — Preservation of forest resources and other plant life generally, T. 12, C. 6. Authority of Commissioner to quarantine animals bearing residue of pesticides, insecticides, and other chemicals, § 26-2-150 et seq. Persons engaged in structural pest control, T. 43, C. 45.

ARTICLE 1

GENERAL PROVISIONS

Code Commission notes. — Ga. L. 1937, p. 659 § 19, which forms the basis for this article, reads as follows: "It is hereby declared to be the purpose of this Act to repeal and supersede all previous legislation upon the subject of the State Entomologist, his powers, duties and functions with respect to injurious insects, plant diseases and other kindred subjects formerly placed under his control, and

supervision, (with the exception of the Act approved March 28, 1935 (Ga. Laws 1935, page 461) relating to the fraudulent sale of plants), to repeal and supplant all chapters and sections referred to and to be considered as exhaustive of the subject of the powers, duties and functions of the State Entomologist with respect to the aforesaid subjects."

Administrative rules and regulations. — Entomology and plant industry, Official Compilation of the Rules and Regulations of the State of Georgia, Rules of the Georgia Department of Agriculture, Chapter 40-4.

OPINIONS OF THE ATTORNEY GENERAL

Commissioner empowered to delegate authority to sign checks. — The director of entomology (now Commissioner) has the power to delegate to an assistant the authority to sign checks. 1954-56 Op. Att'y Gen. p. 4.

RESEARCH REFERENCES

ALR. — Exterminator's tort liability for personal injury or death directly resulting from operations, 29 A.L.R.4th 987.

2-7-1. Short title.

This article shall be known as "The Entomology Act of 1937."

History. — Ga. L. 1937, p. 659, § 1.

OPINIONS OF THE ATTORNEY GENERAL

This article does not by implication repeal Bee Disease Laws of 1920 and 1921. 1945-47 Op. Att'y Gen. p. 5.

Extent of repeal of state entomologist's powers and duties. — The previous powers and duties of the state entomologist were only repealed and supplanted by this article to the extent that they related to the subjects dealt with in this article. 1945-47 Op. Att'y Gen. p. 5.

RESEARCH REFERENCES

C.J.S. — 67 C.J.S., Officers and Public Employees, § 323 et seq. 73 C.J.S., Public Administrative Law and Procedure, §§ 146 et seq., 190 et seq., 207 et seq. 98 C.J.S., Woods and Forests, §§ 3 et seq., 8 et seq.

ALR. — Right to and measure of compensation for animals or trees destroyed to prevent spread of disease or infection, 67 A.L.R. 208.

Warranties and conditions upon sale of seed, nursery stock, etc., 168 A.L.R. 581.

Validity of statutes, ordinances, or regulations for protection of vegetation against disease or infection, 70 A.L.R.2d 852.

2-7-2. Definitions.

As used in this article, the term:

(1) "Agent" means any person soliciting orders for or selling or distributing nursery stock under the partial or full control of a nurseryman or dealer.

(2) "Dealer" means any person not a grower of nursery stock, who buys or otherwise acquires nursery stock for the purpose of reselling or distributing same independently of any control of the nurseryman.

(3) Reserved.

(4) "Nursery" means any grounds or premises on or in which nursery stock is grown, kept, or propagated for sale or distribution.

(5) "Nurseryman" means any person engaged in the production of nursery stock for sale or distribution.

(6) "Nursery stock" means all trees or plants or parts of trees or plants grown or kept for or capable of propagation, distribution, or sale.

(7) "Persons" means individuals, associations, partnerships, and corporations, whether private, public, or municipal.

(8) "Places" means vessels, aircraft, cars, trucks, automobiles, wagons and other vehicles, buildings, docks, depots, yards, nurseries, greenhouses, orchards, and other premises where material affected by this article is grown, produced, kept, stored, or handled.

(8.1) "Plant pest" means any organism which is determined by the Commissioner to be injurious to the agricultural, horticultural, or other interests of the state, including, but not limited to, insects, bacteria, fungi, viruses, or weeds.

(9) "Plants and plant products" means trees, shrubs, vines, forage and cereal plants, and all other plants, cuttings, grafts, scions, buds, and other parts of plants; and fruit, vegetables, roots, bulbs, seeds, wood, timber, and all other plant products. The term "trees" includes shade trees and all other trees except forest trees, jurisdiction as to which is vested in the State Forestry Commission, provided that the term "trees" includes nursery stock of all trees, including forestry trees.

History. — Ga. L. 1937, p. 659, § 2; Ga. L. 1955, p. 309, § 25; Ga. L. 1996, p. 329, § 1.

Code Commission notes. — Pursuant to Code Section 28-9-5, in 1996, the "(3)" designation was added.

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Scope of article. — This article is meant to be limited to injurious insects or insect pests and their diseases. 1945-47 Op. Att'y Gen. p. 5.

Honey bee is not considered as an "insect pest." 1945-47 Op. Att'y Gen. p. 5 (decided prior to 1996 amendment).

2-7-3. Division of Entomology established.

There is established as a division of the Department of Agriculture the Division of Entomology, which shall be under the supervision of the chief entomologist appointed pursuant to Code Section 2-7-4 and shall be subject to the control and supervision of the Commissioner.

History. — Ga. L. 1959, p. 360, § 3.

RESEARCH REFERENCES

C.J.S. — 3 C.J.S., Agriculture, § 115 et seq.

2-7-4. Commissioner of Agriculture as ex officio state entomologist; designation of chief entomologist authorized.

(a) The Commissioner shall be ex officio state entomologist.

(b) The Commissioner is authorized to designate a chief entomologist, who must be a graduate of a recognized college of agriculture and shall have had courses in entomology and plant pathology and experience in field and administrative work in pest control while in the employment of one or more of the several states of the United States or in the employment of that branch of the federal government which is in charge of pest control. The chief entomologist shall serve at the pleasure of and shall be compensated in an amount determined by the Commissioner.

History. — Ga. L. 1959, p. 360, § 2.

2-7-5. Duty of Commissioner generally.

It shall be the duty of the Commissioner to protect the agricultural, horticultural, and other interests of the state from plant pests.

History. — Ga. L. 1937, p. 659, § 4; Ga. L. 1996, p. 329, § 2.

2-7-6. Publication of information and advice.

The Commissioner may disseminate information and advice to the public on the prevention, control, or eradication of plant pests, by the publication and distribution of printed matter, by correspondence, and by other methods.

History. — Ga. L. 1937, p. 659, § 4; Ga. L. 1996, p. 329, § 3.

2-7-7. Cooperative agreements.

The Commissioner may enter into cooperative arrangements with any person, municipality, county, or other department of this state and with boards, officers, and authorities of other states and of the United States for inspection with reference to plant pests and for the control and eradication thereof. The Commissioner may contribute a just and proportionate share of the expenses incurred under such arrangements.

History. — Ga. L. 1937, p. 659, § 4; Ga. L. 1996, p. 329, § 4.

2-7-8. Purchases and expenditures.

The Commissioner may purchase all necessary materials, supplies, office and field equipment, and other things and may make such other expenditures as may be essential and necessary in carrying out this article, within the limits of the amount appropriated by law.

History. — Ga. L. 1937, p. 659, § 4.

2-7-9. Investigations authorized; employment of experts; rental, lease, or purchase of land.

The Commissioner may carry on investigations of methods of control, eradication, and prevention of dissemination of plant pests and for that purpose may employ the necessary experts and may rent, lease, or purchase the necessary land, when required for this purpose.

History. — Ga. L. 1937, p. 659, § 4; Ga. L. 1996, p. 329, § 5.

RESEARCH REFERENCES

C.J.S. — 3 C.J.S., Agriculture, §§ 102 et seq., 115 et seq.

ALR. — Right to and measure of compensation for animals or trees destroyed to prevent spread of disease or infection, 67 A.L.R. 208.

2-7-10. Inspection of plants and other things capable of disseminating or carrying plant pests.

The Commissioner may inspect or cause to be inspected by duly authorized employees or agents any plants, plant products, or other articles, things, or substances that may in the Commissioner's opinion be capable of disseminating or carrying plant pests. For this purpose the Commissioner or the Commissioner's employees and agents shall have the power to enter into or upon any place and to open any bundle, package, or other container containing or thought to contain plants or

plant products or other things capable of disseminating or carrying plant pests.

History. — Ga. L. 1937, p. 659, § 4; Ga. L. 1996, p. 329, § 6.

RESEARCH REFERENCES

Am. Jur. 2d. — 3 Am. Jur. 2d, Agriculture, § 37 et seq.

2-7-11. Nursery inspections; rules governing nursery stock and plants in transit.

(a) The Commissioner may inspect or cause to be inspected all nurseries in this state at such intervals as the Commissioner may deem best. The Commissioner shall have a plenary power to make all rules and regulations governing nurseries and the movement of nursery stock therefrom or the introduction of nursery stock therein as the Commissioner may deem necessary in the eradication, control, or prevention of the dissemination of plant pests.

(b) The Commissioner may also make rules and regulations:

(1) To govern the sale and distribution of nursery stock by dealers and agents;

(2) Under which nursery stock may be brought into this state from other states and territories of the United States or any foreign country; and

(3) With reference to plants and plant products and other things and substances while in transit through this state as may be deemed necessary to prevent the introduction into, dissemination within, and establishment in this state of injurious plant pests.

History. — Ga. L. 1937, p. 659, § 4; Ga. L. 1996, p. 329, § 7.

Administrative rules and regulations. — Live plant regulations, Official Compilation of the Rules and Regulations of the State of Georgia, Rules of Georgia Department of Agriculture, Entomology and Plant Industry, Subject 40-4-9.

RESEARCH REFERENCES

Am. Jur. 2d. — 3 Am. Jur. 2d, Agriculture, §§ 37 et seq., 51 et seq.

2-7-12. Treatment, cutting, or destruction of infested trees, plants, or other things or substances.

The Commissioner may visit any section of this state in which any dangerous pest is supposed to exist and determine whether any infested

trees, plants, or other things or substances are worthy of remedial treatment or shall be destroyed. The Commissioner may supervise or cause the treatment, cutting, or destruction of plants, trees, or other things or substances when deemed necessary to prevent or control the dissemination of plant pests or to eradicate same and may prescribe rules and regulations therefor.

History. — Ga. L. 1898, p. 94, § 4; Civil Code 1910, § 2123; Code 1933, § 5-706; Ga. L. 1937, p. 659, § 4; Ga. L. 1996, p. 329, § 8.

2-7-13. Interception and inspection of plants, plant products, or other things or substances in transit; disposition.

The Commissioner may intercept and inspect, while in transit or after arrival at destination, all plants, plant products, or other things or substances likely to carry plant pests being moved in this state or brought into this state from another state or territory of the United States or from any foreign country. If, upon inspection, such plants, plant products, or other things or substances are found to be infested or infected with an injurious plant pest or are believed to be likely to communicate or transmit same or are being transported in violation of any of the rules and regulations of the Commissioner, then such plants, plant products, or other things or substances may be treated if necessary and released, returned to the sender, or destroyed, their disposition to be determined under rules and regulations prescribed by the Commissioner.

History. — Ga. L. 1937, p. 659, § 4; Ga. L. 1996, p. 329, § 9.

RESEARCH REFERENCES

Am. Jur. 2d. — 3 Am. Jur. 2d, Agriculture, §§ 44, 45.

2-7-14. Demand for information; penalty.

(a) The Commissioner may demand of any person who has plants or plant products or other things likely to carry plant pests in his or her possession to give full information as to the origin and source of the same.

(b) It shall be a misdemeanor for a person to refuse to give the information demanded under subsection (a) of this Code section if he or she is able to do so.

History. — Ga. L. 1937, p. 659, § 4; Ga. L. 1996, p. 329, § 10.

2-7-15. Declaration of public nuisance authorized.

The Commissioner may declare a dangerous plant pest, as well as any plant or other thing which has been infested or infected therewith or exposed to infestation or infection and is therefore likely to communicate the same, to be a public nuisance.

History. — Ga. L. 1937, p. 659, § 4; Ga. L. 1996, p. 329, § 11.

2-7-16. Notice of declaration of nuisance; prescription of treatment; right of appeal.

Whenever inspection discloses that any places, plants or plant products, or other things or substances are infested or infected with any dangerous plant pest which has been declared a public nuisance under this article, the Commissioner or the Commissioner's agents or employees shall give written notice to the owner or other person in possession or control of the place where such things are found, in person or by registered or certified mail or statutory overnight delivery. Such owner or other person shall proceed to control, eradicate, or prevent the dissemination of such plant pest and to remove, cut, or destroy infested or infected plants and plant products or other things or substances within the time and in the manner prescribed by the notice or the rules and regulations made pursuant to this article or to take an appeal as provided in Code Section 2-7-24.

History. — Ga. L. 1898, p. 94, § 5; Civil Code 1910, § 2124; Code 1933, § 5-707; Ga. L. 1937, p. 659, § 7; Ga. L. 1996, p. 329, § 12; Ga. L. 2000, p. 1589, § 3.

Editor's notes. — Ga. L. 2000, p. 1589, § 16, not codified by the General Assembly, provides that the amendment to this Code section is applicable with respect to notices delivered on or after July 1, 2000.

2-7-17. Treatment of nuisance by department where owner fails to act; lien for expenses; compensation not allowed.

Whenever an owner or other person cannot be found or fails, neglects, or refuses to obey the requirements of the notice given under Code Section 2-7-16 and the rules and regulations made pursuant to this article, such requirements shall be carried out by the inspectors or other employees or agents of the department. The Commissioner shall have and enforce a lien for the expense thereof against the place in or upon which such expense was incurred, in the same manner as liens are had and enforced upon buildings and lots, wharves, and piers, for labor and materials furnished by virtue of contract with the owner. No compensation shall be allowed for any trees or plants, plant products, or other things or substances that are destroyed.

History. — Ga. L. 1937, p. 659, § 8.
Cross references. — Mechanics' and materialmen's liens generally, § 44-14-360 et seq.

RESEARCH REFERENCES

Am. Jur. 2d. — 3 Am. Jur. 2d, Agriculture, §§ 44, 46, 47.
ALR. — Right to and measure of compensation for animals or trees destroyed to prevent spread of disease or infection, 67 A.L.R. 208.

2-7-18. Judicial proceeding where owner refuses to act or to permit Commissioner to act; expenses and court costs.

In case any person or persons refuse to execute the directions of the Commissioner or refuse to allow the Commissioner or his agents to do so, the judge of the superior court of the county having jurisdiction over such person, upon complaint filed by the Commissioner or any citizen, shall cite the person or persons to appear before him within three days after notice is served. The judge may hear and determine all these cases. Upon satisfactory evidence, the judge shall cause the prescribed treatment to be executed. The expenses thereof and the costs of court shall be collected from the owner or owners of the affected material.

History. — Ga. L. 1898, p. 94, § 6; Civil Code 1910, § 2125; Code 1933, § 5-708; Ga. L. 1937, p. 659, § 9.

2-7-19. Investigation on citizens' complaint; notice to owner; treatment or destruction of affected plants or other things or substances; costs.

When two reputable citizens of any county in this state notify the Commissioner, from belief, that noxious insects or plant diseases exist in their county, the Commissioner shall ascertain as speedily as possible the nature and extent of the condition reported. If, after such investigation, it is determined by the Commissioner that it is necessary or desirable for the public interest, he shall act with all due diligence to control or eradicate such insects or plant diseases by giving notice to the owner, tenant, or agent of the owner of such premises to treat such affected plants or other things or substances according to the methods he may prescribe or to destroy them within the period set forth in such notice. If, after the expiration of the period set forth in the notice, the affected materials or other things or substances have not been destroyed or treated as prescribed in the notice or the treatment has not been properly applied or is not effectual in ridding the affected materials, things, or substances of the pests, the Commissioner shall cause such affected materials, things, or substances to be properly treated or destroyed, as his judgment warrants. The cost of the work shall be

assessed against the owner of the premises and shall be collected in the same manner as that provided in Code Section 2-7-17.

History. — Ga. L. 1898, p. 94, § 14; Civil Code 1910, § 2132; Code 1933, § 5-714; Ga. L. 1937, p. 659, § 10.

RESEARCH REFERENCES

Am. Jur. 2d. — 3 Am. Jur. 2d, Agriculture, § 39 et seq.

2-7-20. Declaration of quarantine; violation unlawful.

(a) The Commissioner may declare a quarantine against any area, place, nursery, grove, orchard, county, or counties within this state, other states, or territories of the United States or any portion thereof or any foreign country, in reference to dangerous plant pests and may prohibit the movement within this state or any part thereof or the introduction into this state from other states or territories of the United States or any foreign country of all plants, plant products, or other things or substances from such quarantined places or areas as are likely to carry dangerous plant pests, if such quarantine is determined by the Commissioner, after due investigation, to be necessary in order to protect the agricultural, horticultural, or other interests of this state. In such cases the quarantine may be made absolute or rules and regulations may be adopted prescribing the method and manner under which the prohibited articles may be moved into or within, sold, or otherwise disposed of within or outside the state.

(b) Whenever the Commissioner declares a quarantine against any place, nursery, grove, orchard, county, or counties of the state or against other states or territories of the United States or any foreign country, as to a dangerous plant pest, it shall be unlawful thereafter until such quarantine is removed for any person to introduce into this state or to move, sell, or otherwise dispose of within this state any plant, plant produce, or other things included in such quarantine, except under such rules and regulations as may be prescribed by the Commissioner.

History. — Ga. L. 1937, p. 659, §§ 4, 13; Ga. L. 1996, p. 329, § 13.

Cross references. — Power of director of State Forestry Commission to declare and fix boundaries of zones of infestation or infection upon determination of existence of infestation of forest insect pests or infection of forest tree diseases, § 12-6-16.

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Agent criminally liable for quarantine violation. — The fact that the manager of a company was acting for the manager's employer in violating a quarantine established by the director of entomology (now Commissioner) would not

relieve the manager of individual criminal liability. 1945-47 Op. Att'y Gen. p. 8.

Quarantine violation punishable as misdemeanor. — The violation of a quarantine declared by the director of entomology (now Commissioner) is punishable as a misdemeanor. 1945-47 Op. Att'y Gen. p. 8.

RESEARCH REFERENCES

Am. Jur. 2d. — 3 Am. Jur. 2d, Agriculture, §§ 37, 38.

2-7-21. Registration of certain growers.

The Commissioner may provide for the registration of all growers of plant or nursery stock intended for sale or distribution, when such plants or nursery stock has been declared by the Commissioner as being liable or likely to disseminate or capable of disseminating plant pests.

History. — Ga. L. 1937, p. 659, § 4; Ga. L. 1996, p. 329, § 14.

2-7-22. Assessment of costs.

For the purpose of defraying the expenses of the registration of nurserymen, dealers, agents, and plant growers and the certification and inspection of plants or plant products or other things, the Commissioner may assess and collect the cost thereof, any surplus to be paid into the state treasury.

History. — Ga. L. 1937, p. 659, § 4.

2-7-23. Promulgation of rules and regulations; publication thereof.

(a) The Commissioner may make such rules and regulations governing the conditions under which plants or other products may be produced as will permit such plants or other products to be certified as free or relatively free from plant pests.

(b) Any rules and regulations made by the Commissioner relative to the certification of tomato, cabbage, onion, and all other cruciferous plants shall be published on or before December 15 of the year preceding that in which such plants are to be grown; provided, however, that in case of emergency supplemental rules and regulations may be promulgated and published; and provided, further, that certification of tomato, cabbage, onion, and other cruciferous plants shall not be compulsory on the grower.

(c) All rules and regulations made by the Commissioner within the limits of the authority conferred by this article shall have the full force

and effect of law. Printed copies of all acts, rules and regulations, quarantines, and notices of the department which are published under the authority of the Commissioner shall be admitted as sufficient evidence of such acts, rules and regulations, quarantines, or notices in all courts and on all occasions whatsoever, when the correctness of such copies is certified by the Commissioner.

History. — Ga. L. 1937, p. 659, §§ 4, 5; Ga. L. 1996, p. 329, § 15.

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Commissioner authorized to establish quarantine. — The director of entomology (now Commissioner) may establish a quarantine for the protection of the agricultural, horticultural, and other interests of the state from insects, pests, and plant diseases. 1945-47 Op. Att'y Gen. p. 8.

2-7-24. Administrative review of rules and notices.

Any person affected by any rule or regulation made or notice given pursuant to this article may have a review thereof as provided in Chapter 13 of Title 50, the "Georgia Administrative Procedure Act," for the purpose of having such rule, regulation, or notice modified, suspended, or withdrawn.

History. — Ga. L. 1937, p. 659, § 6.

2-7-25. Required compliance with article and rules.

It shall be unlawful for any nurseryman, dealer, or agent to sell, give away, carry, ship, or deliver for carriage or shipment any nursery stock, except in compliance with this article and the rules and regulations made pursuant thereto.

History. — Ga. L. 1937, p. 659, § 14.

2-7-26. Importation of injurious insect or plant disease without permit prohibited.

The introduction into this state of any insect injurious to plants in any stage of development or of any specimen of any disease injurious to plants, except under a special permit issued by the Commissioner, is prohibited.

History. — Ga. L. 1937, p. 659, § 11.

2-7-27. Report of violations; investigation and disposition.

Any person, including a common carrier, who receives plants, plant products, or other things or substances sold, given away, carried, shipped, or delivered for carriage or shipment within this state, as to which this article and the rules and regulations made pursuant thereto have not been complied with, shall immediately inform the Commissioner or any employee or agent of the Commissioner and shall isolate and hold the plants, plant products, or other things or substances in question unopened or unused, subject to such inspection and such disposition as may be provided by the Commissioner.

History. — Ga. L. 1937, p. 659, § 12.

2-7-28. Act of agent imputed to principal.

In construing and enforcing this article, the act, omission, or failure of any official, agent, or other person acting for or employed by any association, partnership, corporation, or other principal within the scope of his employment or office shall in every case be deemed the act, omission, or failure of such association, partnership, corporation, or other principal, as well as that of the individual.

History. — Ga. L. 1937, p. 659, § 16.

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Agent criminally liable for quarantine violation. — The fact that the manager of a company was acting for the manager's employer in violating a quarantine established by the director of entomology (now Commissioner) would not relieve the manager of individual criminal liability. 1945-47 Op. Att'y Gen. p. 8.

2-7-29. Enforcement of article generally; criminal proceedings; subpoena powers.

The Commissioner may enforce this article and the rules and regulations made pursuant hereto by injunction in the proper court as well as by criminal proceedings. It shall be the duty of the prosecuting attorneys of all courts to represent the Commissioner when called upon to do so. In the discharge of his duties and in the enforcement of the powers delegated in this article, the Commissioner may issue subpoenas for the production of evidence, require production of books and papers, administer oaths, and subpoena and hear witnesses. To this end, it is made the duty of the various sheriffs throughout this state to serve all subpoenas and other papers upon the request of the Commissioner.

History. — Ga. L. 1937, p. 659, § 4.

2-7-30. Injunctions; violations declared public nuisances.

The Commissioner may institute action to enjoin any violation of this article or any rule or regulation or quarantine promulgated under this article. A violation of this article or any rule or regulation promulgated pursuant to this article or any quarantine established pursuant hereto is declared to constitute a public nuisance. Such action for injunction may be maintained notwithstanding the existence of other legal remedies and notwithstanding the pendency or successful completion of a criminal prosecution as for a misdemeanor.

History. — Ga. L. 1960, p. 255, § 1.

2-7-31. Penalty.

Any person who violates any provision or requirement of this article or of the rules and regulations made thereunder or of any notice given pursuant thereto or who forges, counterfeits, defaces, destroys, or wrongfully or improperly uses any certificate provided for in this article or in the rules and regulations made pursuant hereto or who interferes with or obstructs any inspector or other employee or agent of the department in the performance of his duties shall be guilty of a misdemeanor.

History. — Ga. L. 1937, p. 659, § 15.

OPINIONS OF THE ATTORNEY GENERAL

Agent criminally liable for quarantine violation. — The fact that the manager of a company was acting for the manager's employer in violating a quarantine established by the director of entomology (now Commissioner) would not relieve the manager of individual criminal liability. 1945-47 Op. Att'y Gen. p. 8.

Violation of quarantine punishable as misdemeanor. — The violation of a quarantine declared by the director of entomology (now Commissioner) is punishable as a misdemeanor. 1945-47 Op. Att'y Gen. p. 8.

ARTICLE 2

CONTROL OF PESTICIDES

Administrative rules and regulations. — Economic poisons, Official Compilation of the Rules and Regulations of the State of Georgia, Rules of Georgia Department of Agriculture, Chapter 40-11.

Pesticide use and application, Official Compilation of the Rules and Regulations of the State of Georgia, Rules of Georgia Department of Agriculture, Chapter 40-21.

Law reviews. — For article, "Controlling the Use of Pesticides," see 15 J. of Public L. 311 (1966).

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Registration required for mildew-resistant paint. — Mildew-resistant paint is subject to the registration and other requirements of this article. 1972 Op. Att'y Gen. No. 72-95.

Registration required for device sold for controlling bacteria in markets. — A device being manufactured and sold in this state for the stated purpose of controlling meat-spoilage bacteria and fungi in meat markets and packing houses is subject to registration under this article. 1963-65 Op. Att'y Gen. p. 543.

RESEARCH REFERENCES

ALR. — Anticompetitive covenants: aerial spray dust business, 60 A.L.R.4th 965.

2-7-50. Short title.

This article shall be known as the "Georgia Pesticide Control Act of 1976."

History. — Ga. L. 1976, p. 282, § 1.

Law reviews. — For article advocating more comprehensive laws regulating pesticide use, see 17 J. of Public L. 351 (1968). For annual survey of product liability law, see 58 Mercer L. Rev. 313 (2006).

2-7-51. Purpose of article; legislative findings.

The purpose of this article is to regulate, in the public interest, the labeling, distribution, storage, transportation, use, and disposal of pesticides. The General Assembly finds that pesticides are valuable to this state's agricultural production and to the protection of man and the environment from insects, rodents, weeds, and other forms of life which may be pests but that it is essential to the public health and welfare that they be regulated to prevent adverse effects on human life and on the environment. New pesticides which are valuable to the control of pests and for use as defoliants, desiccants, and plant regulators are continually being discovered or synthesized. The dissemination of accurate scientific information as to the proper use of any pesticide is vital to the public health and welfare and to the environment, both immediately and in the future. Therefore, it is deemed necessary to provide for regulation of such pesticides.

History. — Ga. L. 1976, p. 282, § 3.

RESEARCH REFERENCES

Am. Jur. 2d. — 3 Am. Jur. 2d, Agriculture, § 1 et seq.

2-7-52. Definitions.

As used in this article, the term:

(1) "Active ingredient" means any ingredient which will prevent, destroy, repel, control, or mitigate pests or which will act as a plant regulator, defoliant, or desiccant.

(2) "Adulterated" shall apply to any pesticide:

(A) If its strength or purity falls below the professed standard of quality, as expressed on its labeling or under which it is sold;

(B) If any substance has been substituted wholly or in part for the pesticide; or

(C) If any valuable constituent of the pesticide has been wholly or in part abstracted.

(3) "Animal" means all vertebrate and invertebrate species, including, but not limited to, man and other mammals, birds, fish, and shellfish.

(4) "Antidote" means the most practical immediate treatment in case of poisoning and includes first-aid treatment.

(5) "Beneficial insects" means those insects which, during their life cycles, are effective pollinators of plants, are parasites or predators of pests, or are otherwise beneficial.

(6) "Commissioner" means the Commissioner of Agriculture.

(7) "Defoliant" means any substance or mixture of substances intended for causing the leaves or foliage to drop from a plant, with or without causing abscission.

(8) "Desiccant" means any substance or mixture of substances intended for artificially accelerating the drying of plant tissue.

(9) "Device" means any instrument or contrivance, other than a firearm, which is intended for trapping, destroying, repelling, or mitigating any pest or any other form of plant or animal life, other than man and other than bacteria, viruses, or other microorganisms on or in living man or other living animals; the term does not include equipment used for the application of pesticides when such equipment is sold separately therefrom.

(10) "Distribute" means to offer for sale, hold for sale, sell, barter, ship, deliver for shipment, or receive and, having so received, deliver or offer to deliver pesticides in this state.

(11) "Environment" includes the water, air, and land, all plants and man and other animals living therein, and the interrelationships which exist among these.

(12) "Environmental Protection Agency" means the United States Environmental Protection Agency.

(13) "FIFRA" means the Federal Insecticide, Fungicide, and Rodenticide Act, and the amendments thereto.

(14) "Fungi" means all nonchlorophyll-bearing thallophytes, that is, all nonchlorophyll-bearing plants of a lower order than mosses and liverworts, as, for example, rusts, smuts, mildews, molds, yeasts, and bacteria, except those on or in living man or other living animals and except those in or on processed food, beverages, or pharmaceuticals.

(15) "Highly toxic pesticide" means any pesticide determined to be a highly toxic pesticide under the authority of Section 25(c)(2) of FIFRA or by the Commissioner under paragraph (2) of subsection (a) of Code Section 2-7-63.

(16) "Imminent hazard" means a situation which exists when the continued use of a pesticide during the time required for cancellation proceedings pursuant to Code Section 2-7-59 would likely result in unreasonable adverse effects on the environment or will involve unreasonable hazard to the survival of a species declared endangered under the Endangered Species Act of 1973 and any amendments thereto.

(17) "Inert ingredient" means an ingredient which is not an active ingredient.

(18) "Ingredient statement" means a statement of the name and percentage of each active ingredient in a pesticide, together with the total percentage of the inert ingredients in the pesticide. When the pesticide contains arsenic in any form, the ingredient statement shall also include percentages of total and water soluble arsenic, each calculated as elemental arsenic.

(19) "Insect" means any of the numerous small invertebrate animals generally having a body more or less obviously segmented, for the most part belonging to the class Insecta, comprising six-legged, usually winged forms, as, for example, beetles, bugs, bees, and flies, and to other allied classes of arthropods whose members are wingless and usually have more than six legs, as, for example, spiders, mites, ticks, centipedes, and wood lice.

(20) "Label" means the written, printed, or graphic matter on or attached to the pesticide or device or any of its containers or wrappers.

(21) "Labeling" means the label and all other written, printed, or graphic matter:

(A) Accompanying the pesticide or device at any time; or

(B) To which reference is made on the label or in literature accompanying the pesticide or device, except for current official publications of:

(i) The Environmental Protection Agency;

(ii) The United States Department of Agriculture;

(iii) The United States Department of the Interior;

(iv) The United States Department of Health and Human Services;

(v) State experiment stations;

(vi) State agricultural colleges; and

(vii) Other similar federal or state institutions or agencies authorized by law to conduct research in the field of pesticides.

(22) "Land" means all land and water areas, including airspace, and all plants, animals, structures, buildings, contrivances, and machinery appurtenant thereto or situated thereon, fixed or mobile, including any used for transportation.

(23) "Nematode" means invertebrate animals of the phylum Nemathelminthes and class Nematoda, that is, unsegmented roundworms with elongated, fusiform, or saclike bodies covered with cuticle and inhabiting soil, water, plants, or plant parts; they may also be called nemas or eelworms.

(24) "Permit" means a written certificate issued by the Commissioner or his authorized agent, authorizing the purchase, possession, or use, or any combination thereof, of certain pesticides or pesticide uses defined in paragraphs (31) and (33) of this Code section.

(25) "Person" means any individual, partnership, association, fiduciary, corporation, or organized group of persons, whether or not incorporated.

(26) "Pest" means:

(A) Any insect, rodent, nematode, fungus, or weed; or

(B) Any other form of terrestrial or aquatic plant or animal life or virus, bacterium, or other microorganism, except viruses, bacteria, or other microorganisms on or in living man or other living animals, which the Environmental Protection Agency administrator declares to be a pest under Section 25(c)(1) of FIFRA or which the Commissioner declares to be a pest under paragraph (1) of subsection (a) of Code Section 2-7-63.

(27) "Pesticide" means:

(A) Any substance or mixture of substances intended for preventing, destroying, repelling, or mitigating any pests; and

(B) Any substance or mixture of substances intended for use as a plant regulator, defoliant, or desiccant.

(28) "Plant regulator" means any substance or mixture of substances, intended through physiological action for accelerating or retarding the rate of growth or rate of maturation or for otherwise altering the behavior of ornamental or crop plants or the produce thereof; the term shall not include substances to the extent that they are intended as plant nutrients, trace elements, nutritional chemicals, plant inoculants, and soil amendments.

(29) "Protect health and the environment" means protection against any unreasonable adverse effects on the environment.

(30) "Registrant" means a person who has registered any pesticide pursuant to this article.

(31) "Restricted use pesticide" means any pesticide whose label bears one or more uses which have been classified as restricted by the administrator of the Environmental Protection Agency.

(32) "Restricted use pesticide dealer" means any person who distributes any restricted use pesticide or any pesticide whose label bears a state restricted pesticide use to any person other than a manufacturer or distributor of pesticides.

(33) "State restricted pesticide use" means any pesticide use which, when carried out in accordance with label directions and other commonly recognized good practices, the Commissioner determines, subsequent to a hearing, to require additional restrictions for that use to protect the environment, including man, lands, beneficial insects, animals, crops, and wildlife, other than pests.

(34) "Unreasonable adverse effects on the environment" means any unreasonable risk to man or the environment, taking into account the economic, social, and environmental costs and benefits of the use of any pesticide.

(35) "Weed" means any plant which grows where not wanted.

(36) "Wildlife" means all living things that are neither human, domesticated, nor, as defined in this article, pests, including, but not limited to, mammals, birds, and aquatic life.

History. — Ga. L. 1950, p. 390, § 2; Ga. L. 1960, p. 178, § 1; Ga. L. 1976, p. 282, § 4.

Code Commission notes. — Pursuant to Code Section 28-9-5, in 1990, "Section" was substituted for "section" in paragraphs (15) and (26).

U.S. Code. — The Federal Insecticide, Fungicide, and Rodenticide Act and amendments thereto, referred to in para-

graph (13) of this Code section, was codified at 7 U.S.C. §§ 135 through 135K. However, in 1972 the Federal Insecticide, Fungicide, and Rodenticide Act was extensively amended by Pub. L. No. 92-516. The 1972 Act, as amended, provided that the provisions of the Federal Insecticide, Fungicide, and Rodenticide Act and the regulations enacted thereunder should remain in effect until superseded by the amendments made by the 1972 Act and the regulations thereunder. See Pub. L. No. 92-516, § 4, as amended by Pub. L. No. 94-140, § 4 and Pub. L. No. 95-396, § 28. The 1972 Act has been codified at 7 U.S.C. §§ 136 through 136y and treated as a new subchapter 2 in the chapter of the U.S.C. in which the Federal Insecticide, Fungicide, and Rodenticide Act appeared. Public Law No. 92-516, § 1 provides that the short title of the 1972 Act is the Federal Environmental Pesticide Control Act of 1972.

Section 25(c)(2) of the Federal Insecticide, Fungicide, and Rodenticide Act, referred to in paragraph (15) of this Code section, is codified at 7 U.S.C. § 136w(c)(2).

The federal Endangered Species Act of 1973, referred to in paragraph (16) of this Code section, is codified at 16 U.S.C. § 1531 et seq.

Section 25(c)(1) of the Federal Insecticide, Fungicide, and Rodenticide Act, referred to in paragraph (26) of this Code section, is codified at 7 U.S.C. § 136w(c)(1).

2-7-53. Meaning of "misbranded."

The term "misbranded" shall apply:

(1) To any pesticide or device subject to this article:

(A) If its labeling bears any statement, design, or graphic representation relative thereto or to its ingredients which is false or misleading in any particular;

(B) If it is an imitation of or is distributed under the name of another pesticide; or

(C) If any word, statement, or other information required to appear on the label or labeling is not prominently placed thereon with such conspicuousness, as compared with other words, statements, designs, or graphic matter in the labeling, or in such terms as to render it likely to be read and understood by the ordinary individual under customary conditions of purchase and use;

(2) To any pesticide:

(A) If the labeling does not contain a statement of the federal use classification under which the product is registered;

(B) If the labeling accompanying it does not contain directions for use which are necessary for effecting the purpose for which the product is intended and which, if complied with, together with any requirements imposed under Section 3(d) of FIFRA, are adequate to protect health and the environment; or

(C) If the label does not bear:

(i) The name, brand, or trademark under which the pesticide is distributed;

(ii) An ingredient statement on that part of the immediate container which is presented or displayed under customary conditions of purchase, and on the outside container and wrapper of the retail package, if there is such a container and wrapper through which the ingredient statement on the immediate container cannot be clearly read, provided that the ingredient statement may appear prominently on another part of the container, as permitted pursuant to Section 2(q)(2)(A) of FIFRA if the size or form of the container makes it impracticable to place it on the part of the retail package which is presented or displayed under customary conditions of purchase;

(iii) A warning or caution statement which may be necessary and which, if complied with together with any requirements imposed under Section 3(d) of FIFRA, would be adequate to protect health and the environment;

(iv) The net weight or measure of the contents;

(v) The name and address of the manufacturer, registrant, or person for whom manufactured; and

(vi) The Environmental Protection Agency registration number assigned to the pesticide and the Environmental Protection Agency establishment number if required by regulations under FIFRA;

(D) If the pesticide contains any substance or substances in quantities highly toxic to man, unless the label bears, in addition to other label requirements:

(i) The skull and crossbones;

(ii) The word "POISON" in red, prominently displayed on a background of distinctly contrasting color; and

(iii) A statement of a practical treatment, first aid or otherwise, in case of poisoning by the pesticide; or

(E) If the pesticide container does not bear a registered label or does not bear a label stating that it is for "experimental use only."

History. — Ga. L. 1950, p. 390, § 2; Ga. L. 1976, p. 282, § 5.

Code Commission notes. — Pursuant to Code Section 28-9-5, in 1990, "Section" was substituted for "section" in subparagraph (2)(B) and in two places in subparagraph (2)(C).

U.S. Code. — Section 2(q)(2)(A) of the Federal Insecticide, Fungicide, and Rodenticide Act, referred to in division (2)(C)(ii) of this Code section, is codified at 7 U.S.C. § 135(q)(2)(R).

Section 3(d) of the Federal Insecticide, Fungicide, and Rodenticide Act, referred to in subparagraph (B) of paragraph (2) and division (2)(C)(iii) of this Code section, is codified at 7 U.S.C. § 136a(d).

RESEARCH REFERENCES

ALR. — Constitutionality of statutes requiring notice by label or otherwise of the fact that product is imported, or as to place of production, 124 A.L.R. 572.

2-7-54. Commissioner to administer article.

This article shall be administered by the Commissioner of Agriculture of this state.

History. — Ga. L. 1976, p. 282, § 2.

2-7-55. Registration required; exceptions; contents of application; fees; renewal; special local needs.

(a) Every pesticide which is distributed in this state shall be registered with the Commissioner, subject to this article. Such registration shall be renewed annually prior to January 1, provided that registration is not required if a pesticide is shipped from one plant or warehouse to another plant or warehouse operated by the same person and if the pesticide is used solely at such plant or warehouse as a constituent part to make a pesticide which is registered under this article or if the pesticide is distributed under the provisions of an experimental use permit issued under Code Section 2-7-56; provided, further, that after all pesticides have been classified for "General Use" or "Restricted Use" as required by Section 3 of FIFRA, the Commissioner, by regulation, may require the registration of products on a multiple-year basis of two, three, four, or five years.

(b) The applicant for registration shall file a statement with the Commissioner which shall include:

(1) The name and address of the applicant and the name and address of the person whose name will appear on the label, if other than the applicant's;

(2) The name of the pesticide;

(3) Other necessary information required for completion of the department's application for registration form; and

(4) A complete copy of the labeling accompanying the pesticide and a statement of all claims to be made for it, including the directions for use and the use classification as provided for in FIFRA.

(c) The Commissioner, when he deems it necessary in the administration of this article, may require the submission of the complete formula of any pesticide, including the active and inert ingredients.

(d) The Commissioner may require a full description of the tests made and the results thereof on which the claims are based on any

pesticide not registered pursuant to Section 3 of FIFRA or on any pesticide on which restrictions are being considered. The Commissioner may refuse to consider data he required of the initial registrant of a pesticide use in support of any other application for registration of that same use, unless such subsequent applicant has first obtained written permission to use such data. If data from the original registrant is considered without such permission, the Commissioner shall promptly notify such initial registrant. In the case of renewal of registration, a statement shall be required only with respect to information which is different from that furnished when the pesticide was registered or last reregistered.

(e) The Commissioner may prescribe other necessary information by regulation.

(f) The applicant desiring to register a pesticide shall pay an annual registration fee to the Commissioner for each pesticide registered for such applicant. The amount of such fee shall be established by the Commissioner in an amount not less than $100.00 nor more than $200.00 per annum. All such registrations shall expire on December 31 of any one year, provided that if the Commissioner adopts a multiple-year registration period, the annual registration fee per product shall be compounded for the number of years included in the multiple-year registration. A registration for a special local need pursuant to subsection (i) of this Code section which is disapproved by the administrator of the Environmental Protection Agency shall expire on the effective date of the administrator's disapproval. Any fees collected pursuant to this Code section shall be retained pursuant to the provisions of Code Section 45-12-92.1.

(g) Any registration approved by the Commissioner and in effect on December 31 or, in case a multiple-year registration period is adopted, on the last day of the registration period, for which a renewal application has been made and the proper fee paid, shall continue in full force and effect until such time as the Commissioner notifies the applicant that the registration has been renewed or denied, in accordance with Code Section 2-7-59. Forms for reregistration shall be mailed to registrants at least 30 days prior to the due date.

(h) If the renewal of a pesticide registration is not filed prior to January 1 of any one year, or by the expiration date in the case of multiple-year registration, the applicable registration fee shall be doubled and shall be paid by the applicant before the registration renewal for that pesticide shall be issued.

(i) Provided the state is certified by the administrator of the Environmental Protection Agency to register pesticides for special local need pursuant to Section 24(c) of FIFRA, the Commissioner shall require the

information set forth under subsections (b) through (e) of this Code section and, subject to the terms and conditions of that certification, shall register such pesticide if he determines that:

(1) Its composition is such as to warrant the proposed claims for it;

(2) Its labeling and other material required to be submitted comply with the requirements of this article;

(3) It will perform its intended function without unreasonable adverse effects on the environment;

(4) When used in accordance with widespread and commonly recognized practice, it will not generally cause unreasonable adverse effects on the environment;

(5) The classification for general use or restricted use is in conformity with Section 3(d) of FIFRA; and

(6) A special local need exists.

(j) The Commissioner shall not make any lack of essentiality a criterion for denying registration of any pesticide. Where two pesticides meet the requirements of this Code section, one should not be registered in preference to the other.

History. — Ga. L. 1950, p. 390, § 4; Ga. L. 1958, p. 389, § 1; Ga. L. 1976, p. 282, § 7; Ga. L. 2001, p. 900, § 1; Ga. L. 2010, p. 9, § 1-3/HB 1055.

Code Commission notes. — Pursuant to Code Section 28-9-5, in 1990, "Section" was substituted for "section" in subsection (a), subsection (d), and in two places in subsection (i).

U.S. Code. — Section 3 of the Federal Insecticide, Fungicide, and Rodenticide Act, referred to in subsections (a) and (d) of this Code section, is codified at 7 U.S.C. § 136a.

Section 24(c) of the Federal Insecticide, Fungicide, and Rodenticide Act, referred to in subsection (i) of this section, is codified at 7 U.S.C. § 136v(c).

Section 3(d) of the Federal Insecticide, Fungicide, and Rodenticide Act, referred to in paragraph (i)(5) of this section, is codified at 7 U.S.C. § 136a(d).

RESEARCH REFERENCES

Am. Jur. 2d. — 61C Am. Jur. 2d, Pollution Control, § 1633 et seq.

2-7-56. Issuance of experimental use permits; terms; revocation or modification.

(a) Provided the state is authorized by the administrator of the Environmental Protection Agency to issue experimental use permits, the Commissioner may:

(1) Issue an experimental use permit to any person applying for an experimental use permit, if he determines that the applicant needs such permit in order to accumulate information necessary to register

a pesticide under subsection (i) of Code Section 2-7-55. An application for an experimental use permit may be filed at the time of or before or after an application for registration is filed;

(2) Refuse to issue an experimental use permit, if he determines that issuance of such permit is not warranted or that the pesticide use to be made under the proposed terms and conditions may cause unreasonable adverse effects on the environment;

(3) Prescribe terms, conditions, and a period of time for the experimental use permit, which permit shall be under the supervision of the Commissioner; and

(4) Revoke or modify any experimental use permit at any time if he finds that its terms or conditions are being violated or that its terms and conditions are inadequate to avoid unreasonable adverse effects on the environment.

(b) Any person who has obtained an Environmental Protection Agency experimental use permit for a product to be used in this state shall, before shipping the product into this state, also secure an experimental use permit from the Commissioner. No fee shall be required for any experimental use permit issued under this article.

History. — Ga. L. 1976, p. 282, § 8.

RESEARCH REFERENCES

Am. Jur. 2d. — 61C Am. Jur. 2d, Pollution Control, § 1726 et seq.

2-7-57. Licensing of restricted use pesticide dealers required; application; fees; responsibility of dealer.

(a) It shall be unlawful for any person to act in the capacity of a restricted use pesticide dealer, as defined by this article, or to advertise as or assume to act as a restricted use pesticide dealer at any time, without first having obtained an annual license from the Commissioner, which license shall expire on December 31 of each year. A license shall be required for each location or outlet located within this state from which restricted use pesticides or pesticides with state restricted uses are distributed, provided that any manufacturer, registrant, or distributor who has no pesticide dealer outlet within this state and who distributes such pesticides directly into this state shall obtain a restricted use pesticide dealer license for his principal out-of-state location or outlet.

(b) Application for a license shall be accompanied by a $55.00 annual license fee, shall be on a form prescribed by the Commissioner, and shall include the full name of the person applying for such license. If the

applicant is a partnership, association, corporation, or organized group of persons, the full name of each member of the firm or partnership or the names of the principal officers of the association or corporation shall be given on the application. Such application shall further state the address of the outlet to be licensed, the principal business address of the applicant, and any other necessary information prescribed by the Commissioner. Any fees collected pursuant to this Code section shall be retained pursuant to the provisions of Code Section 45-12-92.1.

(c) This Code section shall not apply to a licensed pesticide contractor who sells pesticides only as an integral part of his pesticide application service, when such pesticides are dispensed only through equipment used for such pesticide application, or to a federal, state, county, or municipal agency which provides pesticides only for its own programs.

(d) If an application for renewal of a restricted use pesticide dealer license is not filed on or prior to January 1 of any one year, an additional fee of $15.00 shall be assessed and added to the original fee and shall be paid by the applicant before the renewal license shall be issued.

(e) Each restricted use pesticide dealer shall be responsible for the acts of each person employed by him in the solicitation and sale of pesticides and all claims and recommendations for use of pesticides. The dealer's license shall be subject to denial, suspension, or revocation, after a hearing, for any violation of this article or regulations issued hereunder, whether committed by the dealer or by the dealer's officer, agent, or employee.

History. — Ga. L. 1976, p. 282, § 14; Ga. L. 2010, p. 9, § 1-4/HB 1055.

RESEARCH REFERENCES

ALR. — Right to enjoin business competitor from unlicensed or otherwise illegal acts or practices, 90 A.L.R.2d 7.

2-7-58. Denial, suspension, or revocation of license, registration, or permit.

The Commissioner is authorized to deny, suspend, or revoke any license, registration, or permit provided for in this article, subject to a hearing and in conformance with Chapter 13 of Title 50, the "Georgia Administrative Procedure Act," in any case in which he finds that there has been a failure or refusal to comply with this article or regulations adopted hereunder.

History. — Ga. L. 1950, p. 390, § 8; Ga. L. 1976, p. 282, § 16.

Cross references. — Authority of Commissioner to impose penalties in lieu of other action, § 2-2-10.

2-7-59. Grounds for denial, suspension, or cancellation of registration of pesticides formulated to meet local needs or for seeking legal recourse against them; notice and hearing; judicial review.

(a) Provided the state is certified by the administrator of the Environmental Protection Agency to register pesticides formulated to meet special local needs, the Commissioner may act according to the criteria set forth in this Code section in refusing to register such pesticides, in canceling or suspending registration of such pesticides, or in seeking legal recourse against such pesticides.

(b) If it does not appear to the Commissioner that the composition of a pesticide is such as to warrant the proposed claims for it or if the pesticide and its labeling and other material required to be submitted do not comply with this article or regulations adopted hereunder, he shall notify the applicant of the manner in which the pesticide, labeling, or other material required to be submitted fails to comply with this article, so as to afford the applicant an opportunity to make the necessary corrections. If, upon receipt of such notice, the applicant does not make the required changes, the Commissioner may refuse to register the pesticide. The applicant may request a hearing as provided for in Chapter 13 of Title 50, the "Georgia Administrative Procedure Act."

(c) When the Commissioner determines that a pesticide or its labeling does not comply with this article or the regulations adopted hereunder or when necessary to prevent unreasonable adverse effects on the environment, he may cancel the registration of a pesticide or change the classification of a pesticide, after providing opportunity for a hearing in accordance with Chapter 13 of Title 50, the "Georgia Administrative Procedure Act."

(d) When the Commissioner determines that there is an imminent hazard, he may, on his own motion, immediately suspend the registration of a pesticide in conformance with Chapter 13 of Title 50, the "Georgia Administrative Procedure Act." Opportunity for a hearing shall be provided thereafter with the utmost possible expedition.

(e) If the Commissioner determines that a federally registered pesticide, with respect to the use of such pesticide within this state, does not warrant the proposed claims for it or would cause unreasonable adverse effects on the environment, he may refuse to register the pesticide as required in Code Section 2-7-55, or, if the pesticide is

registered under Code Section 2-7-55, he may cancel or suspend the registration pursuant to this Code section. If the Commissioner determines that the pesticide does not comply with FIFRA or the regulations adopted thereunder, he shall advise the Environmental Protection Agency of the manner in which the pesticide, labeling, or other material required to be submitted fails to comply with FIFRA and suggest necessary corrections.

(f) Any person who will be adversely affected by an order authorized in this Code section may obtain judicial review thereof in accordance with Chapter 13 of Title 50, the "Georgia Administrative Procedure Act."

History. — Ga. L. 1976, p. 282, § 9; Ga. L. 1982, p. 3, § 2.

2-7-60. Subpoena powers.

The Commissioner may issue subpoenas to compel the attendance of witnesses or the production of books, documents, and records or any combination thereof in this state, in any hearing affecting the authority or privilege granted by a license, registration, or permit issued under this article.

History. — Ga. L. 1976, p. 282, § 17.

2-7-61. Records to be kept; access by Commissioner; confidentiality.

(a) Any person issued a license, permit, or registration under this article may be required by the Commissioner to keep accurate records containing the following information:

(1) The delivery, movement, or holding of any pesticide or device, including the quantity thereof;

(2) The date of shipment and receipt;

(3) The name of consignor and consignee; and

(4) Any other information necessary for the enforcement of this article, as prescribed by the Commissioner.

(b) The Commissioner shall have access to the records required in subsection (a) of this Code section at any reasonable time, in order to copy or make copies of such records, for the purpose of carrying out this article. Unless required for the enforcement of this article, the information derived from such records shall be confidential and, if summarized, shall not identify an individual person.

History. — Ga. L. 1976, p. 282, § 15.

RESEARCH REFERENCES

Am. Jur. 2d. — 61C Am. Jur. 2d, Pollution Control, § 1692 et seq.

2-7-62. Prohibited acts; exemptions.

(a) It is unlawful for any person to distribute any of the following in this state:

(1) Any pesticide which has not been registered pursuant to this article;

(2) Any pesticide, if any of the claims made for it or any of the directions for its use or any labeling differs from the representations made in connection with its registration or if the composition of the pesticide differs from its composition as represented in connection with its registration, provided that a change in the labeling or formulation of a pesticide may be made within a registration period without requiring reregistration of the product, if the registration is amended to reflect such change and if such change will not violate any provision of FIFRA or this article;

(3) Any pesticide, unless it is in the registrant's or the manufacturer's unbroken immediate container and there is affixed to such container and to the outside container or wrapper of the retail package, if there is one through which the required information on the immediate container cannot be clearly read, a label bearing the information required in this article and the regulations adopted under this article;

(4) Any pesticide which has not been colored or discolored pursuant to Section 25(c)(5) of FIFRA or paragraph (6) of subsection (b) of Code Section 2-7-63;

(5) Any pesticide which is adulterated or misbranded or any device which is misbranded; or

(6) Any pesticide in containers which are unsafe due to damage.

(b) It shall be unlawful:

(1) To distribute any pesticide labeled for restricted uses to any person who is required by law or regulations promulgated under such law to have a permit or to be certified to use or purchase such pesticide labeled for restricted uses, unless such person or his agent to whom distribution is made has a valid permit or is certified to use or purchase the kind and quantity of such pesticide labeled for restricted uses, provided that subject to conditions established by the

Commissioner, such permit may be obtained immediately prior to distribution, from any person designated by the Commissioner;

(2) For any person to detach, alter, deface, or destroy, wholly or in part, any label or labeling provided for in this article or regulations adopted under this article or to add any substance to, or take any substance from, a pesticide in a manner that may defeat the purpose of this article or the regulations adopted hereunder;

(3) For any person to use or cause to be used any pesticide in a manner inconsistent with its labeling or the regulations of the Commissioner, if those regulations further restrict the uses provided on the labeling;

(4) For any person to use for his own advantage or to reveal, other than to the Commissioner, to properly designated state or federal officials, to employees of the state or federal executive agencies, to the courts of the state or the federal government in response to a subpoena, to physicians, or, in emergencies, to pharmacists and other qualified persons for use in the preparation of antidotes, any information relative to formulas of products acquired by authority of Code Section 2-7-55 or any information judged by the Commissioner as containing or relating to trade secrets or commercial or financial information obtained by authority of this article and marked as privileged or confidential by the registrant;

(5) For any person to handle, transport, store, display, or distribute pesticides in such a manner as to endanger man and his environment or to endanger food, feed, or any other products that may be transported, stored, displayed, or distributed with such pesticides;

(6) For any person to dispose of, discard, or store any pesticides or pesticide containers in such a manner as to cause injury to humans, vegetation, crops, livestock, wildlife, or beneficial insects or in such a manner as to pollute any water supply or waterway;

(7) For any person to refuse or otherwise fail to comply with this article or the regulations adopted hereunder.

(c) The penalties provided for violations of paragraphs (1) through (5) of subsection (a) of this Code section shall not apply to:

(1) Any carrier, while lawfully engaged in transporting pesticides or devices within this state, if such carrier, upon request, permits the Commissioner to copy all records showing the transactions in and movements of the pesticides or devices;

(2) Public officials of this state and the federal government, while engaged in the performance of their official duties in administering state or federal pesticide laws or regulations;

(3) The manufacturer, shipper, or distributor of a pesticide for experimental use only by or under the supervision of an agency of this state or of the federal government authorized by law to conduct research in the field of pesticides, provided that there is a valid experimental use permit for such pesticide; or

(4) Any person who ships a substance or mixture of substances being put through tests, in which the purpose is only to determine its value for pesticide purposes or to determine its toxicity or other properties and from the use of which the user does not expect to receive any benefit in pest control.

(d) No pesticide or device shall be deemed in violation of this article when intended solely for export to a foreign country and when prepared or packed according to the specifications or directions of the purchaser. If not so exported, all the provisions of this article shall apply.

History. — Ga. L. 1950, p. 390, §§ 3, 7; Ga. L. 1976, p. 282, § 6.

Code Commission notes. — Pursuant to Code Section 28-9-5, in 1990, "Section" was substituted for "section" in paragraph (a)(4).

U.S. Code. — Section 25(c)(5) of the Federal Insecticide, Fungicide, and Rodenticide Act, referred to in paragraph (a)(4) of this Code section, is codified at 7 U.S.C. § 136w(c)(5).

JUDICIAL DECISIONS

Mixing chemicals inconsistently with label is jury question. — Upon a claim that a pesticide company violated O.C.G.A. § 2-7-62(b)(3), given the multiple instructions included on the pesticide label, particularly that portion suggesting that the preparer reverse the order of the added components, the trial court properly concluded that the issue of whether the chemical was mixed in a manner inconsistent with its label was a jury question. Moreover, even if the company violated § 2-7-62(b)(3), it did not entitle the plaintiff to judgment as a matter of law, as it would improperly remove the issue of proximate cause from the jury. Chancey v. Peachtree Pest Control Co., 288 Ga. App. 767, 655 S.E.2d 228 (2007), cert. denied, No. S08C0642, 2008 Ga. LEXIS 459 (Ga. 2008).

RESEARCH REFERENCES

Am. Jur. 2d. — 3 Am. Jur. 2d, Agriculture, §§ 37 et seq., 48 et seq.

2-7-63. Powers of Commissioner generally; rules and regulations.

(a) The Commissioner is authorized, after due notice and an opportunity for a hearing:

(1) To declare as a pest any form of plant or animal life (other than man and other than bacteria, viruses, and other microorganisms on or in living man or other living animals) which is injurious to health or the environment;

(2) To determine whether pesticides registered under the authority of Section 24(c) of FIFRA are highly toxic to man. The regulations promulgated by the Environmental Protection Agency pursuant to Section 25(c)(2) of FIFRA, as issued or as hereafter amended, shall govern the Commissioner's determinations; and

(3) To determine pesticides and quantities of substances contained in pesticides registered for special local needs which are injurious to the environment. The Commissioner shall be guided by Environmental Protection Agency regulations in this determination.

(b) The Commissioner is authorized, after due notice and a public hearing as provided for in Chapter 13 of Title 50, the "Georgia Administrative Procedure Act," to make appropriate regulations, where such regulations are necessary for the enforcement and administration of this article, including but not limited to regulations providing for:

(1) The collection, examination, and reporting of samples of pesticides or devices pursuant to subsection (a) of Code Section 2-7-69;

(2) The safe handling, transportation, storage, display, distribution, and disposal of pesticides and their containers;

(3) Labeling requirements for all pesticides required to be registered under this article, provided that such regulations shall not impose any requirements for federally registered labels in addition to or different from those required pursuant to FIFRA;

(4) The specification of classes of devices which shall be subject to paragraph (1) of Code Section 2-7-53;

(5) The determination of which pesticides with restricted uses may be distributed only by licensed restricted use pesticide dealers;

(6) The requirement that any pesticide registered for special local needs should be colored or discolored, if he determines that such requirement is feasible and is necessary for the protection of health and the environment. Such regulations shall be consistent with regulations promulgated by the Environmental Protection Agency pursuant to Section 25(c)(5) of FIFRA; and

(7) The establishment of standards for the packages, containers, and wrappings of pesticides registered for special local needs. Such regulations shall be consistent with the regulations promulgated by the Environmental Protection Agency pursuant to Section 25(c)(3) of FIFRA.

(c) For the purpose of uniformity of requirements between the states and the federal government, the Commissioner, after a public hearing, may adopt regulations in conformity with the primary pesticide standards, particularly as to labeling, registration requirements, and issu-

ance of experimental use permits, established by the Environmental Protection Agency or other federal or state agencies.

History. — Ga. L. 1950, p. 390, § 5; Ga. L. 1976, p. 282, § 10.

Code Commission notes. — Pursuant to Code Section 28-9-5, in 1990, "Section" was substituted for "section" in two places in paragraph (a)(2) and in paragraphs (b)(6) and (b)(7).

U.S. Code. — Section 24(c) of the Federal Insecticide, Fungicide, and Rodenticide Act, referred to in paragraph (a)(2) of this Code section, is codified at 7 U.S.C. § 136v(c).

Section 25(c)(2) of the Federal Insecticide, Fungicide, and Rodenticide Act, referred to in paragraph (a)(2) of this Code section, is codified at 7 U.S.C. § 136w(c)(2).

Section 25(c)(5) of the Federal Insecticide, Fungicide, and Rodenticide Act, referred to in paragraph (b)(6) of this Code section, is codified at 7 U.S.C. § 136w(c)(5).

Section 25(c)(3) of the Federal Insecticide, Fungicide, and Rodenticide Act, referred to in paragraph (b)(7) of this Code section, is codified at 7 U.S.C. § 136w(c)(5).

RESEARCH REFERENCES

ALR. — Mistake as to chemical or product furnished or misdescription thereof by label or otherwise as basis of liability for personal injury or death resulting from combination with other chemical, 123 A.L.R. 939.

2-7-64. Delegation of duties.

All authority vested in the Commissioner by virtue of this article may be executed with like force and effect by such employees of the Department of Agriculture as the Commissioner may designate from time to time for such purposes.

History. — Ga. L. 1950, p. 390, § 12; Ga. L. 1976, p. 282, § 21.

2-7-65. Cooperation with federal and state agencies; grants-in-aid.

The Commissioner may cooperate, receive grants-in-aid, and enter into cooperative agreements with any agency of the federal government, of this state or its subdivisions, or of another state for the following purposes, without exclusion:

(1) To secure uniformity of regulations;

(2) To enter into cooperative agreements with the Environmental Protection Agency to register pesticides under the authority of this article and FIFRA;

(3) To cooperate in the enforcement of the federal pesticide control laws through the use of state or federal personnel and facilities or any combination thereof and to implement cooperative enforcement pro-

grams including, but not limited to, the registration and inspection of establishments;

(4) To enter into a contract for monitoring pesticides for the national plan; and

(5) To prepare and submit state plans to meet federal certification standards or for issuing experimental use permits.

History. — Ga. L. 1950, p. 390, § 13; Ga. L. 1976, p. 282, § 22.

2-7-66. Disposition of funds.

Reserved. Repealed by Ga. L. 2010, p. 9, § 1-4.1, effective May 12, 2010.

Editor's notes. — This Code section was based on Ga. L. 1976, p. 282, § 23.

2-7-67. Publication of information.

The Commissioner may publish, in such form as he deems proper, results of analyses based on official samples as compared with the analyses guaranteed and information concerning the distribution of pesticides, provided that individual distribution information shall not be a public record.

History. — Ga. L. 1976, p. 282, § 19.

2-7-68. Designation of trade secrets by applicant; protection from public disclosure; notification of proposed release; declaratory judgment.

(a) In submitting data required by this article, the applicant may:

(1) Clearly mark any portions thereof which in his opinion are trade secrets or commercial or financial information; and

(2) Submit such marked material separately from other material required to be submitted under this article.

(b) Notwithstanding any other provision of this article, the Commissioner shall not make public any information which in his judgment contains or relates to trade secrets or any commercial or financial information obtained from a person and considered privileged or confidential, provided that when necessary to carry out this article, information relating to formulas of products acquired by authorization of this article may be revealed to any state or federal agency consulted or as required by law and may be revealed at a public hearing or in findings of fact issued by the Commissioner.

(c) If the Commissioner proposes to release for inspection any information which the applicant or registrant has indicated that he believes is protected from disclosure under subsection (b) of this Code section, he shall notify the applicant or registrant, in writing, by certified mail or statutory overnight delivery. The Commissioner shall not thereafter make such data available for inspection until 30 days after receipt of the notice by the applicant or registrant. During this period, the applicant or registrant may institute an action in an appropriate court for a declaratory judgment as to whether such information is subject to protection under subsection (b) of this Code section.

History. — Ga. L. 1976, p. 282, § 20; Ga. L. 2000, p. 1589, § 3.

Editor's notes. — Ga. L. 2000, p. 1589, § 16, not codified by the General Assembly, provides that the amendment to this Code section is applicable with respect to notices delivered on or after July 1, 2000.

RESEARCH REFERENCES

Am. Jur. Proof of Facts. — Abandonment of Trade Secret, 100 POF3d195, 140 POF3d 81.

ALR. — Disclosure of trade secret as abandonment of secrecy, 92 A.L.R.3d 138.

2-7-69. Sampling and inspections authorized; notice of contemplated proceedings; search warrants; duty of enforcement; injunctions; written warnings authorized for minor violations.

(a) Sampling and examination of pesticides or devices shall be made under the direction of the Commissioner for the purpose of determining whether they comply with the requirements of this article. The Commissioner is authorized, upon presentation of proper identification, to enter any distributor's premises, including any vehicle of transport, at all reasonable times, in order to have access to inspect and sample labeled pesticides or devices packaged for distribution. If it appears upon inspection or examination that a pesticide or device fails to comply with this article or regulations adopted hereunder and the Commissioner contemplates instituting criminal proceedings against any person, the Commissioner shall cause appropriate notice to be given to such person. Any person so notified shall be given an opportunity, within a reasonable time, to present his views, either orally or in writing, with regard to the contemplated proceedings. If thereafter, in the opinion of the Commissioner, it appears that this article or regulations adopted hereunder have been violated by such person, the Commissioner shall refer a copy of the results of the analysis or the examination of such pesticide or device to the prosecuting attorney for the county in which the violation occurred.

(b) Should the Commissioner be denied access to any land where such access was sought for the purposes set forth in this article, he may

apply to any court of competent jurisdiction for a search warrant authorizing access to such land for such purposes. The court, upon such application, may issue the search warrant for the purposes requested.

(c) The Commissioner is charged with the duty of enforcing the requirements of this article and the rules and regulations promulgated hereunder.

(d) In addition to any other remedy provided in this article, the Commissioner is authorized to bring an action to enjoin a violation of any provision of this article or any rule or regulation promulgated hereunder. In such an action it shall not be necessary for the Commissioner to allege or prove the absence of an adequate remedy at law.

(e) Nothing in this article shall be construed as requiring the Commissioner to report minor violations of this article for prosecution or for the institution of condemnation proceedings, when he believes that the public interest will be served best by a suitable notice of warning in writing.

History. — Ga. L. 1950, p. 390, § 6; Ga. L. 1976, p. 282, § 11; Ga. L. 1980, p. 747, §§ 1, 2.

2-7-70. Stop sale, use, or removal order.

When the Commissioner has reasonable cause to believe that a pesticide or device is being distributed, stored, transported, or used in violation of any of the provisions of this article or of any of the prescribed regulations under this article, he may issue and serve a written stop sale, use, or removal order upon the owner or custodian of any such pesticide or device. If the owner or custodian is not available for service of the order upon him, the Commissioner may attach the order to the pesticide or device and notify the owner or custodian and the registrant. The pesticide or device shall not be sold, used, or removed until this article has been complied with and until the pesticide or device has been released in writing under conditions specified by the Commissioner or until the violation has been otherwise disposed of as provided in this article by a court of competent jurisdiction.

History. — Ga. L. 1950, p. 390, § 10; Ga. L. 1976, p. 282, § 12.

2-7-71. Judicial actions after stop sale, use, or removal order generally; injunctions; condemnation; disposition of condemned pesticide or device; costs and expenses.

(a) After service of a stop sale, use, or removal order is made upon any person, either that person, the registrant, or the Commissioner may file an action in a court of competent jurisdiction in the appropriate county for an adjudication of the alleged violation. The court in such action may issue temporary or permanent injunctions, mandatory or restraining, and such intermediate orders as it deems necessary or advisable. The court may order condemnation of any pesticide or device which does not meet the requirements of this article or regulations adopted hereunder.

(b) If the pesticide or device is condemned, after entry of decree it shall be disposed of by destruction or sale as the court directs; and if such pesticide or device is sold, the proceeds, less costs, including legal costs, shall be retained pursuant to the provisions of Code Section 45-12-92.1, provided that the pesticide or device shall not be sold contrary to this article or regulations adopted hereunder. Upon payment of costs and execution and delivery of a good and sufficient bond conditioned that the pesticide or device shall not be disposed of unlawfully, the court may direct that the pesticide or device be delivered to the owner thereof for relabeling, reprocessing, removal from the state, or otherwise bringing the product into compliance.

(c) When a decree of condemnation is entered against a pesticide or device, court costs, fees, storage, and other proper expenses shall be awarded against the person, if any, appearing as claimant of the pesticide.

History. — Ga. L. 1950, p. 390, § 11; Ga. L. 1976, p. 282, § 13; Ga. L. 2010, p. 9, § 1-4.2/HB 1055.

2-7-72. Effect of article on certain other laws.

No provision of this article shall authorize any person to violate any law or any rules or regulations adopted and promulgated thereunder, the administration and enforcement of which are assigned to the Department of Natural Resources or any division thereof or to the Coastal Marshlands Protection Committee. This article shall not be construed as repealing, preempting, modifying, or limiting the authority or functions assigned to the Department of Natural Resources or its divisions or officials or to the Coastal Marshlands Protection Committee.

History. — Ga. L. 1976, p. 282, § 24.

2-7-73. Penalties.

Any person who violates any provision of this article or of the regulations adopted hereunder shall be guilty of a misdemeanor.

History. — Ga. L. 1950, p. 390, § 8; Ga. L. 1976, p. 282, § 18.

ARTICLE 3

USE AND APPLICATION OF PESTICIDES

Law reviews. — For article, "Controlling the Use of Pesticides," see 15 J. of Pub. L. 311 (1966).

RESEARCH REFERENCES

Am. Jur. 2d. — 61C Am. Jur. 2d, Pollution Control, § 1691 et seq.

ALR. — Exterminator's tort liability for personal injury or death directly resulting from operations, 29 A.L.R.4th 987.

2-7-90. Short title.

This article shall be cited as the "Georgia Pesticide Use and Application Act of 1976."

History. — Ga. L. 1972, p. 849, § 1; Ga. L. 1976, p. 369, § 1.

Law reviews. — For annual survey of product liability law, see 58 Mercer L. Rev. 313 (2006).

2-7-91. Purpose of article; legislative findings.

The purpose of this article is to regulate, in the public interest, the use and application of pesticides to control pests, as defined in this article. Pesticides perform a valuable role by:

(1) Controlling insects, fungi, nematodes, rodents, and other pests which ravage and destroy our supply of food and fiber, which serve as vectors of disease, and which otherwise constitute a nuisance in the environment or the home;

(2) Controlling weeds which compete in the production of food and fiber and which otherwise are unwanted elements in our environment; and

(3) Regulating plant growth to enhance both the quantity and quality of our supply of food and fiber and to facilitate its harvest.

New pesticides are continually being discovered, synthesized, or developed which are valuable for the control of pests and for use as

defoliants, desiccants, plant regulators, and related purposes. However, such pesticides may be ineffective, may cause injury to man, or may cause unreasonable adverse effects on the environment if not properly used. Pesticides may injure man or animals, either by direct poisoning or by gradual accumulation of pesticide residues in the tissues. Crops or other plants may also be injured by the improper use of pesticides. The drifting or washing of pesticides into streams or lakes may cause appreciable damage to aquatic life. A pesticide applied for the purpose of killing pests in a crop which is not itself injured by the pesticide may drift and injure other crops or nontarget organisms with which it comes in contact. Therefore, it is deemed necessary to provide for regulation of the use and application of such pesticides.

History. — Ga. L. 1972, p. 849, § 3; Ga. L. 1976, p. 369, § 3.

2-7-92. Definitions.

As used in this article, the term:

(1) "Animal" means all vertebrate and invertebrate species, including, but not limited to, man and other mammals, birds, fish, and shellfish.

(2) "Beneficial insects" means those insects which, during their life cycles, are effective pollinators of plants, are parasites or predators of pests, or are otherwise beneficial.

(3) "Board" means the Pesticide Advisory Board.

(4) "Certified applicator" means any individual who is certified under this article to use or supervise the use of any restricted use pesticide restricted to use by certified applicators or any state restricted pesticide use restricted to use by certified applicators.

(5) "Commercial applicator" means any individual:

(A) Who is not a "private applicator," who uses or supervises the use of any restricted use pesticide restricted to use by certified applicators or any state restricted pesticide use restricted to use by certified applicators; or

(B) Who uses or supervises the use of any other pesticide for a pesticide contractor, as an employee or otherwise.

(6) "Defoliant" means any substance or mixture of substances intended for causing the leaves or foliage to drop from a plant, with or without causing abscission.

(7) "Desiccant" means any substance or mixture of substances intended for artificially accelerating the drying of plant tissue.

(8) "Environment" includes the water, air, and land, all plants and man and other animals living therein, and the interrelationships which exist among these.

(9) "Environmental Protection Agency" means the United States Environmental Protection Agency.

(10) "Equipment" means any type of ground, water, or aerial equipment or contrivance using motorized, mechanical, or pressurized power and used to apply any pesticide on land and anything that may be growing, habitating, or stored on or in such land but shall not include any pressurized hand-sized household apparatus used to apply any pesticide or any equipment or contrivance of which the person who is applying the pesticide is the source of power or energy in making such pesticide application.

(11) "FIFRA" means the Federal Insecticide, Fungicide, and Rodenticide Act, and the amendments thereto.

(12) "Fungi" means all nonchlorophyll-bearing thallophytes, that is, all nonchlorophyll-bearing plants of a lower order than mosses and liverworts, as, for example, rusts, smuts, mildews, molds, yeasts, and bacteria, except those on or in living man or other living animals and except those in or on processed food, beverages, or pharmaceuticals.

(13) "Insect" means any of the numerous small invertebrate animals generally having a body more or less obviously segmented, for the most part belonging to the class Insecta, comprising six-legged, usually winged forms, as, for example, beetles, bugs, bees, and flies, and other allied classes of arthropods whose members are wingless and usually have more than six legs, as, for example, spiders, mites, ticks, centipedes, and wood lice.

(14) "Label" means the written, printed, or graphic matter on or attached to the pesticide or device or any of its containers or wrappers.

(15) "Labeling" means the label and all other written, printed, or graphic matter:

(A) Accompanying the pesticide or device at any time; or

(B) To which reference is made on the label or in literature accompanying the pesticide or device, except for current official publications of:

(i) The Environmental Protection Agency;

(ii) The United States Department of Agriculture;

(iii) The United States Department of the Interior;

(iv) The United States Department of Health and Human Services;

(v) State experiment stations;

(vi) State agricultural colleges; and

(vii) Other similar federal or state institutions or agencies authorized by law to conduct research in the field of pesticides.

(16) "Land" means all land and water areas, including airspace, and all plants, animals, structures, buildings, contrivances, and machinery appurtenant thereto or situated thereon, fixed or mobile, including any used for transportation.

(17) "Nematode" means invertebrate animals of the phylum Nemathelminthes and class Nematoda, that is, unsegmented roundworms with elongated, fusiform, or saclike bodies covered with cuticle, and inhabiting soil, water, plants, or plant parts; they may also be called nemas or eelworms.

(18) "Permit" means a written certificate issued by the Commissioner or his authorized agent, authorizing the purchase, possession, or use of certain pesticides or pesticide uses defined in paragraphs (26) and (27) of this Code section.

(19) "Person" means any individual, partnership, association, fiduciary, corporation, or organized group of persons, whether or not incorporated.

(20) "Pest" means:

(A) Any insect, rodent, nematode, fungus, or weed; or

(B) Any other form of terrestrial or aquatic plant or animal life or virus, bacterium, or other microorganism, except viruses, bacteria, or other microorganisms on or in living man or other living animals,

which the Environmental Protection Agency administrator declares to be a pest under Section 25(c)(1) of FIFRA or which the Commissioner declares to be a pest under subsection (f) of Code Section 2-7-97.

(21) "Pesticide" means:

(A) Any substance or mixture of substances intended for preventing, destroying, repelling, or mitigating any pests; and

(B) Any substance or mixture of substances intended for use as a plant regulator, defoliant, or desiccant.

(22) "Pesticide contractor" means any person who engages in the business of contracting for the application of any pesticide to the lands of another.

(23) "Plant regulator" means any substance or mixture of substances intended through physiological action for accelerating or retarding the rate of growth or rate of maturation or for otherwise altering the behavior of ornamental or crop plants or the produce thereof; the term shall not include substances to the extent that they are intended as plant nutrients, trace elements, nutritional chemicals, plant inoculants, and soil amendments.

(24) "Private applicator" means any individual who purchases, uses, or supervises the use of any restricted use pesticide restricted to use by certified applicators or any state restricted pesticide use restricted to use by certified applicators, for purposes of producing any agricultural or forestry commodity on property owned or rented by him or his employer or, if applied without compensation other than the trading of personal services between producers of agricultural and forestry commodities, on the property of another person.

(25) "Protect health and the environment" means to protect against any unreasonable adverse effects on the environment.

(26) "Restricted use pesticide" means any pesticide whose label bears one or more uses which have been classified as restricted by the administrator of the Environmental Protection Agency.

(27) "State restricted pesticide use" means any pesticide use which, when used as directed or in accordance with a widespread and commonly recognized practice, the Commissioner determines, subsequent to a hearing, to require additional restrictions for that use to protect the environment, including man, lands, beneficial insects, animals, crops, and wildlife, other than pests.

(28) "Under the direct supervision of a certified applicator" means that, unless otherwise prescribed by its labeling or regulations of the Commissioner, a pesticide shall be considered to be applied under the direct supervision of a certified applicator if it is applied by a competent person acting under the instructions and control of a certified applicator who is available if and when needed, even though such certified applicator is not physically present at the time and place the pesticide is applied.

(29) "Unreasonable adverse effects on the environment" means any unreasonable risk to man or the environment, taking into account the economic, social, and environmental costs and benefits of the use of any pesticide.

(30) "Weed" means any plant which grows where not wanted.

(31) "Wildlife" means all living things that are neither human, domesticated, nor, as defined in this article, pests, including, but not limited to, mammals, birds, and aquatic life.

History. — Ga. L. 1972, p. 849, § 4; Ga. L. 1976, p. 369, § 4; Ga. L. 1994, p. 97, § 2.

Code Commission notes. — Pursuant to Code Section 28-9-5, in 1990, "Section" was substituted for "section" in paragraph (20).

U.S. Code. — The Federal Insecticide, Fungicide, and Rodenticide Act and amendments thereto, referred to in paragraph (11) of this Code section, was codified at 7 U.S.C. §§ 135 through 135k. However, in 1972 the Federal Insecticide, Fungicide, and Rodenticide Act was extensively amended by Pub. L. No. 92-516. The 1972 Act, as amended, provided that the provisions of the Federal Insecticide, Fungicide, and Rodenticide Act and the regulations enacted thereunder should remain in effect until superseded by the amendments made by the 1972 Act and the regulations thereunder. See Pub. L. No. 92-516, § 4, as amended by Pub. L. No. 94-140, § 4 and Pub. L. No. 95-396, § 28. The 1972 Act has been codified at 7 U.S.C. §§ 136 through 136y and treated as a new subchapter 2 in the chapter of the U.S.C. in which the Federal Insecticide, Fungicide, and Rodenticide Act appeared. Public Law No. 92-516, § 1 provides that the short title of the 1972 Act is the Federal Environmental Pesticide Control Act of 1972.

Section 25(c)(1) of the Federal Insecticide, Fungicide, and Rodenticide Act, referred to in the ending paragraph of subparagraph (20)(B) of this Code section, is codified at 7 U.S.C. § 136w(c)(1).

2-7-93. Commissioner to administer article; appointment of Pesticide Advisory Board.

This article shall be administered by the Commissioner of Agriculture of this state. In the administration of this article the Commissioner shall appoint a Pesticide Advisory Board for the purpose of advising him on all matters relating to pesticides and their use and application.

History. — Ga. L. 1972, p. 849, § 2; Ga. L. 1976, p. 369, § 2.

2-7-94. Delegation of duties.

The functions vested in the Commissioner by this article may be delegated by him to such employees or agents of the department as the Commissioner may from time to time designate for such purposes.

History. — Ga. L. 1972, p. 849, § 22; Ga. L. 1976, p. 369, § 24.

2-7-95. Publication of information; instruction.

The Commissioner may cooperate with educational institutions and other state or federal agencies in publishing information and conducting short courses of instruction in the areas of knowledge required by this article.

History. — Ga. L. 1972, p. 849, § 18; Ga. L. 1976, p. 369, § 20.

2-7-96. Cooperative agreements; grants-in-aid.

The Commissioner may cooperate, receive grants-in-aid, and enter into agreements with any agency of the federal government, of this state or its subdivisions, or of another state, to obtain assistance in the implementation of this article, in order to:

(1) Secure uniformity of regulations;

(2) Cooperate in the enforcement of the federal pesticide control laws through the use of personnel and facilities of the state or the federal government or both and implement cooperative enforcement programs;

(3) Develop and administer state plans for training and for certification of certified applicators consistent with federal standards;

(4) Contract for training with other agencies for the purpose of training certified applicators;

(5) Prepare and submit state plans to meet federal certification standards, as provided for in Section 4 of FIFRA; and

(6) Regulate certified applicators.

History. — Ga. L. 1972, p. 849, § 23; Ga. L. 1976, p. 369, § 9.

Code Commission notes. — Pursuant to Code Section 28-9-5, in 1990, "Section" was substituted for "section" in paragraph (5).

U.S. Code. — Section 4 of the Federal Insecticide, Fungicide, and Rodenticide Act, referred to in paragraph (5) of this Code section, is codified at 7 U.S.C. § 136b.

2-7-97. Promulgation of rules and regulations authorized; notice and hearing; restricted use pesticide classifications and state restricted pesticide uses; declaration of pests; reports to Environmental Protection Agency.

(a) The Commissioner shall administer and enforce this article. He shall have authority to issue regulations to carry out this article, after a public hearing following due notice to all interested persons, in conformance with Chapter 13 of Title 50, the "Georgia Administrative Procedure Act." Such regulations may prescribe methods to be used in the application of pesticides. When the Commissioner finds that such regulations are necessary to carry out the purpose and intent of this article, such regulations may relate to the time, place, manner, methods, materials, and amounts and concentrations in connection with the application of pesticides; they may restrict or prohibit the use of pesticides in designated areas during specified periods of time and shall encompass all reasonable factors which the Commissioner deems necessary to prevent damage or injury by drift or misapplication to:

(1) Plants, including forage plants, or adjacent or nearby lands;

(2) Wildlife in the adjoining or nearby areas;

(3) Fish and other aquatic life in waters in reasonable proximity to the area to be treated; and

(4) Humans, animals, or beneficial insects.

(b) In issuing such regulations, the Commissioner shall give consideration to pertinent research findings and recommendations of other agencies of this state or of the federal government. The Commissioner may require, by regulation, that notice of a proposed application of a pesticide be given to land owners in designated areas if he finds that such notice is necessary to carry out the purpose of this article.

(c) For the purpose of uniformity and in order to enter into cooperative agreements, the Commissioner may adopt "restrictive use pesticide" classifications as determined by the Environmental Protection Agency. In addition to those "restricted use pesticides" classified by the administrator of the Environmental Protection Agency, the Commissioner also may determine, by regulation, after a public hearing following due notice, "state restricted pesticide uses" for the state or for designated areas within the state. If the Commissioner determines that a pesticide use, when applied in accordance with its directions for use, warnings, cautions, and for uses for which it is registered, may cause, without additional regulatory restrictions, unreasonable adverse effects on the environment, including injury to the applicator or other persons because of acute dermal or inhalation toxicity of the pesticide, the pesticide use shall be applied only by or under the direct supervision of a certified applicator or shall be subject to such other restrictions as the Commissioner may determine.

(d) Regulations adopted under this article shall not permit any pesticide use which is prohibited by FIFRA and any regulations or orders issued thereunder.

(e) Regulations adopted under this article as to certified applicators of "restricted use pesticides" as designated under FIFRA shall not be inconsistent with the requirements of FIFRA and any regulations promulgated thereunder.

(f) The Commissioner, after notice and opportunity for hearing, is authorized to declare any form of plant or animal life, other than man and other than bacteria, viruses, and other microorganisms on or in living man or other living animals, which is injurious to health or the environment to be a pest.

(g) In order to comply with Section 4 of FIFRA, the Commissioner is authorized to make such reports to the Environmental Protection

Agency, in such form and containing such information, as the agency may from time to time require.

History. — Ga. L. 1972, p. 849, § 5; Ga. L. 1976, p. 369, § 5; Ga. L. 1982, p. 3, § 2.

Code Commission notes. — Pursuant to Code Section 28-9-5, in 1990, "Section" was substituted for "section" in subsection (g).

U.S. Code. — Section 4 of the Federal Insecticide, Fungicide, and Rodenticide Act, referred to in subsection (g) of this Code section, is codified at 7 U.S.C. § 136b.

RESEARCH REFERENCES

ALR. — Validity, construction, and operation of state and municipal act or regulation requiring notice of pesticide and herbicide use, 18 A.L.R.6th 793.

2-7-98. Classification of certifications and licenses; standards for certification of applicators.

(a) The Commissioner may classify or subclassify certifications or licenses to be issued under this article, as may be necessary for the effective administration and enforcement of this article. Each classification shall be subject to separate requirements, provided that no person shall be required to pay an additional license fee if such person desires to be licensed in one or all of the license classifications provided for certified commercial pesticide applicators by the Commissioner under the authority of this Code section.

(b) The Commissioner, in promulgating regulations under this article, shall prescribe standards for the certification of applicators of pesticides. Such standards may relate to the use and handling of pesticides or to the use and handling of the pesticide or class of pesticides covered by the individual's certification and shall be relative to the hazards involved.

(c) In determining standards, the Commissioner shall consider:

(1) The characteristics of the pesticide formulation, such as the acute dermal and inhalation toxicity and the persistence, mobility, and susceptibility to biological concentration;

(2) The use experience which may reflect an inherent misuse or an unexpected good safety record which does not always follow laboratory toxicological information;

(3) The relative hazards or patterns of use, such as granular soil applications, ultralow volume or dust aerial applications, or air blast sprayer applications; and

(4) The extent of the intended use.

Further, the Commissioner shall take into consideration the standards of the Environmental Protection Agency and is authorized to adopt such standards by regulation.

History. — Ga. L. 1972, p. 849, § 6; Ga. L. 1976, p. 369, § 6.

RESEARCH REFERENCES

Am. Jur. 2d. — 61C Am. Jur. 2d, Pollution Control, § 1719 et seq.

ALR. — Right of one who acquires title to, or other interest in, real property to benefit of a license previously issued by the public, permitting use of property for a specified purpose, 131 A.L.R. 1339.

2-7-99. Licensing requirements; applications; issuance; fees; renewal.

(a) **Pesticide contractor's license.**

(1) **Required; additional requirement; fee.** No person shall engage in the business of contracting for the application of any pesticide to the lands of another within this state at any time without a pesticide contractor's license issued by the Commissioner for each business location. In addition to the pesticide contractor's license, each business location must maintain, in full-time employment during all periods of operation, at least one certified commercial pesticide applicator. The Commissioner shall require an annual fee of $55.00 for each pesticide contractor's license issued. Any fees collected pursuant to this Code section shall be retained pursuant to the provisions of Code Section 45-12-92.1.

(2) **Application for license; form; content.** Application for a pesticide contractor's license shall be made in writing to the Commissioner on a designated form obtained from the Commissioner's office. Each application for a license shall contain information regarding the applicant's qualifications and proposed operations and shall include the following:

(A) The full name of the person applying for the license;

(B) If the applicant is a person other than an individual, the full name of each member of the firm or partnership or the names of the principal officers of the association, corporation, or group;

(C) The principal business address of the applicant in this state and elsewhere;

(D) If applicable, the name and address of an attorney in fact pursuant to the requirements of Chapter 5 of this title, the "Department of Agriculture Registration, License, and Permit Act";

(E) The model, make, horsepower, and size of any equipment used by the applicant to apply pesticides; and

(F) Any other necessary information prescribed by the Commissioner.

(3) **Issuance.** If the Commissioner finds the applicant qualified to engage in the business of contracting for the application of pesticides commercially, if the applicant files proof of financial responsibility as required under Code Section 2-7-103, and if the applicant applying for a license to contract for aerial application of pesticides has met all of the requirements of the Federal Aviation Administration and all aeronautic requirements of this state for operation of equipment described in the application, the Commissioner shall issue a pesticide contractor's license, with any necessary limitations; provided, however, commercial aerial applicators of crop protection products and pesticide contractors applying crop protection products to agricultural crops shall not be required to file proof of financial responsibility as required under Code Section 2-7-103. The license shall expire at the end of the calendar year of issue, unless it is revoked or suspended prior thereto by the Commissioner for cause.

(b) **Certified pesticide applicator licenses.**

(1) **Certified private applicator's license.**

(A) **Required; competency.** No individual shall purchase, use, or supervise the use of any pesticide as a private applicator unless he is licensed as a certified private applicator or is acting under the direct supervision of an individual who is licensed as a certified private applicator. The Commissioner shall require the applicant to demonstrate his competency to apply "restricted use pesticides" safely, effectively, and in such a manner as to prevent any unreasonable adverse effects on the environment. Such determination of competency shall be made on the basis of standards and procedures approved by the Environmental Protection Agency in the "Georgia Plan for Certification of Pesticide Applicators."

(B) **Application for license; form; content.** Application for a license shall be made in writing to the Commissioner on a designated form obtained from the Commissioner's office. Each application shall contain information regarding the applicant's qualifications and proposed operations and shall include the following:

(i) The name of the person applying for the license;

(ii) The complete home address and mailing address of the applicant; and

(iii) Any other information pertinent to the applicant's operation.

(C) **Issuance.** If the Commissioner finds the applicant qualified to use or supervise the use of "restricted use pesticides" as a private pesticide applicator, he shall issue such license, to be effective for a specified period which shall be determined by the Commissioner by

regulation. There shall be no fee required for a certified private applicator's license.

(2) **Certified commercial pesticide applicator's license.**

(A) **Required; competency.** No individual shall purchase, use, or supervise the use of any pesticide as a commercial applicator unless he is licensed as a certified commercial applicator or is acting under the direct supervision of an individual who is licensed as a certified commercial applicator. No person shall commercially apply any pesticide by aerial equipment without a certified commercial pesticide applicator license. The Commissioner shall require the applicant to demonstrate his competency to apply pesticides safely, effectively, and without any unreasonable adverse effects on the environment. Such determination of competency shall be made on the basis of standards and procedures approved by the Environmental Protection Agency in the "Georgia Plan for Certification of Pesticide Applicators."

(B) **Application for license; form; content.** Application for a license shall be made in writing to the Commissioner on a designated form obtained from the Commissioner's office. Each application shall contain information regarding the applicant's qualifications and proposed operations and shall include the following:

(i) The full name of the person applying for the license;

(ii) The principal business address of the applicant in this state and elsewhere;

(iii) If applicable, the name and address of an attorney in fact pursuant to the requirements of Chapter 5 of this title, the "Department of Agriculture Registration, License, and Permit Act"; and

(iv) Any other necessary information prescribed by the Commissioner.

(C) **Issuance; fees; renewal.** If the Commissioner finds the applicant qualified to apply pesticides in the classification or classifications he or she has applied for, the Commissioner shall issue a certified commercial pesticide applicator's license. Effective August 21, 1980, all new certified commercial pesticide applicator licenses shall be issued for a period of five years from the date of certification. The fee for the five-year license shall be $90.00. Licenses shall be subject to renewal on the day following expiration, based on such recertification requirements as the Commissioner may establish by regulation.

History. — Ga. L. 1972, p. 849, § 7; Ga. L. 1976, p. 369, § 7; Ga. L. 1980, p. 749, §§ 1, 2; Ga. L. 1982, p. 3, § 2; Ga. L. 1990, p. 1253, § 1; Ga. L. 2010, p. 9, § 1-5/HB 1055.

Cross references. — Licensing of restricted use pesticide dealers, § 2-7-57.

Administrative rules and regulations. — Recertification and applicator license renewals, Official Compilation of the Rules and Regulations of the State of Georgia, Rules of Georgia Department of Agriculture, Pesticide Use and Application, Subject 40-21-4.

2-7-100. Reciprocal examination waiver.

The Commissioner may waive all or part of the examination requirements provided for in Code Sections 2-7-98, 2-7-99, and 2-7-111 on a reciprocal basis with any other state which has substantially the same standards.

History. — Ga. L. 1972, p. 849, § 14; Ga. L. 1976, p. 369, § 16.

2-7-101. Renewals of licenses, permits, or certifications; penalty for late renewals.

(a) If the application for renewal of any license, permit, or certification is not filed prior to the first day of the succeeding license period, a penalty of 50 percent shall be assessed and added to the original fee and shall be paid by the applicant before the renewal license, permit, or certification is issued.

(b) Any person holding a current valid license, permit, or certification may renew such license, permit, or certification for the next year or the next license period, subject to reexamination or such other requirements as the Commissioner may impose by regulation to ensure that applicators continue to meet the needs of changing technology and to assure a continuing level of competence and ability to use pesticides safely and properly.

(c) If a license, permit, or certification is not renewed within 60 days after the beginning of a new license period, then such licensee, permittee, or certificate holder shall be required to take another examination.

History. — Ga. L. 1972, p. 849, § 8; Ga. L. 1976, p. 369, § 10.

2-7-102. Grounds for denial, suspension, revocation, or modification of license, permit, or certification.

(a) Any licensed or unlicensed person shall be subject to prosecution or civil injunctive action for committing any of the following acts, each of which is declared unlawful; and additionally, if an applicant or the holder of any license, permit, or certification is found by the Commis-

sioner to have committed any of the following acts, or is subject to a final order imposing a civil penalty pursuant to Section 14 of FIFRA, the Commissioner may suspend any such license, permit, or certification, pending inquiry, for not longer than ten days, and, after opportunity for a hearing, may deny, suspend, or revoke such license, permit, or certification, or modify any provision thereof:

(1) Made false or fraudulent claims through any media misrepresenting the effect of pesticides or methods to be utilized;

(2) Made a pesticide recommendation or use inconsistent with the labeling, the Environmental Protection Agency or Georgia state registration for that pesticide, or in violation of the Environmental Protection Agency or Georgia state restrictions on the use of that pesticide;

(3) Applied known ineffective or improper pesticides;

(4) Operated faulty or unsafe equipment;

(5) Operated in a faulty, careless, or negligent manner;

(6) Neglected or, after notice, refused to comply with this article or the rules adopted hereunder;

(7) Refused or neglected to keep and maintain the records required by this article or to make reports when and as required;

(8) Made false or fraudulent records, invoices, or reports;

(9) Contracted to apply any pesticide to the lands of another without a licensed commercial pesticide applicator in full-time employment;

(10) Used fraud or misrepresentation in making an application for or renewal of a license, permit, or certification;

(11) Refused or neglected to comply with any limitations or restrictions on or in a duly issued license, permit, or certification;

(12) Aided or abetted a licensed or an unlicensed person to evade the provisions of this article, conspired with such a licensed or an unlicensed person to evade the provisions of this article, or allowed one's license, permit, or certification to be used by another person;

(13) Made false or misleading statements, during or after an inspection, concerning any infestation or infection of pests found on land;

(14) Impersonated any federal, state, county, or city inspector or official; or

(15) Acted in the capacity of, or advertised as, a pesticide contractor or applicator without the required license issued by the Commissioner.

(b) The Commissioner may suspend any pesticide contractor's license or any certified commercial pesticide applicator's license, pending inquiry, for not longer than ten days and, after opportunity for a hearing, may deny, suspend, or revoke such license for a period not to exceed five years upon a finding by the Commissioner that:

(1) The applicant for or holder of such a license has been convicted of or has pleaded guilty to a violation of Code Section 16-13-31;

(2) The conviction occurred or the plea was entered on or after January 1, 1984;

(3) The conviction occurred or the plea was entered within the immediately preceding five years; and

(4) An aircraft was used in the commission of such violation.

(c) The Commissioner may suspend any pesticide contractor's license or certified commercial pesticide applicator's license or refuse to grant or renew either license upon notice to the Commissioner by either a court of competent jurisdiction or the child support agency within the Department of Human Services that:

(1) The applicant for or holder of either such license is not in compliance with an order for child support as defined in Code Section 19-6-28.1 or 19-11-9.3; and

(2) The hearings and appeals procedures provided in Code Section 19-6-28.1 or 19-11-9.3, where applicable, shall be the only such procedures required under this article.

(d) The Commissioner shall not suspend any pesticide contractor's license or certified commercial pesticide applicator's license or refuse to grant or renew either license because an applicant for or holder of either such license is a borrower in default who is not in satisfactory repayment status under the Georgia Higher Education Loan Program as determined by the Georgia Higher Education Assistance Corporation or who has been certified by any entity of the federal government for nonpayment or default or breach of a repayment or service obligation under any federal educational loan, loan repayment, or service conditional scholarship program.

History. — Ga. L. 1972, p. 849, § 9; Ga. L. 1976, p. 369, § 11; Ga. L. 1982, p. 3, § 2; Ga. L. 1984, p. 890, § 1; Ga. L. 1985, p. 149, § 2; Ga. L. 1996, p. 453, § 1; Ga. L. 1997, p. 143, § 2; Ga. L. 1998, p. 1094, § 1; Ga. L. 2009, p. 453, § 2-2/HB 228; Ga. L. 2019, p. 462, § 1-1/SB 214.

The 2019 amendment, effective July 1, 2019, rewrote subsection (d), which read: "The Commissioner shall suspend any pesticide contractor's license or certified commercial pesticide applicator's license or refuse to grant or renew either license upon notice to the Commissioner by the Georgia Higher Education Assistance Corporation that:

"(1) The applicant for or holder of either such license is a borrower in default who is not in satisfactory repayment status as defined in Code Section 20-3-295; and

"(2) The hearings and appeals procedures provided in Code Section 20-3-295, where applicable, shall be the only such procedures required under this article."

Cross references. — Authority of Commissioner to impose penalties in lieu of other action, § 2-2-10.

Code Commission notes. — Pursuant to Code Section 28-9-5, in 1990, "Section" was substituted for "section" in the introductory language of subsection (a).

U.S. Code. — Section 14 of the Federal Insecticide, Fungicide, and Rodenticide Act, referred to in the introductory paragraph of this section, is codified at 7 U.S.C. § 136*l*.

2-7-103. Evidence of financial responsibility required; amount of bond, insurance, or cash deposit; notice of reduction or cancellation.

(a) **Required.** The Commissioner shall not issue a pesticide contractor's license until the applicant has furnished evidence of financial responsibility with the Commissioner, consisting either of a surety bond, a liability insurance policy, or a cash deposit or certification thereof, protecting persons who may suffer legal damages as a result of the operation of the applicant, provided that such surety bond, liability insurance policy, or cash deposit need not apply to damages or injury to agricultural crops, plants, or land being worked upon by the applicant.

(b) **Amount; notice of reduction or cancellation by surety or insurer.** The amount of surety bond, liability insurance, or cash deposit provided for in this Code section shall be set by regulation. Such surety bond, liability insurance, or cash deposit shall be maintained at not less than the minimum set by regulation at all times during the license period. The Commissioner shall be notified ten days prior to any reduction made at the request of the applicant or any cancellation of such surety bond or liability insurance by the surety or insurer. The total and aggregate liability of the surety and insurer for all claims shall be limited to the face of the bond or liability insurance policy or cash deposit. The Commissioner may accept a liability insurance policy, surety bond, or cash deposit in the proper sum, which has a deductible clause in an amount not exceeding $1,000.00 for aerial contractors and $500.00 for all other contractors, for the total amount of liability insurance, surety bond, or cash deposit required, provided that if the applicant has not satisfied the requirement of the deductible amount in any prior legal claim, such deductible clause shall not be accepted by the Commissioner, unless such applicant furnishes the Commissioner with a surety bond, liability insurance, or cash deposit which shall satisfy the amount of the deductible as to all claims that may arise in his application of pesticides. In the event that any contractor has an unpaid and outstanding judgment against him as a result of damages caused to a second party by the misuse of pesticides, he must provide a bond in an amount acceptable to the Commissioner before he can be licensed or relicensed.

(c) **Personal liability for damage.** Nothing in this article shall be construed to relieve any person from liability for any damage to the

person or lands of another caused by the use of pesticides, even though such use conforms to the rules and regulations of the Commissioner.

History. — Ga. L. 1972, p. 849, § 10; Ga. L. 1974, p. 1189, §§ 1, 2; Ga. L. 1976, p. 369, § 12; Ga. L. 1980, p. 749, § 3.

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"Legal damages" construed. — "Legal damages" as referred to in subsection (a) of O.C.G.A. § 2-7-103 include damages arising from the use of aircraft utilized in the application of pesticides, where the use of that aircraft leads to the injury of an employee of the insured. Kelly v. Lloyd's of London, 255 Ga. 291, 336 S.E.2d 772 (1985).

Section prevails over insurance contract. — Any terms in an insurance contract which conflict with O.C.G.A. § 2-7-103 are void and will be superseded by the provisions of that section. Kelly v. Lloyd's of London, 255 Ga. 291, 336 S.E.2d 772 (1985).

RESEARCH REFERENCES

Am. Jur. 2d. — 61C Am. Jur. 2d, Pollution Control, § 1692 et seq.

2-7-104. Records to be kept; inspection thereof.

The Commissioner shall require licensed pesticide contractors and licensed certified commercial applicators who are not employed by or otherwise acting for a licensed pesticide contractor to maintain records with respect to applications of pesticides. Such relevant information as the Commissioner may deem necessary to be recorded and maintained may be specified by regulation. Such records shall be kept for a period of time specified by the Commissioner by regulation. The Commissioner or his authorized designee shall be permitted to inspect such records during normal business hours at the place where they are maintained. Upon request in writing, the Commissioner or his authorized designee shall be furnished with a copy of such records forthwith by the licensee.

History. — Ga. L. 1972, p. 849, § 12; Ga. L. 1976, p. 369, § 14.

Administrative rules and regulations. — Record keeping requirements, Official Compilation of the Rules and Regulations of the State of Georgia, Rules of Georgia Department of Agriculture, Pesticide Use and Application, Subject 40-21-5.

2-7-105. Equipment inspection; requirement of repairs or other changes.

The Commissioner may provide for inspection of any equipment used for application of pesticides. He may require repairs or other changes before its further use for pesticide application. A list of requirements which equipment must meet may be adopted by regulation.

History. — Ga. L. 1972, p. 849, § 13; Ga. L. 1976, p. 369, § 15.

2-7-106. Transportation, storage, and disposal of pesticides and pesticide containers.

No person shall transport, store, or dispose of any pesticide or pesticide containers in such a manner as to cause injury to humans, vegetation, crops, livestock, wildlife, or beneficial insects or in such a manner as to pollute any waterway in a way harmful to any wildlife therein. The Commissioner may promulgate rules and regulations governing the storing and disposal of such pesticides or pesticide containers. In determining these standards, the Commissioner shall take into consideration any regulations issued by the United States Environmental Protection Agency and any regulations issued by the Environmental Protection Division of the Department of Natural Resources of this state.

History. — Ga. L. 1972, p. 849, § 16; Ga. L. 1976, p. 369, § 18.

Cross references. — Powers of Environmental Protection Division of Department of Natural Resources regarding management of hazardous waste, § 12-8-60 et seq.

2-7-107. Inspections; search warrants; injunctions.

(a) For the purpose of carrying out this article, the Commissioner may enter upon any public or private premises, at reasonable times, in order to:

(1) Have access for the purpose of inspecting any equipment subject to this article;

(2) Inspect or sample lands actually or reported to be exposed to pesticides;

(3) Inspect storage or disposal areas;

(4) Inspect or investigate complaints of injury to humans or land;

(5) Sample pesticides being applied or to be applied; or

(6) Observe the use and application of any pesticide.

(b) Should the Commissioner be denied access to any land, where such access was sought for the purposes set forth in this article, he may apply to any court of competent jurisdiction for a search warrant authorizing access to such land for such purposes. Upon such application, the court may issue a search warrant for the purposes requested.

(c) The Commissioner is charged with the duty of enforcing the requirements of this article and the rules and regulations promulgated hereunder.

(d) In addition to any other remedy provided in this article, the Commissioner is authorized to bring an action to enjoin a violation of any provision of this article or any rule or regulation promulgated hereunder. In such an action it shall not be necessary for the Commissioner to allege or prove the absence of an adequate remedy at law.

History. — Ga. L. 1972, p. 849, § 21; Ga. L. 1976, p. 369, § 23; Ga. L. 1980, p. 749, §§ 4, 5.

RESEARCH REFERENCES

Am. Jur. 2d. — 3 Am. Jur. 2d, Agriculture, §§ 39 et seq., 53 et seq.

2-7-108. Subpoena powers.

The Commissioner may issue subpoenas to compel the attendance of witnesses and the production of books, documents, and records anywhere in this state in any hearing affecting the authority or privilege granted by a license, certification, or permit issued under this article.

History. — Ga. L. 1972, p. 849, § 20; Ga. L. 1976, p. 369, § 22.

2-7-109. Judicial review of Commissioner's actions.

Any person aggrieved by any action of the Commissioner may obtain judicial review thereof in accordance with Chapter 13 of Title 50, the "Georgia Administrative Procedure Act."

History. — Ga. L. 1972, p. 849, § 17; Ga. L. 1976, p. 369, § 19.

2-7-110. Reports of pesticide accidents; claim of damage; notification; inspection; effect of failure to file; failure to permit observation as bar to claim.

(a) The Commissioner by regulation may require the reporting of significant pesticide accidents or incidents.

(b) Any person claiming damages from a pesticide application shall file with the Commissioner, on a form prescribed by the Commissioner, a written statement claiming that he has been damaged. This report shall be filed within 60 days after the date that damages occur. If a growing crop is alleged to have been damaged, the report must be filed prior to the time that 25 percent of the crop has been harvested. Such statement shall contain, but shall not be limited to, the name of the person allegedly responsible for the application of the pesticide, the

name of the owner or lessee of the land on which the crop is grown and for which damage is alleged to have occurred, and the date on which the alleged damage occurred. The Commissioner shall prepare a form to be furnished for use in such cases. Such form shall also contain such other requirements as the Commissioner may deem proper. Upon receipt of such statement, the Commissioner shall notify the licensee and the owner or lessee of the land or other person who may be charged with responsibility for the damages claimed and shall furnish such copies of the statement as may be requested. The Commissioner shall inspect damages whenever possible. When he determines that a complaint has sufficient merit, he shall make such information available to the person claiming damages and to the person who is alleged to have caused the damage.

(c) The filing of a report as prescribed in subsection (b) of this Code section or the failure to file such a report need not be alleged in any complaint which might be filed in a court of law; nor shall the failure to file a report be considered any bar to the maintenance of any criminal or civil action.

(d) The failure to file a report as prescribed in subsection (b) of this Code section shall not be a violation of this article. However, if the person failing to file such report is the only one injured from the use or application of a pesticide by others, the Commissioner, when in the public interest, may refuse to hold a hearing for the denial, suspension, or revocation of a license or permit issued under this article until such report is filed.

(e) Where damage is alleged to have occurred, the claimant shall permit the Commissioner and the licensee and his representatives, including the bondsman and the insurer, to observe, within reasonable hours, the lands or nontarget organism alleged to have been damaged, in order that such damage may be examined. Failure of the claimant to permit such observation and examination of the damaged lands shall automatically bar the claim against the licensee.

History. — Ga. L. 1972, p. 849, § 11; Ga. L. 1976, p. 369, § 13.

RESEARCH REFERENCES

C.J.S. — 3 C.J.S., Agriculture, § 115 et seq.

ALR. — Products liability: fertilizers, insecticides, pesticides, fungicides, weedkillers, and the like, or articles used in application thereof, 12 A.L.R.4th 462.

2-7-111. Applicability of article to governmental entities; liability of such entities.

(a) All state agencies, municipal corporations, and other governmental agencies shall be subject to this article and rules adopted hereunder concerning the application and use of pesticides.

(b) Employees of agencies listed in subsection (a) of this Code section who use or supervise the use of restricted use pesticides restricted to use by certified applicators or state restricted pesticide uses restricted to use by certified applicators shall be subject to the requirements provided for in paragraph (2) of subsection (b) of Code Section 2-7-99, provided that the Commissioner shall issue a limited license without a fee to such public applicator who has qualified for such license. Such license shall be valid only when such applicator is acting as an applicator applying or supervising application of pesticides used by such entities. Government research personnel shall be exempt from this licensing requirement when applying pesticides, other than restricted use pesticides restricted to use by certified applicators or state restricted pesticide uses restricted to use by certified applicators, to experimental plots only. Individuals licensed pursuant to this subsection shall be certified commercial applicators for the use of "restricted use pesticides" covered by the applicant's classification.

(c) Such governmental agencies and municipal corporations shall be subject to legal recourse by any person damaged by the application of any pesticide. Such action may be brought in the county where the damage or some part thereof occurred.

History. — Ga. L. 1976, p. 369, § 8.

RESEARCH REFERENCES

ALR. — Products liability: fertilizers, weedkillers, and the like, or articles used in application thereof, insecticides, pesticides, fungicides, 12 A.L.R.4th 462.

2-7-112. Exemptions from article.

(a) **Farmers.** Code Section 2-7-99, relating to licenses and requirements for their issuance, shall not apply to any farmer applying pesticides classified for general use for himself or for his farmer neighbors, provided that:

(1) He operates farm property and operates and maintains pesticide application equipment primarily for his own use;

(2) He is not regularly engaged in the business of applying pesticides for hire, amounting to a principal or regular occupation, and he does not publicly hold himself out as a pesticide contractor; and

(3) He operates his pesticide application equipment only in the vicinity of his own property and for the accommodation of his neighbors.

(b) **Veterinarians.** Paragraph (2) of subsection (b) of Code Section 2-7-99, relating to license and requirements for their issuance, shall not apply to a doctor of veterinary medicine applying pesticides to animals during the normal course of his veterinary practice, provided that he is not regularly engaged in the business of applying pesticides for hire, amounting to a principal or regular occupation, and does not publicly hold himself out as a pesticide contractor.

(c) **Experimental research.** Code Section 2-7-99, relating to licenses and requirements for their issuance, shall not apply to research personnel applying pesticides, other than restricted use pesticides restricted to use by certified applicators or state restricted pesticide uses restricted to use by certified applicators, only to bona fide experimental plots.

(d) **Persons subject to Structural Pest Control Act.** Persons subject to Chapter 45 of Title 43, the "Structural Pest Control Act," are exempt from this article and the regulations issued hereunder with respect to any activities which are regulated under Chapter 45 of Title 43.

History. — Ga. L. 1972, p. 849, § 15; Ga. L. 1976, p. 369, § 17.

Code Commission notes. — Pursuant to Code Section 28-9-5, in 2019, "Georgia" was deleted preceding "Structural Pest Control Act" in subsection (d).

2-7-113. Effect of article on certain other laws.

No provision of this article shall authorize any person to violate any of the provisions of any law or any rules or regulations adopted and promulgated thereunder, the administration and enforcement of which is assigned to the Department of Natural Resources or any division therein or to the Coastal Marshlands Protection Committee. This article shall not be construed as repealing, preempting, modifying, or limiting the authority or functions assigned to the Department of Natural Resources or its divisions or officials or to the Coastal Marshlands Protection Committee.

History. — Ga. L. 1976, p. 369, § 25.

2-7-113.1. Local regulation of pesticides prohibited; variances from rule or regulation of Commissioner of Agriculture.

(a) No county, municipal corporation, consolidated government, or other political subdivision of this state shall adopt or continue in effect

any ordinance, rule, regulation, or resolution relating to pesticide use, sale, distribution, storage, transportation, disposal, formulation, labeling, registration, or manufacture. This provision shall in no way prohibit or impair the legal right of any county, municipal corporation, consolidated government, or other political subdivision of this state to issue business licenses or to make zoning decisions.

(b) The governing authority of any county or municipality may, by resolution, petition the Commissioner of Agriculture for a variance from a rule or regulation of the Commissioner because of special circumstances relating to the use or application of a pesticide. If such a petition is received by the Commissioner, it shall be the duty of the Commissioner to notify the President of the Senate, the Speaker of the House of Representatives, and the chairpersons of the Agriculture and Consumer Affairs Committee and Natural Resources and the Environment Committee of the Senate and the Agriculture and Consumer Affairs Committee and the Natural Resources and Environment Committee of the House of Representatives that such petition has been received. The Commissioner shall conduct a public hearing on such petition and issue a decision on the requested variance within 60 days of the receipt of the petition. If a decision is not given within 60 days of the receipt of the petition, the variance shall automatically be granted. The Commissioner may grant a variance requested under this subsection with or without changes.

History. — Code 1981, § 2-7-113.1, enacted by Ga. L. 1992, p. 3162, § 1; Ga. L. 2009, p. 303, § 2/HB 117; Ga. L. 2011, p. 752, § 2/HB 142.

Editor's notes. — Ga. L. 2009, p. 303, § 20/HB 117, not codified by the General Assembly, provides that: "This Act is intended to reflect the current internal organization of the Georgia Senate and House of Representatives and is not otherwise intended to change substantive law. In the event of a conflict with any other Act of the 2009 General Assembly, such other Act shall control over this Act."

2-7-114. Penalties.

Any person violating any provision of this article or any regulation adopted hereunder shall be guilty of a misdemeanor.

History. — Ga. L. 1972, p. 849, § 19; Ga. L. 1976, p. 369, § 21.

ARTICLE 4

PEST CONTROL COMPACT

2-7-130. Enactment; text of compact.

The Pest Control Compact is enacted into law and entered into with all other jurisdictions legally joining therein. The compact is substantially as follows:

PEST CONTROL COMPACT

ARTICLE I. FINDINGS.

The party states find that:

(a) In the absence of the higher degree of cooperation among them possible under this compact, the annual loss of approximately 25 billion dollars from the depredations of pests is virtually certain to continue, if not to increase.

(b) Because of varying climatic, geographic and economic factors, each state may be affected differently by particular species of pests but all states share the inability to protect themselves fully against those pests which present serious dangers to them.

(c) The migratory character of pest infestations makes it necessary for states both adjacent to and distant from one another, to complement each other's activities when faced with conditions of infestation and reinfestation.

(d) While every state is seriously affected by a substantial number of pests, and every state is susceptible of infestation by many species of pests not now causing damage to its crop and plant life and products, the fact that relatively few species of pests present equal danger to or are of interest to all states makes the establishment and operation of an Insurance Fund, from which individual states may obtain financial support for pest control programs of benefit to them in other states and to which they may contribute in accordance with their relative interests, the most equitable means of financing cooperative pest eradication and control programs.

ARTICLE II. DEFINITIONS.

As used in this compact, unless the context clearly requires a different construction:

(a) "State" means a state, territory or possession of the United States, the District of Columbia, and the Commonwealth of Puerto Rico.

(b) "Requesting state" means a state which invokes the procedures of the compact to secure the undertaking or intensification of measures to control or eradicate one or more pests within one or more other states.

(c) "Responding state" means a state requested to undertake or intensify the measures referred to in subdivision (b) of this Article.

(d) "Pest" means any invertebrate animal, pathogen, parasitic plant or similar or allied organism which can cause disease or damage in any crops, trees, shrubs, grasses or other plants of substantial value.

(e) "Insurance Fund" means the Pest Control Insurance Fund established pursuant to this compact.

(f) "Governing Board" means the administrators of this compact representing all of the party states when such administrators are acting as a body in pursuance of authority vested in them by this compact.

(g) "Executive Committee" means the committee established pursuant to Article V (e) of this compact.

ARTICLE III. THE INSURANCE FUND.

There is hereby established the Pest Control Insurance Fund for the purpose of financing other than normal pest control operations which states may be called upon to engage in pursuant to this compact. The Insurance Fund shall contain monies appropriated to it by the party states and any donations and grants accepted by it. All appropriations, except as conditioned by the rights and obligations of party states expressly set forth in this compact, shall be unconditional and may not be restricted by the appropriating state to use in the control of any specified pest or pests. Donations and grants may be conditional or unconditional, provided that the Insurance Fund shall not accept any donation or grant whose terms are inconsistent with any provision of this compact.

ARTICLE IV. THE INSURANCE FUND, INTERNAL OPERATIONS AND MANAGEMENT.

(a) The Insurance Fund shall be administered by a Governing Board and Executive Committee as hereinafter provided. The actions of the Governing Board and Executive Committee pursuant to this compact shall be deemed the actions of the Insurance Fund.

(b) The members of the Governing Board shall be entitled to one vote each on such Board. No action of the Governing Board shall be binding unless taken at a meeting at which a majority of the total number of votes on the Governing Board are cast in favor thereof. Action of the Governing Board shall be only at a meeting at which a majority of the members are present.

(c) The Insurance Fund shall have a seal which may be employed as an official symbol and which may be affixed to documents and otherwise used as the Governing Board may provide.

(d) The Governing Board shall elect annually, from among its members, a chairman, a vice chairman, a secretary and a treasurer. The chairman may not succeed himself. The Governing Board may appoint an executive director and fix his duties and his compensation, if any. Such executive director shall serve at the pleasure of the Governing Board. The Governing Board shall make provision for the bonding of such of the officers and employees of the Insurance Fund as may be appropriate.

(e) Irrespective of the civil service, personnel or other merit system laws of any of the party states, the executive director, or if there be no executive director, the chairman, in accordance with such procedures as the bylaws may provide, shall appoint, remove or discharge such personnel as may be necessary for the performance of the functions of the Insurance Fund and shall fix the duties and compensation of such personnel. The Governing Board in its bylaws shall provide for the personnel policies and programs of the Insurance Fund.

(f) The Insurance Fund may borrow, accept or contract for the services of personnel from any state, the United States, or any other governmental agency, or from any person, firm, association or corporation.

(g) The Insurance Fund may accept for any of its purposes and functions under this compact any and all donations, and grants of money, equipment, supplies, materials and services, conditional or otherwise, from any state, the United States, or any other governmental agency, or from any person, firm, association or corporation, and may receive, utilize and dispose of the same. Any donation, gift or grant accepted by the Governing Board pursuant to this paragraph or services borrowed pursuant to paragraph (f) of this Article shall be reported in the annual report of the Insurance Fund. Such report shall include the nature, amount and conditions, if any, of the donation, gift, grant or services borrowed and the identity of the donor or lender.

(h) The Governing Board shall adopt bylaws for the conduct of the business of the Insurance Fund and shall have the power to amend and rescind these bylaws. The Insurance Fund shall publish its bylaws in convenient form and shall file a copy thereof and a copy of any amendment thereto with the appropriate agency or officer in each of the party states.

(i) The Insurance Fund annually shall make to the Governor and legislature of each party state a report covering its activities for the preceding year. The Insurance Fund may make such additional reports as it may deem desirable.

(j) In addition to the powers and duties specifically authorized and imposed, the Insurance Fund may do such other things as are necessary and incidental to the conduct of its affairs pursuant to this compact.

ARTICLE V. COMPACT AND INSURANCE FUND ADMINISTRATION.

(a) In each party state there shall be a compact administrator, who shall be selected and serve in such manner as the laws of his state may provide, and who shall:

1. Assist in the coordination of activities pursuant to the compact in his state; and

2. Represent his state on the Governing Board of the Insurance Fund.

(b) If the laws of the United States specifically so provide, or if administrative provision is made therefor within the federal government, the United States may be represented on the Governing Board of the Insurance Fund by not to exceed three representatives. Any such representative or representatives of the United States shall be appointed and serve in such manner as may be provided by or pursuant to federal law, but no such representative shall have a vote on the Governing Board or on the Executive Committee thereof.

(c) The Governing Board shall meet at least once each year for the purpose of determining policies and procedures in the administration of the Insurance Fund and, consistent with the provisions of the compact, supervising and giving direction to the expenditure of monies from the Insurance Fund. Additional meetings of the Governing Board shall be held on call of the chairman, the Executive Committee, or a majority of the membership of the Governing Board.

(d) At such times as it may be meeting, the Governing Board shall pass upon applications for assistance from the Insurance Fund and authorize disbursements therefrom. When the Governing Board is not in session, the Executive Committee thereof shall act as agent of the Governing Board, with full authority to act for it in passing upon such applications.

(e) The Executive Committee shall be composed of the chairman of the Governing Board and four additional members of the Governing Board chosen by it so that there shall be one member representing each of four geographic groupings of party states. The Governing Board shall make such geographic groupings. If there is representation of the United States on the Governing Board, one such representative may meet with the Executive Committee. The chairman of the Governing Board shall be chairman of the Executive Committee. No action of the Executive Committee shall be binding unless taken at a meeting at which at least four members of such Committee are present and vote in favor thereof. Necessary expenses of each of the five members of the Executive Committee incurred in attending meetings of such Committee, when not held at the same time and place as a meeting of the Governing Board, shall be charges against the Insurance Fund.

ARTICLE VI. ASSISTANCE AND REIMBURSEMENT.

(a) Each party state pledges to each other party state that it will employ its best efforts to eradicate, or control within the strictest practicable limits, any and all pests. It is recognized that performance of this responsibility involves:

1. The maintenance of pest control and eradication activities of interstate significance by a party state at a level that would be reasonable for its own protection in the absence of this compact.

2. The meeting of emergency outbreaks or infestations of interstate significance to no less an extent than would have been done in the absence of this compact.

(b) Whenever a party state is threatened by a pest not present within its borders but present within another party state, or whenever a party state is undertaking or engaged in activities for the control or eradication of a pest or pests, and finds that such activities are or would be impracticable or substantially more difficult of success by reason of failure of another party state to cope with infestation or threatened infestation, that state may request the Governing Board to authorize expenditures from the Insurance Fund for eradication or control measures to be taken by one or more of such other party states at a level sufficient to prevent, or to reduce to the greatest practicable extent, infestation or reinfestation of the requesting state. Upon such authorization the responding state or states shall take or increase such eradication or control measures as may be warranted. A responding state shall use monies made available from the Insurance Fund expeditiously and efficiently to assist in affording the protection requested.

(c) In order to apply for expenditures from the Insurance Fund, a requesting state shall submit the following in writing:

1. A detailed statement of the circumstances which occasion the request for the invoking of the compact.

2. Evidence that the pest on account of whose eradication or control assistance is requested constitutes a danger to an agricultural or forest crop, product, tree, shrub, grass or other plant having a substantial value to the requesting state.

3. A statement of the extent of the present and projected program of the requesting state and its subdivisions, including full information as to the legal authority for the conduct of such program or programs and the expenditures being made or budgeted therefor, in connection with the eradication, control, or prevention of introduction of the pest concerned.

4. Proof that the expenditures being made or budgeted as detailed in item 3 do not constitute a reduction of the effort for the control or eradication of the pest concerned or, if there is a reduction, the reasons why the level of program detailed in item 3 constitutes a normal level of pest control activity.

5. A declaration as to whether, to the best of its knowledge and belief, the conditions which in its view occasion the invoking of the compact in the particular instance can be abated by a program undertaken with the aid of monies from the Insurance Fund in one year or less, or whether the request is for an installment in a program which is likely to continue for a longer period of time.

6. Such other information as the Governing Board may require consistent with the provisions of this compact.

(d) The Governing Board or Executive Committee shall give due notice of any meeting at which an application for assistance from the Insurance Fund is to be considered. Such notice shall be given to the compact administrator of each party state and to such other officers and agencies as may be designated by the laws of the party states. The requesting state and any other party state shall be entitled to be represented and present evidence and argument at such meeting.

(e) Upon the submission as required by paragraph (c) of this Article and such other information as it may have or acquire, and upon determining that an expenditure of funds is within the purposes of this compact and justified thereby, the Governing Board or Executive Committee shall authorize support of the program. The Governing Board or the Executive Committee may meet at any time or place for the purpose of receiving and considering an application. Any and all determinations of the Governing Board or Executive Committee, with respect to an application, together with the reasons therefor shall be recorded and subscribed in such manner as to show and preserve the votes of the individual members thereof.

(f) A requesting state which is dissatisfied with a determination of the Executive Committee shall upon notice in writing given within 20 days of the determination with which it is dissatisfied, be entitled to receive a review thereof at the next meeting of the Governing Board. Determinations of the Executive Committee shall be reviewable only by the Governing Board at one of its regular meetings, or at a special meeting held in such manner as the Governing Board may authorize.

(g) Responding states required to undertake or increase measures pursuant to this compact may receive monies from the Insurance Fund, either at the time or times when such state incurs expenditures on account of such measures, or as reimbursement for expenses incurred and chargeable to the Insurance Fund. The Governing Board shall

adopt and, from time to time, may amend or revise procedures for submission of claims upon it and for payment thereof.

(h) Before authorizing the expenditure of monies from the Insurance Fund pursuant to an application of a requesting state, the Insurance Fund shall ascertain the extent and nature of any timely assistance or participation which may be available from the federal government and shall request the appropriate agency or agencies of the federal government for such assistance and participation.

(i) The Insurance Fund may negotiate and execute a memorandum of understanding or other appropriate instrument defining the extent and degree of assistance or participation between and among the Insurance Fund, cooperating federal agencies, states and any other entities concerned.

ARTICLE VII. ADVISORY AND TECHNICAL COMMITTEES.

The Governing Board may establish advisory and technical committees composed of state, local, and federal officials, and private persons to advise it with respect to any one or more of its functions. Any such advisory or technical committee, or any member or members thereof may meet with and participate in its deliberations. Upon request of the Governing Board or Executive Committee an advisory or technical committee may furnish information and recommendations with respect to any application for assistance from the Insurance Fund being considered by such Board or Committee and the Board or Committee may receive and consider the same: provided that any participant in a meeting of the Governing Board or Executive Committee held pursuant to Article VI (d) of the compact shall be entitled to know the substance of any such information and recommendations, at the time of the meeting if made prior thereto or as a part thereof or, if made thereafter, no later than the time at which the Governing Board or Executive Committee makes its disposition of the application.

ARTICLE VIII. RELATIONS WITH NONPARTY JURISDICTIONS.

(a) A party state may make application for assistance from the Insurance Fund in respect of a pest in a nonparty state. Such application shall be considered and disposed of by the Governing Board or Executive Committee in the same manner as an application with respect to a pest within a party state, except as provided in this Article.

(b) At or in connection with any meeting of the Governing Board or Executive Committee held pursuant to Article VI (d) of this compact a nonparty state shall be entitled to appear, participate, and receive information only to such extent as the Governing Board or Executive Committee may provide. A nonparty state shall not be entitled to review of any determination made by the Executive Committee.

(c) The Governing Board or Executive Committee shall authorize expenditures from the Insurance Fund to be made in a nonparty state only after determining that the conditions in such state and the value of such expenditures to the party states as a whole justify them. The Governing Board or Executive Committee may set any conditions which it deems appropriate with respect to the expenditure of monies from the Insurance Fund in a nonparty state and may enter into such agreement or agreements with nonparty states and other jurisdictions or entities as it may deem necessary or appropriate to protect the interests of the Insurance Fund with respect to expenditures and activities outside of party states.

ARTICLE IX. FINANCE.

(a) The Insurance Fund shall submit to the executive head or designated officer or officers of each party state a budget for the Insurance Fund for such period as may be required by the laws of that party state for presentation to the legislature thereof.

(b) Each of the budgets shall contain specific recommendations of the amount or amounts to be appropriated by each of the party states. The requests for appropriations shall be apportioned among the party states as follows: one-tenth of the total budget in equal shares and the remainder in proportion to the value of agricultural and forest crops and products, excluding animals and animal products, produced in each party state. In determining the value of such crops and products the Insurance Fund may employ such source or sources of information as in its judgment present the most equitable and accurate comparisons among the party states. Each of the budgets and requests for appropriations shall indicate the source or sources used in obtaining information concerning value of products.

(c) The financial assets of the Insurance Fund shall be maintained in two accounts to be designated respectively as the "Operating Account" and the "Claims Account." The Operating Account shall consist only of those assets necessary for the administration of the Insurance Fund during the next ensuing two-year period. The Claims Account shall contain all monies not included in the Operating Account and shall not exceed the amount reasonably estimated to be sufficient to pay all legitimate claims on the Insurance Fund for a period of three years. At any time when the Claims Account has reached its maximum limit or would reach its maximum limit by the addition of monies requested for appropriation by the party states, the Governing Board shall reduce its budget requests on a pro rata basis in such manner as to keep the Claims Account within such maximum limit. Any monies in the Claims Account by virtue of conditional donations, grants or gifts shall be included in calculations made pursuant to this paragraph only to the extent that such monies are available to meet demands arising out of claims.

(d) The Insurance Fund shall not pledge the credit of any party state. The Insurance Fund may meet any of its obligations in whole or in part with monies available to it under Article IV (g) of this compact, provided that the Governing Board takes specific action setting aside such monies prior to incurring any obligation to be met in whole or in part in such manner. Except where the Insurance Fund makes use of monies available to it under Article IV (g) hereof, the Insurance Fund shall not incur any obligation prior to the allotment of monies by the party states adequate to meet the same.

(e) The Insurance Fund shall keep accurate accounts of all receipts and disbursements. The receipts and disbursements of the Insurance Fund shall be subject to the audit and accounting procedures established under its bylaws. However, all receipts and disbursements of funds handled by the Insurance Fund shall be audited yearly by a certified or licensed public accountant and a report of the audit shall be included in and become part of the annual report of the Insurance Fund.

(f) The accounts of the Insurance Fund shall be open at any reasonable time for inspection by duly authorized officers of the party states and by any persons authorized by the Insurance Fund.

ARTICLE X. ENTRY INTO FORCE AND WITHDRAWAL.

(a) This compact shall enter into force when enacted into law by any five or more states. Thereafter, this compact shall become effective as to any other state upon its enactment thereof.

(b) Any party state may withdraw from this compact by enacting a statute repealing the same, but no such withdrawal shall take effect until two years after the executive head of the withdrawing state has given notice in writing of the withdrawal to the executive heads of all other party states. No withdrawal shall affect any liability already incurred by or chargeable to a party state prior to the time of such withdrawal.

ARTICLE XI. CONSTRUCTION AND SEVERABILITY.

This compact shall be liberally construed so as to effectuate the purposes thereof. The provisions of this compact shall be severable and if any phrase, clause, sentence or provision of this compact is declared to be contrary to the constitution of any state or of the United States or the applicability thereof to any government, agency, person or circumstance is held invalid, the validity of the remainder of this compact and the applicability thereof to any government, agency, person or circumstance shall not be affected thereby. If this compact shall be held contrary to the constitution of any state participating herein, the compact shall remain in full force and effect as to the remaining party

states and in full force and effect as to the state affected as to all severable matters.

History. — Code 1981, § 2-7-130, enacted by Ga. L. 1984, p. 1021, § 1; Ga. L. 1985, p. 149, § 2.

Code Commission notes. — Pursuant to Code Section 28-9-5, in 2019, "Governing Board" was substituted for "governing board" at the beginning of the third sentence of subsection (d) of Article IV.

2-7-131. Cooperation with insurance fund.

Consistent with the law of this state and within the limits of funds appropriated or otherwise available, the departments, agencies, and officers of this state may cooperate with the insurance fund established by the Pest Control Compact.

History. — Code 1981, § 2-7-131, enacted by Ga. L. 1984, p. 1021, § 1.

2-7-132. Filing of compact bylaws and amendments.

Pursuant to Article IV (h) of the Pest Control Compact, copies of bylaws and amendments thereto shall be filed with the Commissioner of Agriculture.

History. — Code 1981, § 2-7-132, enacted by Ga. L. 1984, p. 1021, § 1.

2-7-133. Compact administrator.

The compact administrator for the Pest Control Compact for this state shall be the Commissioner of Agriculture.

History. — Code 1981, § 2-7-133, enacted by Ga. L. 1984, p. 1021, § 1.

2-7-134. Request or application for assistance from insurance fund.

Within the meaning of Article VI (b) or VIII (a) of the Pest Control Compact, a request or application for assistance from the insurance fund may be made by the Governor.

History. — Code 1981, § 2-7-134, enacted by Ga. L. 1984, p. 1021, § 1.

2-7-135. Appropriation of funds; receipt and expenditure of payments.

(a) The funds necessary to carry out this article and the Pest Control Compact shall be paid from funds appropriated to or otherwise made available to the Department of Agriculture.

(b) When any payment is made to this state pursuant to the Pest Control Compact for purposes of allowing this state to undertake or intensify a control or eradication program, such payment shall be received by the department, agency, or officer expending funds or becoming liable to expend funds for such control or eradication program. Such payment shall be expended for purposes of such control or eradication program by such department, agency, or officer; and such payment need not be paid into the general fund of the state treasury.

History. — Code 1981, § 2-7-135, enacted by Ga. L. 1984, p. 1021, § 1.

2-7-136. "Executive head" defined.

As used in the Pest Control Compact, with reference to this state, the term "executive head" shall mean the Governor.

History. — Code 1981, § 2-7-136, enacted by Ga. L. 1984, p. 1021, § 1.

ARTICLE 5

BOLL WEEVIL ERADICATION

Editor's notes. — Ga. L. 1985, p. 1079, § 2 provided for an effective date for this article as follows:

"This Act shall become effective July 1, 1985, for the purposes of certifying a cotton growers' organization and conducting a referendum among cotton growers. For all other purposes, this Act shall not become effective until the states of Alabama and Florida have enacted a boll weevil eradication program similar to the program provided for in this Act."

Alabama enacted a similar program in 1984. For Alabama law, see § 2-19-120 et seq., Code of Alabama 1975. Florida enacted a similar program in 1987. For Florida law, see Fla. Stat. § 593.101 et seq. (1987), effective May 29, 1987.

By the terms of Ga. L. 1985, p. 1079, § 2, this article became effective May 29, 1987.

Administrative rules and regulations. — Boil Weevil eradication, Official Compilation of the Rules and Regulations of the State of Georgia, Rules of Georgia Department of Agriculture, Chapter 40-24.

RESEARCH REFERENCES

Am. Jur. 2d. — 3 Am. Jur. 2d, Agriculture, § 37 et seq.

C.J.S. — 3 C.J.S., Agriculture, §§ 102 et seq., 115 et seq.

2-7-150. Short title.

This article shall be cited as the "Georgia Boll Weevil Eradication Act of 1985."

History. — Code 1981, § 2-7-150, enacted by Ga. L. 1985, p. 1079, § 1.

2-7-151. Declaration of purpose.

The boll weevil, *Anthonomus grandis* Boheman, is declared to be a serious pest and a menace to the cotton-growing industry. The purpose of this article is to provide for the eradication of this pest.

History. — Code 1981, § 2-7-151, enacted by Ga. L. 1985, p. 1079, § 1.

Code Commission notes. — Pursuant to Code Section 28-9-5, in 1986, a hyphen was inserted between "cotton" and "growing" in the first sentence.

2-7-152. Definitions.

As used in this article, the term:

(1) "Bale" means a running bale of cotton averaging 500 pounds.

(1.1) "Boll weevil" means *Anthonomus grandis* Boheman in any stage of development.

(2) "Certificate" means a document issued by the Commissioner certifying that a regulated article is free of the boll weevil.

(3) "Commissioner" means the Commissioner of Agriculture, any employee of the Department of Agriculture, or any other person authorized by the Commissioner to act in his or her behalf.

(4) "Department" means the Georgia Department of Agriculture.

(4.1) "First handler" means that person who owns or operates the gin where cotton is first delivered from the cotton grower.

(5) "Host" means any plant, plant part, or product thereof, including cotton, which is capable of sustaining the boll weevil in the completion of any portion of its life cycle.

(6) "Infested" means actually infested with the boll weevil or exposed to such an extent that it would be reasonable to expect that an infestation exists.

(7) "Noncommercial cotton" means cotton intended for purposes other than processing.

(8) "Permit" means a document issued or authorized by the Commissioner providing for the movement of regulated articles to restricted destinations for limited handling, use, or processing.

(9) "Person" means an individual, corporation, company, society, association, or other business entity.

(10) "Regulated article" means any article carrying or capable of carrying the boll weevil, including, but not limited to, cotton plants, seed cotton, hosts, gin trash, and equipment which may be designated by the Commissioner.

History. — Code 1981, § 2-7-152, enacted by Ga. L. 1985, p. 1079, § 1; Ga. L. 1998, p. 1123, § 1; Ga. L. 2009, p. 439, § 1/SB 43.

Editor's notes. — Ga. L. 1998, p. 1123, § 5, not codified by the General Assembly, provides that: "This Act is not severable. In the event any section, subsection, sentence, clause, or phrase of this Act shall be declared or adjudged invalid or unconstitutional, the other sections, subsections, sentences, clauses, or phrases of this Act shall automatically be repealed and Article 5 of Chapter 7 of Title 2 of the Official Code of Georgia Annotated in effect immediately prior to the enactment of this Act is reenacted as of such date as if this Act had not been enacted. The General Assembly declares that it would not have passed the remaining parts of this Act if it had known that such part or parts hereof would be declared or adjudged invalid or unconstitutional."

2-7-153. Administration and enforcement by Commissioner.

The Commissioner is authorized to administer and enforce the provisions of this article through the utilization of personnel and facilities of the department.

History. — Code 1981, § 2-7-153, enacted by Ga. L. 1985, p. 1079, § 1.

2-7-154. Powers of Commissioner.

The Commissioner is authorized to:

(1) Cooperate with and, as he may deem necessary, enter into written agreements with any other agency of this state, any agency of the federal government, any agency of another state, any person who may be engaged in the growing, processing, marketing, or handling of cotton, or any other person for the purpose of cost sharing or assignment of duties and responsibilities in destroying and eradicating the boll weevil in Georgia;

(2) Inspect or cause to be inspected by duly authorized employees or agents any land, plants, plant products, or other articles, things, or substances that may, in his opinion, be capable of disseminating or carrying the boll weevil. For this purpose, the Commissioner or his employees and agents shall have the power to enter into or upon any place and to open any bundle, package, or other container containing or thought to contain any regulated article or other item capable of disseminating or carrying the boll weevil;

(3) Require every person growing cotton in this state to furnish, on forms supplied by the Commissioner, such information as he may require relating to the size and location of all commercial and noncommercial cotton fields or patches being grown in this state;

(4) Quarantine this state or any portion thereof or any other state or portion thereof when, after hearing, he determines that such action is necessary to prevent or reduce the spread of the boll weevil;

(5) Adopt, after hearing, such rules as he deems necessary to prevent or reduce the spread of the boll weevil, including but not limited to rules:

(A) Governing the movement of regulated articles into, out of, or within this state;

(B) Establishing eradication zones within the state where eradication efforts will be undertaken;

(C) Restricting or prohibiting the planting of cotton in eradication zones when he determines that it would jeopardize the success of the eradication effort or present a hazard to the public health or safety;

(D) Requiring that all growers of commercial cotton in the designated eradication zones participate in the eradication program, including cost sharing through assessment;

(E) Establishing penalty fees for those growers in eradication zones who fail to comply with the rules adopted by the Commissioner; or

(F) Imposing restrictions on pasturing of livestock, entry by humans, and location of honeybee colonies in any eradication zone which has been or is to be treated with pesticides for eradication of the boll weevil or in any other area affected by such treatments;

(6) Enter upon any premise, property, or field within an eradication zone and treat with pesticides or destroy any volunteer or noncommercial cotton when he determines that such action is necessary to the success of the eradication efforts;

(7) Require the destruction of commercial cotton in an eradication zone when it is not being grown in compliance with the rules adopted under this article; and

(8) Exempt from the assessment penalty requirements set forth in this article those cotton growers for whom paying the assessment penalties would impose an undue financial hardship. The Commissioner is authorized to establish, upon the recommendation of the cotton growers' organization certified pursuant to Code Section

2-7-155, a payment plan in such hardship cases. This exemption shall be implemented as follows:

(A) The Commissioner shall adopt rules and regulations defining the criteria to be used in determining financial hardship; provided, however, that no exemption shall be granted to any cotton grower who, after the amount of assessments and penalties otherwise due has been subtracted from his taxable net income, as defined in Code Section 48-7-27, has a net income exceeding $15,000.00 for the year in which he seeks an exemption;

(B) Any cotton grower who claims an exemption shall apply on a form prescribed by the Commissioner. A separate application shall be filed for each calendar year in which a cotton grower claims an exemption. Each application shall contain an explanation of the conditions to be met for approval. An oath shall be included on the form and the form, upon completion, shall be returned to the Commissioner;

(C) The Commissioner shall forward all completed exemption application forms to the cotton growers' organization certified pursuant to Code Section 2-7-155. The certified growers' organization shall determine from the information contained in the application forms whether or not the applicants qualify for a hardship exemption and may recommend a payment plan to the Commissioner; and

(D) The certified cotton growers' organization shall notify the Commissioner of its determination, which shall be binding upon the applicants. Upon receipt of the determination of the certified cotton growers' organization, the Commissioner shall promptly notify each affected cotton grower of that determination. If an exemption has been denied, assessments and penalties for the year in which the application was made will become due at the time they would otherwise have become due had no application for exemption been filed or within 30 days after the date of the Commissioner's notice of an adverse determination, whichever is later.

History. — Code 1981, § 2-7-154, enacted by Ga. L. 1985, p. 1079, § 1; Ga. L. 1991, p. 452, § 1.

2-7-155. Certification of cotton growers' organization by Commissioner; effect of certification; powers of organization; liability.

(a) The Commissioner is authorized to certify a cotton growers' organization for the purpose of entering into agreements with the department, agencies of other states, the federal government, or any

other person as may be necessary to carry out the purposes of this article. In applying to the Commissioner for certification, the cotton growers' organization shall demonstrate that:

(1) It is a nonprofit organization within the meaning of Section 501(a) of the Internal Revenue Code (26 U.S.C. Section 501(a));

(2) Membership is open to all cotton growers in this state;

(3) It has only one class of members and each member has only one vote;

(4) Its board of directors consists of six cotton growers elected by the membership and one employee of the department;

(5) All books and records of account and minutes of proceedings of the organization are available for inspection or audit by the Commissioner upon request at any reasonable time; and

(6) Any employee or agent of the organization who handles its funds is adequately bonded.

(b) If the Commissioner finds that the growers' organization meets the requirements set forth in subsection (a) of this Code section, he shall certify the organization, in writing, for the purposes of this article only, and such certification shall not affect any other organization of cotton growers established for other purposes. The Commissioner is authorized to revoke such certification if at any time the organization fails to meet the certification requirements or the purposes of this article.

(c)(1) The certified cotton growers' organization:

(A) Shall be a public corporation and may contract and be contracted with, implead and be impleaded, and complain and defend in all courts; and

(B) Shall be governed by a board of directors which shall name its chairman, vice chairman, and secretary and determine a quorum for the transaction of its business.

(2) The certified cotton growers' organization is authorized to appoint advisory boards, special committees, legal counsel, and technical and clerical personnel to advise, aid, and assist the organization in the performance of its duties and to fix, if necessary, any compensation for such services.

(3) The members, officers, and employees of the cotton growers' organization operating under this article shall not be held individually responsible in any way whatsoever to any grower or other person for errors in judgment, mistakes, or other acts of omission or commission, other than their own individual acts of dishonesty or

crime. No member, officer, or employee shall be held individually responsible for any act or omission of any other member of such organization. The liability of the members of the growers' organization shall be several and not joint, and no member shall be liable for the default of any other member.

(4) The certified cotton growers' organization is authorized to borrow money or otherwise incur indebtedness and to expend the moneys so acquired for the purpose of destroying and eradicating the boll weevil in Georgia. Any indebtedness created pursuant to this paragraph shall be repaid from the assessments on cotton growers provided for in Code Section 2-7-156 or from other funds available to the certified cotton growers' organization and shall not constitute a debt of the State of Georgia or any department, agency, political subdivision, official, or employee thereof. Funds borrowed under this paragraph may be expended by the certified cotton growers' organization for the purpose of reducing the annual assessment or increasing the number of years over which cotton growers are required to pay assessments under this article.

History. — Code 1981, § 2-7-155, enacted by Ga. L. 1985, p. 1079, § 1; Ga. L. 1986, p. 1086, § 1; Ga. L. 1987, p. 191, § 9.

Code Commission notes. — Pursuant to Code Section 28-9-5, in 2019, "26 U.S.C. Section 501(a)" was substituted for "26 USC 501(a)" near the end of paragraph (a)(1).

Editor's notes. — Ga. L. 1987, p. 191, § 10, not codified by the General Assembly, provided that this Act is applicable to taxable years ending on or after March 11, 1987, and that a taxpayer with a taxable year ending on or after January 1, 1987, and before March 11, 1987, may elect to have the provisions of that Act apply.

Ga. L. 1987, p. 191, § 10, not codified by the General Assembly, also provided that tax, penalty, and interest liabilities and refund eligibility for prior taxable years shall not be affected by that Act.

Ga. L. 1987, p. 191, § 10, not codified by the General Assembly, also provided that provisions of the federal Tax Reform Act of 1986 and of the Internal Revenue Code of 1986 which as of January 1, 1987, were not yet effective become effective for purposes of Georgia taxation on the same dates as they become effective for federal purposes.

2-7-156. Assessment for suppression and eradication programs; conditions.

An assessment shall be levied upon all cotton growers in this state to cover, in whole or in part, the cost of boll weevil suppression and eradication programs authorized by this article, subject to the following:

(1) All assessments imposed on cotton shall be levied on a per acre or per bale basis as determined by the Commissioner upon recommendation of the cotton growers' organization; provided, however, that the per acre assessment shall continue to be used so long as acreage certification is available to the department;

(2) The per acre or per bale assessment, the period for which it shall be levied, and the geographical area to which the assessment applies shall be established by the Commissioner, upon recommendation by the board of directors of the cotton growers' organization;

(3) When the assessment is imposed on a per bale basis, it shall be the duty of each first handler of cotton from cotton growers in this state to collect the assessments imposed pursuant to this article on such cotton, to file reports on forms prescribed by the Commissioner listing such sales and the name of the grower, and to remit the amounts so imposed and collected to the Commissioner within 30 days of the date of purchase of the cotton;

(4) The Commissioner of Agriculture is authorized, and it shall be the Commissioner's duty, to receive, collect, hold in trust, and disburse all assessments and any other funds created under this article as trust funds of the cotton growers' organization, without complying with the requirements applicable to funds collected for the use and benefit of the state. Such funds shall not be required to be deposited in the state treasury and appropriated therefrom. All moneys collected by the Commissioner shall be deposited in a bank or other depository approved by the growers' organization and shall be disbursed by the Commissioner only upon the written authorization of the certified cotton growers' organization for the administration and implementation of the boll weevil eradication program. Should the eradication program be discontinued or certification of the growers' organization be revoked by the Commissioner, the assessments authorized by this article shall be discontinued on the date specified by the Commissioner and any funds remaining in its hands at such time are authorized to be paid out by the Commissioner for existing obligations and for winding up the affairs of the certified cotton growers' organization. Any funds remaining over and above those required for completing the business of the cotton growers' organization shall be paid by the Commissioner to the contributing growers on a pro rata basis;

(5) Records maintained by the Commissioner on behalf of the certified cotton growers' organization shall be audited at least annually by the state auditor;

(6) The Commissioner shall have a lien for the payment of assessments under this article which shall be of equal dignity with liens for taxes in favor of the state. The Commissioner is authorized to issue executions for the collection of such assessments in like manner as executions are issued for ad valorem property taxes due the state. It shall be the duty of each and every sheriff of this state and their lawful deputies, upon request of the Commissioner, to levy and collect such executions and to make their return thereof to the Commis-

sioner in like manner as such tax executions are levied and return thereof made to county tax collectors and tax commissioners; provided, however, that the Commissioner shall be authorized to levy and collect his or her own executions;

(7) In addition to the lien provided in paragraph (6) of this Code section, the Commissioner shall have a special lien on cotton for payment of assessments which shall be superior to any other lien provided by law, shall arise as of the time the assessments become due and payable, and shall cover all cotton grown by or ginned from the cotton grower from the date the lien arises until such assessments are paid; provided, however, that any buyers of cotton shall take free of such lien if such buyer has not received written notice of the lien from the Commissioner. Such lien extends to the proceeds of sale received by the person who originally bought the cotton from the grower. Notice may be provided by tagging the cotton as being subject to a delinquency or by documentation in the sales agreement indicating that the cotton is subject to a delinquency. The Commissioner or the Commissioner's authorized representative is authorized and empowered to so tag the cotton wherever found. In order to enforce such liens, the Commissioner is authorized to issue an execution for the collection of delinquent assessments due the Commissioner. The execution shall be directed to all and singular sheriffs of this state and shall command them to levy upon the cotton of the cotton grower or notified initial buyer; provided, however, that the Commissioner shall be authorized to levy and collect his or her own executions. Each sheriff or the Commissioner or the Commissioner's authorized representative shall execute the execution as in cases of writs of execution from the superior courts. The Commissioner or the Commissioner's authorized representative may levy and conduct judicial sales in the manner provided by law for sales by sheriffs and constables. The special lien on cotton may also be enforced by a foreclosure action or action at law, as appropriate, brought by the Commissioner in the superior court of the county of residence of the person who originally bought the cotton from the grower. A buyer of cotton other than a person buying cotton from the grower takes free of the lien created by this paragraph.

History. — Code 1981, § 2-7-156, enacted by Ga. L. 1985, p. 1079, § 1; Ga. L. 1986, p. 1086, § 2; Ga. L. 1990, p. 5, § 1; Ga. L. 1991, p. 452, § 2; Ga. L. 1998, p. 1123, § 2; Ga. L. 2009, p. 439, § 2/SB 43.

Code Commission notes. — Pursuant to Code Section 28-9-5, in 1999, "Code section" was substituted for "subsection" in paragraph (7).

Editor's notes. — Ga. L. 1998, p. 1123, § 5, not codified by the General Assembly, provides that: "This Act is not severable. In the event any section, subsection, sentence, clause, or phrase of this Act shall be declared or adjudged invalid or unconstitutional, the other sections, subsections, sentences, clauses, or phrases of this Act shall automatically be repealed and Article 5 of Chapter 7 of Title 2 of the Official Code of Georgia Annotated in effect imme-

diately prior to the enactment of this Act is reenacted as of such date as if this Act had not been enacted. The General Assembly declares that it would not have passed the remaining parts of this Act if it had known that such part or parts hereof would be declared or adjudged invalid or unconstitutional." This Act became effective July 1, 1998.

2-7-156.1. Assessment Advisory Committee created; composition; eligibility of members; duties.

Repealed by Ga. L. 1998, p. 1123, § 3, effective March 24, 2010.

Editor's notes. — This Code section was based on Code 1981, § 2-7-156.1, enacted by Ga. L. 1998, p. 1123, § 3.

2-7-157. Prohibited activities.

It shall be unlawful:

(1) To plant cotton in any eradication zone in which planting has been prohibited by the Commissioner;

(2) To alter, forge, counterfeit, or engage in the unauthorized use of any certificate, permit, or other document provided for in this article; or

(3) To store or handle any regulated article in the eradication zone or to move a regulated article into, through, or from the eradication zone in violation of the purposes of this article.

History. — Code 1981, § 2-7-157, enacted by Ga. L. 1985, p. 1079, § 1.

2-7-158. Penalties.

(a) Any person violating any provision of this article shall be guilty of a misdemeanor and, upon conviction, shall be punished by a fine of not less than $50.00 nor more than $1,000.00 or by imprisonment not exceeding 12 months, or both, as determined by the court.

(b) Any cotton grower or the first handler of cotton from a cotton grower who fails to pay any assessment levied under this article when due and upon reasonable notice shall be subject to a penalty of not more than $25.00 per acre or $12.50 per bale, such amount to be established by the Commissioner upon recommendation of the board of directors of the cotton growers' organization.

(c) Any cotton grower who fails to pay all assessments, including penalties, within 30 days from the date of notice shall be required to destroy all cotton plants growing on his or her property which are subject to assessment. Any plants not destroyed shall be deemed to be

a public nuisance. In such case, the Commissioner is authorized to apply to any court of competent jurisdiction and such court shall issue judgment and order condemnation and destruction of such nuisance. The grower shall be liable for all court costs, fees, and other expenses incurred in such action.

History. — Code 1981, § 2-7-158, enacted by Ga. L. 1985, p. 1079, § 1; Ga. L. 1991, p. 452, § 3; Ga. L. 1998, p. 1123, § 4; Ga. L. 2009, p. 439, § 3/SB 43.

Code Commission notes. — Pursuant to Code Section 28-9-5, in 1986, "12" was substituted for "twelve" in subsection (a).

Editor's notes. — Ga. L. 1998, p. 1123, § 5, not codified by the General Assembly, provides that: "This Act is not severable. In the event any section, subsection, sentence, clause, or phrase of this Act shall be declared or adjudged invalid or unconstitutional, the other sections, subsections, sentences, clauses, or phrases of this Act shall automatically be repealed and Article 5 of Chapter 7 of Title 2 of the Official Code of Georgia Annotated in effect immediately prior to the enactment of this Act is reenacted as of such date as if this Act had not been enacted. The General Assembly declares that it would not have passed the remaining parts of this Act if it had known that such part or parts hereof would be declared or adjudged invalid or unconstitutional." This Act became effective July 1, 1998.

ARTICLE 6

LIABILITY FOR USE OF FERTILIZERS, PLANT GROWTH REGULATORS, OR PESTICIDES

RESEARCH REFERENCES

Am. Jur. 2d. — 3 Am. Jur. 2d, Agriculture, § 46.

C.J.S. — 3 C.J.S., Agriculture, §§ 93 et seq., 102 et seq., 115 et seq.

ALR. — Exterminator's tort liability for personal injury or death resulting from operations, 29 A.L.R.4th 987.

2-7-170. Liability resulting from use or application of fertilizer, plant growth regulator, or pesticide; previous orders issued by Department of Agriculture and Department of Natural Resources; strict tort liability against product manufacturers.

(a) No person, firm, or corporation engaged in an agricultural, silvicultural, farming, horticultural, or similar operation, place, establishment, or facility, or any of its appurtenances, who has applied or used or arranged for the application or use of any fertilizer, plant growth regulator, or pesticide as defined in the Federal Insecticide, Fungicide, and Rodenticide Act, 7 U.S.C. 135, et seq., as amended by the Federal Environmental Pesticide Control Act of 1972, 7 U.S.C. 136, et seq., and Article 2 of this chapter, known as the "Georgia Pesticide Control Act of 1976," and Article 3 of this chapter, known as the "Georgia Pesticide Use and Application Act of 1976," shall be responsible or liable under this title, without proof of negligence or lack of due

care, for any damages, response costs, or injunctive relief relating to any direct or indirect discharge or release into, or actual or threatened pollution of, the land, waters, air, or other resources of the state that is or may be associated with or resulting from such application or use, provided that:

(1) Such application or use was in a manner consistent with the labeling of such fertilizer, plant growth regulator, or pesticide and in accordance with acceptable agricultural management practices and all applicable state and federal laws and regulations at the time of such application or use;

(2) The state or federal government, or any of its agencies, had approved, recommended, or permitted the application or use and there is no finding that any conditions of such approval, recommendation, or permit were violated or that warnings or limitations regarding the application or use were ignored; and

(3) Such fertilizer, plant growth regulator, or pesticide was licensed by or registered with the state or federal government at the time of such application or use and such person, firm, or corporation knew of no special geological, hydrological, or soil type condition existing on the land which rendered such application or use likely to cause pollution. No person, firm, or corporation shall be liable based solely on ownership of the land where such application or use took place.

(b) Nothing in this article shall affect or limit any right of action of an individual against any person, firm, or corporation engaged in an agricultural or farming operation for injury to person or property resulting from such chemical application or use.

(c) All orders issued by the Department of Agriculture and the Department of Natural Resources prior to July 1, 1988, pursuant to this title and Title 12, and the liability upon which such orders are premised, if any, shall remain in effect unless the orders are otherwise revoked, amended, or modified by the Commissioner of Agriculture or the commissioner of natural resources.

(d) Nothing in this article shall be construed to prohibit any cause of action based on strict tort liability against any manufacturer of such fertilizer, plant growth regulator, or pesticide.

History. — Code 1981, § 2-7-170, enacted by Ga. L. 1988, p. 1409, § 1; Ga. L. 1989, p. 502, § 1; Ga. L. 1990, p. 8, § 2.

Code Commission notes. — Pursuant to Code Section 28-9-5, in 1988, "natural resources" was substituted for "Natural Resources" at the end of subsection (c).

RESEARCH REFERENCES

ALR. — Common-law strict liability in tort of prior landowner or lessee to subsequent owner for contamination of land with hazardous waste resulting from prior owner's or lessee's abnormally dangerous or ultrahazardous activity, 13 A.L.R.5th 600.

Federal pre-emption of state common-law products liability claims pertaining to pesticides, 101 A.L.R. Fed. 887.

ARTICLE 7

FERAL HOGS

2-7-200. "Feral hog" defined.

As used in this article, the term "feral hog" has the meaning provided by Code Section 27-1-2.

History. — Code 1981, § 2-7-200, enacted by Ga. L. 2015, p. 1352, § 3/HB 475.

2-7-201. Transport of live feral hogs; permit required.

(a) No person shall transport live feral hogs anywhere in this state unless authorized to do so pursuant to a feral hog transport permit carried on such person while engaging in the transport of such feral hogs.

(b)(1) Upon request by any person, the department shall issue a feral hog transport permit authorizing such person to transport live feral hogs; provided, however, that such permit shall only authorize the transportation of live feral hogs directly to slaughter, to a slaughtering facility, or to any other type of facility approved and licensed by the department, unless otherwise directed pursuant to an order issued by the state veterinarian.

(2) The cost of a feral hog transport permit shall not exceed $15.00.

(c) The department may require a license for the operation of any facility which holds but does not slaughter live feral hogs. The cost of such license shall not exceed $100.00.

(d) Any fees for licenses collected pursuant to this Code section shall be retained pursuant to the provisions of Code Section 45-12-92.1.

(e) Any person who violates subsection (a) of this Code section shall be guilty of a misdemeanor of a high and aggravated nature and shall be punished as provided by Code Section 17-10-4; provided, however, that if a fine is imposed pursuant to such Code section, such fine shall be not less than $1,500.00. In addition, any license or permit previously issued under Title 27 to any such person shall by operation of law be

revoked and shall not be reissued for a period of three years after the date of conviction. Such person shall be notified of the revocation by the Department of Natural Resources either personally or by a letter sent by certified mail or statutory overnight delivery to the name and address indicated on the application for the license or permit, or both, or to the Secretary of State as provided in Code Section 27-2-24.

History. — Code 1981, § 2-7-201, enacted by Ga. L. 2015, p. 1352, § 3/HB 475.

2-7-202. Commingling feral hogs with domestic swine prohibited.

No person shall commingle feral hogs with domestic swine or hold feral hogs on any premises where domestic swine are located.

History. — Code 1981, § 2-7-202, enacted by Ga. L. 2015, p. 1352, § 3/HB 475.

2-7-203. Penalty for violation.

Except as provided in subsection (e) of Code Section 2-7-201, any person who violates any provision of this article shall be guilty of a misdemeanor.

History. — Code 1981, § 2-7-203, enacted by Ga. L. 2015, p. 1352, § 3/HB 475.

2-7-204. Promulgation of rules and regulations.

The department may promulgate all rules and regulations necessary to administer the provisions of this article.

History. — Code 1981, § 2-7-204, enacted by Ga. L. 2015, p. 1352, § 3/HB 475.

CHAPTER 8

AGRICULTURAL COMMODITIES PROMOTION

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2-8-129. Committee members and employees not responsible individually for errors in judgment, mistakes or other acts.
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2-8-133. Amendments to, rules and regulations governing, and expiration and termination of marketing orders.
2-8-134. Limited application of marketing orders.
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Article 6

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2-8-201. Creation.
2-8-202. Membership; vacancies; compensation; certification of membership; naming of chairperson; quorum.
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2-8-217. Attorney General or prosecuting attorney to bring actions; administrative hearings; response to finding violation.
2-8-218. Falsification of reports, statements, or records; penalty.
2-8-219. Regulatory authority.

Cross references. — Promotion of agricultural products, Ga. Const. 1983, Art. VII, Sec. III, Para. II. Georgia Development Authority, T. 50, C. 10.

Administrative rules and regulations. — Agricultural Commodity Commissions, Official Compilation of the Rules and Regulations of the State of Georgia, Rules of Georgia Department of Agriculture, Chapter 40-26.

JUDICIAL DECISIONS

Cited in Campbell v. Farmer, 223 Ga. 605, 157 S.E.2d 276 (1967).

OPINIONS OF THE ATTORNEY GENERAL

Powers and duties of commission governed by this chapter. — The creation, powers, and duties of any agricultural commodity commission are subject to the provisions of this chapter and are governed and controlled thereby. 1976 Op. Att'y Gen. No. 76-4.

Assessment program not authorized. — Absent a constitutional amendment, a program to assess testing of equines for equine infectious anemia cannot be established under the authority of O.C.G.A. T. 2, Ch. 8 or through amendment thereof. 1995 Op. Att'y Gen. No. 95-18.

RESEARCH REFERENCES

Am. Jur. 2d. — 3 Am. Jur. 2d, Agriculture, § 19 et seq.

C.J.S. — 3 C.J.S., Agriculture, §§ 51, 68 et seq., 185 et seq.

ARTICLE 1

PURPOSE OF CHAPTER

2-8-1. Short title.

This chapter may be cited as the "Georgia Agricultural Commodities Promotion Act."

History. — Ga. L. 1961, p. 301, § 2; Ga. L. 1969, p. 763, § 3; Ga. L. 1989, p. 1420, § 1.

2-8-2. Intent and purpose of chapter.

It is the intent and purpose of this chapter to implement Article VII, Section III, Paragraph II(b) of the Constitution of Georgia, providing for the promotion of the production, marketing, sale, use and utilization, processing, and improvement of agricultural products. The provisions of this chapter which provide for the financing of the cost of programs authorized under this chapter are expressly found, determined, and declared to be an exercise of the authority vested in the General Assembly by this provision of the Constitution. It is the purpose of this chapter to promote agricultural products and commodities, provide education related to such agricultural products and commodities, and promote research concerning such agricultural products and commodities.

History. — Ga. L. 1961, p. 301, § 1; Ga. L. 1969, p. 763, § 2; Ga. L. 1983, p. 3, § 46; Ga. L. 1989, p. 1420, § 1.

Law reviews. — For article, "Agricultural Commodities Promotion," see 30 Ga. St. U. L. Rev. 1 (2013).

ARTICLE 1A

PROMOTION OF AGRICULTURAL COMMODITIES

2-8-5. Definitions.

(a) As used in this Code section, the term:

(1) "Agricultural commodities" means any and all agricultural, horticultural, floricultural, and vegetable products produced in this state or any class, variety, or utilization thereof, either in their natural state or as processed by a producer for the purpose of marketing such product or by a processor, and shall include any one, any combination thereof, or all of the agricultural products, livestock and livestock products, poultry and poultry products, timber and timber products, fish and seafood, and the products of the farms and forests of this state.

(2) "Processor" has the meaning provided by Code Section 2-8-11.

(3) "Producer" has the meaning provided by Code Section 2-8-11.

(b) The Commissioner shall be authorized to take all actions necessary and appropriate to create, register, license, promote, and protect a trademark for use in connection with the general promotion of agricultural commodities as being Georgia grown.

History. — Code 1981, § 2-8-5, enacted by Ga. L. 2009, p. 446, § 3/SB 152.

ARTICLE 2

AGRICULTURAL COMMODITY COMMISSIONS GENERALLY

2-8-10. Nonapplicability of article to Agricultural Commodity Commission for Peanuts, Agricultural Commodity Commission for Equines, Agricultural Commodity Commission for Georgia Grown Products; or Agricultural Commodity Commission for Propane.

This article shall not apply to the Agricultural Commodity Commission for Peanuts provided for in Article 3 of this chapter, except as provided in Code Section 2-8-13; nor shall this article apply to the Agricultural Commodity Commission for Equines provided for in Article 5 of this chapter; nor shall this article apply to the Agricultural Commodity Commission for Georgia Grown Products provided for in Article 4 of this chapter; nor shall this article apply to the Agricultural Commodity Commission for Propane provided for in Article 6 of this chapter.

History. — Code 1981, § 2-8-10, enacted by Ga. L. 1989, p. 1420, § 1; Ga. L. 2006, p. 632, § 1/SB 380; Ga. L. 2013, p. 74, § 2/HB 298; Ga. L. 2019, p. 91, § 2/HB 512.

The 2019 amendment, effective April 18, 2019, added "; nor shall this article apply to the Agricultural Commodity Commission for Propane provided for in Article 6 of this chapter" at the end of this Code section.

Editor's notes. — Ga. L. 2006, p. 632, § 2/SB 380, not codified by the General Assembly, provides that the 2006 amendment became effective January 1, 2007, only upon ratification of a constitutional amendment by the voters at the November 2006 general election. The constitutional amendment (Ga. L. 2006, p. 1112) was approved by a majority of the qualified voters voting at the general election held on November 7, 2006.

Law reviews. — For article, "Agricultural Commodities Promotion," see 30 Ga. St. U. L. Rev. 1 (2013).

2-8-11. Definitions.

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 agricultural commodities 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 any commodity or commodities included in any marketing order made effective pursuant to this article.

(2) "Agricultural commodity" means any and all agricultural, horticultural, floricultural, and vegetable products produced in this state or any class, variety, or utilization thereof, either in their natural state or as processed by a producer for the purpose of marketing such product or by a processor as defined in this Code section, and shall include any one, any combination thereof, or all of the agricultural products, livestock and livestock products, poultry and poultry products, timber and timber products, fish and seafood, and the products of the farms and forests of this state. For the purpose of this article, the term "agricultural commodity" shall not mean or include peanuts.

(3) "Commission" means each and every agricultural commodity commission created under this article.

(4) "Distributor" means any person who engages in the operation of selling, marketing, or distributing an agricultural commodity which he has produced or has purchased or acquired from a producer or which he is marketing on behalf of a producer, whether as owner, agent, employee, broker, or otherwise, but shall not include a retailer as defined in this Code section, except a retailer who purchases or acquires from, or handles on behalf of, any producer, an agricultural commodity not theretofore subjected to regulation by the marketing order covering such commodity.

(5) "Handler" means any person engaged within this state as a distributor in the business of distributing an agricultural commodity or any person engaged as a processor in the business of processing an agricultural commodity.

(6) "Marketing order" means an order issued pursuant to this article prescribing rules and regulations governing the processing, distributing, or handling in any manner of any agricultural commodity within this state or establishing an assessment for financing the programs established under this article.

(7) "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.

(8) "Processor" means any person engaged within this state in the operation of receiving, grading, packing, canning, fermenting, distilling, extracting, preserving, grinding, crushing, or changing the form of an agricultural commodity for the purpose of preparing such agricultural commodity for market or of marketing such commodity or engaged in any other activities performed for the purpose of preparing such commodity for market or of marketing such commodity but shall not include a person engaged in manufacturing another and different product from an agricultural commodity, so changed in form. The term "processor" shall not include an agent of the processor nor any person who receives an agricultural commodity for or on the account of another person.

(9) "Producer" means any person engaged within this state in the business of producing or causing to be produced for market any agricultural commodity as defined in this Code section.

(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, any agricultural commodity which he has produced to any handler as defined in this Code section.

(11) "Retailer" means any person who purchases or acquires any agricultural commodity for resale at retail to the general public for consumption off the premises; however, such person shall also be included within the definition of "distributor," as set forth in this Code section, to the extent that he engages in the business of a distributor as defined in this Code section.

(12) "Seasonal marketing regulations" means marketing regulations, applicable to a particular marketing order, made effective as prescribed in this article for the purpose of carrying into effect, by

administrative order, the marketing regulatory authorizations and the provisions of such marketing order, as such authorizations or provisions may be applicable to or required by changing economic or marketing conditions and requirements from time to time during each marketing season in which such marketing order may operate. Such seasonal marketing regulations shall not extend beyond the marketing order concerned; nor shall they modify or change the language of such marketing order.

(13) "To distribute" means to engage in the business of a distributor as defined in this Code section.

(14) "To handle" means to engage in the business of a handler as defined in this Code section.

(15) "To process" means to engage in the business of a processor as defined in this Code section.

History. — Ga. L. 1961, p. 301, § 3; Ga. L. 1964, p. 141, § 1A; Ga. L. 1968, p. 398, § 1; Ga. L. 1969, p. 763, § 4; Code 1981, § 2-8-3; Code 1981, § 2-8-11, as redesignated by Ga. L. 1989, p. 1420, § 1.

JUDICIAL DECISIONS

Cited in Herrin v. Opatut, 248 Ga. 140, 281 S.E.2d 575 (1981).

OPINIONS OF THE ATTORNEY GENERAL

"Business unit" applies in determining eligibility to vote in referendum. — The "business unit" engaged in the producing of an affected commodity is the appropriate criterion to apply in determining eligibility to vote in commodity commission referendum. 1970 Op. Att'y Gen. No. 70-168.

Each "business unit" is entitled to cast one vote. 1970 Op. Att'y Gen. No. 70-168.

"Producer." — "Producer" is party responsible for assessments levied by commission. 1976 Op. Att'y Gen. No. 76-4.

"Producer" is also the individual to whom voting rights in the commission referenda must devolve. 1976 Op. Att'y Gen. No. 76-4.

2-8-12. Commissioner to administer and enforce article.

The Commissioner shall be authorized to exercise supervisory jurisdiction over the administration and enforcement of this article. In the performance of this duty, he is authorized to utilize the personnel and facilities of the department.

History. — Ga. L. 1961, p. 301, § 4; Ga. L. 1969, p. 763, § 5; Code 1981, § 2-8-4; Code 1981, § 2-8-12, as redesignated by Ga. L. 1989, p. 1420, § 1.

2-8-13. Commissions previously established are ratified and governed by chapter; contributions deemed voluntary; balloting to determine continued existence.

(a)(1) Each of the following commissions heretofore established pursuant to the "Georgia Agricultural Commodities Promotion Act," (Ga. L. 1961, p. 301), as amended, effective from the date set forth below opposite its name, is ratified and confirmed as a public corporation and instrumentality of the State of Georgia from and since such date:

(A) The Agricultural Commodity Commission for Milk established July 1, 1961;

(B) The Agricultural Commodity Commission for Eggs established July 1, 1961;

(C) The Agricultural Commodity Commission for Peanuts established August 1, 1961;

(D) The Agricultural Commodity Commission for Sweet Potatoes established August 1, 1961;

(E) The Agricultural Commodity Commission for Peaches established May 1, 1962;

(F) The Agricultural Commodity Commission for Tobacco established July 1, 1962;

(G) The Agricultural Commodity Commission for Apples established August 1, 1962; and

(H) The Agricultural Commodity Commission for Cotton established August 1, 1965.

(2) Each of the following entities that were formed de facto to act as commodity commissions upon presentation by the producers of the affected agricultural commodity of a list of nominees for appointment and on which ex officio members elected by the House Committee on Agriculture and Consumer Affairs and the Senate Agriculture and Consumer Affairs Committee served is ratified and confirmed as a public corporation and instrumentality of the State of Georgia from and since such date:

(A) The Agricultural Commodity Commission for Soybeans established September 1, 1971;

(B) The Agricultural Commodity Commission for Canola established June 24, 1994;

(C) The Agricultural Commodity Commission for Pecans established June 24, 1994;

(D) The Agricultural Commodity Commission for Corn established March 24, 1995; and

(E) The Agricultural Commodity Commission for Vegetables established June 19, 2006.

(3) There shall be an Agricultural Commodity Commission for Blueberries established on May 12, 2008.

(4) There shall be an Agricultural Commodity Commission for Ornamental Plants established on May 1, 2009. For purposes of this paragraph, the term "ornamental plants" means any plants grown in commercial nurseries for sale as live plants for use primarily in ornamental or landscape plantings; such term shall not include turf production or plants grown in nurseries for other agricultural, horticultural, or silvicultural use.

(5) There shall be an Agricultural Commodity Commission for Beef established on April 17, 2013. For purposes of this paragraph, the term "beef" means any bovine animal.

(b)(1) All actions taken by each of the commissions enumerated in paragraph (1) of subsection (a) of this Code section prior to July 1, 1969, pursuant to terms of Ga. L. 1961, p. 301, as amended, are ratified; and all funds received by each of the commissions after the effective date shown opposite its name and prior to July 1, 1969, are determined to have been voluntarily contributed pursuant to subsection (h) of Code Section 2-8-14 and to constitute trust funds of such commission as provided in Code Section 2-8-17. Each of such commissions shall, from and after July 1, 1969, be organized and constituted, have corporate existence, and possess powers and duties as stated in this article and shall be governed and controlled by this article; provided, however, that any contract obligation or other undertaking entered into or incurred by or in behalf of any such commission prior to July 1, 1969, shall be valid and binding if authorized by Ga. L. 1961, p. 301, as amended.

(2) All actions taken by each of the commissions enumerated in paragraph (2) of subsection (a) of this Code section prior to May 11, 2007, pursuant to terms of Ga. L. 1969, p. 763, as amended, or this article are ratified; and all funds received by each of the commissions on or after the effective date shown opposite its name and prior to May 11, 2007, are determined to have been voluntarily contributed pursuant to subsection (h) of Code Section 2-8-14 and to constitute trust funds of such commission as provided in Code Section 2-8-17. Each of such commissions shall, from and after May 11, 2007, be organized and constituted, have corporate existence, and possess powers and duties as stated in this article and shall be governed and controlled by this article; provided, however, that any contract

obligation or other undertaking entered into or incurred by or in behalf of any such commission prior to May 11, 2007, shall be valid and binding if authorized by Ga. L. 1969, p. 763, as amended, or this article.

(c)(1) Prior to April 30, 1971, and each three years thereafter, balloting shall be conducted in accordance with Code Section 2-8-23 to determine whether any existing commission listed in paragraph (1) of subsection (a) of this Code section shall continue to exist and operate under this article.

(2) Prior to April 30, 2009, and each three years thereafter, balloting shall be conducted in accordance with Code Section 2-8-23 to determine whether any existing commission listed in paragraph (2) of subsection (a) of this Code section shall continue to exist and operate under this article.

(3) Prior to April 30, 2010, and each three years thereafter, balloting shall be conducted in accordance with Code Section 2-8-23 to determine whether any existing commission listed in paragraph (3) of subsection (a) of this Code section shall continue to exist and operate under this article.

(4) Prior to April 30, 2011, and each three years thereafter, balloting shall be conducted in accordance with Code Section 2-8-23 to determine whether any existing commission listed in paragraph (4) of subsection (a) of this Code section shall continue to exist and operate under this article.

(5) Prior to December 31, 2015, and each three years thereafter, balloting shall be conducted in accordance with Code Section 2-8-23 to determine whether any existing commission listed in paragraph (5) of subsection (a) of this Code section shall continue to exist and operate under this article.

History. — Ga. L. 1968, p. 398, § 2; Ga. L. 1969, p. 763, § 8; Code 1981, § 2-8-5; Code 1981, § 2-8-13, as redesignated by Ga. L. 1989, p. 1420, § 1; Ga. L. 2007, p. 75, § 1/SB 165; Ga. L. 2008, p. 311, § 1/HB 649; Ga. L. 2009, p. 446, §§ 4, 5/SB 152; Ga. L. 2013, p. 65, §§ 1, 2/SB 97.

Code Commission notes. — Pursuant to Code Section 28-9-5, in 2007, in paragraph (b)(2), "May 11, 2007," was substituted for "the effective date of this paragraph" three times, and "May 11, 2007" for "the effective date of this paragraph" once.

Pursuant to Code Section 28-9-5, in 2008, "May 12, 2008" was substituted for "the effective date of this paragraph" at the end of paragraph (a)(3).

Pursuant to Code Section 28-9-5, in 2009, "May 1, 2009" was substituted for "the effective date of the paragraph" in paragraph (a)(4).

Pursuant to Code Section 28-9-5, in 2013, "on April 17, 2013" was substituted for "on the effective date of this paragraph" in paragraph (a)(5).

Editor's notes. — Ga. L. 1961, p. 301, as amended, referred to in this Code section, was repealed by Ga. L. 1969, p. 763, § 1, which enacted this article.

OPINIONS OF THE ATTORNEY GENERAL

Powers and duties of commission governed by this chapter. — The creation, powers, and duties of any agricultural commodity commission are subject to the provisions of this chapter and are governed and controlled thereby. 1976 Op. Att'y Gen. No. 76-4.

Who may vote in referendum. — The only persons who may vote in a commodity commission continuation referendum are those persons undertaking physical activities of producing or causing the appropriate commodity to be produced for market. 1982 Op. Att'y Gen. No. U82-23.

This chapter contains no requirement that a "producer," to be eligible to vote in a referendum, must have produced in year prior to balloting. 1982 Op. Att'y Gen. No. U82-23.

Commissions permitted to participate in employee's insurance and pension plans. — In fixing the compensation for services of employees, the commissions may participate in or provide health insurance and pension plan coverage for their employees. 1972 Op. Att'y Gen. No. 72-78.

"Producer" is party responsible for assessments levied by commission. 1976 Op. Att'y Gen. No. 76-4.

"Producer" is also the individual to whom voting rights in the commission referenda must devolve. 1976 Op. Att'y Gen. No. 76-4.

2-8-14. Composition; appointments, terms of office, and compensation; certification; advisory boards, special committees, and personnel; legal representation; acceptance of donations; voting; termination.

(a) Each commission shall be composed of:

(1) The Commissioner of Agriculture, or his or her designee, except as to the Agricultural Commodity Commission for Peanuts as created by Article 3 of this chapter, ex officio;

(2) The president of the Georgia Farm Bureau Federation, ex officio;

(3) One member, to serve as an ex officio member of all commissions, elected by the Senate Agriculture and Consumer Affairs Committee with a quorum present and a majority of those present concurring, who shall be a producer of an affected agricultural commodity and shall not be a member of the General Assembly;

(4) One member, to serve as an ex officio member of all commissions, elected by the Agriculture and Consumer Affairs Committee of the House of Representatives with a quorum present and a majority of those present concurring, who shall be a producer of an affected agricultural commodity and shall not be a member of the General Assembly; and

(5) Five additional members, who shall be producers of the affected agricultural commodity, to be appointed by the ex officio members of the commission; provided, however, that such additional membership of the Agricultural Commodity Commission for Beef shall consist of

three beef cattle farmers, one dairy farmer, and one individual involved in the marketing of cattle; and provided, further, that for the Agricultural Commodity Commission for Cotton, the number of additional members appointed pursuant to this paragraph shall be seven. For the purposes of the appointment of such additional members, the two members elected by each of the agriculture committees of the General Assembly, who shall serve as members of each commission, shall be deemed to be ex officio members.

(b) Members elected by the agriculture committees of the General Assembly shall be elected during each regular session of the General Assembly convening in even-numbered years. Such members shall be selected so that one member is from the northern part of Georgia and one member is from the southern part. For purposes of this selection the northern part of Georgia shall be that area north of and including Richmond, McDuffie, Warren, Hancock, Baldwin, Jones, Bibb, Crawford, Upson, Talbot, and Muscogee counties; and the southern part shall be that area south of such counties. The chairpersons of the Senate and House committees shall by agreement determine which committee shall choose the member from the northern part and which committee shall choose the member from the southern part. Such members shall serve from the date of their election until the election of their successors.

(c) The appointment of additional members of the commission by the ex officio members thereof, as provided in this Code section, shall be made by them from a list of nominees, submitted by the producers of the affected agricultural commodity, containing the names of double the number of appointments to be made. In the event of a controversy as to the producer group authorized to submit a list of nominees for appointment as members of the commission, the ex officio members shall consider and determine all issues pertaining thereto and upon making their determination shall make the appointments in accordance with such determination. Initial appointments shall be made for three members for a term of three years each from the effective date of their appointment and until their successors are appointed and qualified and two members for a term of two years each from the effective date of their appointment and until their successors are appointed and qualified. Thereafter, successors shall be appointed for a term of three years each from the effective date of their appointment and until their successors are appointed and qualified. Vacancies shall be filled by appointment by the ex officio members of the commission, in like manner, for the unexpired term, except that vacancies in the office of a member elected by a legislative committee shall be filled for the unexpired term by the legislative committee which made the previous appointment. Any appointed member shall be eligible for reappointment provided he is nominated as provided in subsection (b) of this Code section.

(d)(1) The ex officio members who are state officers shall be compensated as provided by law. Each such ex officio member shall be reimbursed by his respective department or from the funds of the commission for actual and necessary expenses incurred in the performance of his duties. Each such ex officio member who is a state officer may designate a representative of his department to act for him in performing any duties under this article.

(2) The two members elected by the agriculture committees of the General Assembly, as provided by subsection (a) of this Code section, shall be entitled to receive, for attending meetings of the commission, the same expenses and travel allowances which members of the General Assembly receive for attending meetings of legislative interim committees. Such expenses and allowances shall be paid from funds appropriated or otherwise available to the legislative branch of state government.

(3) The appointed members of the commission and the president of the Georgia Farm Bureau Federation shall receive compensation and reimbursement of expenses as shall be provided by the commission, and such funds shall be payable from the funds of the commission.

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

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

(g) Any other provision of this article to the contrary notwithstanding, a member of any federation or organization of producers shall be eligible to be appointed as a member of any commission administering this article with respect to any agricultural commodity produced by such federation or organization or handled by it for its members who produce it.

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

(i) The two members elected by the agriculture committees of the General Assembly, as provided by subsection (a) of this Code section, as members of each commission shall be entitled to vote on matters pertaining to the organization of each such commission and upon the selection and nomination of the appointed members of each commission. Such two members shall not be entitled to vote upon any matter pertaining to the policy provisions of the agricultural commodity nor shall they be entitled to vote upon the expenditure of any funds of the commission.

(j) Each commission shall continue as a public corporation and instrumentality of the State of Georgia until abolished by law or until terminated by referendum.

History. — Ga. L. 1961, p. 301, §§ 9, 10; Ga. L. 1964, p. 141, § 1; Ga. L. 1968, p. 398, § 3; Ga. L. 1969, p. 763, §§ 10, 11; Ga. L. 1970, p. 86, § 1; Ga. L. 1980, p. 568, §§ 1-3; Ga. L. 1981, p. 692, § 1; Ga. L. 1982, p. 3, § 2; Code 1981, § 2-8-6; Code 1981, § 2-8-14, as redesignated by Ga. L. 1989, p. 1420, § 1; Ga. L. 2008, p. 311, § 2/HB 649; Ga. L. 2009, p. 303, § 1/HB 117; Ga. L. 2013, p. 65, § 3/SB 97; Ga. L. 2013, p. 74, § 3/HB 298; Ga. L. 2017, p. 774, § 2/HB 323; Ga. L. 2019, p. 314, § 1/HB 332.

The 2017 amendment, effective May 9, 2017, part of an Act to revise, modernize, and correct the Code, substituted "appointed member" for "appointive member" in subsection (c) and substituted "appointed members" for "appointive members" in paragraph (d)(3) and subsection (i).

The 2019 amendment, effective July 1, 2019, inserted "or his or her designee, except as to the Agricultural Commodity Commission for Peanuts as created by Article 3 of this chapter," in paragraph (a)(1).

Code Commission notes. — Pursuant to Code Section 28-9-5, in 2013, "and provided, further," was substituted for "provided, however," near the middle of the first sentence of paragraph (a)(5).

Editor's notes. — Ga. L. 2009, p. 303, § 20/HB 117, not codified by the General Assembly, provides that: "This Act is intended to reflect the current internal organization of the Georgia Senate and House of Representatives and is not otherwise intended to change substantive law. In the event of a conflict with any other Act of the 2009 General Assembly, such other Act shall control over this Act."

Law reviews. — For article, "Agricultural Commodities Promotion," see 30 Ga. St. U. L. Rev. 1 (2013).

OPINIONS OF THE ATTORNEY GENERAL

Election of officers is matter "pertaining to the organization" of commodity commissions within the meaning of this section. 1970 Op. Att'y Gen. No. 70-9.

Participation in appointment of producer members. — All ex-officio members of the commissions shall participate by vote in the appointment of the five producer members of each commission. 1977 Op. Att'y Gen. No. 77-22.

Transacting business by conducting telephone poll of members prohibited. — An agricultural commodity commission may not transact business by conducting a telephone poll of commission

members. 1970 Op. Att'y Gen. No. 70-122. (Modified by 1985 Op. Att'y Gen. 85-26).

Applicability of Workers' Compensation Act. — The fact that the various agricultural commodity commission members receive a salary which they themselves establish out of commission monies creates no employment relationship within the purview of the Workers' Compensation Act, either with the particular commission or the State of Georgia. 1973 Op. Att'y Gen. No. 73-68.

Nonpaid "beauty queens" of commissions are not subject to Workers' Compensation Act under any circumstance; however, the Peach Queen, who receives a per diem salary, would be covered by the Workers' Compensation Act, provided that the Act's various criteria are met. 1973 Op. Att'y Gen. No. 73-68.

Commissions permitted to participate in employees' insurance and pension plans. — In fixing the compensation for services of employees, the commissions may participate in or provide health insurance and pension plan coverage for their employees. 1972 Op. Att'y Gen. No. 72-78.

2-8-15. Public corporations; corporate powers; chairman; quorum; oath of office; certification of appointments to Secretary of State.

Each commission, with the name of the agricultural commodity annexed thereto, shall be a public corporation and an instrumentality of the State of Georgia. By that name, style, and title, each such commission may contract and be contracted with, implead and be impleaded, and complain and defend in all courts. Each such commission shall name its chairman and determine a quorum for the transaction of business. Each such commission shall assume the duties and exercise the authority provided in this article without further formality than that provided in this article. Each member of each such commission shall be a public officer and shall take an oath of office faithfully to perform his duties. Such oath shall be administered by the Commissioner or some other person qualified to administer oaths. The fact of a member's appointment shall be certified to the Secretary of State, who shall issue the appropriate commission under the seal of his office.

History. — Ga. L. 1961, p. 301, § 8; Ga. L. 1969, p. 763, § 9; Code 1981, § 2-8-7; Code 1981, § 2-8-15, as redesignated by Ga. L. 1989, p. 1420, § 1.

OPINIONS OF THE ATTORNEY GENERAL

Ex-officio member may hold office of chair. — This chapter does not require the office of chair to be held by a producer member; an ex-officio member may hold the office. 1970 Op. Att'y Gen. No. 70-70.

Effect of vacancy. — So long as there remain sufficient members to provide a quorum, the operation of the commission is not affected by a vacancy in its membership. 1970 Op. Att'y Gen. No. 70-70.

Transacting business by conducting telephone poll of members prohibited. — An agricultural commodity commission may not transact business by conducting a telephone poll of commission members. 1970 Op. Att'y Gen. No. 70-122. (Modified by 1985 Op. Att'y Gen. 85-26).

Commission's property exempt from ad valorem taxes. — Because the property owned by the Agricultural Commodity Commission for Peanuts is public property, not used for the purpose of pri-

vate or corporate profit and income, it is exempt from city and county ad valorem taxes. 1963-65 Op. Att'y Gen. p. 390.

2-8-16. Funds of commissions — Receipt, collection, and disbursement.

The Commissioner is authorized and it shall be his duty to receive, collect, and disburse the funds of each commission qualifying and operating under this article. He shall disburse funds of any entity created under this article only upon the written authorization of the affected commission.

History. — Ga. L. 1961, p. 301, § 5; Ga. L. 1969, p. 763, § 6; Code 1981, § 2-8-8; Code 1981, § 2-8-16, as redesignated by Ga. L. 1989, p. 1420, § 1.

2-8-17. Funds of commissions — Treatment as trust funds.

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

History. — Ga. L. 1961, p. 301, § 6; Ga. L. 1969, p. 763, § 7; Code 1981, § 2-8-9; Code 1981, § 2-8-17, as redesignated by Ga. L. 1989, p. 1420, § 1.

OPINIONS OF THE ATTORNEY GENERAL

Funds expended for student scholarships in dairy science curricula prohibited. — Fiscal resources of the Georgia Agricultural Commodity Commission for Milk may not be expended to fund student scholarships in the dairy science curricula at the University of Georgia or to participate in funding a private scholarship foundation for students matriculating in such curricula. 1976 Op. Att'y Gen. No. 76-115.

Also contributions to Southeastern Legal Foundation activities. — Funds of the commissions may not be expended for contributions to and support of the activities of the Southeastern Legal Foundation since the Foundation is a private enterprise undertaken by and serving private groups and individuals. 1976 Op. Att'y Gen. No. 76-102.

2-8-18. Bonds of persons handling funds.

Any person who handles funds under this article shall be bonded with good and sufficient surety in an amount determined by the Commissioner for the accounting of any and all funds coming into his hands.

History. — Ga. L. 1961, p. 301, § 26; Ga. L. 1969, p. 763, § 27; Code 1981, § 2-8-10; Code 1981, § 2-8-18, as redesignated by Ga. L. 1989, p. 1420, § 1.

2-8-19. Liability of commission members and employees.

The members and employees of any commission governed by this article and the Commissioner shall not be held responsible individually in any way whatsoever to any producer, processor, distributor, or other handler or to any other person for errors in judgment, mistakes, or other acts, either of commission or omission, as principal, agent, person, or employee, except for their own individual acts of dishonesty or crime. No such person or employee shall be held responsible individually for any act or omission of any other member of any such commission. The liability of the members of the commission shall be several and not joint and no member shall be liable for the default of any other member.

History. — Ga. L. 1961, p. 301, § 21; Ga. L. 1969, p. 763, § 22; Code 1981, § 2-8-11; Code 1981, § 2-8-19, as redesignated by Ga. L. 1989, p. 1420, § 1.

OPINIONS OF THE ATTORNEY GENERAL

"Members" and "employees" not one and same. — The General Assembly, by referring to both "members" of the commission and "employees" of the commission, would clearly seem to have indicated that "members and employees" are not one and the same. 1973 Op. Att'y Gen. No. 73-68.

2-8-20. Cooperation with state and federal governmental authorities.

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

History. — Ga. L. 1968, p. 398, § 15; Ga. L. 1969, p. 763, § 24; Code 1981, § 2-8-12; Code 1981, § 2-8-20, as redesignated by Ga. L. 1989, p. 1420, § 1.

2-8-21. Issuance of marketing orders authorized; notice; public hearing; record; reports from handlers; compilation of lists of producers and handlers; use of information in reports.

(a) The Commissioner, upon the approval and request of a commission governed by this article, is authorized to issue, administer, and

enforce the provisions of marketing orders regulating producer marketing or the handling of agricultural commodities within this state.

(b)(1) Whenever the Commissioner has reason to believe that the issuance of a marketing order or amendments to an existing marketing order will tend to effectuate the declared policy of this article with respect to any agricultural commodity, he shall, either upon his own motion, upon the motion of any commission, or upon the application of any producer of such commodity or any organization of such persons, give due notice of and an opportunity for a public hearing upon a proposed marketing order or amendments to an existing marketing order.

(2) Notice of any hearing called for such purpose shall be given by the Commissioner or the commission by publishing a notice of such hearing for a period of not less than five days in a newspaper of general circulation published in the capital of the state and in such other newspapers as the Commissioner may prescribe. No such public hearing shall be held prior to five days after the last day of such period of publication. The Commissioner or the commission shall also mail a copy of such notice of hearing and a copy of such proposed marketing order or proposed amendments to all producers of such agricultural commodity whose names and addresses appear upon lists of such persons on file in the department and who may be directly affected by the provisions of such proposed marketing order or such proposed amendments. Such notice of hearing shall in all respects comply with the requirements of Chapter 13 of Title 50, the "Georgia Administrative Procedure Act."

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

(c)(1) In order to provide the Commissioner or the commission with accurate and reliable information with respect to the persons who may be directly affected by any proposed marketing order for any agricultural commodity when such information is not then on file in

the department, the Commissioner or the commission is authorized and directed, whenever the Commissioner or the commission has reason to believe that the issuance of a marketing order will tend to effectuate the declared policy of this article or upon receipt of a written application for a hearing pursuant to subsection (b) of this Code section, to notify all handlers of such agricultural commodity, by publication of a notice as required in paragraph (2) of this subsection, to file with the Commissioner or the commission within ten days from the last date of such publication a report, properly certified, showing:

(A) The correct name and address of such handler;

(B) The quantities of the agricultural commodity affected by the proposed marketing order handled by such handler in the marketing season next preceding the filing of such report;

(C) The correct names and addresses of all producers of such agricultural commodity who may be directly affected by such proposed marketing order, from whom such handler received such agricultural commodity in the marketing season next preceding the filing of such report; and

(D) The quantities of such agricultural commodity received by such handler from each such producer in the marketing season next preceding the filing of such report.

(2) The notice to handlers requiring them to file a report shall be published by the Commissioner or the commission for a period of not less than five days in a newspaper of general circulation published in the capital of the state and in such other newspaper or newspapers as the Commissioner or the commission may prescribe. The Commissioner or the commission shall also mail a copy of such notice to all handlers of such agricultural commodity whose names and addresses appear upon the lists on file in the department who may be directly affected by such proposed marketing order.

(3) Each handler of an agricultural commodity directly affected by a proposed marketing order shall file his verified report with the Commissioner or the commission within the time specified in paragraph (1) of this subsection. Failure or refusal of any handler to file such report shall not invalidate any proceeding taken or marketing order issued. The Commissioner or the commission is authorized and directed to proceed upon the basis of such information and reports as may otherwise be available.

(4) From the reports so filed and the information so received or available to the Commissioner or the commission, including any proper corrections, the Commissioner or the commission shall prepare a list of the names and addresses of such producers and the

volume of such commodity produced or marketed by all such producers and a list of the names and addresses of such handlers and the volume of such commodity handled by all such handlers, directly affected by such proposed marketing order or amendments thereto, in the preceding marketing season. Such lists shall constitute complete and conclusive lists for use in any finding made by the Commissioner or the commission pursuant to subsection (a) of Code Section 2-8-23 and such findings shall be conclusive.

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

History. — Ga. L. 1961, p. 301, § 11; Ga. L. 1968, p. 398, § 4; Ga. L. 1969, p. 763, § 12; Code 1981, § 2-8-13; Code 1981, § 2-8-21, as redesignated by Ga. L. 1989, p. 1420, § 1.

Code Commission notes. — Pursuant to Code Section 28-9-5, in 1989, the reference to § 2-8-15 in paragraph (c)(4) was changed to § 2-8-23.

Law reviews. — For article, "Agricultural Commodities Promotion," see 30 Ga. St. U. L. Rev. 1 (2013).

2-8-22. Recommendation of marketing orders or amendments by commission; authorized provisions.

(a) If, upon the basis of the record of testimony and documentary evidence received at the hearing provided for in Code Section 2-8-21 and the facts officially noticed therein from official publications or institutions of recognized standing, the commission determines that the issuance of a marketing order or an amendment will tend to effectuate the intent and purpose of this article, it may recommend the promulgation of a marketing order or amendment with respect to the matters specified in the hearing notice and supported by the record, containing any or all of the following provisions, but no others:

(1) Provisions regulating the period or periods during which any agricultural commodity or any grade, size, or quality of such commodity may be processed, distributed, or otherwise marketed within this state by any and all persons engaged in such processing, distributing, or marketing within this state; such periods shall be established by the commission so as to conform to the better principles of sound agricultural practices with respect to production of the commodities affected, in order to secure, so far as is commercially practical, a sufficient supply of good quality of each grade of such

commodity proportionate to normal market demand and to prevent disruptive marketing practices likely to result in oversupply or scarcity, which create unnecessarily inflated prices to consumers and handlers, depressed prices to producers, or salability of products of inferior grade and quality due to unavailability of good quality products;

(2) Provisions establishing or providing for establishing, with respect to any agricultural commodity, either as delivered by producers to handlers or processors or as handled, processed, or otherwise prepared for market or as marketed by producers, handlers, or processors:

(A) Grading standards of quality, condition, size, maturity, or pack, which standards may include minimum standards, provided that the standards so established shall not be established below any minimum standards prescribed by law for such commodity; and

(B) Uniform inspection and grading of such commodity in accordance with the standards so established.

(3) Provisions for the establishment of plans for advertising and sales promotion to maintain present markets or to create new or larger markets for agricultural commodities grown in this state or for the prevention, modification, or removal of trade barriers which obstruct the normal flow of agricultural commodities to market. The commission is authorized to prepare, issue, administer, and enforce plans for promoting the sale of any agricultural commodity, provided that any such plan shall be directed toward promoting and increasing the sale, use, and utilization of such commodity without reference to a particular brand or trade name; and provided, further, that no advertising or sales promotion program shall be issued by the Commissioner or the commission which makes use of false or unwarranted claims in behalf of any such product or disparages the quality, value, sale, or use of any other agricultural commodity;

(4) Provisions prohibiting unfair trade practices by which any producer or handler tends toward establishment of monopoly, unfairly discriminates among customers as to price or quality, or engages in fraudulent, deceptive, or misleading representations, concealment, or other similar sharp business practices which are harmful to his or its customers, injurious to competitors, likely to bring into disrepute persons generally engaged in production and handling of the commodity involved, or detrimental to the intent and purpose of this article;

(5) Provisions for carrying on research studies in promoting the production, marketing, sale, use and utilization, processing, and

improvement of any agricultural commodity or any combination thereof and for the expenditure of moneys for such purposes. In any research carried on under this paragraph, the dean of the College of Agricultural and Environmental Sciences of the University of Georgia, the Commissioner, and the commission shall cooperate in selecting the research project or projects to be carried on from time to time. Insofar as practicable such projects shall be carried out by the College of Agricultural and Environmental Sciences but, if the dean of the college and the commission determine that the college has no facilities for a particular project or that some other research agency has better facilities therefor, the project may be carried out by other research agencies selected by the commission;

(6) Provisions establishing or providing authority for establishing, for any agricultural commodity, either as such commodity is produced or is delivered by producers to handlers or as such commodity is handled or otherwise prepared for market or as such commodity is marketed by producers or handlers, an educational program designed to acquaint producers, handlers, or other interested persons with quality improvement, including sanitation practices, procedures, or methods as applied to such commodity;

(7) Provisions for the promotion of the marketing of surplus commodities through the establishment of surplus, stabilization, or by-product pools for any agricultural commodity or any grade, size, quality, or condition thereof, providing for the sale of the commodity in any such pool and for the equitable distribution among the persons participating therein of the net returns derived from the sale of such commodity. Whenever the marketing order authorizes the establishment of any such pool or pools, the commission shall have the power to receive such commodity from each producer or handler, to handle the same according to the grade, size, quality, or condition thereof, and to account to each producer or handler participating therein upon a pro rata basis for the net proceeds derived from the sale thereof. Whenever the marketing order authorizes the establishment of a surplus, stabilization, or by-product pool, the commission shall have authority to promote the marketing of surplus commodities by making arrangements for and operating any necessary facilities for the storing, financing, grading, hauling, packing, servicing, processing, preparing for market, selling, and disposing of the contents of any pools provided for in this paragraph. Whenever the marketing order authorizes the establishment of any type of pool authorized in this paragraph, the commission shall have authority to create, by a uniform assessment upon producers, or to maintain and disburse, upon some other uniform and equitable basis, an equalization fund to be used for the removal of any inequalities between producers or handlers participating in any pool.

(b) All provisions authorized by this Code section which are contained in marketing orders and amendments thereto heretofore adopted by any commission and in effect on July 1, 1969, shall be and remain of full force and effect until repealed or modified by each such commission as provided in this article.

History. — Ga. L. 1961, p. 301, § 13; Ga. L. 1968, p. 398, § 6; Ga. L. 1969, p. 763, § 13; Ga. L. 1971, p. 78, § 1; Ga. L. 1974, p. 564, § 1; Code 1981, § 2-8-14; Code 1981, § 2-8-22, as redesignated by Ga. L. 1989, p. 1420, § 1; Ga. L. 1995, p. 10, § 2.

Law reviews. — For article, "Agricultural Commodities Promotion," see 30 Ga. St. U. L. Rev. 1 (2013).

2-8-23. Approval by producers prerequisite to issuance of marketing order or major amendment; notice; rules and regulations; expiration; extensions; referendum.

(a)(1) No marketing order or major amendment thereto, directly affecting producers or producer marketing, issued pursuant to this article, shall be made effective by the commission or the Commissioner until the finding of one or more of the following:

(A) That such marketing order or amendment thereto has been assented to in writing by not less than 65 percent of the producers who are engaged within the area specified in such marketing order or amendment thereto in the production for market or the producer marketing of not less than 51 percent of the agricultural commodity specified therein in commercial quantities;

(B) That such marketing order or amendment thereto has been assented to in writing by producers who produce not less than 65 percent of the volume of such agricultural commodity and by 51 percent of the total number of producers so engaged; or

(C) That such marketing order or amendment thereto has been approved or favored by producers in a referendum among producers directly affected if the valid votes cast in such referendum in favor of such marketing order or amendment thereto represent not less than 51 percent of the total number of producers of the commodity of record with the department who marketed not less than 51 percent of the total quantity of the commodity marketed in the next preceding marketing season by the total number of producers of record with the department.

(2) Whenever any marketing order or any major amendment to any marketing order is issued by the commission, the commission shall determine whether assent, approval, or favor thereto of the producers shall be by written assents or by referendum.

(3) If the Commissioner or the commission determines that a referendum shall be had, the Commissioner or the commission shall

establish a referendum period of 30 days. At the close of such referendum period, the Commissioner or the commission shall count and tabulate the ballots filed during such period. If from such tabulation the Commissioner or the commission finds that the number of producers voting in favor of such marketing order or amendment thereto is not less than 51 percent of the total number of producers of record with the department and that such producers who voted in favor of the marketing order or amendment thereto marketed not less than 51 percent of the total volume of such commodity marketed by all producers of record with the department during the marketing season next preceding such referendum, the Commissioner or the commission may make such marketing order or amendment thereto effective. The Commissioner and the commission are authorized to prescribe such additional procedures as may be necessary to conduct such referendum.

(4) At a public hearing held to consider a proposed marketing order or major amendments to an existing marketing order which directly affect producers or producer marketing, the Commissioner or the commission shall also receive testimony or evidence from which he or it can determine whether the assent, approval, or favor of such producers shall be determined by written assents or by referendum as prescribed in this Code section. Upon the conclusion of any hearing which involves a marketing order or a major amendment thereto directly affecting producers or producer marketing, the Commissioner or the commission shall make a finding, based upon the testimony and evidence received, whether producer assent, approval, or favor shall be determined by written assents or by referendum. If the Commissioner or the commission finds that a referendum shall be had, he or it shall direct that a referendum be held in accordance with this subsection.

(5) Any referendum or assent in writing to a marketing order under paragraphs (3), (5), and (6) of subsection (a) of Code Section 2-8-22 shall be held pursuant to this Code section; and upon the approval thereof by two-thirds of those voting therein, where the total vote cast thereon represents not less than 25 percent of those eligible to vote or where the total vote cast thereon represents not less than 25 percent of the total amount of the affected agricultural commodity, such marketing order may be declared by the commission to be approved.

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

(b) Subject to the provisions, restrictions, and limitations imposed in this article, the Commissioner or the commission may issue marketing

orders regulating producer marketing and the processing, distributing, or handling in any manner of agricultural commodities by any and all persons engaged in such producer marketing, processing, distributing, or handling of such agricultural commodities within this state.

(c)(1) Upon the recommendation of not less than three of the appointive members of the commission, the Commissioner or the commission may make effective minor amendments to a marketing order. The Commissioner or the commission may require a public hearing upon minor amendments if in his or its opinion the substance of such minor amendments so warrants. The Commissioner or the commission, however, shall not be required to submit minor amendments for written assents or referendum approval.

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

(A) Authority for regulating the period or periods during which any agricultural commodity or any grade, size, or quality of such commodity may be processed, distributed, or otherwise marketed within this state;

(B) Authority for the establishment of uniform grading and inspection of any agricultural commodity and the establishment of grading standards of quality, condition, size, or pack of such commodity;

(C) Authority for the establishment of plans for advertising and sales promotion of any agricultural commodity;

(D) Authority to prohibit unfair trade practices;

(E) Authority for carrying out research studies in the production, processing, or distribution of any agricultural commodity;

(F) Authority to increase an assessment rate beyond the maximum rate authorized by the marketing order in effect;

(G) Authority to extend the application of the provisions of any marketing order to portions or uses of an agricultural commodity not previously subject to such provisions or to restrict or extend the application of such provisions upon the producers or handlers of such portions or uses of such commodity.

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

provisions or of modifying administrative procedures for carrying out such provisions, are declared not to be a major amendment of such marketing order.

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

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

(f) Upon the recommendation of the commission concerned, the Commissioner shall have the power, consistent with this article, to establish administrative rules and regulations for each marketing order issued and made effective as may be necessary to facilitate the supervision, administration, and enforcement of each such order. The provisions of subsection (d) of this Code section relative to posting, publication, mailing of notice, and time of taking effect shall be applicable to any such administrative rules and regulations.

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

(h) In the event either one of the following conditions is complied with, a marketing order shall be extended for a period of three years after the date of its original expiration:

(1) Assent has been given in writing to such marketing order by not less than two-thirds of the producers participating; or

(2) Approval or favor of such marketing order has been given by producers in a referendum among producers directly affected if at least 66 2/3 percent of the votes cast in such referendum favor the extension of such marketing order.

(i) If the Commissioner or the commission determines that a referendum shall be held, the Commissioner or the commission shall establish a referendum period of 30 days, such referendum period to terminate at least 30 days prior to the expiration date of the marketing order which is the subject of such referendum. At the close of such referendum period, the Commissioner or the commission shall count and tabulate the ballots cast during such period. If from such tabulation the Commissioner or the commission finds that the number of producers voting in favor of the extension of such marketing order is not less than 66 2/3 percent of the total number of ballots cast, then such marketing order shall be extended for a period of three years after the expiration date. If it is found from the tabulation of such referendum that the number of producers who had voted in favor of the extension of such marketing order is less than the required 66 2/3 percent of the total number of ballots cast, then the marketing order shall expire, terminate, and be of no force and effect as provided in subsection (g) of this Code section.

History. — Ga. L. 1961, p. 301, § 14; Ga. L. 1964, p. 141, §§ 2, 3; Ga. L. 1969, p. 763, §§ 15, 16; Code 1981, § 2-8-15; Code 1981, § 2-8-23, as redesignated by Ga. L. 1989, p. 1420, § 1.

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Conflict between Commission Rules and Uniform Rules. — Only the Commissioner can adopt rules and regulations that apply uniformly to all commodity commissions. Therefore, the provisions of Commission Rules dealing with subjects other than the depositing and disbursement of funds must yield to the provisions of the Uniform Rules covering the same subject matter whenever a conflict exists. 1989 Op. Att'y Gen. No. 89-1.

Business unit applies in determining eligibility to vote in referendum. — The business unit engaged in the producing of an affected commodity is the appropriate criterion to apply in determining eligibility to vote in commodity commission referendum; such business unit is entitled to cast one vote. 1970 Op. Att'y Gen. No. 70-168.

Producer is individual to whom voting rights in commission referenda must devolve. 1976 Op. Att'y Gen. No. 76-4.

Party responsible for assessments levied by commission. 76 Op. Att'y Gen. No. 76-115.

2-8-23.1. Limitations on assessments.

(a) No marketing order issued by the Agricultural Commodity Commission for Beef shall impose an assessment in excess of $1.00 per head on bovine animals sold, nor shall any assessment be placed on any bovine animal which sells for less than $100.00.

(b) The Agricultural Commodity Commission for Beef may in its discretion lower the assessment amount imposed by any marketing regulation duly issued under the authority provided by this article.

History. — Code 1981, § 2-8-23.1, enacted by Ga. L. 2013, p. 65, § 4/SB 97.

2-8-24. Area marketing orders authorized.

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

History. — Ga. L. 1961, p. 301, § 17; Ga. L. 1968, p. 398, § 11; Ga. L. 1969, p. 763, § 18; Code 1981, § 2-8-16; Code 1981, § 2-8-24, as redesignated by Ga. L. 1989, p. 1420, § 1.

2-8-25. Seasonal marketing regulations authorized; notice of issuance; liberal interpretation of Code section.

(a) The Commissioner, upon recommendation of the commission concerned, and each commission, without prior notice to and public hearing for the producers or handlers of the commodity directly affected, may issue and make effective seasonal marketing regulations or modifications thereof, provided that the marketing order, made effective after due notice, public hearing, and written assent as required by this article, (1) provides for the issuance or modification of such seasonal marketing regulations without requiring such prior notice and public hearing, and (2) sets forth the limits within which such seasonal marketing regulations may be made effective or subsequently modified by the Commissioner or the commission; and provided, further, that the commission finds that such seasonal marketing regulations or modifications thereof are reasonable and proper and a practical means of carrying out the marketing provisions authorized in such marketing order or agreement and will effectuate the declared purposes and policies of this article with respect to such agricultural commodity. Notice of the issuance and the effective date of any such seasonal marketing regulations or modifications thereof shall be given

by the Commissioner or the commission to all producers and handlers directly affected by any such regulations in the manner and within the time specified in the applicable marketing order or, in absence of such, as may be specified by the commission or as specified in the administrative rules and regulations made effective for such marketing order pursuant to subsection (f) of Code Section 2-8-23.

(b) It is recognized that with respect to some agricultural commodities, marketing, weather, and other conditions may change so rapidly as to require changes in seasonal marketing regulations from week to week or more often. It is intended that this Code section be interpreted liberally so that the Commissioner or the commission may be enabled to carry out the marketing regulations and procedures authorized in this Code section in a practical and effective manner.

History. — Ga. L. 1961, p. 301, § 14; Ga. L. 1968, p. 398, § 7; Ga. L. 1969, p. 763, § 14; Code 1981, § 2-8-17; Code 1981, § 2-8-25, as redesignated by Ga. L. 1989, p. 1420, § 1.

2-8-26. Applicability of marketing orders.

Whenever producers or handlers of an agricultural commodity regulated by a marketing order issued by any commission pursuant to this article are required to comply with minimum quality, condition, size, or maturity regulations, no person, except as otherwise provided in such order, shall process, distribute, or otherwise handle any of such agricultural commodity from any source, whether produced within or without this state, which commodity does not meet such minimum requirements applicable to producers or handlers of such commodity in this state, provided that such regulations shall not apply to any commodity which has been produced outside of this state and is in transit on the effective date of the regulations.

History. — Ga. L. 1961, p. 301, § 17; Ga. L. 1968, p. 398, § 11; Ga. L. 1969, p. 763, § 18; Code 1981, § 2-8-18; Code 1981, § 2-8-26, as redesignated by Ga. L. 1989, p. 1420, § 1.

2-8-27. Assessments to defray expenses; borrowing in anticipation of collections; use and repayment of contributions in lieu of advance deposits; collection and enforcement of assessments generally; disposition and investment of proceeds; audit.

(a) For the purpose of providing funds to defray the necessary expenses incurred by the Commissioner or the commission in the formulation, issuance, administration, and enforcement of each marketing order issued under this article, each such marketing order shall provide for the levying and collection of assessments in sufficient

amounts to defray such expenses. Each marketing order shall indicate the maximum rate of any such assessment which may be collected and the proportion, if any, payable by each producer and handler directly regulated or affected by such marketing order. In administering such marketing order, the commission shall adopt, from time to time, budgets to cover necessary expenses and the assessment rate necessary to provide sufficient funds. If the commission finds that each such budget and assessment rate are proper and equitable and will provide sufficient moneys to defray the necessary expenses, it may approve such budget and rate of assessment and order that each producer and handler so assessed shall pay to the Commissioner or the commission, at such times and in such installments as the commission may prescribe, an assessment, based upon the units in which such agricultural commodity is marketed or upon any other uniform basis which the commission determines to be reasonable and equitable, but in amounts which (1) in the case of producers will not exceed 2 1/2 percent of the gross dollar volume of sales of the commodity affected by all such producers regulated by such marketing order, or (2) in the case of processors, distributors, or other handlers will not exceed 2 1/2 percent of the gross dollar volume of purchases of the commodity affected by the marketing order from producers or of the gross dollar volume of sales of the commodity affected by the marketing order and handled by all such processors, distributors, or other handlers regulated by such marketing order during the marketing season or seasons during which such marketing order is effective.

(b) Each marketing order which authorizes the carrying out of advertising and sales promotion plans shall provide for the levying and collection of assessments in sufficient amounts to defray the expenses of such activities. Each such marketing order shall indicate the maximum rate of any such assessment and the proportion, if any, payable by each producer and handler directly regulated or affected by such marketing order. The commission shall adopt budgets to cover such expenses and establish the assessment rate necessary to provide sufficient funds. If the commission finds that each such budget and assessment rate are proper and equitable and will provide sufficient moneys to defray such expenses, they may approve such budget and approve and levy such assessment. Any assessments so established shall be based upon the units in which such agricultural commodity is marketed or upon any other uniform basis which the commission determines to be proper and equitable. Any assessment rates established under this subsection shall be in amounts not to exceed 4 percent of the gross dollar volume of sales by all producers or by all processors, distributors, or other handlers of such agricultural commodity regulated by such marketing order during the marketing season or seasons during which such marketing order is effective.

(c) In lieu of the assessments to defray the costs of formulation, issuance, administration, and enforcement of the marketing order and of advertising or sales promotion provided for in subsections (a) and (b) of this Code section, if the marketing order contains provisions for advertising or sales promotion as authorized in this article, the commission may approve and fix one assessment not exceeding 6 1/2 percent of the gross dollar volume of sales of such commodity by all producers or by all processors, distributors, or other handlers of such agricultural commodity regulated by such marketing order during the marketing season or seasons during which such marketing order is effective. The method and manner of assessment and collection thereof and the limitations and restrictions applicable thereupon shall conform in all respects with subsection (b) of this Code section, except as to the maximum amount of such assessment. In such case, the commission shall approve the proportions of such assessments which may be expended to defray the costs of formulation, issuance, administration, and enforcement of the marketing order and of such advertising or sales promotion program, provided that the proportion of such assessments which may be allocated in such manner to defray the cost of such administrative activities for such marketing order shall in no case exceed the maximum amount authorized in subsection (a) of this Code section.

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

(e) In lieu of requiring advance deposits for defraying administrative or advertising and sales promotion expenses until such time as sufficient moneys are collected for such purposes from the payment of assessments established pursuant to this Code section, the Commissioner is authorized to receive and disburse for such purposes contributions made by producers, processors, distributors, or other handlers. Neither the commission nor the Commissioner shall be held responsible for the repayment of such contributions, provided that whenever collections from the payment of established assessments credited to the respective marketing order accounts are sufficient so to warrant, the commission shall recommend and the Commissioner shall repay contributions or shall authorize the application of such contributions to the assessment obligations of the persons who made such contributions.

(f) Each and every handler of the agricultural commodities for which an assessment has been established by or pursuant to this article shall,

at the time of purchase of any such commodity from the producer thereof, collect from such producer the assessment established by or in accordance with this article and remit the same to the Commissioner for the use of the commission for which the same was levied. The liability of such handler under this article shall not be discharged except upon receipt of such sums by the Commissioner. For the purpose of this subsection, to ensure compliance with this Code section, and for the administrative convenience of the Commissioner in enforcing payment and collection of such assessments, delivery by a producer to a handler for processing of any agricultural commodity upon which an assessment has been established shall be deemed a sale of such commodity within the meaning of this Code section; and the assessment shall thereupon attach and become due, regardless of whether such handler actually purchases such agricultural commodity for himself or only processes same for a consideration payable by the producer or another person and such agricultural commodity is thereafter sold to another person, provided that upon collection of such assessment by the handler to whom such agricultural commodity is so delivered for processing only, no further or additional assessment shall attach or become due by reason of the subsequent sale by such producer of such processed agricultural commodity to another person or handler.

(g) The Commissioner may prescribe such rules as may be necessary and reasonable for the orderly reporting and transmitting of assessments by handlers and may take all legal action necessary to enforce payment of the same by handlers. The Commissioner is authorized to issue executions for the same in like manner as executions are issued for ad valorem property taxes due the state. It shall be the duty of each and every sheriff of this state and their lawful deputies, upon the request of the Commissioner, to levy and collect such executions and to make their return thereof to the Commissioner in like manner as such tax executions are levied and return thereof made to county tax collectors and tax commissioners. The Commissioner shall likewise be authorized to collect, by execution as above provided or otherwise, directly from the producer against whom any assessment levied under this Code section may be found due whenever it is determined that such producer has sold such affected commodity or commodities giving rise to such liability to a person other than to a handler who has collected such assessment and is required by this Code section to remit the same to the Commissioner. Furthermore, the Commissioner may proceed against such producer and the purchaser of such commodity simultaneously if the purchaser is a handler required to collect such assessment, until satisfaction is obtained.

(h) Any moneys collected by the Commissioner or the commission pursuant to this article shall be deposited in a bank or other depository approved by the commission and shall be disbursed by the Commis-

sioner only for the necessary expenses incurred by the commission and the Commissioner, as approved by the commission. Funds so collected shall be deposited and disbursed in conformity with appropriate rules and regulations prescribed by the Commissioner. All such expenditures by the Commissioner shall be audited at least annually by the state auditor and a copy of such audit shall be delivered within 30 days after the completion thereof to the Governor, the Commissioner, and the affected commission. If any such commission is abolished, any funds remaining in its hands at such time shall be used to pay the existing obligations of such commission and the expenses incurred in winding up the affairs of such commission. Any excess remaining shall escheat to the state and shall be paid by the Commissioner into the state treasury as unclaimed trust funds.

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

History. — Ga. L. 1961, p. 301, § 16; Ga. L. 1968, p. 398, § 10; Ga. L. 1969, p. 763, § 17; Code 1981, § 2-8-19; Code 1981, § 2-8-27, as redesignated by Ga. L. 1989, p. 1420, § 1.

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"Producer" is responsible for assessments levied by commission. 1976 Op. Att'y Gen. No. 76-4.

Funds expended for student scholarships in dairy science curricula prohibited. — Fiscal resources of the Georgia Agricultural Commodity Commission for Milk may not be expended to fund student scholarships in the dairy science curricula at the University of Georgia or to participate in funding a private scholarship foundation for students matriculating in such curricula. 1976 Op. Att'y Gen. No. 76-115.

Contributions to Southeastern Legal Foundation activities. — Funds of the commissions may not be expended for contributions to and support of the activities of the Southeastern Legal Foundation since the Foundation is a private enterprise undertaken by and serving private groups and individuals. 1976 Op. Att'y Gen. No. 76-102.

2-8-28. Collection of assessments by civil action; penalty for delinquent payment.

(a) Any assessment levied or established in accordance with this article in such specified amount as may be determined by the Commissioner or the commission pursuant to this article shall constitute a personal debt of every person so assessed and shall be due and payable to the Commissioner when payment is called for by the Commissioner.

In the event of the failure of such person to pay any such assessment upon the date determined by the Commissioner, the Commissioner may file an action against such person in a court of competent jurisdiction for the collection thereof.

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

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

History. — Ga. L. 1961, p. 301, § 20; Ga. L. 1968, p. 398, § 14; Ga. L. 1969, p. 763, § 21; Code 1981, § 2-8-20; Code 1981, § 2-8-28, as redesignated by Ga. L. 1989, p. 1420, § 1.

JUDICIAL DECISIONS

Cited in Dunn v. Campbell, 219 Ga. 412, 134 S.E.2d 20 (1963).

2-8-29. Maintenance and inspection of books and records and provision of information; confidentiality of information; hearings, testimony, and subpoenas.

(a) The Commissioner may require any and all processors or distributors subject to the provisions of any marketing order issued pursuant to this article:

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

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

(3) To permit inspection by the Commissioner or his duly authorized or designated representatives of such portions of such books and records as relate to operations under the marketing order.

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

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

History. — Ga. L. 1961, p. 301, § 22; Ga. L. 1969, p. 763, § 23; Code 1981, § 2-8-21; Code 1981, § 2-8-29, as redesignated by Ga. L. 1989, p. 1420, § 1.

2-8-30. Use of grade or quality designations by persons not complying with order or regulations prohibited.

Whenever the use by a producer or handler of a particular emblem, label, certificate, or other distinctive designation of grade, quality, or condition, other than grade or other quality designations then in effect pursuant to state or federal grade standards, is made contingent upon compliance with certain production or handling regulations authorized by a marketing order issued and made effective under this article, it shall be unlawful and a violation of this article for any person who is not participating in and complying with such order or regulations to use such designation of grade, quality, or condition.

History. — Ga. L. 1961, p. 301, § 18; Ga. L. 1968, p. 398, § 12; Ga. L. 1969, p. 763, § 19; Code 1981, § 2-8-22; Code 1981, § 2-8-30, as redesignated by Ga. L. 1989, p. 1420, § 1.

2-8-31. Inspections; holding of commodity; warning notice; notice of noncompliance; time for correction of deficiencies; petition to divert or destroy; show cause order; disposition of noncomplying commodity; penalty provisions not waived by disposal.

(a) Any authorized inspector or other authorized person discharging his duties in the checking of compliance with any marketing order made effective pursuant to this article may enter during normal business hours and inspect any premises, enclosure, building, or conveyance where he has reason to believe any agricultural commodity subject to a marketing order is produced, stored, being prepared for market, or marketed and may inspect or cause to be inspected such representative samples of the commodity as may be necessary to determine whether or

not any lot of such commodity is in compliance with applicable regulations of any marketing order made effective pursuant to this article.

(b) Any authorized inspector or other authorized person in the discharge of his duties, if he has reason to believe that a lot of any agricultural commodity subject to a marketing order issued under this article is not in compliance with the requirements of such marketing order or of marketing rules and regulations issued pursuant thereto, as to quality, condition, size, maturity, pack, labeling, or markings, may hold such lot for a reasonable period of time sufficient to enable such officer to ascertain by an authorized inspection whether such lot complies with such marketing requirements, but in any event not to exceed 24 hours in the case of perishables or 72 hours in the case of nonperishables, except as provided in this Code section.

(c)(1) Following inspection, an inspector or other authorized person may affix to any lot which is determined to be in noncompliance an official notice, warning tag, or other appropriate marking warning that the lot is held and stating the reasons therefor. It shall be unlawful for any person, other than an authorized inspector or enforcing officer, to detach, alter, deface, or destroy any such official notice, warning tag, or marking so affixed to any such lot or to remove or dispose of such lot in any manner or under conditions other than as prescribed in such notice of noncompliance, except upon written permission of an authorized enforcing officer or by order of a court of competent jurisdiction.

(2) The Commissioner or the authorized person by whom such lot is being held shall serve the person in possession of such lot with a notice of noncompliance. Such notice shall be served in person or by mail to the last known address of the person in possession. It shall be the duty of the person in possession to notify the owner of the lot or other persons having an interest therein of the serving of such notice of noncompliance.

(3) Such notice of noncompliance shall include a description of the lot and the place where and reasons for which it is held and shall cite the applicable marketing order or marketing rules and regulations and the Code section upon which the notice of noncompliance is based.

(d)(1) The owner of a lot shall have, in the case of a perishable commodity, not more than 48 hours and, in the case of a nonperishable commodity, not more than 72 hours from the time of the service of a notice of noncompliance for reconditioning or for the correction of the deficiencies noted in the notice of noncompliance. If such lot is reconditioned or the deficiencies are corrected, the enforcing officer shall remove the warning tags or markings and release the lot for

marketing, provided that with the consent of the owner of the lot, the enforcing officer is authorized to divert the lot to other lawful uses or to destroy the lot.

(2)(A) If the owner of the lot fails or refuses to give consent to its diversion to other lawful uses or to its destruction or if the lot has not been reconditioned or the deficiencies otherwise corrected so as to bring the lot into compliance within the time specified in the notice, then the enforcing officer shall proceed as provided in this subsection.

(B) The Commissioner may file a verified petition in the superior court of the county where the agricultural commodity is held or the county of the residence of the owner thereof requesting permission to divert such lot to any other available lawful use or to destroy such lot. Such verified petition shall show the condition of the lot; that the lot is situated within the territorial jurisdiction of the court in which the petition is being filed or that the owner thereof resides within the jurisdiction of the court; that the lot is held and the notice of noncompliance has been served as provided in this Code section; that the lot has not been reconditioned as required; the name and address of the owner and the person in possession of the lot; and that the owner has refused permission to divert or to destroy the lot. Upon the filing of such verified petition the court may issue an order to show cause, returnable five days after service upon the owner, why the lot shall not be reconditioned or the deficiencies corrected or why the lot shall not be diverted to other lawful uses or destroyed. The owner of the lot may, prior to the date when the order to show cause is returnable, either recondition or correct the deficiencies in the lot so as to bring the lot into compliance or file at or before the hearing on the order an answer with the court showing why the lot should not be reconditioned or the deficiencies corrected so as to bring it into compliance or showing why the lot should not be diverted to other lawful uses or destroyed.

(C) If, at the expiration of the five days, the owner of the lot has failed or refused to recondition or to correct the deficiencies so as to bring the lot into compliance, the court may enter judgment ordering that the lot be reconditioned, diverted to any other lawful uses, or destroyed in the manner directed by the court or that the lot be relabeled, denatured, or otherwise processed or that the lot be sold or released upon such condition as the court in its discretion may impose, provided that the lot may not be sold or released into the regular channels of trade.

(D) In the event of the sale of any lot by order of the court, the costs of storage, handling, and reconditioning or disposal shall be

deducted from the proceeds of the sale and the balance, if any, shall be paid into the court for the account of the owner of any such lot.

(e) Disposal of any lot or portion of any lot pursuant to this Code section, whether such disposal is by arrangement with an enforcing officer or by court order, shall not waive any of the penalty provisions of this article.

(f) This Code section shall apply to any lot of any agricultural commodity regulated by a marketing order wherever or in the possession of whomever such lot may be in the marketing channels within this state.

History. — Ga. L. 1961, p. 301, §§ 18, 19; Ga. L. 1968, p. 398, §§ 12, 13; Ga. L. 1969, p. 763, §§ 19, 20; Code 1981, § 2-8-23; Code 1981, § 2-8-31, as redesignated by Ga. L. 1989, p. 1420, § 1.

2-8-32. Civil penalties; notice and hearing; recovery procedure; disposition of proceeds.

Any person who violates any provision of this article or any marketing order duly issued by any commission and in effect under this article or who violates any rule or regulation issued by the Commissioner pursuant to this article or of any marketing order duly issued and effective under this article shall be civilly liable to such commission for a penalty in an amount not to exceed $500.00 for each and every violation thereof, the amount of such penalty to be fixed by the Commissioner after notice and hearing as provided by Chapter 13 of Title 50, the "Georgia Administrative Procedure Act," for contested cases and recoverable by a civil action brought in the name of the Commissioner for the use and benefit of the affected commission or by execution issued in like manner as for assessments provided by Code Section 2-8-27. Any moneys recovered pursuant to this Code section shall be deposited and disbursed in accordance with subsection (e) of Code Section 2-8-27 as are other moneys.

History. — Ga. L. 1961, p. 301, § 18; Ga. L. 1968, p. 398, § 12; Ga. L. 1969, p. 763, § 19; Code 1981, § 2-8-24; Code 1981, § 2-8-32, as redesignated by Ga. L. 1989, p. 1420, § 1.

2-8-33. Action for civil penalty or injunctive relief; costs.

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

provisions of this article or of any marketing order or any rule or regulation duly issued by the Commissioner or any commission under this article.

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

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

History. — Ga. L. 1961, p. 301, § 18; Ga. L. 1968, p. 398, § 12; Ga. L. 1969, p. 763, § 19; Code 1981, § 2-8-25; Code 1981, § 2-8-33, as redesignated by Ga. L. 1989, p. 1420, § 1.

2-8-34. Referral for institution of legal proceedings; administrative hearing; cease and desist order.

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

(b) In case the matter is referred directly by the Commissioner to the Attorney General or any prosecuting attorney, it shall be the duty of

such officer, if after examination of the complaint and the evidence he believes that a violation has occurred, to bring an appropriate action or actions in a court or courts of competent jurisdiction in this state.

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

History. — Ga. L. 1961, p. 301, § 18; Ga. L. 1968, p. 398, § 12; Ga. L. 1969, p. 763, § 19; Code 1981, § 2-8-26; Code 1981, § 2-8-34, as redesignated by Ga. L. 1989, p. 1420, § 1.

2-8-35. Furnishing of false report, statement, record, or marketing order; refusal to furnish certain information.

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

(b) Any person engaged in the handling or processing of any agricultural commodity or in the wholesale or retail trade thereof who fails or refuses to furnish, upon request, information concerning the name and address of the person from whom he has received an agricultural commodity regulated by a marketing order issued and in effect under this article and the quantity of such commodity received shall be guilty of a misdemeanor.

History. — Ga. L. 1961, p. 301, § 18; Ga. L. 1969, p. 763, § 19; Code 1981, § 2-8-27; Code 1981, § 2-8-35, as redesignated by Ga. L. 1989, p. 1420, § 1; Ga. L. 1990, p. 8, § 2.

2-8-36. Criminal penalty.

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

History. — Ga. L. 1961, p. 301, §§ 18, 25; Ga. L. 1968, p. 398, § 12; Ga. L. 1969, p. 763, §§ 19, 26; Code 1981, § 2-8-28; Code 1981, § 2-8-36, as redesignated by

Ga. L. 1989, p. 1420, § 1.

2-8-37. Penalties and remedies concurrent, alternative, and cumulative.

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

History. — Ga. L. 1961, p. 301, § 18; Ga. L. 1969, p. 763, § 19; Code 1981, § 2-8-29; Code 1981, § 2-8-37, as redesignated by Ga. L. 1989, p. 1420, § 1; Ga. L. 1990, p. 8, § 2.

2-8-38. Applicability of article to retailers.

This article shall not be applicable to any retailer of agricultural commodities except to the extent that any retailer also engages in the processing or distribution of agricultural commodities as defined in this article.

History. — Ga. L. 1961, p. 301, § 24; Ga. L. 1969, p. 763, § 25; Code 1981, § 2-8-30; Code 1981, § 2-8-38, as redesignated by Ga. L. 1989, p. 1420, § 1.

ARTICLE 3

AGRICULTURAL COMMODITY COMMISSION FOR PEANUTS

2-8-50. Applicability of article.

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

History. — Code 1981, § 2-8-50, enacted by Ga. L. 1989, p. 1420, § 1.

2-8-51. Definitions.

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 peanuts 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 peanuts included in any marketing order made effective pursuant to this article.

(2) "Commission" means the Agricultural Commodity Commission for Peanuts created under this article.

(3) "Distributor" means any person who engages in the operation of selling, marketing, or distributing peanuts which he has produced or has purchased or acquired from a producer or which he is marketing on behalf of a producer, whether as owner, agent, employee, broker, or otherwise, but shall not include a retailer as defined in this Code section, except a retailer who purchases or acquires from, or handles on behalf of, any producer peanuts not theretofore subjected to regulation by the marketing order covering peanuts.

(4) "Handler" means any person engaged within this state as a distributor in the business of distributing peanuts or any person engaged as a processor in the business of processing peanuts.

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

(6) "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.

(7) "Peanuts" means peanuts and peanut products produced in this state or any class, variety, or utilization thereof, either in their natural state or as processed by a producer for the purpose of marketing such product or by a processor as defined in this Code section.

(8) "Processor" means any person engaged within this state in the operation of receiving, grading, packing, canning, extracting, preserving, grinding, crushing, or changing the form of peanuts for the purpose of preparing peanuts for market or of marketing such peanuts or engaged in any other activities performed for the purpose of preparing such peanuts for market or of marketing such peanuts but shall not include a person engaged in manufacturing another and different product from peanuts, so changed in form. The term "processor" shall not include an agent of the processor nor any person who receives peanuts for or on the account of another person.

(9) "Producer" means any person engaged within this state in the business of producing or causing to be produced for market peanuts as defined in this Code section.

(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, peanuts which he has produced to any handler as defined in this Code section.

(11) "Retailer" means any person who purchases or acquires peanuts for resale at retail to the general public for consumption off the premises; however, such person shall also be included within the definition of "distributor," as set forth in this Code section, to the extent that he engages in the business of a distributor as defined in this Code section.

(12) "Seasonal marketing regulations" means marketing regulations, applicable to a particular marketing order, made effective as prescribed in this article for the purpose of carrying into effect, by administrative order, the marketing regulatory authorizations and the provisions of such marketing order, as such authorizations or provisions may be applicable to or required by changing economic or marketing conditions and requirements from time to time during each marketing season in which such marketing order may operate. Such seasonal marketing regulations shall not extend beyond the marketing order concerned; nor shall they modify or change the language of such marketing order.

(13) "To distribute" means to engage in the business of a distributor as defined in this Code section.

(14) "To handle" means to engage in the business of a handler as defined in this Code section.

(15) "To process" means to engage in the business of a processor as defined in this Code section.

History. — Code 1981, § 2-8-51, enacted by Ga. L. 1989, p. 1420, § 1; Ga. L. 1990, p. 8, § 2.

OPINIONS OF THE ATTORNEY GENERAL

"Handler" construed. — Inasmuch as the Seed Commission is a public corporation and state instrumentality which engages in the operation of selling peanuts which it has purchased from a producer, the commission is a "handler" to whom the Peanut Commission may look for payment of the assessment established by Marketing Order No. 3. 1990 Op. Att'y Gen. No. 90-33.

2-8-52. Commission continued in existence; powers and duties; continuation of certain rules, regulations, and orders; periodic determination as to continuation of commission.

(a) The Agricultural Commodity Commission for Peanuts which was initially established August 1, 1961, pursuant to the "Georgia Agricultural Commodities Promotion Act," (Ga. L. 1961, p. 301), as amended, is continued in existence and is ratified and confirmed as a public corporation and instrumentality of the State of Georgia from and since such date. The Agricultural Commodity Commission for Peanuts shall be organized and constituted, have corporate existence, and possess powers and duties as stated in this article and shall be governed and controlled by this article.

(b) Marketing Order No. 3 for Peanuts which was adopted by the Agricultural Commodity Commission for Peanuts and which was continued in existence until June 30, 1991, shall continue in effect under the provisions of this article until such date.

(c) All rules, regulations, and orders of the Agricultural Commodity Commission for Peanuts in force and effect on July 1, 1989, shall remain in effect until otherwise amended or repealed pursuant to this article.

(d) Prior to April 30, 1991, and each three years thereafter, balloting shall be conducted in accordance with Code Section 2-8-63 to determine whether the commission shall continue to exist and operate under this article.

History. — Code 1981, § 2-8-52, enacted by Ga. L. 1989, p. 1420, § 1.

2-8-53. Membership of commission; division of peanut-producing counties into districts; election of members; compensation and expenses; certification of members to Secretary of State.

(a) The Agricultural Commodity Commission for Peanuts shall be composed of five members, who shall be peanut producers to be elected in the manner provided in subsection (b) of this Code section.

(b)(1) For the purpose of electing the five members of the Agricultural Commodity Commission for Peanuts, the commission shall divide those counties within this state in which peanuts are produced into five districts, each of which shall have approximately equal quota pound production of peanuts. Any county in which peanuts are not produced shall not be included in any of the five districts. Such

districts in existence on July 1, 1989, shall remain as constituted on such date until otherwise changed by the commission.

(2) The five producer members of the Agricultural Commodity Commission for Peanuts who are serving as such on July 1, 1989, shall continue as members for the remainder of their unexpired terms. Prior to the expiration of a term of office, it shall be the duty of the commission to conduct an election for a successor. Except as otherwise provided in this Code section, elections shall be called and conducted in the manner specified by the commission. One member shall be elected from each district by the producers of peanuts residing in such district. To be eligible for election, a person must be a peanut producer. No producer of peanuts residing within the district shall be denied the right to seek election to membership on the commission.

(3) A person must receive a majority of the votes cast for a position in order to be elected to such position; provided, however, if only one person qualifies for such position, no election shall be required and that person shall automatically become a member of the commission. If no person receives a majority of the votes cast for such position, a run-off election shall be conducted by the commission. Any member may succeed himself as a member of a commission. Members shall have terms of office of three years each and until their respective successors are elected and qualified.

(4) Vacancies in the membership of the commission shall be filled by election in the same manner as the original election of such members. Any person elected to fill a vacancy shall be elected for the remainder of the unexpired term.

(c) The members of the commission shall receive compensation and reimbursement of expenses as shall be provided by the commission, and such funds shall be payable from the funds of the commission. The commission shall keep comprehensive and detailed records of all compensation and expense reimbursement paid to each member of the commission. In connection with the audits provided for in subsection (h) of Code Section 2-8-67, the state auditor shall annually prepare a comprehensive and detailed report of the compensation and reimbursement paid to each member of the commission and shall provide a copy of such report to the commission; and such report shall be available to any producer of peanuts upon written request of any such producer.

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

History. — Code 1981, § 2-8-53, enacted by Ga. L. 1989, p. 1420, § 1; Ga. L. 1991, p. 997, § 1.

2-8-54. Authority; legal representation; acceptance and use of donations, gifts, and other property; exercise of powers of corporations; continuation of existence of commission; authority to lease or purchase property.

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

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

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

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

History. — Code 1981, § 2-8-54, enacted by Ga. L. 1989, p. 1420, § 1; Ga. L. 1999, p. 765, § 1.

2-8-55. Commission as public corporation; name used in contracts and legal proceedings; chairman; quorum; oath of office; certification of election.

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

History. — Code 1981, § 2-8-55, enacted by Ga. L. 1989, p. 1420, § 1.

OPINIONS OF THE ATTORNEY GENERAL

Commission's property exempt from ad valorem taxes. — Because the property owned by the Agricultural Commodity Commission for Peanuts is public property, not used for the purpose of private or corporate profit and income, it is exempt from city and county ad valorem taxes. 1963-65 Op. Att'y Gen. p. 390.

2-8-56. Receipt, collection, and disbursal of funds.

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

History. — Code 1981, § 2-8-56, enacted by Ga. L. 1989, p. 1420, § 1.

2-8-57. Funds held in trust; deposit, accounting, and disbursal of funds; exemption from requirements applicable to state funds.

Funds received by the commission under this article shall be held in trust for the commission. Such funds shall be deposited, accounted for, and disbursed in the same manner as the funds of this state but shall not be required to be deposited in the state treasury and appropriated therefrom as are other state funds. It is the express intent and purpose of this article to authorize the receipt, collection, and disbursement by the commission of such funds as trust funds of the commission without

complying with the requirement applicable to funds collected for the use and benefit of the state.

History. — Code 1981, § 2-8-57, enacted by Ga. L. 1989, p. 1420, § 1.

2-8-58. Bond of persons handling funds under article; signing of checks, drafts, and negotiable instruments; election, powers, and duties of treasurer.

Any persons who handle funds under this article shall be bonded with good and sufficient surety in an amount determined by the commission for the accounting of any and all funds coming into their hands. All checks, drafts, and negotiable instruments which are drawn on or payable from the funds of the Agricultural Commodity Commission for Peanuts shall be signed by either the chairman or treasurer of the commission. It shall be the duty of the commission to elect annually a treasurer from among the membership of the commission. The treasurer shall have such powers and perform such duties as shall be provided by the commission.

History. — Code 1981, § 2-8-58, enacted by Ga. L. 1989, p. 1420, § 1.

2-8-59. Liability of commission members.

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

History. — Code 1981, § 2-8-59, enacted by Ga. L. 1989, p. 1420, § 1.

2-8-60. Authority to confer with and make information available to governmental authorities of this state, other states, and the United States.

The commission is authorized to confer with and to make any information obtained pursuant to this article available to the duly constituted governmental authorities of this state, of other states, of political subdivisions of this state or other states, and of the United

States who, by reason of their duties, have legitimate concern with the subject and to cooperate with all such authorities for the purpose of obtaining administrative uniformity and achieving the objectives of this article.

History. — Code 1981, § 2-8-60, enacted by Ga. L. 1989, p. 1420, § 1.

2-8-61. Issuance, administration, and enforcement of marketing orders; notice and hearing as to proposed order; information from persons who may be affected by order.

(a) The commission is authorized to issue, administer, and enforce the provisions of marketing orders regulating producer marketing or the handling of peanuts within this state.

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

(2) Notice of any hearing called for such purpose shall be given by the commission by publishing a notice of such hearing for a period of not less than five days in a newspaper of general circulation published in the capital of the state and in such other newspapers as the commission may prescribe. No such public hearing shall be held prior to five days after the last day of such period of publication. The commission shall also mail a copy of such notice of hearing and a copy of such proposed marketing order or proposed amendments to all producers of peanuts whose names and addresses appear upon lists of such persons on file with the commission and who may be directly affected by the provisions of such proposed marketing order or such proposed amendments. Such notice of hearing shall in all respects comply with the requirements of Chapter 13 of Title 50, the "Georgia Administrative Procedure Act."

(3) The hearing shall be public and all testimony shall be received under oath. A full and complete record of the proceedings at such hearing shall be made and maintained on file in the office of the commission. The hearing shall, in all respects, be conducted in accordance with Chapter 13 of Title 50, the "Georgia Administrative Procedure Act." The hearing may be conducted by the commission or by a member of the commission, as may be designated by the commission in each instance, but no decision shall be made based on

hearings conducted other than by the commission itself, at which a majority of the members thereof are present, until the members of the commission have been afforded an opportunity to review the hearing record. Where the commission conducts hearings, its recommendation shall be based on the findings reached after a review of the record of the hearing.

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

(A) The correct name and address of such handler;

(B) The quantities of peanuts affected by the proposed marketing order handled by such handler in the marketing season next preceding the filing of such report;

(C) The correct names and addresses of all producers of peanuts who may be directly affected by such proposed marketing order, from whom such handler received peanuts in the marketing season next preceding the filing of such report; and

(D) The quantities of peanuts received by such handler from each such producer in the marketing season next preceding the filing of such report.

(2) The notice to handlers requiring them to file a report shall be published by the commission for a period of not less than five days in a newspaper of general circulation published in the capital of the state and in such other newspaper or newspapers as the commission may prescribe. The commission shall also mail a copy of such notice to all handlers of peanuts whose names and addresses appear upon the lists on file with the commission who may be directly affected by such proposed marketing order.

(3) Each handler of peanuts directly affected by a proposed marketing order shall file his verified report with the commission within the time specified in paragraph (1) of this subsection. Failure or refusal of any handler to file such report shall not invalidate any proceeding taken or marketing order issued. The commission is

authorized and directed to proceed upon the basis of such information and reports as may otherwise be available.

(4) From the reports so filed and the information so received or available to the commission, including any proper corrections, the commission shall prepare a list of the names and addresses of such producers and the volume of peanuts produced or marketed by all such producers and a list of the names and addresses of such handlers and the volume of peanuts handled by all such handlers, directly affected by such proposed marketing order or amendments thereto, in the preceding marketing season. Such lists shall constitute complete and conclusive lists for use in any finding made by the commission pursuant to subsection (a) of Code Section 2-8-63 and such findings shall be conclusive.

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

History. — Code 1981, § 2-8-61, enacted by Ga. L. 1989, p. 1420, § 1.

2-8-62. Recommendation of promulgation of marketing order; permissible provisions of orders; effectiveness of orders heretofore adopted and in effect on July 1, 1989.

(a) If, upon the basis of the record of testimony and documentary evidence received at the hearing provided for in Code Section 2-8-61 and the facts officially noticed therein from official publications or institutions of recognized standing, the commission determines that the issuance of a marketing order or an amendment will tend to effectuate the intent and purpose of this article, it may recommend the promulgation of a marketing order or amendment with respect to the matters specified in the hearing notice and supported by the record, containing any or all of the following provisions, but no others:

(1) Provisions regulating the period or periods during which peanuts or any grade, size, or quality of peanuts may be processed, distributed, or otherwise marketed within this state by any and all persons engaged in such processing, distributing, or marketing within this state; such periods shall be established by the commission so as to conform to the better principles of sound agricultural practices with respect to production of the peanuts in order to secure,

so far as is commercially practical, a sufficient supply of good quality of each grade of peanuts proportionate to normal market demand and to prevent disruptive marketing practices likely to result in oversupply or scarcity, which create unnecessarily inflated prices to consumers and handlers, depressed prices to producers, or salability of products of inferior grade and quality due to unavailability of good quality products;

(2) Provisions establishing or providing for establishing, with respect to peanuts, either as delivered by producers to handlers or processors or as handled, processed, or otherwise prepared for market or as marketed by producers, handlers, or processors:

(A) Grading standards of quality, condition, size, maturity, or pack, which standards may include minimum standards, provided that the standards so established shall not be established below any minimum standards prescribed by law for peanuts; and

(B) Uniform inspection and grading of peanuts in accordance with the standards so established.

(3) Provisions for the establishment of plans for advertising and sales promotion to maintain present markets or to create new or larger markets for peanuts grown in this state or for the prevention, modification, or removal of trade barriers which obstruct the normal flow of peanuts to market. The commission is authorized to prepare, issue, administer, and enforce plans for promoting the sale of peanuts, provided that any such plan shall be directed toward promoting and increasing the sale, use, and utilization of peanuts without reference to a particular brand or trade name; and provided, further, that no advertising or sales promotion program shall be issued by the commission which makes use of false or unwarranted claims in behalf of any such product or disparages the quality, value, sale, or use of any other agricultural commodity;

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

(5) Provisions for carrying on research studies in promoting the production, marketing, sale, use and utilization, processing, and improvement of peanuts or any combination thereof and for the expenditure of moneys for such purposes. In any research carried on

under this paragraph, the dean of the College of Agricultural and Environmental Sciences of the University of Georgia and the commission shall cooperate in selecting the research project or projects to be carried on from time to time. Insofar as practicable such projects shall be carried out by the College of Agricultural and Environmental Sciences but, if the dean of the college and the commission determine that the college has no facilities for a particular project or that some other research agency has better facilities therefor, the project may be carried out by other research agencies selected by the commission;

(6) Provisions establishing or providing authority for establishing, either as peanuts are produced or are delivered by producers to handlers or as peanuts are handled or otherwise prepared for market or as peanuts are marketed by producers or handlers, an educational program designed to acquaint producers, handlers, or other interested persons with quality improvement, including sanitation practices, procedures, or methods as applied to peanuts;

(7) Provisions for the promotion of the marketing of surplus peanuts through the establishment of surplus, stabilization, or by-product pools for peanuts or any grade, size, quality, or condition thereof, providing for the sale of the peanuts in any such pool and for the equitable distribution among the persons participating therein of the net returns derived from the sale of such peanuts. Whenever the marketing order authorizes the establishment of any such pool or pools, the commission shall have the power to receive such peanuts from each producer or handler, to handle the same according to the grade, size, quality, or condition thereof, and to account to each producer or handler participating therein upon a pro rata basis for the net proceeds derived from the sale thereof. Whenever the marketing order authorizes the establishment of a surplus, stabilization, or by-product pool, the commission shall have authority to promote the marketing of surplus peanuts by making arrangements for and operating any necessary facilities for the storing, financing, grading, hauling, packing, servicing, processing, preparing for market, selling, and disposing of the contents of any pools provided for in this paragraph. Whenever the marketing order authorizes the establishment of any type of pool authorized in this paragraph, the commission shall have authority to create, by a uniform assessment upon producers, or to maintain and disburse, upon some other uniform and equitable basis, an equalization fund to be used for the removal of any inequalities between producers or handlers participating in any pool; and

(8) Provisions for the establishment and management of a stabilization fund to compensate producers of peanuts for peanuts which must be diverted or which fail to qualify for marketing or sale in

regular marketing channels due to grade, quality, or size regulations. The commission shall be authorized to provide, by regulations, for the administration of such stabilization fund, including regulations as to the type, quality or grade of peanuts, the amount of stabilization support, reporting, and qualifying procedures. Whenever the marketing order authorizes the establishment of any type of stabilization fund authorized in this paragraph, the commission shall have the authority to create such fund by a uniform assessment upon producers of peanuts and to maintain and disburse such stabilization fund in accordance with the purposes set out in this paragraph.

(b) All provisions authorized by this Code section which are contained in marketing orders and amendments thereto heretofore adopted by the Agricultural Commodity Commission for Peanuts and in effect on July 1, 1989, shall be and remain of full force and effect until repealed or modified by the commission as provided in this article.

History. — Code 1981, § 2-8-62, enacted by Ga. L. 1989, p. 1420, § 1; Ga. L. 1995, p. 10, § 2.

OPINIONS OF THE ATTORNEY GENERAL

Hiring of person to explain impact of federal actions. — Agricultural Commodity Commission for Peanuts is authorized to hire person to perform function of meeting with federal officials to explain impact of proposed federal actions on peanut producers in Georgia. 1980 Op. Att'y Gen. No. 80-161 (rendered under O.C.G.A. § 2-8-22).

2-8-63. Finding of assent or approval of producers required for marketing order to become effective; commission authorized to issue orders regulating peanuts; amendments; notice; rules and regulations; expiration and extension of orders.

(a)(1) No marketing order or major amendment thereto, directly affecting producers or producer marketing, issued pursuant to this article, shall be made effective by the commission until the finding of one or more of the following:

(A) That such marketing order or amendment thereto has been assented to in writing by not less than 65 percent of the producers who are engaged within the area specified in such marketing order or amendment thereto in the production for market or the producer marketing of not less than 51 percent of the peanuts specified therein in commercial quantities;

(B) That such marketing order or amendment thereto has been assented to in writing by producers who produce not less than 65

percent of the volume of peanuts and by 51 percent of the total number of producers so engaged; or

(C) That such marketing order or amendment thereto has been approved or favored by producers in a referendum among producers directly affected if the valid votes cast in such referendum in favor of such marketing order or amendment thereto represent not less than 51 percent of the total number of producers of peanuts of record with the commission who marketed not less than 51 percent of the total quantity of the peanuts marketed in the next preceding marketing season by the total number of producers of record with the commission.

(2) Whenever any marketing order or any major amendment to any marketing order is issued by the commission, the commission shall determine whether assent, approval, or favor thereto of the producers shall be by written assents or by referendum.

(3) If the commission determines that a referendum shall be had, the commission shall establish a referendum period of 30 days. At the close of such referendum period, the commission shall count and tabulate the ballots filed during such period. If from such tabulation the commission finds that the number of producers voting in favor of such marketing order or amendment thereto is not less than 51 percent of the total number of producers of record with the commission and that such producers who voted in favor of the marketing order or amendment thereto marketed not less than 51 percent of the total volume of peanuts marketed by all producers of record with the commission during the marketing season next preceding such referendum, the commission may make such marketing order or amendment thereto effective. The commission is authorized to prescribe such additional procedures as may be necessary to conduct such referendum.

(4) At a public hearing held to consider a proposed marketing order or major amendments to an existing marketing order which directly affect producers or producer marketing, the commission shall also receive testimony or evidence from which it can determine whether the assent, approval, or favor of such producers shall be determined by written assents or by referendum as prescribed in this Code section. Upon the conclusion of any hearing which involves a marketing order or a major amendment thereto directly affecting producers or producer marketing, the commission shall make a finding, based upon the testimony and evidence received, whether producer assent, approval, or favor shall be determined by written assents or by referendum. If the commission finds that a referendum shall be had, it shall direct that a referendum be held in accordance with this subsection.

(5) Any referendum or assent in writing to a marketing order under paragraphs (3), (5), and (6) of subsection (a) of Code Section 2-8-62 shall be held pursuant to this Code section; and upon the approval thereof by two-thirds of those voting therein, where the total vote cast thereon represents not less than 25 percent of those eligible to vote or where the total vote cast thereon represents not less than 25 percent of the total amount of peanuts, such marketing order may be declared by the commission to be approved.

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

(b) Subject to the provisions, restrictions, and limitations imposed in this article, the commission may issue marketing orders regulating producer marketing and the processing, distributing, or handling in any manner of peanuts by any and all persons engaged in such producer marketing, processing, distributing, or handling of peanuts within this state.

(c)(1) Upon the recommendation of not less than three members of the commission, the commission may make effective minor amendments to a marketing order. The commission may require a public hearing upon minor amendments if in its opinion the substance of such minor amendments so warrants. The commission, however, shall not be required to submit minor amendments for written assents or referendum approval.

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

(A) Authority for regulating the period or periods during which peanuts or any grade, size, or quality of such peanuts may be processed, distributed, or otherwise marketed within this state;

(B) Authority for the establishment of uniform grading and inspection of peanuts and the establishment of grading standards of quality, condition, size, or pack of such peanuts;

(C) Authority for the establishment of plans for advertising and sales promotion of peanuts;

(D) Authority to prohibit unfair trade practices;

(E) Authority for carrying out research studies in the production, processing, or distribution of peanuts;

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

(G) Authority to extend the application of the provisions of any marketing order to portions or uses of peanuts not previously subject to such provisions or to restrict or extend the application of such provisions upon the producers or handlers of such portions or uses of such peanuts.

(3) Modification of any provisions of any marketing order in effect, for the purpose of clarifying the meaning or application of such provisions or of modifying administrative procedures for carrying out such provisions, are declared not to be a major amendment of such marketing order.

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

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

(f) The commission shall have the power, consistent with this article, to establish administrative rules and regulations for each marketing order issued and made effective as may be necessary to facilitate the supervision, administration, and enforcement of each such order. The provisions of subsection (d) of this Code section relative to posting,

publication, mailing of notice, and time of taking effect shall be applicable to any such administrative rules and regulations.

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

(h) In the event either one of the following conditions is complied with, a marketing order shall be extended for a period of three years after the date of its original expiration:

(1) Assent has been given in writing to such marketing order by not less than two-thirds of the producers participating; or

(2) Approval or favor of such marketing order has been given by producers in a referendum among producers directly affected if at least 66 2/3 percent of the votes cast in such referendum favor the extension of such marketing order.

(i) If the commission determines that a referendum shall be held, the commission shall establish a referendum period of 30 days, such referendum period to terminate at least 30 days prior to the expiration date of the marketing order which is the subject of such referendum. At the close of such referendum period, the commission shall count and tabulate the ballots cast during such period. If from such tabulation the commission finds that the number of producers voting in favor of the extension of such marketing order is not less than 66 2/3 percent of the total number of ballots cast, then such marketing order shall be extended for a period of three years after the expiration date. If it is found from the tabulation of such referendum that the number of producers who had voted in favor of the extension of such marketing order is less than the required 66 2/3 percent of the total number of ballots cast, then the marketing order shall expire, terminate, and be of no force and effect as provided in subsection (g) of this Code section.

History. — Code 1981, § 2-8-63, enacted by Ga. L. 1989, p. 1420, § 1.

2-8-64. Limiting of application of marketing order to certain marketing areas or portions of state.

Marketing orders issued by the commission under this article may be limited in their application by prescribing the marketing areas or portions of the state in which a particular order shall be effective, provided that no marketing order shall be issued by the commission

unless it embraces all persons of a like class who are engaged in a specific and distinctive agricultural industry or trade within this state.

History. — Code 1981, § 2-8-64, enacted by Ga. L. 1989, p. 1420, § 1.

2-8-65. Seasonal marketing regulations; legislative findings; interpretation of Code section.

(a) The commission without prior notice to and public hearing for the producers or handlers of the peanuts directly affected, may issue and make effective seasonal marketing regulations or modifications thereof, provided that the marketing order, made effective after due notice, public hearing, and written assent as required by this article, (1) provides for the issuance or modification of such seasonal marketing regulations without requiring such prior notice and public hearing, and (2) sets forth the limits within which such seasonal marketing regulations may be made effective or subsequently modified by the commission; and provided, further, that the commission finds that such seasonal marketing regulations or modifications thereof are reasonable and proper and a practical means of carrying out the marketing provisions authorized in such marketing order or agreement and will effectuate the declared purposes and policies of this article with respect to peanuts. Notice of the issuance and the effective date of any such seasonal marketing regulations or modifications thereof shall be given by the commission to all producers and handlers directly affected by any such regulations in the manner and within the time specified in the applicable marketing order or, in absence of such, as may be specified by the commission or as specified in the administrative rules and regulations made effective for such marketing order pursuant to subsection (f) of Code Section 2-8-63.

(b) It is recognized that with respect to some peanuts, marketing, weather, and other conditions may change so rapidly as to require changes in seasonal marketing regulations from week to week or more often. It is intended that this Code section be interpreted liberally so that the commission may be enabled to carry out the marketing regulations and procedures authorized in this Code section in a practical and effective manner.

History. — Code 1981, § 2-8-65, enacted by Ga. L. 1989, p. 1420, § 1.

2-8-66. Applicability of orders regulating minimum quality, condition, size, or maturity.

Whenever producers or handlers of peanuts regulated by a marketing order issued by the commission pursuant to this article are required to

comply with minimum quality, condition, size, or maturity regulations, no person, except as otherwise provided in such order, shall process, distribute, or otherwise handle any of such peanuts from any source, whether produced within or outside this state, which peanuts do not meet such minimum requirements applicable to producers or handlers of such peanuts in this state, provided that such regulations shall not apply to any peanuts which have been produced outside of this state and are in transit on the effective date of the regulations.

History. — Code 1981, § 2-8-66, enacted by Ga. L. 1989, p. 1420, § 1.

2-8-67. Assessments to defray expenses of marketing orders; budgets for administration; authority to borrow money; contributions in lieu of advance deposits; collection of assessments; rules; enforcement of payment; deposit and disbursement of moneys; investment of moneys.

(a) For the purpose of providing funds to defray the necessary expenses incurred by the commission in the formulation, issuance, administration, and enforcement of each marketing order issued under this article, each such marketing order shall provide for the levying and collection of assessments in sufficient amounts to defray such expenses. Each marketing order shall indicate the maximum rate of any such assessment which may be collected and the proportion, if any, payable by each producer and handler directly regulated or affected by such marketing order. In administering such marketing order, the commission shall adopt, from time to time, budgets to cover necessary expenses and the assessment rate necessary to provide sufficient funds. If the commission finds that each such budget and assessment rate are proper and equitable and will provide sufficient moneys to defray the necessary expenses, it may approve such budget and rate of assessment and order that each producer and handler so assessed shall pay to the commission, at such times and in such installments as the commission may prescribe, an assessment, based upon the units in which peanuts are marketed or upon any other uniform basis which the commission determines to be reasonable and equitable, but in amounts which (1) in the case of producers will not exceed 2 1/2 percent of the gross dollar volume of sales of the peanuts affected by all such producers regulated by such marketing order, or (2) in the case of processors, distributors, or other handlers will not exceed 2 1/2 percent of the gross dollar volume of purchases of peanuts affected by the marketing order from producers or of the gross dollar volume of sales of peanuts affected by the marketing order and handled by all such processors, distributors, or other handlers regulated by such marketing order during the marketing season or seasons during which such marketing order is effective.

(b) Each marketing order which authorizes the carrying out of advertising and sales promotion plans shall provide for the levying and collection of assessments in sufficient amounts to defray the expenses of such activities. Each such marketing order shall indicate the maximum rate of any such assessment and the proportion, if any, payable by each producer and handler directly regulated or affected by such marketing order. The commission shall adopt budgets to cover such expenses and establish the assessment rate necessary to provide sufficient funds. If the commission finds that each such budget and assessment rate are proper and equitable and will provide sufficient moneys to defray such expenses, they may approve such budget and approve and levy such assessment. Any assessments so established shall be based upon the units in which peanuts are marketed or upon any other uniform basis which the commission determines to be proper and equitable. Any assessment rates established under this subsection shall be in amounts not to exceed 4 percent of the gross dollar volume of sales by all producers or by all processors, distributors, or other handlers of peanuts regulated by such marketing order during the marketing season or seasons during which such marketing order is effective.

(c) In lieu of the assessments to defray the costs of formulation, issuance, administration, and enforcement of the marketing order and of advertising or sales promotion provided for in subsections (a) and (b) of this Code section, if the marketing order contains provisions for advertising or sales promotion as authorized in this article, the commission may approve and fix one assessment not exceeding 6 1/2 percent of the gross dollar volume of sales of such peanuts by all producers or by all processors, distributors, or other handlers of such peanuts regulated by such marketing order during the marketing season or seasons during which such marketing order is effective. The method and manner of assessment and collection thereof and the limitations and restrictions applicable thereupon shall conform in all respects with subsection (b) of this Code section, except as to the maximum amount of such assessment. In such case, the commission shall approve the proportions of such assessments which may be expended to defray the costs of formulation, issuance, administration, and enforcement of the marketing order and of such advertising or sales promotion program, provided that the proportion of such assessments which may be allocated in such manner to defray the cost of such administrative activities for such marketing order shall in no case exceed the maximum amount authorized in subsection (a) of this Code section.

(d) In the event that the commission has reason to believe that the administration of a marketing order will be facilitated or the attainment of the purposes and objectives of the marketing order will be promoted thereby, the commission is authorized to borrow money, with

or without interest, to carry out any provision of any marketing order authorized by this article and may hypothecate anticipated assessment collections applicable to such respective provisions.

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

(f) Each and every handler of peanuts for which an assessment has been established by or pursuant to this article shall, at the time of purchase of any such peanuts from the producer thereof, collect from such producer the assessment established by or in accordance with this article and remit the same to the commission. The liability of such handler under this article shall not be discharged except upon receipt of such sums by the commission. For the purpose of this subsection, to ensure compliance with this Code section, and for the administrative convenience of the commission in enforcing payment and collection of such assessments, delivery by a producer to a handler for processing of any peanuts upon which an assessment has been established shall be deemed a sale of such peanuts within the meaning of this Code section; and the assessment shall thereupon attach and become due, regardless of whether such handler actually purchases such peanuts for himself or only processes same for a consideration payable by the producer or another person and such peanuts are thereafter sold to another person, provided that upon collection of such assessment by the handler to whom such peanuts are so delivered for processing only, no further or additional assessment shall attach or become due by reason of the subsequent sale by such producer of such processed peanuts to another person or handler.

(g) The commission may prescribe such rules as may be necessary and reasonable for the orderly reporting and transmitting of assessments by handlers and may take all legal action necessary to enforce payment of the same by handlers. The commission is authorized to issue executions for the same in like manner as executions are issued for ad valorem property taxes due the state. It shall be the duty of each and every sheriff of this state and their lawful deputies, upon the request of the commission, to levy and collect such executions and to

make their return thereof to the commission in like manner as such tax executions are levied and return thereof made to county tax collectors and tax commissioners. The commission shall likewise be authorized to collect, by execution as provided in this subsection or otherwise, directly from the producer against whom any assessment levied under this Code section may be found due whenever it is determined that such producer has sold such affected peanuts giving rise to such liability to a person other than to a handler who has collected such assessment and is required by this Code section to remit the same to the commission. Furthermore, the commission may proceed against such producer and the purchaser of such peanuts simultaneously if the purchaser is a handler required to collect such assessment, until satisfaction is obtained.

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

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

History. — Code 1981, § 2-8-67, enacted by Ga. L. 1989, p. 1420, § 1.

OPINIONS OF THE ATTORNEY GENERAL

Seed peanut producers subject to assessment. — Persons who produce seed peanuts for the Seed Commission are producers subject to a per/ton assessment, by the Peanut Commission, to defray expenses of marketing orders. 1990 Op. Att'y Gen. No. 90-33.

Commission without authority to exempt producers. — The Peanut Commission has no authority to exempt pro-

ducers of seed peanuts from the per/ton assessment established in Marketing Order No. 3. 1990 Op. Att'y Gen. No. 90-33.

2-8-68. Assessment constitutes personal debt; action for collection; fee for late payment; remedies cumulative.

(a) Any assessment levied or established in accordance with this article in such specified amount as may be determined by the commission pursuant to this article shall constitute a personal debt of every person so assessed and shall be due and payable to the commission when payment is called for by the commission. In the event of the failure of such person to pay any such assessment upon the date determined by the commission, the commission may file an action against such person in a court of competent jurisdiction for the collection thereof.

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

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

History. — Code 1981, § 2-8-68, enacted by Ga. L. 1989, p. 1420, § 1.

2-8-69. Books and records of processors and distributors; furnishing information to commission; inspection of books and records; confidentiality; enforcement.

(a) The commission may require any and all processors or distributors subject to the provisions of any marketing order issued pursuant to this article:

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

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

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

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

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

History. — Code 1981, § 2-8-69, enacted by Ga. L. 1989, p. 1420, § 1.

2-8-70. Use of designations of grade, quality, or condition without complying with regulations or marketing order.

Whenever the use by a producer or handler of a particular emblem, label, certificate, or other distinctive designation of grade, quality, or condition, other than grade or other quality designations then in effect pursuant to state or federal grade standards, is made contingent upon compliance with certain production or handling regulations authorized by a marketing order issued and made effective under this article, it shall be unlawful and a violation of this article for any person who is not participating in and complying with such order or regulations to use such designation of grade, quality, or condition.

History. — Code 1981, § 2-8-70, enacted by Ga. L. 1989, p. 1420, § 1.

2-8-71. Entry and inspection of premises to check compliance with marketing order; holding of lot of peanuts to ascertain compliance; affixing of notice of noncompliance; service of notice of noncompliance; correction of deficiencies; disposal of lot; applicability.

(a) Any authorized inspector or other authorized person discharging his duties in the checking of compliance with any marketing order made effective pursuant to this article may enter during normal business hours and inspect any premises, enclosure, building, or conveyance where he has reason to believe any peanuts subject to a marketing

order are produced, stored, being prepared for market, or marketed and may inspect or cause to be inspected such representative samples of the peanuts as may be necessary to determine whether or not any lot of such peanuts is in compliance with applicable regulations of any marketing order made effective pursuant to this article.

(b) Any authorized inspector or other authorized person in the discharge of his duties, if he has reason to believe that a lot of any peanuts subject to a marketing order issued under this article is not in compliance with the requirements of such marketing order or of marketing rules and regulations issued pursuant thereto, as to quality, condition, size, maturity, pack, labeling, or markings, may hold such lot for a reasonable period of time sufficient to enable such officer to ascertain by an authorized inspection whether such lot complies with such marketing requirements, but in any event not to exceed 72 hours, except as provided in this Code section.

(c)(1) Following inspection, an inspector or other authorized person may affix to any lot which is determined to be in noncompliance an official notice, warning tag, or other appropriate marking warning that the lot is held and stating the reasons therefor. It shall be unlawful for any person, other than an authorized inspector or enforcing officer, to detach, alter, deface, or destroy any such official notice, warning tag, or marking so affixed to any such lot or to remove or dispose of such lot in any manner or under conditions other than as prescribed in such notice of noncompliance, except upon written permission of an authorized enforcing officer or by order of a court of competent jurisdiction.

(2) The commission or the authorized person by whom such lot is being held shall serve the person in possession of such lot with a notice of noncompliance. Such notice shall be served in person or by mail to the last known address of the person in possession. It shall be the duty of the person in possession to notify the owner of the lot or other persons having an interest therein of the serving of such notice of noncompliance.

(3) Such notice of noncompliance shall include a description of the lot and the place where and reasons for which it is held and shall cite the applicable marketing order or marketing rules and regulations and the Code section upon which the notice of noncompliance is based.

(d)(1) The owner of a lot shall have not more than 72 hours from the time of the service of a notice of noncompliance for reconditioning or for the correction of the deficiencies noted in the notice of noncompliance. If such lot is reconditioned or the deficiencies are corrected, the enforcing officer shall remove the warning tags or markings and

release the lot for marketing, provided that with the consent of the owner of the lot, the enforcing officer is authorized to divert the lot to other lawful uses or to destroy the lot.

(2)(A) If the owner of the lot fails or refuses to give consent to its diversion to other lawful uses or to its destruction or if the lot has not been reconditioned or the deficiencies otherwise corrected so as to bring the lot into compliance within the time specified in the notice, then the enforcing officer shall proceed as provided in this subsection.

(B) The commission may file a verified petition in the superior court of the county where the peanuts are held or the county of the residence of the owner thereof requesting permission to divert such lot to any other available lawful use or to destroy such lot. Such verified petition shall show the condition of the lot; that the lot is situated within the territorial jurisdiction of the court in which the petition is being filed or that the owner thereof resides within the jurisdiction of the court; that the lot is held and the notice of noncompliance has been served as provided in this Code section; that the lot has not been reconditioned as required; the name and address of the owner and the person in possession of the lot; and that the owner has refused permission to divert or to destroy the lot. Upon the filing of such verified petition the court may issue an order to show cause, returnable five days after service upon the owner, why the lot shall not be reconditioned or the deficiencies corrected or why the lot shall not be diverted to other lawful uses or destroyed. The owner of the lot may, prior to the date when the order to show cause is returnable, either recondition or correct the deficiencies in the lot so as to bring the lot into compliance or file at or before the hearing on the order an answer with the court showing why the lot should not be reconditioned or the deficiencies corrected so as to bring it into compliance or showing why the lot should not be diverted to other lawful uses or destroyed.

(C) If, at the expiration of the five days, the owner of the lot has failed or refused to recondition or to correct the deficiencies so as to bring the lot into compliance, the court may enter judgment ordering that the lot be reconditioned, diverted to any other lawful uses, or destroyed in the manner directed by the court or that the lot be relabeled or otherwise processed or that the lot be sold or released upon such condition as the court in its discretion may impose, provided that the lot may not be sold or released into the regular channels of trade.

(D) In the event of the sale of any lot by order of the court, the costs of storage, handling, and reconditioning or disposal shall be deducted from the proceeds of the sale and the balance, if any, shall be paid into the court for the account of the owner of any such lot.

(e) Disposal of any lot or portion of any lot pursuant to this Code section, whether such disposal is by arrangement with an enforcing officer or by court order, shall not waive any of the penalty provisions of this article.

(f) This Code section shall apply to any lot of peanuts regulated by a marketing order wherever or in the possession of whomever such lot may be in the marketing channels within this state.

History. — Code 1981, § 2-8-71, enacted by Ga. L. 1989, p. 1420, § 1.

2-8-72. Civil penalty; fixing amount of penalty; civil action; disposition of moneys.

Any person who violates any provision of this article or any marketing order duly issued by the commission and in effect under this article or who violates any rule or regulation issued by the commission pursuant to this article or of any marketing order duly issued and effective under this article shall be civilly liable to the commission for a penalty in an amount not to exceed $500.00 for each and every violation thereof, the amount of such penalty to be fixed by the commission after notice and hearing as provided by Chapter 13 of Title 50, the "Georgia Administrative Procedure Act," for contested cases and recoverable by a civil action brought in the name of the commission or by execution issued in like manner as for assessments provided by Code Section 2-8-67. Any moneys recovered pursuant to this Code section shall be deposited and disbursed in accordance with subsection (e) of Code Section 2-8-67 as are other moneys.

History. — Code 1981, § 2-8-72, enacted by Ga. L. 1989, p. 1420, § 1.

2-8-73. Action by Attorney General for civil penalties or injunctive relief; remedies court may impose; payment of costs.

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

(b) If it appears to the court, upon any application for a temporary restraining order, upon the hearing of any order to show cause why a

preliminary injunction should not be issued, or upon the hearing of any motion for a preliminary injunction, or if the court finds in any such action that any defendant therein is violating or has violated any provision of this article or of any marketing order or any rule or regulation duly issued by the commission under this article, then the court shall enjoin the defendant from committing further violations and may compel specific performance of any obligation imposed by a marketing order or any rule or regulation issued by the commission under this article. It shall not be necessary in such event to allege or prove lack of an adequate remedy at law.

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

History. — Code 1981, § 2-8-73, enacted by Ga. L. 1989, p. 1420, § 1.

2-8-74. Referral of complaints to Attorney General or prosecuting attorney; hearing to consider charges; cease and desist order.

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

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

(c) After an administrative hearing, if the commission finds that a violation has occurred, it shall enter its findings and notify the parties to such complaint. In its discretion, the commission shall either refer the matter to the Attorney General for the institution of legal proceed-

ings or notify such parties to cease and desist from further violation. Upon the refusal or failure of such parties to comply or if the commission finds that the facts or circumstances warrant immediate prosecution, the commission shall file a complaint with the Attorney General or with any prosecuting attorney of this state requesting that such officer commence any or all actions authorized in this article against such respondent or respondents in a court of competent jurisdiction.

History. — Code 1981, § 2-8-74, enacted by Ga. L. 1989, p. 1420, § 1.

2-8-75. False or fraudulent reports, statements, and records; failure or refusal to give name and address of person from whom peanuts received.

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

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

History. — Code 1981, § 2-8-75, enacted by Ga. L. 1989, p. 1420, § 1; Ga. L. 1990, p. 8, § 2.

2-8-76. Criminal penalty.

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

History. — Code 1981, § 2-8-76, enacted by Ga. L. 1989, p. 1420, § 1.

2-8-77. Construction of penalty and remedy provisions.

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

History. — Code 1981, § 2-8-77, enacted by Ga. L. 1989, p. 1420, § 1.

2-8-78. Applicability to retailers of peanuts.

This article shall not be applicable to any retailer of peanuts except to the extent that any retailer also engages in the processing or distribution of peanuts as defined in this article.

History. — Code 1981, § 2-8-78, enacted by Ga. L. 1989, p. 1420, § 1.

2-8-79. Applicability of "Georgia Administrative Procedure Act."

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

History. — Code 1981, § 2-8-79, enacted by Ga. L. 1989, p. 1420, § 1.

ARTICLE 4

AGRICULTURAL COMMODITY COMMISSION FOR GEORGIA GROWN PRODUCTS

Editor's notes. — The former article consisted of Code Sections 2-8-90 through 2-8-114, relating to the Agricultural Commodity Commission for Beef, and was based on Code 1981, §§ 2-8-90 through 2-8-114, enacted by Ga. L. 2004, p. 948, § 1-1, and was repealed by Ga. L. 2004, p. 948, § 3-1, effective July 1, 2006.

2-8-90. Definitions.

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 Georgia grown products 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 Georgia grown products.

(2) "Commission" means the Agricultural Commodity Commission for Georgia Grown Products created under this article.

(3) "Georgia grown products" means any agricultural, horticultural, floricultural, silvicultural, or vegetable products commercially produced in this state.

(4) "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.

(5) "Processor" means any person engaged within this state in the operation of receiving, grading, packing, canning, extracting, preserving, grinding, crushing, milling, or changing the form of a Georgia grown product for the purpose of preparing for market or marketing such product or engaged in any other activities performed for the purpose of preparing for market or marketing such product.

(6) "Producer" means any person engaged within this state in the business of producing or causing to be produced for market Georgia grown products.

History. — Code 1981, § 2-8-90, enacted by Ga. L. 2013, p. 74, § 1/HB 298; Ga. L. 2014, p. 866, § 2/SB 340.

Law reviews. — For article, "Agricultural Commodities Promotion," see 30 Ga. St. U. L. Rev. 1 (2013).

2-8-91. Authority of Commissioner.

The Commissioner shall be authorized to exercise supervisory jurisdiction over the administration and enforcement of this article. In the performance of this duty, the Commissioner is authorized to utilize the personnel and facilities of the department.

History. — Code 1981, § 2-8-91, enacted by Ga. L. 2013, p. 74, § 1/HB 298.

2-8-92. Creation.

There is created the Agricultural Commodity Commission for Georgia Grown Products.

History. — Code 1981, § 2-8-92, enacted by Ga. L. 2013, p. 74, § 1/HB 298.

2-8-93. Composition; membership.

(a) The commission shall be composed of:

(1) The Commissioner of Agriculture, ex officio;

(2) The president of the Georgia Farm Bureau, ex officio;

(3) One member elected by the Senate Agriculture and Consumer Affairs Committee with a quorum present and a majority of those present concurring, who shall be a producer or processor and shall not be a member of the General Assembly;

(4) One member elected by the House Committee on Agriculture and Consumer Affairs who shall be a producer or processor and shall not be a member of the General Assembly; and

(5) Five additional members, all of whom shall be appointed by the members of the commission specified in paragraphs (1) through (4) of this subsection.

(b) The initial two members elected by the agriculture and consumer affairs committees of the General Assembly shall be elected and qualified to take office for a term ending upon the election of their successors during the regular 2016 session of the General Assembly. Their successors shall be elected during the 2016 regular session of the General Assembly; and thereafter future successors shall be elected during each regular session of the General Assembly convening in even-numbered years. Such members shall serve from the date of their election until their successors are elected and qualified. Such members shall be entitled to vote on matters pertaining to the organization of the commission and upon the selection and nomination of the appointed members of the commission, but shall not be entitled to vote upon any matter pertaining to the policy provisions of the commission, nor shall they be entitled to vote upon the expenditure of any funds of the commission.

(c) For purposes of the appointment of additional members of the commission as provided in this Code section, a list of nominees shall be requested from producers and processors. Initial appointments shall be made for three members for a term of three years each from the effective date of their appointment and until their successors are appointed and qualified and two members for a term of two years each from the effective date of their appointment and until their successors are appointed and qualified. Thereafter, successors shall be appointed for a term of three years each from the effective date of their appointment and until their successors are appointed and qualified. Vacancies shall be filled by appointment in like manner, for the unexpired term, except that vacancies in the office of a member elected by a legislative committee shall be filled for the unexpired term by the legislative committee which made the previous appointment. Any appointed member shall be eligible for reappointment.

(d)(1) The members who are state officers shall be compensated as provided by law. Each such member shall be reimbursed by his or her respective department or from the funds of the commission for actual and necessary expenses incurred in the performance of his or her duties.

(2) The two members elected by the agriculture and consumer affairs committees of the General Assembly, as provided by subsec-

tion (a) of this Code section, shall be entitled to receive, for attending meetings of the commission, the same expenses and travel allowances which members of the General Assembly receive for attending meetings of legislative interim committees. Such expenses and allowances shall be paid from funds appropriated or otherwise available to the legislative branch of state government.

(3) The appointed members of the commission shall receive compensation and reimbursement of expenses as shall be provided by the commission, and such funds shall be payable from the funds of the commission.

(e) Each member of the commission shall be a public officer and shall take an oath of office faithfully to perform his or her duties. The fact of a member's appointment shall be certified to the Secretary of State, who shall issue the appropriate commission under the seal of his or her office.

History. — Code 1981, § 2-8-93, enacted by Ga. L. 2013, p. 74, § 1/HB 298; Ga. L. 2014, p. 866, § 2/SB 340.

2-8-94. Public corporation and instrumentality of the State of Georgia.

The commission, with its name annexed thereto, shall be a public corporation and an instrumentality of the State of Georgia. By that name, style, and title, the commission may contract and be contracted with, implead and be impleaded, and complain and defend in all courts.

History. — Code 1981, § 2-8-94, enacted by Ga. L. 2013, p. 74, § 1/HB 298.

2-8-95. Powers, duties, and authority of commission.

(a) The commission is authorized to accept donations, gifts, grants, and other funds or property and to use the same for commission purposes. The commission may exercise the powers and authority conferred by law upon corporations.

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

(c) The Commissioner is authorized and it shall be his or her duty to receive, collect, and disburse the funds of the commission qualifying and operating under this article. The Commissioner shall disburse funds of the commission only upon the written authorization of the commission.

(d) Any person who handles funds under this article shall be bonded with good and sufficient surety in an amount determined by the Commissioner for the accounting of any and all funds coming into his or her hands.

History. — Code 1981, § 2-8-95, enacted by Ga. L. 2013, p. 74, § 1/HB 298.

2-8-96. Immunity from liability.

The members and employees of the commission and the Commissioner shall be immune from liability to the same extent as the state and state officers and employees under Article 2 of Chapter 21 of Title 50, "The Georgia Tort Claims Act."

History. — Code 1981, § 2-8-96, enacted by Ga. L. 2013, p. 74, § 1/HB 298.

2-8-97. Authority of Commissioner to issue, administer, and enforce provisions of marketing orders; hearings.

(a) The Commissioner, upon the approval and request of the commission, is authorized to issue, administer, and enforce the provisions of marketing orders.

(b)(1) Whenever the Commissioner has reason to believe that the issuance of a marketing order or amendments to an existing marketing order will tend to effectuate the declared policy of this article with respect to any Georgia grown product, he or she shall, either upon his or her own motion, upon the motion of the commission, upon the application of any producer, or any organization of such persons, give due notice of and an opportunity for a public hearing upon a proposed marketing order or amendments to an existing marketing order.

(2) Notice of any hearing called for such purpose shall be given by the Commissioner or the commission by publishing a notice of such hearing for a period of not less than five days in a newspaper of general circulation published in the capital of this state and in such other newspapers as the Commissioner may prescribe. No such public hearing shall be held prior to five days after the last day of such period of publication. Such notice of hearing shall in all respects comply with the requirements of Chapter 13 of Title 50, the "Georgia Administrative Procedure Act."

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

History. — Code 1981, § 2-8-97, enacted by Ga. L. 2013, p. 74, § 1/HB 298.

2-8-98. Recommendation of promulgation of a marketing order.

If, upon the basis of the record of testimony and evidence received at the hearing provided for in Code Section 2-8-97, the commission determines that the issuance of a marketing order or amendment will tend to effectuate the intent and purpose of this article, it may recommend the promulgation of a marketing order containing any one or more of the following provisions, but no others:

(1) Provisions for the establishment of plans for advertising and sales promotion to maintain present markets or to create new or larger markets for Georgia grown products in this state or for the prevention, modification, or removal of trade barriers which obstruct the normal flow of Georgia grown products to market. The commission is authorized to prepare, issue, administer, and enforce plans for promoting the sale of Georgia grown products, provided that any such plan shall be directed toward promoting and increasing the sale, use, and utilization of Georgia grown products only, without reference to any other brand or trade name; and provided, further, that no advertising or sales promotion program shall be issued by the commission which makes use of false or unwarranted claims on behalf of or disparages the quality, value, sale, or use of any other commodity;

(2) Provisions for carrying on research studies in promoting the production, marketing, sale, use and utilization, and improvement of Georgia grown products or any combination thereof and for the expenditure of moneys for such purposes; and

(3) Provisions establishing or providing authority for establishing an educational program designed to acquaint producers or the general public about Georgia grown products.

History. — Code 1981, § 2-8-98, enacted by Ga. L. 2013, p. 74, § 1/HB 298; Ga. L. 2014, p. 866, § 2/SB 340.

2-8-99. Amendments to marketing orders; notice; rules and regulations; termination of orders.

(a)(1) Upon the recommendation of not fewer than three of the appointed members of the commission, the Commissioner or the commission may make effective minor amendments to a marketing order. The Commissioner or the commission may require a public hearing upon minor amendments if in the Commissioner's or the commission's opinion the substance of such minor amendments so warrants.

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

(A) Authority for the establishment of plans for advertising and sales promotion of Georgia grown products;

(B) Authority to increase an assessment rate beyond the maximum rate authorized by the marketing order in effect;

(C) Extension of the termination date of any marketing order; or

(D) Authority for carrying out research studies in the production or distribution of Georgia grown products.

(3) Modification of any provisions of any marketing order in effect, for the purpose of clarifying the meaning or application of such provisions or of modifying administrative procedures for carrying out such provisions, are declared not to be a major amendment of such marketing order.

(b) Upon the issuance of any order making effective a marketing order or any suspension, amendment, or termination thereof, a notice thereof shall be posted on a public bulletin board maintained at the Department of Agriculture; and a copy of such notice shall be published as the Commissioner or the commission may prescribe. No marketing order nor any suspension, amendment, or termination thereof shall

become effective until the termination of a period of five days from the date of such posting and publication.

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

(d) Upon the recommendation of the commission, the Commissioner shall have the power, consistent with this article, to establish administrative rules and regulations for each marketing order issued and made effective as may be necessary to facilitate the supervision, administration, and enforcement of each such order. The provisions of subsection (b) of this Code section relative to posting, publication, mailing of notice, and time of taking effect shall be applicable to any such administrative rules and regulations.

(e) Unless extended as provided in this article, all marketing orders issued under the authority of this article shall terminate at the expiration of one year from the date of the issuance of the original marketing order or, if such marketing order has been extended, at the expiration of one year after the date of any such extension.

History. — Code 1981, § 2-8-99, enacted by Ga. L. 2013, p. 74, § 1/HB 298; Ga. L. 2014, p. 866, § 2/SB 340.

2-8-100. Levying and collection of assessments.

(a) For the purpose of providing funds to defray the necessary expenses incurred by the commission in the formulation, issuance, administration, and enforcement of any marketing order which authorizes the carrying out of advertising and sales promotion plans, such order shall provide for the levying of assessments upon producers or processors utilizing the Georgia grown trademark. Such orders shall be in sufficient amounts to defray the expenses of such activities. Each such order shall indicate the maximum rate of any such assessment. The commission shall adopt budgets to cover such expenses and establish the assessment rate necessary to provide sufficient funds. If the commission finds that each such budget and assessment rate is proper and equitable and will provide sufficient moneys to defray such

expenses, they may approve such budget and approve and levy such assessment.

(b) The commission may prescribe such rules as may be necessary and reasonable for the orderly collection of assessments and may take all legal action necessary to enforce payment of such assessments.

History. — Code 1981, § 2-8-100, enacted by Ga. L. 2013, p. 74, § 1/HB 298.

2-8-101. Limitations on application of marketing orders.

Marketing orders issued by the commission may be limited in their application by prescribing the marketing areas or portions of this state in which a particular order shall be effective, provided that no marketing order shall be issued by the commission unless it embraces all persons of a like class.

History. — Code 1981, § 2-8-101, enacted by Ga. L. 2013, p. 74, § 1/HB 298.

2-8-102. Deposit and disbursement of funds; investment.

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

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

History. — Code 1981, § 2-8-102, enacted by Ga. L. 2013, p. 74, § 1/HB 298.

2-8-103. Duties of Attorney General.

(a) The Attorney General of this state shall represent the commission in legal matters and shall be the attorney for the commission.

(b) The Attorney General shall, upon complaint by the commission, bring an action in the superior court in the name of the commission for civil penalties or for injunctive relief, including specific performance of any obligation imposed by a marketing order or any rule or regulation issued under this article, or both, against any person violating any provisions of this article or of any marketing order or any rule or regulation duly issued by the commission under this article. It shall not be necessary in such event to allege or prove lack of an adequate remedy at law.

History. — Code 1981, § 2-8-103, enacted by Ga. L. 2013, p. 74, § 1/HB 298.

2-8-104. Violations.

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

History. — Code 1981, § 2-8-104, enacted by Ga. L. 2013, p. 74, § 1/HB 298.

2-8-105. Rules and regulations.

The commission is empowered to make all necessary rules and regulations for the purpose of carrying out the purposes of this article. The promulgation, adoption, and amendment of rules and regulations by the commission shall be subject to the requirements of Chapter 13 of Title 50, the "Georgia Administrative Procedure Act."

History. — Code 1981, § 2-8-105, enacted by Ga. L. 2013, p. 74, § 1/HB 298.

ARTICLE 5

AGRICULTURAL COMMODITY COMMISSION FOR EQUINES

Editor's notes. — Ga. L. 2006, p. 632, § 3/SB 380, not codified by the General Assembly, provides that the enactment of this article became effective January 1, 2007, only upon ratification of a constitutional amendment by the voters at the 2006 general election. The constitutional amendment (Ga. L. 2006, p. 1112) was

approved by a majority of the qualified voters voting at the general election held on November 7, 2006.

2-8-120. Applicability.

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

History. — Code 1981, § 2-8-120, enacted by Ga. L. 2006, p. 632, § 2/SB 380.
Code Commission notes. — Pursuant to Code Section 28-9-5, in 2006, "Commodity" was substituted for "Commodities".

2-8-121. Definitions.

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 equines 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 any equines.

(2) "Commission" means the Agricultural Commodity Commission for Equines created under this article.

(3) "Equine" means any member of the Equidae family, including horses, mules, hinnies, and asses.

(4) "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.

(5) "Producer" means any person who owns one or more equines or is engaged within this state in the business of buying, selling, boarding, holding, training, breeding, riding, pulling vehicles with, or otherwise utilizing equines for similar purposes.

History. — Code 1981, § 2-8-121, enacted by Ga. L. 2006, p. 632, § 2/SB 380.

2-8-122. Commissioner's authority.

The Commissioner shall be authorized to exercise supervisory jurisdiction over the administration and enforcement of this article. In the performance of this duty, the Commissioner is authorized to utilize the personnel and facilities of the department.

History. — Code 1981, § 2-8-122, enacted by Ga. L. 2006, p. 632, § 2/SB 380.

2-8-123. Commission created.

There is created the Agricultural Commodity Commission for Equines.

History. — Code 1981, § 2-8-123, enacted by Ga. L. 2006, p. 632, § 2/SB 380.

2-8-124. Commission membership; nomination and election of commission members.

(a) The commission shall be composed of:

(1) The Commissioner of Agriculture, ex officio;

(2) The president of the Georgia Farm Bureau, ex officio;

(3) One member elected by the Senate Agriculture and Consumer Affairs Committee with a quorum present and a majority of those present concurring, who shall be a producer and shall not be a member of the General Assembly;

(4) One member elected by the House of Representatives Committee on Agriculture and Consumer Affairs with a quorum present and a majority of those present concurring, who shall be a producer and shall not be a member of the General Assembly; and

(5) Five additional members, all of whom shall be appointed by the members of the commission specified in paragraphs (1) through (4) of this subsection. At least four of such appointees shall be producers.

(b) The initial two members elected by the agriculture and consumer affairs committees of the General Assembly shall be elected and qualified to take office for a term beginning on January 1, 2007, and ending upon the election of their successors during the regular 2009 session of the General Assembly. Their successors shall be elected during the 2009 regular session of the General Assembly; and thereafter future successors shall be elected during each regular session of the General Assembly convening in odd-numbered years. Such members shall be selected so that one member is from the northern part of Georgia and one member is from the southern part. For purposes of this selection the northern part of Georgia shall be that area north of and including Richmond, McDuffie, Warren, Hancock, Baldwin, Jones, Bibb, Crawford, Upson, Talbot, and Muscogee counties; and the southern part shall be that area south of such counties. The chairpersons of the Senate and House committees shall by agreement determine which committee will choose the member from the northern part and which

committee will choose the member from the southern part. Such members shall serve from the date of their election until their successors are elected and qualified.

(c) For purposes of the appointment of additional members of the commission as provided in this Code section, a list of nominees shall be requested from producers of equines. Initial appointments shall be made for three members for a term of three years each from the effective date of their appointment and until their successors are appointed and qualified and two members for a term of two years each from the effective date of their appointment and until their successors are appointed and qualified. Thereafter, successors shall be appointed for a term of three years each from the effective date of their appointment and until their successors are appointed and qualified. Vacancies shall be filled by appointment in like manner, for the unexpired term, except that vacancies in the office of a member elected by a legislative committee shall be filled for the unexpired term by the legislative committee which made the previous appointment. Any appointed member shall be eligible for reappointment.

(d)(1) The members who are state officers shall be compensated as provided by law. Each such member shall be reimbursed by his or her respective department or from the funds of the commission for actual and necessary expenses incurred in the performance of his or her duties. Each such member who is a state officer may designate a representative of his or her department to act for the officer in performing any duties under this article.

(2) The two members elected by the agriculture and consumer affairs committees of the General Assembly, as provided by subsection (a) of this Code section, shall be entitled to receive, for attending meetings of the commission, the same expenses and travel allowances which members of the General Assembly receive for attending meetings of legislative interim committees. Such expenses and allowances shall be paid from funds appropriated or otherwise available to the legislative branch of state government.

(3) The appointed members of the commission shall receive compensation and reimbursement of expenses as shall be provided by the commission, and such funds shall be payable from the funds of the commission.

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

(f) The commission is authorized to appoint advisory boards, special committees, and individuals, including technical and clerical personnel, to advise, aid, and assist the commission in the performance of its

duties. Compensation for such services shall be fixed by the commission and may be paid from the funds of the commission. The Attorney General shall represent the commission in legal matters and shall be the attorney for the commission. If the Attorney General determines that outside legal counsel is necessary or desirable in connection with any legal matter of the commission, he or she shall so inform the commission and, upon approval of the commission, shall employ such outside counsel. Compensation for such outside counsel shall be agreed upon between such counsel and the Attorney General, subject to the approval of the commission. Such compensation shall be paid from the funds of the commission. Neither Code Section 16-10-9 nor any other law shall prohibit or be applicable to the employment of such counsel.

(g) Any other provision of this article to the contrary notwithstanding, a member of any federation or organization of producers shall be eligible to be appointed as a member of the commission with respect to any equine produced by such federation or organization or handled by it for its members who produce it.

(h) The commission is authorized to accept donations, gifts, grants, revenue derived from the sale of special license plates as may be otherwise provided by law, and other funds or property and to use the same for commission purposes. The commission may exercise the powers and authority conferred by law upon corporations.

(i) The two members elected by the agriculture and consumer affairs committees of the General Assembly, as provided by subsection (a) of this Code section, as members of the commission shall be entitled to vote on matters pertaining to the organization of the commission and upon the selection and nomination of the appointed members of the commission. Such two members shall not be entitled to vote upon any matter pertaining to the policy provisions of the commission nor shall they be entitled to vote upon the expenditure of any funds of the commission.

(j) The commission shall continue as a public corporation and instrumentality of the State of Georgia until abolished by law.

History. — Code 1981, § 2-8-124, enacted by Ga. L. 2006, p. 632, § 2/SB 380; Ga. L. 2017, p. 774, § 2/HB 323.

The 2017 amendment, effective May 9, 2017, part of an Act to revise, modernize, and correct the Code, substituted "appointed member" for "appointive member" in subsection (c) and substituted "appointed members" for "appointive members" in paragraph (d)(3) and subsection (i).

Code Commission notes. — Pursuant to Code Section 28-9-5, in 2006, "qualified" was substituted for "qualification" in the first sentence of subsection (b).

2-8-125. Commission to be a public corporation and instrumentality of the state; powers; transaction of commission business.

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

History. — Code 1981, § 2-8-125, enacted by Ga. L. 2006, p. 632, § 2/SB 380.

Code Commission notes. — Pursuant to Code Section 28-9-5, in 2006, "each" was deleted preceding "the commission" in the fifth sentence.

2-8-126. Receipt, collection, and disbursement of funds.

The Commissioner is authorized and it shall be his or her duty to receive, collect, and disburse the funds of the commission qualifying and operating under this article. The Commissioner shall disburse funds of the commission only upon the written authorization of the commission.

History. — Code 1981, § 2-8-126, enacted by Ga. L. 2006, p. 632, § 2/SB 380.

2-8-127. Funds received under this article to be held in trust for the commission.

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

History. — Code 1981, § 2-8-127, enacted by Ga. L. 2006, p. 632, § 2/SB 380.

2-8-128. Persons handling funds to be bonded.

Any person who handles funds under this article shall be bonded with good and sufficient surety in an amount determined by the Commissioner for the accounting of any and all funds coming into his or her hands.

History. — Code 1981, § 2-8-128, enacted by Ga. L. 2006, p. 632, § 2/SB 380.

2-8-129. Committee members and employees not responsible individually for errors in judgment, mistakes or other acts.

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

History. — Code 1981, § 2-8-129, enacted by Ga. L. 2006, p. 632, § 2/SB 380.

2-8-130. Commission authorized to share information with state and federal government agencies.

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

History. — Code 1981, § 2-8-130, enacted by Ga. L. 2006, p. 632, § 2/SB 380.

2-8-131. Issuance, administration, and enforcement of marketing orders; hearing.

(a) The Commissioner, upon the approval and request of the commission, is authorized to issue, administer, and enforce the provisions of marketing orders.

(b)(1) Whenever the Commissioner has reason to believe that the issuance of a marketing order or amendments to an existing marketing order will tend to effectuate the declared policy of this article with respect to any equines, he or she shall, either upon his or her own motion, upon the motion of the commission, or upon the application of any producer, or any organization of such persons, give due notice of and an opportunity for a public hearing upon a proposed marketing order or amendments to an existing marketing order.

(2) Notice of any hearing called for such purpose shall be given by the Commissioner or the commission by publishing a notice of such hearing for a period of not less than five days in a newspaper of general circulation published in the capital of the state and in such other newspapers as the Commissioner may prescribe. No such public hearing shall be held prior to five days after the last day of such period of publication. Such notice of hearing shall in all respects comply with the requirements of Chapter 13 of Title 50, the "Georgia Administrative Procedure Act."

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

History. — Code 1981, § 2-8-131, enacted by Ga. L. 2006, p. 632, § 2/SB 380.

2-8-132. Provisions for establishment of advertising, research, and education programs.

If, upon the basis of the record of testimony and documentary evidence received at the hearing provided for in Code Section 2-8-131 and the facts officially noticed therein, the commission determines that the issuance of a marketing order or an amendment will tend to effectuate the intent and purpose of this article, it may recommend the promulgation of a marketing order containing any one or more of the following provisions, but no others:

(1) Provisions for the establishment of plans for advertising and sales promotion to maintain present markets or to create new or larger markets for equine grown in this state or for the prevention, modification, or removal of trade barriers which obstruct the normal flow of equines to market. The commission is authorized to prepare, issue, administer, and enforce plans for promoting the sale of equines, provided that any such plan shall be directed toward promoting and increasing the sale, use, and utilization of equines without reference to a particular producer or breed; and provided, further, that no advertising or sales promotion program shall be issued by the Commissioner or the commission which makes use of false or unwarranted claims on behalf of any equines or disparages the quality, value, sale, or use of any other agricultural commodity;

(2) Provisions for carrying on research studies in promoting the production, marketing, sale, use and utilization, and improvement of equines or any combination thereof and for the expenditure of moneys for such purposes. In any research carried on under this paragraph, the Commissioner and the commission shall cooperate in selecting the research project or projects to be carried on from time to time. Such projects shall be carried out by postsecondary educational institutions or private organizations selected by the commission;

(3) Provisions establishing or providing authority for establishing an educational program designed to acquaint producers or the general public about the equine industry and its associated issues.

History. — Code 1981, § 2-8-132, enacted by Ga. L. 2006, p. 632, § 2/SB 380.

2-8-133. Amendments to, rules and regulations governing, and expiration and termination of marketing orders.

(a)(1) Upon the recommendation of not less than three of the appointed members of the commission, the Commissioner or the commission may make effective minor amendments to a marketing order. The Commissioner or the commission may require a public

hearing upon minor amendments if in the Commissioner's or the commission's opinion the substance of such minor amendments so warrants.

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

(A) Authority for the establishment of plans for advertising and sales promotion of equines; or

(B) Authority for carrying out research studies in the production or distribution of equines.

(3) Modification of any provisions of any marketing order in effect, for the purpose of clarifying the meaning or application of such provisions or of modifying administrative procedures for carrying out such provisions, are declared not to be a major amendment of such marketing order.

(b) Upon the issuance of any order making effective a marketing order or any suspension, amendment, or termination thereof, a notice thereof shall be posted on a public bulletin board maintained at the Department of Agriculture; and a copy of such notice shall be published as the Commissioner or the commission may prescribe. No marketing order nor any suspension, amendment, or termination thereof shall become effective until the termination of a period of five days from the date of such posting and publication.

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

(d) Upon the recommendation of the commission, the Commissioner shall have the power, consistent with this article, to establish administrative rules and regulations for each marketing order issued and

made effective as may be necessary to facilitate the supervision, administration, and enforcement of each such order. The provisions of subsection (b) of this Code section relative to posting, publication, mailing of notice, and time of taking effect shall be applicable to any such administrative rules and regulations.

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

History. — Code 1981, § 2-8-133, enacted by Ga. L. 2006, p. 632, § 2/SB 380; Ga. L. 2017, p. 774, § 2/HB 323.

The 2017 amendment, effective May 9, 2017, part of an Act to revise, modernize, and correct the Code, substituted "appointed members" for "appointive members" in paragraph (a)(1).

2-8-134. Limited application of marketing orders.

Marketing orders issued by the commission may be limited in their application by prescribing the marketing areas or portions of the state in which a particular order shall be effective, provided that no marketing order shall be issued by the commission unless it embraces all persons of a like class.

History. — Code 1981, § 2-8-134, enacted by Ga. L. 2006, p. 632, § 2/SB 380.

2-8-135. Commission authorized to borrow funds for certain purposes; disposition of funds collected pursuant to this article.

(a) In the event that the commission has reason to believe that the administration of a marketing order will be facilitated or the attainment of the purposes and objectives of the marketing order will be promoted thereby, the commission is authorized to borrow money, with or without interest, to carry out any provision of any marketing order authorized by this article and may hypothecate anticipated funds due to the commission as otherwise provided by law and applicable to such respective provisions.

(b) In lieu of requiring advance deposits for defraying administrative or advertising and sales promotion expenses until such time as sufficient moneys are collected for such purposes from any funds due to the commission as otherwise provided by law, the Commissioner is authorized to receive and disburse for such purposes contributions made by producers or distributors. Neither the commission nor the Commissioner shall be held responsible for the repayment of such contribu-

tions, provided that whenever collections from the payment of any funds due to the commission and credited to the respective marketing order accounts are sufficient so to warrant, the commission shall recommend and the Commissioner shall repay contributions.

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

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

History. — Code 1981, § 2-8-135, enacted by Ga. L. 2006, p. 632, § 2/SB 380.

ARTICLE 6

AGRICULTURAL COMMODITY COMMISSION FOR PROPANE

Effective date. — This article became effective April 18, 2019.

2-8-200. Definitions.

As used in this article, the term:

(1) "Commission" means the Agricultural Commodity Commission for Propane created under this article.

(2) "Dealer" means any person to whom the office of the Commissioner of Insurance issues a liquid propane license. The term shall not include any person who offers for retail sale propane in containers of less than 50 pounds water capacity and whose business does not involve the filling or transportation of such containers.

(3) "Distributor" means any person engaged in the business of selling propane to a dealer in the state.

(4) "Marketing order" means an order issued pursuant to this article establishing an assessment for financing the programs established under this article.

(5) "Person" means an individual, sole proprietorship, partnership, limited partnership, firm, corporation, limited liability company, association, or any other business entity, or any combination thereof.

History. — Code 1981, § 2-8-200, enacted by Ga. L. 2019, p. 91, § 1/HB 512.

2-8-201. Creation.

The Agricultural Commodity Commission for Propane is hereby created. The commission shall be organized and constituted, have corporate existence, possess powers and duties, and be governed and controlled as provided in this article.

History. — Code 1981, § 2-8-201, enacted by Ga. L. 2019, p. 91, § 1/HB 512.

2-8-202. Membership; vacancies; compensation; certification of membership; naming of chairperson; quorum.

(a) The commission shall be composed of:

(1) Three members elected by the House Committee on Agriculture and Consumer Affairs with a quorum present and a majority of those present concurring, each of whom shall be a dealer or distributor and shall not be a member of the General Assembly;

(2) Three members elected by the Senate Agriculture and Consumer Affairs Committee with a quorum present and a majority of those present concurring, each of whom shall be a dealer or distributor and shall not be a member of the General Assembly; and

(3) One member elected by a majority of the members of the commission as specified in paragraphs (1) and (2) of this subsection, who shall be a dealer or distributor and shall not be a member of the General Assembly.

(b) Vacancies in the membership of the commission shall be filled in the same manner as that of the original election of such members. Any

person selected to fill a vacancy shall serve for the remainder of the unexpired term.

(c) There shall be no compensation or reimbursement of expenses for members of the commission.

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

(e) The commission shall name its chairperson and determine a quorum for the transaction of business.

History. — Code 1981, § 2-8-202, enacted by Ga. L. 2019, p. 91, § 1/HB 512.

2-8-203. Use of outside resources; representation by Attorney General; acceptance of donations and gifts; property interests.

(a) The commission is authorized to appoint advisory boards, special committees, and individuals, including technical and clerical personnel, to advise, aid, and assist the commission in the performance of its duties. Compensation for such services shall be fixed by the commission and shall be paid from the funds of the commission.

(b) The Attorney General shall represent the commission in legal matters and shall be the attorney for the commission. If the Attorney General determines that outside legal counsel is necessary or desirable in connection with any legal matter of the commission, he or she shall so inform the commission and, upon approval of the commission, shall employ such outside counsel. Compensation for such outside counsel shall be agreed upon between such counsel and the Attorney General, subject to the approval of the commission. Such compensation shall be paid from the funds of the commission. Neither Code Section 16-10-9 nor any other law shall prohibit or be applicable to the employment of such counsel.

(c) The commission is authorized to accept donations, gifts, and other property and to use the same for commission purposes.

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

History. — Code 1981, § 2-8-203, enacted by Ga. L. 2019, p. 91, § 1/HB 512.

2-8-204. Status of commission; oath of office.

The commission shall be a public corporation and an instrumentality of the State of Georgia. By that name, style, and title, the commission may contract and be contracted with, implead and be impleaded, and complain and defend in all courts. The commission shall assume the duties and exercise the authority provided in this article without further formality than that provided in this article. Each member of the commission shall be a public officer and shall take an oath of office to faithfully perform his or her duties. Such oath shall be administered by the Governor or some other person qualified to administer oaths.

History. — Code 1981, § 2-8-204, enacted by Ga. L. 2019, p. 91, § 1/HB 512.

2-8-205. Funding obligations.

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

History. — Code 1981, § 2-8-205, enacted by Ga. L. 2019, p. 91, § 1/HB 512.

2-8-206. Funds held in trust; accounting.

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

History. — Code 1981, § 2-8-206, enacted by Ga. L. 2019, p. 91, § 1/HB 512.

2-8-207. Bonding requirements for those handling finances.

Any persons who handle funds under this article shall be bonded with good and sufficient surety in an amount determined by the commission for the accounting of such funds. All checks, drafts, and negotiable instruments which are drawn on or payable from the funds of the commission shall be signed by the chairperson of the commission.

History. — Code 1981, § 2-8-207, enacted by Ga. L. 2019, p. 91, § 1/HB 512.

2-8-208. No individual liability.

The members and employees of the commission shall not be held individually responsible to any dealer or distributor or to any other person for errors in judgment, mistakes, or other acts as principal, agent, person, or employee, except for their own individual acts of dishonesty or crime. No such member, person, or employee shall be held individually responsible for any act or omission of any other member of the commission. The liability of the members of the commission shall be several and not joint, and no member shall be liable for the default of any other member.

History. — Code 1981, § 2-8-208, enacted by Ga. L. 2019, p. 91, § 1/HB 512.

2-8-209. Marketing orders; public hearings.

(a) The commission is authorized to issue, administer, and enforce marketing orders.

(b)(1) Whenever the commission has reason to believe that the issuance of a marketing order will tend to effectuate the declared policy of this article with respect to propane, it shall give due notice of and an opportunity for a public hearing thereon.

(2) Notice of any hearing called for such purpose shall be given by the commission by publishing a notice of such hearing for a period of not less than five days in a newspaper of general circulation published in the City of Atlanta and in such other newspapers as the commission may prescribe. No such public hearing shall be held prior to five days after the last day of such period of publication. The commission shall also mail a copy or communicate electronically such notice of hearing and a copy of such proposed marketing order or proposed amendments to all dealers and distributors of propane whose names and addresses are on file with the commission. Such notice of hearing shall in all respects comply with the requirements of Chapter 13 of Title 50, the "Georgia Administrative Procedure Act."

(3) The hearing shall be public, and all testimony shall be received under oath. A full and complete record of the proceedings at such hearing shall be made and maintained on file in the office of the commission. The hearing shall, in all respects, be conducted in accordance with Chapter 13 of Title 50, the "Georgia Administrative Procedure Act." The hearing may be conducted by the commission or by a member of the commission, as may be designated by the commission in each instance, but no decision shall be made based on hearings conducted other than by the commission itself, at which a majority of the members thereof are present, until the members of

the commission have been afforded an opportunity to review the hearing record. When the commission conducts hearings, its recommendation shall be based on the findings reached after a review of the record of such hearings.

History. — Code 1981, § 2-8-209, enacted by Ga. L. 2019, p. 91, § 1/HB 512.

2-8-210. Recommendation for promulgation of marketing order; prohibition against lobbying; administrative expenses; costs.

If, upon the basis of the record of testimony and documentary evidence received at the hearing as provided for in Code Section 2-8-209 and the facts officially noticed therein from official publications or institutions of recognized standing, the commission determines that the issuance of a marketing order will tend to effectuate the intent and purpose of this article, it may recommend the promulgation of a marketing order with respect to the matters specified in the hearing notice and supported by the record; such order shall account for provisions to promote propane education, training, safety compliance, equipment replacement for low-income customers, marketing, advertising, promotion, and customer rebates to encourage energy-efficient appliance and equipment purchases by residential, commercial, industrial, motor fuel or agricultural consumers. No funds collected pursuant to this article shall be used in any manner for lobbying or for influencing state or federal legislation. No more than 10 percent of the funds collected and no less than the actual administrative expense pursuant to this article shall be used for administrative expenses relating to the expenditure of the funds. The commission may advance costs of conducting referenda pursuant to this article and reimburse those costs from the assessment funds.

History. — Code 1981, § 2-8-210, enacted by Ga. L. 2019, p. 91, § 1/HB 512.

2-8-211. Requirement for referendum; voters and voting rights; approval; record keeping; confidentiality.

(a)(1) No marketing order issued pursuant to this article shall be made effective by the commission until a referendum thereon is held.

(2) The commission shall determine:

(A) The amount of the proposed assessment established by the marketing order;

(B) The time and place of the referendum;

(C) Procedures for conducting the referendum and the counting of votes;

(D) The proposed effective date for the imposition of the assessment established by the marketing order, which shall be no be less than 90 days from the date the referendum ballot is required to be returned to the commission in order to be considered on the question presented; and

(E) Any other matters pertaining to the referendum.

(b) The amount of the proposed assessment established by the marketing order shall be stated on the referendum ballot. The amount may not exceed four-tenths of one cent for each gallon of propane sold in this state by distributors to dealers.

(c) All dealers may vote in the referendum. Each dealer shall have one vote. Any dispute over eligibility to vote or any other matter relating to the referendum shall be resolved by the commission. The commission shall make reasonable efforts to provide all dealers with notice of the referendum and an opportunity to vote.

(d) A proposed assessment shall become effective if more than 50 percent of the eligible dealers in the state vote and more than 50 percent of the eligible votes cast by the dealers are cast in favor of the assessment. If the assessment is approved by the referendum, then the commission shall notify the department of the amount and the effective date of the assessment. The department shall notify all dealers of the assessment.

(e)(1) Each distributor, as the owner of propane at the time of odorization, or at the time of import of odorized propane, shall make the assessment based on the volume of odorized propane sold in this state and placed in commerce in this state.

(2) Each distributor shall collect the assessment from the dealer to whom the sale is made and shall remit to the commission the sum of the amount of the assessment multiplied by the number of gallons of propane sold to any dealer during the assessment period.

(f) A distributor shall keep records of the number of gallons of propane sold to dealers. All documents or records regarding purchases and sales shall be made available to the commission upon its written request for the purpose of determining the distributor's compliance with the provisions of this article. The commission shall keep the records confidential and shall not disclose the records except to its accountants, attorneys, or financial advisors without a court order directing it to do so.

History. — Code 1981, § 2-8-211, enacted by Ga. L. 2019, p. 91, § 1/HB 512.

2-8-212. Opt out by dealers.

A dealer can opt out of this article only once per year between September 1 and September 30. Any dealer who opts out of this article in accordance with this Code section shall not be eligible to receive the benefit of any marketing order for a period of one year following the date of his or her request to opt out under this Code section and shall not be entitled to the payment of any interest by the commission on the amount refunded.

History. — Code 1981, § 2-8-212, enacted by Ga. L. 2019, p. 91, § 1/HB 512.

Code Commission notes. — Pursuant to Code Section 28-9-5, in 2019, "this Code section" was substituted for "this subsection" near the beginning of the second sentence.

2-8-213. Referendum vote on continuation of commission.

A referendum shall be held once every five years to vote on the continuation of the commission. For the results to be valid, at least 50 percent of the eligible dealers in this state must vote, and if more than 50 percent of the dealers voting vote in favor of continuing the commission, then the commission will continue for another five years.

History. — Code 1981, § 2-8-213, enacted by Ga. L. 2019, p. 91, § 1/HB 512.

2-8-214. Assessments as personal debt; cumulative nature of penalties.

(a) Any assessment established in accordance with this article shall constitute a personal debt of every person so assessed and shall be due and payable to the commission when payment is called for by the commission. If such person fails to pay any such assessment, the commission may file an action against such person in a court of competent jurisdiction for the collection thereof.

(b) In the event that any person duly assessed pursuant to this article fails to pay to the commission the amount so assessed, the commission shall be authorized to add to such unpaid assessment an amount not exceeding 10 percent of such unpaid assessment to defray the cost of enforcing the collection of the unpaid assessment.

(c) The provisions of this Code section shall be cumulative, and any other remedies may be pursued concurrently until satisfaction is obtained. Any penalty recovered shall become a part of the principal assessment levied and shall be for the use of the commission.

History. — Code 1981, § 2-8-214, enacted by Ga. L. 2019, p. 91, § 1/HB 512.

2-8-215. Civil penalty for violations.

Any person who violates any provision of this article or any marketing order duly issued and effective under this article shall be civilly liable to the commission for a penalty in an amount not to exceed $500.00 for each and every violation thereof, the amount of such penalty to be fixed by the commission after notice and hearing as provided by Chapter 13 of Title 50, the "Georgia Administrative Procedure Act," for contested cases and recoverable by a civil action brought in the name of the commission. Any moneys recovered pursuant to this Code section shall be applied for the use of the commission.

History. — Code 1981, § 2-8-215, enacted by Ga. L. 2019, p. 91, § 1/HB 512.

Code Commission notes. — Pursuant to Code Section 28-9-5, in 2019, the subsection designation "(a)" was deleted from the beginning of this Code section since there was no subsection (b).

2-8-216. Actions brought by Attorney General; injunctions and specific performance; incurring and payment of costs.

(a) The Attorney General of this state shall, upon complaint by the commission, or may, after examining the complaint and the evidence and believing that a violation has occurred, bring an action in the superior court in the name of the commission for civil penalties or for injunctive relief, including the specific performance of any marketing order duly issued by the commission under this article.

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

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

History. — Code 1981, § 2-8-216, enacted by Ga. L. 2019, p. 91, § 1/HB 512.

2-8-217. Attorney General or prosecuting attorney to bring actions; administrative hearings; response to finding violation.

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

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

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

History. — Code 1981, § 2-8-217, enacted by Ga. L. 2019, p. 91, § 1/HB 512.

2-8-218. Falsification of reports, statements, or records; penalty.

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

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

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

History. — Code 1981, § 2-8-218, enacted by Ga. L. 2019, p. 91, § 1/HB 512.

2-8-219. Regulatory authority.

The department shall promulgate rules for the administration and enforcement of this article. The promulgation, adoption, and amendment of rules and regulations by the commission shall be subject to the requirements of Chapter 13 of Title 50, the "Georgia Administrative Procedure Act".

History. — Code 1981, § 2-8-219, enacted by Ga. L. 2019, p. 91, § 1/HB 512.

CHAPTER 8A

EMERGING CROPS FUND ACT

Sec.		Sec.	
2-8A-1.	Short title.	2-8A-5.	Fund established.
2-8A-2.	Purpose of chapter.	2-8A-6.	Application for interest loan; maximum amount; maximum rate of interest; security.
2-8A-3.	Definitions.		
2-8A-4.	Crops included as emerging crops [Repealed].	2-8A-7.	Repayment of interest loan.

Editor's notes. — This chapter became effective January 1, 1991, by reason of the amendment to Ga. Const. 1983, Art. III, Sec. IX, Para. VI, which was ratified by a majority of the voters voting in the general election on November 6, 1990.

2-8A-1. Short title.

This chapter shall be known and may be cited as the "Emerging Crops Fund Act."

History. — Code 1981, § 2-8A-1, enacted by Ga. L. 1990, p. 1696, § 1; Ga. L. 2013, p. 671, § 1/SB 91.

2-8A-2. Purpose of chapter.

The purpose of this chapter is to promote economic development by encouraging the production of plant or animal crops in Georgia which are produced commercially and to make available to consumers emerging crops grown in Georgia.

History. — Code 1981, § 2-8A-2, enacted by Ga. L. 1990, p. 1696, § 1; Ga. L. 2013, p. 671, § 1/SB 91.

2-8A-3. Definitions.

As used in this chapter, the term:

(1) "Emerging crop" means a plant or animal crop for which consumers have a demand.

(2) "Farmer" means a resident of Georgia who engages in or wishes to engage in the commercial production of an emerging crop on land in Georgia. This term shall include individuals, family-farm corporations meeting the requirements of paragraph (2) of subsection (b) of Code Section 48-5-7.1, and partnerships in which all of the partners are either individuals or family-farm corporations meeting such requirements.

(3) "Fund" means the Emerging Crops Fund established in Code Section 2-8A-5.

(4) "Georgia Development Authority" or "authority" means the Georgia Development Authority provided for in Chapter 10 of Title 50.

(5) "Interest loan" means a loan made from the fund to pay the interest on a loan made by a lender to a farmer to finance the costs of production of an emerging crop.

(6) "Lender" means a commercial bank, savings bank, savings and loan association, federal land bank, farm credit bank, production credit association, or other farm credit agency which is domiciled or qualified to do business in Georgia or the Farmers Home Administration.

History. — Code 1981, § 2-8A-3, enacted by Ga. L. 1990, p. 1696, § 1; Ga. L. 2013, p. 671, § 1/SB 91.

2-8A-4. Crops included as emerging crops.

Reserved. Repealed by Ga. L. 2013, p. 671, § 1/SB 91, effective May 6, 2013.

Editor's notes. — This Code section was based on Code 1981, § 2-8A-4, enacted by Ga. L. 1990, p. 1696, § 1.

2-8A-5. Fund established.

(a) Pursuant to Article III, Section IX, Paragraph VI(j) of the Constitution of Georgia, there is established as a separate fund of the Georgia Development Authority a fund to be known as the "Emerging Crops Fund," which shall be used to make interest loans on loans made to farmers for costs of production of emerging crops on land in Georgia. The fund shall be administered by the Georgia Development Authority. The Georgia Development Authority shall by rules or regulations develop definitions, guidelines, standards, requirements, and procedures for making interest loans as authorized in this chapter. Funds for the Emerging Crops Fund and for the administration of said fund shall be provided from the following sources:

(1) Appropriations by the General Assembly, and funds appropriated to the Emerging Crops Fund shall be presumptively concluded to have been committed to the purpose for which appropriated and shall not lapse;

(2) The repayment of interest loans made from the fund; and

(3) Any interest or earnings made from the investment of funds of the Emerging Crops Fund.

(b) The Georgia Development Authority shall maintain the Emerging Crops Fund entirely separate from any other funds of the authority, and no funds available to the authority to carry out its purposes under Chapter 10 of Title 50 shall be used for the purposes of the Emerging Crops Fund. The source of funds provided for in subsection (a) of this Code section shall be the only source of funds for the Emerging Crops Fund.

(c) Except as limited by subsection (b) of this Code section, the Georgia Development Authority may exercise any power possessed by the authority under Chapter 10 of Title 50 to carry out the provisions of this chapter.

History. — Code 1981, § 2-8A-5, enacted by Ga. L. 1990, p. 1696, § 1; Ga. L. 2013, p. 671, § 1/SB 91.

2-8A-6. Application for interest loan; maximum amount; maximum rate of interest; security.

Any lender which has made or makes a loan to a farmer to finance the costs of production of an emerging crop on land in Georgia may make application to the Georgia Development Authority for an interest loan to pay interest on the loan during the period from the beginning of production to harvest or initial sale of the product, which payment shall be made from the fund. The maximum amount of interest loans from the fund for the benefit of any one farmer shall be $50,000.00; provided, however, that the Georgia Development Authority in administering the fund shall give priority to smaller interest loans. During the period that the Georgia Development Authority pays the interest on a loan from the fund, the maximum rate of interest which may be charged on the loan by the lender shall be as established from time to time by the Georgia Development Authority. By payment of the interest on a loan, neither the Georgia Development Authority nor the State of Georgia shall be a guarantor of the loan. The Georgia Development Authority shall, by rule or regulation, require such security or lien as may be necessary to provide adequate security for the authority as condition for making an interest loan as authorized by this chapter.

History. — Code 1981, § 2-8A-6, enacted by Ga. L. 1990, p. 1696, § 1; Ga. L. 2013, p. 671, § 1/SB 91.

2-8A-7. Repayment of interest loan.

Repayment of an interest loan made from the fund shall be deferred for a period of time not more than five years or the time when the emerging crop should reach maturity, whichever is later. The schedule for repayment of the interest loan shall be a period of time equal to two times the period that interest is paid on the loan from the fund for that emerging crop. No interest shall be charged on interest loans from the fund, and only the amount actually loaned from the fund shall be required to be repaid. Repayment of interest loans from the fund shall be made to the lender, which shall remit the amounts collected to the Georgia Development Authority for deposit into the fund.

History. — Code 1981, § 2-8A-7, enacted by Ga. L. 1990, p. 1696, § 1; Ga. L. 2013, p. 671, § 1/SB 91.

CHAPTER 9

DEALERS IN AGRICULTURAL PRODUCTS

Article 1

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Article 2

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ARTICLE 1

GENERAL PROVISIONS

Administrative rules and regulations. — Dealers in agriculture products, Official Compilation of the Rules and Regulations of the State of Georgia, Rules of Georgia Department of Agriculture, Chapter 40-30.

Cross references. — Exemption from municipal property taxes and license fees for sale or introduction into municipality of agricultural product raised in state, § 48-5-356.

Law reviews. — For article, "Perishable Agricultural Commodities Act," see 4 Ga. St. B. J. 20 (1999).

2-9-1. Definitions.

As used in this article, the term:

(1) "Agricultural products" includes fruits, vegetables, pecans, and cotton but does not include dairy products, tobacco, grains, eggs, and other basic farm crops.

(2) "Dealer in agricultural products" means any person, association, itinerant dealer, partnership, or corporation engaged in the business of buying, receiving, selling, exchanging, negotiating, or soliciting the sale, resale, exchange, or transfer of any agricultural products purchased from the producer or his or her agent or representative or received on consignment from the producer or his or her agent or representative or received to be handled on a net return basis from the producer. The term "dealer in agricultural products" also includes any person buying, selling, processing, or shelling pecan nuts, including any and every kind and variety of pecan nuts.

(3) "Net return basis" means a purchase for sale of agricultural products from a producer or shipper at a price which is not fixed or stated at the time the agricultural products are shipped from the point of origin. The term includes all purchases made "at the market price," "at net worth," and on similar terms indicating that the buyer is the final arbiter of the price to be paid.

(4) "On consignment" means any receiving or sale of agricultural products for the account of a person, other than the seller, wherein the seller acts as the agent for the owner.

(5) "Producer" means any producer of agricultural products.

History. — Ga. L. 1956, p. 617, § 1; Ga. L. 1957, p. 7, § 1; Ga. L. 1962, p. 127, § 1; Ga. L. 1962, p. 636, § 1; Ga. L. 1978, p. 1450, § 1; Ga. L. 1991, p. 1053, § 1; Ga. L. 1992, p. 2149, § 1; Ga. L. 1999, p. 800, § 1; Ga. L. 2000, p. 1510, § 1; Ga. L. 2013, p. 797, § 1/HB 268.

OPINIONS OF THE ATTORNEY GENERAL

Section inapplicable to sale of baby chicks. — The sale of baby chicks by those persons engaged therein is not subject to this section. 1958-59 Op. Att'y Gen. p. 3.

Lumber is not an "agricultural product" within the meaning of the Georgia State Warehouse Act. 1958-59 Op. Att'y Gen. p. 12.

Nursery products are not "agricultural products." — Nursery products such as ornamental garden shrubs, are not "agricultural products." 1969 Op. Att'y Gen. No. 69-407.

RESEARCH REFERENCES

ALR. — State statute in relation to inspection and grading of grain as unlawful burden on interstate commerce, 19 A.L.R. 164.

Validity of discrimination in license statute or ordinance in favor of farmers selling their own products and against other persons dealing in farm products, 123 A.L.R. 1051.

2-9-2. License required.

It shall be unlawful for any dealer in agricultural products who comes within the terms of this article to engage in such business in this state without a state license issued by the Commissioner.

History. — Ga. L. 1956, p. 617, § 3.

RESEARCH REFERENCES

ALR. — Constitutionality, construction, and application of statutes relating to the purchase of farm and dairy products from producers for purposes of resale, 117 A.L.R. 347.

Validity of discrimination in license statute or ordinance in favor of farmers selling their own products and against other persons dealing in farm products, 123 A.L.R. 1051.

2-9-3. Application for license.

Every dealer in agricultural products desiring to transact business in this state shall file an application for such license with the Commissioner. The application shall be on a form furnished by the Commissioner and, together with such other information as the Commissioner shall require, shall state:

(1) The kind or kinds of agricultural products the applicant proposes to handle;

(2) The full name or title of the applicant or, if the applicant is an association or partnership, the name of each member of such association or partnership or, if the applicant is a corporation, the name of each officer of the corporation;

(3) The names of the local agent or agents of the applicant, if any; and

(4) The municipalities within which places of business of the applicant will be located, together with the street or mailing address of each such place of business.

History. — Ga. L. 1956, p. 617, § 4.

RESEARCH REFERENCES

ALR. — Right to enjoin business competitor from unlicensed or otherwise illegal acts or practices, 90 A.L.R.2d 7.

2-9-4. Issuance of license.

Unless the Commissioner refuses the application on one or more of the grounds provided in Code Section 2-9-7, he or she shall issue to such applicant, upon the execution and delivery of a bond as provided in Code Section 2-9-5, a state license entitling the applicant to conduct business as a dealer in agricultural products. An annual fee not to exceed $400.00 shall be required before a license is issued. Such license shall be valid until revoked or suspended as provided in this article, or until the annual license renewal fee is unpaid.

History. — Ga. L. 1956, p. 617, § 5; Ga. L. 2013, p. 797, § 2/HB 268.

2-9-5. Bond — Required.

Before any license is issued the applicant shall make and deliver to the Commissioner a surety bond executed by a surety corporation authorized to transact business in this state and approved by the Commissioner. Any and all bond applications shall be accompanied by a certificate of "good standing" issued by the Commissioner of Insurance. If any company issuing a bond shall be removed from doing business in this state, it shall be the duty of the Commissioner of Insurance to notify the Commissioner of Agriculture within 30 days. The bond shall be in such amount as the Commissioner may determine, not exceeding an amount equal to the maximum amount of products purchased from or sold for Georgia producers or estimated to be purchased or sold in any month by the applicant; provided, however, that the minimum amount of such bond shall be $10,000.00 and the maximum amount of such bond shall be $230,000.00; provided, further, that in the case of pecans, such bond shall not exceed $500,000.00. Such bond shall be upon a form prescribed or approved by the Commissioner and shall be conditioned to secure the faithful accounting for and payment to producers or their agents or representatives of the proceeds of all agricultural products handled or sold by such dealer. However, in lieu of a surety bond, the Commissioner may accept a cash bond, which shall in all respects be subject to the same claims and actions as would exist against a surety bond. Whenever the Commissioner shall determine that a previously approved bond has for any cause become insufficient, the Commissioner may require an additional bond or bonds to be given, conforming with the requirements of this Code section. Unless the additional bond or bonds are given within the time fixed by written demand therefor, or if the bond of a dealer is canceled, the license of such person shall be immediately revoked by operation of law without notice or hearing and such person shall be ineligible to reapply for such license for a period of four years after such revocation.

History. — Ga. L. 1956, p. 617, § 6; Ga. L. 1991, p. 1053, § 2; Ga. L. 1992, p. 2149, § 2; Ga. L. 1999, p. 800, § 2; Ga. L. 2000, p. 1510, § 2; Ga. L. 2013, p. 797, § 3/HB 268.

RESEARCH REFERENCES

ALR. — Validity of statute or ordinance which requires liability or indemnity insurance or bond as condition of license for conducting business or profession, 120 A.L.R. 950.

2-9-6. Bond — Breach of conditions; complaint to Commissioner; hearing and settlement; action on bond; pro rata distribution of insufficient bond proceeds.

(a) Any person claiming that he or she has been damaged by a breach of the conditions of a bond given by a licensee as provided in Code Section 2-9-5 may enter a complaint to the Commissioner. Such complaint shall be a written statement of the facts constituting the complaint and must be made within 180 days of the alleged breach. If the Commissioner determines that the complaint is prima facie a breach of the bond, and the matter can not be amicably resolved within 15 days, the Commissioner shall publish a solicitation for additional complaints regarding breaches of the bond for a period of not less than five consecutive issues in a newspaper of general circulation and in such other publications as the Commissioner shall prescribe. Additional complaints must be filed within 60 days following initial public notification of a breach of the bond. Civil actions on the breach of such bond shall not be commenced less than 120 days nor more than 547 days from the initial date of public notification of such breach of the bond.

(b) Upon the filing of such complaint in the manner provided in this Code section, the Commissioner shall investigate the charges made and at his discretion order a hearing before him, giving the party complained of notice of the filing of such complaint and the time and place of such hearing. At the conclusion of the hearing the Commissioner shall report his findings and render his conclusion upon the matter complained of to the complainant and respondent in each case, who shall have 15 days thereafter in which to make effective and satisfy the Commissioner's conclusions.

(c) If such settlement is not effected within such time, the Commissioner or the producer may bring an action to enforce the claim. If the producer is not satisfied with the ruling of the Commissioner, he may commence and maintain an action against the principal and surety on the bond of the parties complained of as in any civil action.

(d) If the bond or collateral posted is insufficient to pay in full the valid claims of producers, the Commissioner may direct that the proceeds of such bond shall be divided pro rata among such producers.

History. — Ga. L. 1956, p. 617, § 7; Ga. L. 1982, p. 3, § 2; Ga. L. 1996, p. 335, § 1; Ga. L. 1998, p. 556, § 1.

2-9-7. Denial, suspension, or revocation of license — Grounds generally.

The Commissioner may decline to grant a license or may suspend or revoke a license already granted if he is satisfied that the applicant or licensee has:

(1) Suffered a money judgment to be entered against him upon which execution has been returned unsatisfied;

(2) Made false charges for handling or services rendered;

(3) Failed to account promptly and properly or to make settlements with any producer;

(4) Made any false statement or statements as to condition, quality, or quantity of goods received or held for sale when he could have ascertained the true condition, quality, or quantity by reasonable inspection;

(5) Made any false or misleading statement or statements as to market conditions or service rendered;

(6) Been guilty of a fraud in the attempt to procure or in the procurement of a license; or

(7) Directly or indirectly sold agricultural products received on consignment or on a net return basis for his own account, without prior authority from the producer consigning the same or without notifying such producer.

History. — Ga. L. 1956, p. 617, § 11.

2-9-8. Denial, suspension, or revocation of license — Notice and hearing.

Before the Commissioner refuses a license or suspends or revokes any license, he shall give the applicant or licensee ten days' notice, by registered or certified mail or statutory overnight delivery, of a time and place of hearing. At such hearing the applicant or licensee shall be privileged to appear in person or by or with counsel and to produce witnesses. If the Commissioner finds that the applicant or licensee has committed any violation of this article or any of the rules or regulations promulgated hereunder, the Commissioner may refuse, suspend, or revoke such license. He shall give immediate notice of his action to the applicant or licensee.

History. — Ga. L. 1956, p. 617, § 12; Ga. L. 2000, p. 1589, § 3.

Editor's notes. — Ga. L. 2000, p. 1589, § 16, not codified by the General Assembly, provides that the amendment to this Code section is applicable with respect to notices delivered on or after July 1, 2000.

Cross references. — Authority of Commissioner to impose penalty in lieu of other action, § 2-2-10.

2-9-9. Consignment records; settlement with producer.

(a) Every dealer in agricultural products, upon the receipt of agricultural products on a consignment basis and as he handles and disposes of the same, shall make and preserve for at least one year a record thereof, specifying:

(1) The name and address of the producer consigning such agricultural products;

(2) The date of receipt;

(3) The kind and quality of such products;

(4) The amount of goods sold;

(5) The name and address of the purchaser, provided that where sales total less than $5.00 in value, such sales may be made to the order of "cash";

(6) The selling price; and

(7) The items of expenses connected therewith.

(b) An "account of sales," together with payment in settlement for such shipment, shall be mailed to the producer within 48 hours after the sale of such agricultural products, unless otherwise agreed in writing.

History. — Ga. L. 1956, p. 617, § 8.

2-9-9.1. Bale identification numbers on ginned cotton.

Upon ginning cotton into bales, the ginner shall assign each bale a permanent bale identification number. No bale shall be removed from a gin except when accompanied by a cotton bale voucher issued by the gin, containing the permanent bale identification number and issued in the name of the cotton producer. Except for removal to a bonded warehouse in the name of the cotton producer, transfers or sales from the cotton producer after ginning shall be endorsed by his or her signature on the cotton bale voucher or forms authorized by the Commissioner of Agriculture.

History. — Code 1981, § 2-9-9.1, enacted by Ga. L. 1999, p. 800, § 3.

2-9-10. Investigations.

(a) Upon the complaint of any interested person or upon his own initiative, the Commissioner shall have the power to investigate:

(1) The record of any applicant or licensee;

(2) Any transaction involving the solicitation, receipt, sale, or attempted sale of agricultural products;

(3) The failure to pay proper and true accounts and settlements at prompt and regular intervals;

(4) The making of false statements as to condition, quality, or quantity of goods received or in storage;

(5) The making of false statements as to market conditions with intent to deceive;

(6) The failure to make payment for goods received; or

(7) Other alleged injurious transactions.

(b) For the purposes specified in subsection (a), the Commissioner or his agents may examine the ledgers, books of accounts, memoranda, and other documents which relate to the transaction involved, at the place or places of business of the applicant or licensee, and may take testimony thereon under oath.

History. — Ga. L. 1956, p. 617, § 9.

2-9-11. Inspections of damaged shipments; certificate.

Whenever produce is shipped to or received by a licensed dealer for handling, purchase, or sale in this state at any market point and the dealer finds the produce to be in a spoiled, damaged, unmarketable, or unsatisfactory condition, unless both parties waive inspection before sale or other disposition thereof, the dealer shall cause the produce to be examined by an inspector assigned by the Commissioner for that purpose. The inspector shall execute and deliver a certificate to the applicant stating the day, the time, and the place of the inspection and the condition of the produce and shall mail or deliver a copy of such certificate to the shipper.

History. — Ga. L. 1956, p. 617, § 10.
Cross references. — Duty of railroad companies to furnish refrigerator cars to growers of peaches, apples, and other produce for transportation of such products, § 46-9-90 et seq.

2-9-11.1. Ownership of agricultural product harvested by dealer, agent or employee, or independent contractor retained by dealer; prompt payment; certificate of receipt and quality.

(a) In the absence of a written contract between the producer and a dealer in agricultural products to the contrary, any agricultural product which is harvested by a dealer, an agent or employee of a dealer, or an independent contractor retained by a dealer or which is delivered to a dealer or an agent or employee thereof on the farm or at a facility of the dealer shall become the property of the dealer at the time of delivery and the dealer shall become obligated to pay the agreed-upon price as provided in subsection (b) of this Code section.

(b) A dealer in agricultural products shall make prompt payment for agricultural products purchased in this state. Prompt payment shall mean payment 20 days following delivery, as provided in subsection (a) of this Code section, unless explicitly stated otherwise in a written contract agreed to by the producer and dealer in agricultural products.

(c) Unless explicitly stated otherwise in a written contract, at the time of delivery as specified in subsection (a) of this Code section, the dealer and the producer in agricultural products shall jointly issue a certificate of receipt and quality to the producer or the producer's agent. The certificate of receipt and quality shall contain information, including but not limited to the:

(1) Name and address of the dealer in agricultural products;

(2) Name and address of the producer;

(3) Delivery date and time of receipt;

(4) Description of the product as to identity, quantity, quality, condition, and grade of the product;

(5) Price per unit; and

(6) Terms of the transaction.

Information contained in the certificate of receipt and quality pertaining to quality, quantity, and price shall be presumed to be satisfied unless such agricultural product is inspected and a certificate stating the product is in a different condition is issued by an inspector pursuant to Code Section 2-9-11 within 48 hours of delivery of the agricultural product to the dealer.

(d) This Code section does not preclude the producer from commencing and maintaining an action against the dealer as in any civil action.

History. — Code 1981, § 2-9-11.1, enacted by Ga. L. 1992, p. 1282, § 1; Ga. L. 1993, p. 440, § 1.

Code Commission notes. — Pursuant to Code Section 28-9-5, in 1992, "agreed-upon" was substituted for "agreed upon" in subsection (a).

2-9-12. Sale or possession of substandard products prohibited.

(a) It shall be unlawful for any dealer in agricultural products to sell, offer for sale, or possess any agricultural product that does not comply with the standards of quality established by the Commissioner under authority of law or with the laws and rules and regulations pertaining to such product.

(b) It is the intent and purpose of this Code section to prevent the sale of agricultural products that do not comply with the laws, standards of quality, and rules and regulations pertaining thereto.

History. — Ga. L. 1962, p. 127, § 2.

RESEARCH REFERENCES

Am. Jur. 2d. — 3 Am. Jur. 2d, Agriculture, § 48 et seq.

ALR. — State statute in relation to inspection and grading of grain as unlawful burden on interstate commerce, 19 A.L.R. 164.

2-9-13. Rules and regulations.

The Commissioner shall adopt and enforce rules and regulations deemed necessary to carry out this article.

History. — Ga. L. 1956, p. 617, § 13.

2-9-14. Injunctions.

In addition to the other remedies provided in this article and notwithstanding the existence of any adequate remedy at law, the Commissioner is authorized to apply to the superior court, which court shall have jurisdiction, upon hearing and for cause shown, to grant a temporary or permanent injunction, or both, restraining any person from violating or continuing to violate this article or from failing or refusing to comply with this article or any rule or regulation adopted by the Commissioner as provided in this article. Such injunction shall be issued without bond.

History. — Ga. L. 1956, p. 617, § 15.

2-9-15. Applicability of article.

(a) This article shall not apply to:

(1) Farmers or groups of farmers in the sale of agricultural products grown by themselves;

(2) Persons who buy for cash, paying at the time of purchase in United States currency, certified check, cashier's check, or the equivalent; or

(3) Holders of food sales establishment licenses issued pursuant to Article 2 of Chapter 2 of Title 26, the "Georgia Food Act," who conduct no business at the wholesale level and who have fewer than ten employees.

(b) No warehouse that is in full compliance with the provisions of Article 1 of Chapter 4 of Title 10 shall be required to obtain a license or maintain a surety bond under this article.

History. — Ga. L. 1956, p. 617, § 2; Ga. L. 1978, p. 1450, § 2; Ga. L. 1991, p. 1053, § 3; Ga. L. 1992, p. 2149, § 3; Ga. L. 2000, p. 1510, § 3; Ga. L. 2013, p. 797, § 4/HB 268.

RESEARCH REFERENCES

ALR. — Validity of discrimination in license statute or ordinance in favor of farmers selling their own products and against other persons dealing in farm products, 123 A.L.R. 1051.

2-9-16. Penalty.

Any dealer in agricultural products who violates any of the provisions of this article or who interferes with an agent of the Commissioner in the enforcement of this article shall be guilty of a misdemeanor.

History. — Ga. L. 1956, p. 617, § 15.

ARTICLE 2

GRAIN DEALERS

Cross references. — Labeling and sale of seeds, § 2-11-20 et seq. Adoption and enforcement of standards for grain moisture testing equipment, §§ 10-2-15, 10-2-16. Georgia State Warehouse Act, T. 10, C. 4, Art. I. Grains and bread generally, § 26-2-290 et seq.

Administrative rules and regulations. — Grain dealers, Official Compilation of the Rules and Regulations of the State of Georgia, Rules of Georgia Department of Agriculture, Chapter 40-25.

2-9-30. Definitions.

As used in this article, the term:

(1) "Grain" means all products commonly classified as grain, including, but not limited to, wheat, corn, oats, barley, rye, field peas,

soybeans, clover, and grain sorghum. The term does not include grain which has been produced or packaged for purchase or distribution as seed.

(2) "Grain dealer" means any person, association, itinerant dealer, partnership, or corporation engaged in the business of buying, receiving, selling, exchanging, negotiating, or soliciting the sale, resale, exchange, or transfer of any grain purchased from the producer or his or her agent or representative, received on consignment from the producer or his or her agent or representative, or received to be handled on a net return basis from the producer.

(3) "On consignment" means any receipt or sale of grain for the account of a person other than the seller in which the seller acts as the agent for the owner.

(4) "Producer" means any producer of grain.

History. — Ga. L. 1976, p. 512, § 1; Ga. L. 2013, p. 797, § 5/HB 268.

OPINIONS OF THE ATTORNEY GENERAL

Warehouse license-holder required to acquire separate "grain dealer's" license. — Individuals holding warehouse licenses issued pursuant to the Georgia State Warehousing Act, Ga. L. 1953, Nov.-Dec. Sess., p. 412, § 1 et seq. (see now O.C.G.A. § 10-4-1 et seq.) and bonded in accordance therewith must acquire a separate "grain dealer's" license and surety bond if engaging in the activities of a "grain dealer." 1976 Op. Att'y Gen. No. 76-41.

RESEARCH REFERENCES

ALR. — State statute in relation to inspection and grading of grain as unlawful burden on interstate commerce, 19 A.L.R. 164.

Nature and validity of "hedging" transactions on the commodity market, 20 A.L.R. 1422.

Validity of discrimination in license statute or ordinance in favor of farmers selling their own products and against other persons dealing in farm products, 123 A.L.R. 1051.

Right to enjoin business competitor from unlicensed or otherwise illegal acts or practices, 90 A.L.R.2d 7.

2-9-31. License required.

It shall be unlawful for any dealer in grain who comes within the terms of this article to engage in such business in this state without a state license issued by the Commissioner.

History. — Ga. L. 1976, p. 512, § 3.

Cross references. — Annual license fee for grain dealers, commercial feed dealers, and grain warehousemen, § 2-1-5.

Administrative rules and regulations. — License requirements, Official Compilation of the Rules and Regulations of the State of Georgia, Rules of Georgia Department of Agriculture, Grain

Dealers, Subject 40-25-2.

OPINIONS OF THE ATTORNEY GENERAL

Warehouse license-holder required to acquire separate "grain dealer's" license. — Individuals holding warehouse licenses issued pursuant to the Georgia State Warehousing Act, Ga. L. 1953, Nov.-Dec. Sess., p. 412, § 1 et seq. (see now O.C.G.A. § 10-4-1 et seq.) and bonded in accordance therewith must acquire a separate "grain dealer's" license and surety bond if engaging in the activities of a "grain dealer." 1976 Op. Att'y Gen. No. 76-41.

Federally licensed warehousemen do not have to acquire separate bonding and licensing mandated by § 2-9-34 and this section, but are accorded the exemption provided by § 2-9-44(3). 1978 Op. Att'y Gen. No. 78-11.

RESEARCH REFERENCES

ALR. — Validity of discrimination in license statute or ordinance in favor of farmers selling their own products and against other persons dealing in farm products, 123 A.L.R. 1051.

2-9-32. Application for license.

(a) Every grain dealer desiring to transact business in this state shall file an application for a license with the Commissioner. The application shall be on a form furnished by the Commissioner and, together with such other information as the Commissioner shall require, shall state:

(1) The name of the business;

(2) The business address of the applicant;

(3) The complete telephone number of the applicant;

(4) The type of ownership, whether individual, partnership, corporation, or other;

(5) The name of the owner or, if a partnership or corporation, the name of the partners or stockholders;

(6) The names of the certified public weighers;

(7) The name of the manager; and

(8) The dollar value of business transacted from producers for the highest month during the preceding calendar year.

(b)(1) Each applicant for a license or renewal shall furnish with his application a current financial statement which shall include:

(A) A balance sheet;

(B) A profit and loss statement of income;

(C) A statement of retained earnings; and

(D) A statement of changes in financial position.

(2) The chief executive officer for the business shall certify under penalties of perjury that the statements as prepared accurately reflect the financial condition of the business as of the date named and fairly represent the results of operations for the period named.

(3) Except as otherwise provided in this paragraph, each applicant shall have the financial statements required in paragraph (1) of this subsection audited by an independent certified public accountant. Alternatively, financial statements audited or reviewed by an independent public accountant will be accepted with the understanding that the applicant will be subject to an additional on-site examination by the Commissioner and to an audit by the Commissioner. Audits and reviews by independent certified public accountants and independent public accountants specified in this Code section shall be made in accordance with standards established by the American Institute of Certified Public Accountants. The accountant's certification, assurances, opinion, comments, and notes on such statements, if any, shall be furnished along with the statements. Applicants who cannot immediately meet these requirements may apply to the Commissioner for a temporary waiver of this provision. The Commissioner may grant such waiver for a temporary period not to exceed 180 days if the applicants can furnish evidence of good and substantial reasons therefor. This paragraph shall not be applicable to any applicant who maintains a bond in the maximum amount required by subsection (a) of Code Section 2-9-34.

History. — Ga. L. 1976, p. 512, § 4; Ga. L. 1983, p. 831, § 1; Ga. L. 1988, p. 748, § 1.

OPINIONS OF THE ATTORNEY GENERAL

Warehouse license-holder required to acquire separate "grain dealer's" license. — Individuals holding warehouse licenses issued pursuant to the Georgia State Warehousing Act, Ga. L. 1953, Nov.-Dec. Sess., p. 412, § 1 et seq. (see now O.C.G.A. § 10-4-1 et seq.) and bonded in accordance therewith must acquire a separate "grain dealer's" license and surety bond if engaging in the activities of a "grain dealer." 1976 Op. Att'y Gen. No. 76-41.

2-9-33. Issuance, renewal, and expiration of license.

Unless the Commissioner refuses the application on one or more of the grounds provided in Code Section 2-9-36, he or she shall issue to an applicant, upon the execution and delivery of a bond as provided in Code Section 2-9-34, a state license entitling the applicant to conduct business as a dealer in grain. A fee in an amount fixed by rule or

regulation of the Commissioner at not less than $100.00 nor more than $150.00 per annum shall be charged for such license. All such licenses shall be renewed annually on or before June 30. Any license which is not renewed on or before such date shall expire on June 30. Any fees collected pursuant to this Code section shall be retained pursuant to the provisions of Code Section 45-12-92.1.

History. — Ga. L. 1976, p. 512, § 5; Ga. L. 1985, p. 643, § 1; Ga. L. 1992, p. 2132, § 1; Ga. L. 2010, p. 9, § 1-6/HB 1055.

Cross references. — Annual license fee for grain dealers, commercial feed dealers, and grain warehousemen, § 2-1-5.

OPINIONS OF THE ATTORNEY GENERAL

Warehouse license-holder required to acquire separate "grain dealer's" license. — Individuals holding warehouse licenses issued pursuant to the Georgia State Warehousing Act, Ga. L. 1953, Nov.-Dec. Sess., p. 412, § 1 et seq. (see now O.C.G.A. § 10-4-1 et seq.) and bonded in accordance therewith must acquire a separate "grain dealer's" license and surety bond if engaging in the activities of a "grain dealer." 1976 Op. Att'y Gen. No. 76-41.

2-9-34. Bond — Required.

(a) Before any license is issued, the applicant shall make and deliver to the Commissioner a surety bond in the amount of 20 percent of the average of the highest dollar volume of grain purchases from producers made in any single month for each of the three preceding calendar years or such shorter period of years as the applicant has done business as a grain dealer, provided that the minimum amount of such bond shall be $20,000.00 and the maximum amount of such bond shall be $300,000.00. If a licensed grain dealer operates his or her grain-dealing activities at more than one physical location, he or she shall furnish a surety bond for each location of grain-dealing activities, each bond to be computed as stated in this Code section and each bond to be subject to the minimum and maximum amounts stated in this Code section. The bonds shall be executed by a surety corporation authorized to transact business in this state and approved by the Commissioner. Any and all bond applications shall be accompanied by a certificate of "good standing" issued by the Commissioner of Insurance. If any company issuing a bond shall be removed from doing business in this state, it shall be the duty of the Commissioner of Insurance to notify the Commissioner of Agriculture within 30 days. Such bonds shall be upon forms prescribed by the Commissioner and shall be conditioned to secure the faithful accounting for and payment to the producers or their agents or representatives of the proceeds of all grain handled or sold by such dealer. Whenever the Commissioner shall determine that a previously approved bond has for any cause become insufficient, the Commissioner may require an additional bond or bonds to be given, conforming with

the requirements of this Code section. Unless the additional bond or bonds are given within the time fixed by written demand therefor, or if the bond of a dealer is canceled, the license of such person shall be immediately revoked by operation of law without notice or hearing.

(b) In lieu of a surety bond, the Commissioner may accept a cash bond which shall be subject in all respects to the same claims and actions as would exist against a surety bond.

(c) If the surety bond or cash bond of a licensed grain dealer is canceled, the license of such grain dealer shall immediately be revoked by operation of law without notice or hearing.

History. — Ga. L. 1976, p. 512, § 6; Ga. L. 1977, p. 245, § 2; Ga. L. 1981, p. 927, § 1; Ga. L. 1983, p. 3, § 3; Ga. L. 1983, p. 831, § 2; Ga. L. 1985, p. 643, § 2; Ga. L. 1999, p. 800, § 4; Ga. L. 2013, p. 797, § 6/HB 268.

OPINIONS OF THE ATTORNEY GENERAL

Warehouse license-holder required to acquire separate "grain dealer's" license. — Individuals holding warehouse licenses issued pursuant to the Georgia State Warehousing Act, Ga. L. 1953, Nov.-Dec. Sess., p. 412, § 1 et seq. (see now O.C.G.A. § 10-4-1 et seq.) and bonded in accordance therewith must acquire a separate "grain dealer's" license and surety bond if engaging in the activities of a "grain dealer." 1976 Op. Att'y Gen. No. 76-41.

Federally licensed warehousemen do not have to acquire separate bonding and licensing mandated by § 2-9-31 and this section, but are accorded the exemption provided by § 2-9-44(3). 1978 Op. Att'y Gen. No. 78-11.

RESEARCH REFERENCES

ALR. — Validity of statute or ordinance which requires liability or indemnity insurance or bond as condition of license for conducting business or profession, 120 A.L.R. 950.

2-9-35. Bond — Breach of conditions; complaint to Commissioner; hearing and settlement; action on bond; pro rata distribution of insufficient bond proceeds.

(a) Any person claiming that he or she has been damaged by a breach of the conditions of a bond given by a licensee as provided in Code Section 2-9-34 may enter a complaint to the Commissioner. Such complaint shall be a written statement of the facts constituting the complaint and must be made within 180 days of the alleged breach. If the Commissioner determines that the complaint is prima facie a breach of the bond, and the matter can not be amicably resolved within 15 days, the Commissioner shall publish a solicitation for additional complaints regarding breaches of the bond for a period of not less than five consecutive issues in a newspaper of general circulation and in such other publications as the Commissioner shall prescribe. Additional complaints must be filed within 60 days following initial public notifi-

cation of a breach of the bond. Civil actions on the breach of such bond shall not be commenced less than 120 days nor more than 547 days from the initial date of public notification of such breach of the bond.

(b) Upon the filing of the complaint in the manner provided in this Code section, the Commissioner shall investigate the charges made and, at his discretion, order a hearing before him or his hearing officer, giving all parties concerned notice of the filing of such complaint and the time and place of such hearing. At the conclusion of the hearing, the Commissioner shall report his findings and render his conclusion upon the matter complained of to the complainant and respondent in the case, who shall have 15 days following such report in which to make effective and satisfy the Commissioner's conclusions.

(c) If such settlement is not effected within such time, the Commissioner or the producer may institute appropriate legal proceedings to enforce the claim. If the producer is not satisfied with the ruling of the Commissioner, he may commence and maintain an action against the principal and surety on the bond of the parties complained of, as in any civil action.

(d) If the bond or collateral posted is insufficient to pay the valid claims of producers in full, the Commissioner may direct that the proceeds of the bond shall be divided pro rata among the producers.

History. — Ga. L. 1976, p. 512, § 9; Ga. L. 1985, p. 643, § 3; Ga. L. 1998, p. 556, § 2.

OPINIONS OF THE ATTORNEY GENERAL

Warehouse license-holder required to acquire separate "grain dealer's" license. — Individuals holding warehouse licenses issued pursuant to the Georgia State Warehousing Act, Ga. L. 1953, Nov.-Dec. Sess., p. 412, § 1 et seq. (see now O.C.G.A. § 10-4-1 et seq.) and bonded in accordance therewith must acquire a separate "grain dealer's" license and surety bond if engaging in the activities of a "grain dealer." 1976 Op. Att'y Gen. No. 76-41.

2-9-36. Denial, suspension, or revocation of license — Grounds.

The Commissioner may decline to grant a license or may suspend or revoke a license already granted if he is satisfied that the applicant or licensee has:

(1) Suffered a money judgment to be entered against him upon which execution has been returned unsatisfied;

(2) Made false charges for handling or services rendered;

(3) Failed to account promptly and properly or to make settlements with any producer;

(4) Made any false statement or statements as to the condition, quality, or quantity of grain received or held for sale, when he could have ascertained the true condition, quality, or quantity by reasonable inspection;

(5) Made any false or misleading statement or statements as to market conditions or service rendered;

(6) Been guilty of a fraud in the attempt to procure or in the procurement of a license;

(7) Directly or indirectly sold grain received on consignment or on a net return basis for his own account, without prior authority from the producer consigning the same or without notifying such producer; or

(8) Through any other action, violated this article.

History. — Ga. L. 1976, p. 512, § 12.

OPINIONS OF THE ATTORNEY GENERAL

Warehouse license-holder required to acquire separate "grain dealer's" license. — Individuals holding warehouse licenses issued pursuant to the Georgia State Warehousing Act, Ga. L. 1953, Nov.-Dec. Sess., p. 412, § 1 et seq. (see now O.C.G.A. § 10-4-1 et seq.) and bonded in accordance therewith must acquire a separate "grain dealer's" license and surety bond if engaging in the activities of a "grain dealer." 1976 Op. Att'y Gen. No. 76-41.

2-9-37. Denial, suspension, or revocation of license — Notice and hearing.

Before the Commissioner refuses or revokes any license, he shall give the applicant or licensee ten days' notice, by registered or certified mail or statutory overnight delivery, of a time and place of hearing. At such hearing the applicant or licensee shall be privileged to appear in person or by or with counsel and to produce witnesses. If the Commissioner finds the applicant or licensee to be in violation of this article, the Commissioner may refuse, suspend, or revoke such license. He shall give immediate notice of his action to the applicant or licensee.

History. — Ga. L. 1976, p. 512, § 13; Ga. L. 1981, p. 927, § 2; Ga. L. 2000, p. 1589, § 3.

Editor's notes. — Ga. L. 2000, p. 1589, § 16, not codified by the General Assembly, provides that the amendment to this Code section is applicable with respect to notices delivered on or after July 1, 2000.

Cross references. — Authority of Commissioner to impose penalty in lieu of other action, § 2-2-10.

OPINIONS OF THE ATTORNEY GENERAL

Warehouse license-holder required to acquire separate "grain dealer's" license. — Individuals holding warehouse licenses issued pursuant to the Georgia State Warehousing Act, Ga. L. 1953, Nov.-Dec. Sess., p. 412, § 1 et seq. (see now O.C.G.A. § 10-4-1 et seq.) and bonded in accordance therewith must acquire a separate "grain dealer's" license and surety bond if engaging in the activities of a "grain dealer." 1976 Op. Att'y Gen. No. 76-41.

2-9-38. Grain to be weighed by certified public weigher.

All grain purchased from a producer by a dealer licensed under this article shall be weighed by a certified public weigher licensed in accordance with Article 2 of Chapter 2 of Title 10, relating to certified public weighers.

History. — Ga. L. 1976, p. 512, § 7; Ga. L. 1992, p. 6, § 2.

2-9-39. Scales.

Each grain dealer under this article must be equipped with or have available to him suitable scales which are in good order and so arranged that all grain can be weighed by the dealer. The scales belonging to or used by such grain dealer shall be subject to examination by representatives of the Commissioner and to disapproval by the Commissioner. If the Commissioner disapproves of any weighing apparatus, it shall not be used in ascertaining the weight of grain for the purpose of this article until such disapproval is withdrawn.

History. — Ga. L. 1976, p. 512, § 8.
Cross references. — Weights and measures generally, T. 10, C. 2.

OPINIONS OF THE ATTORNEY GENERAL

Warehouse license-holder required to acquire separate "grain dealer's" license. — Individuals holding warehouse licenses issued pursuant to the Georgia State Warehousing Act, Ga. L. 1953, Nov.-Dec. Sess., p. 412, § 1 et seq. (see now O.C.G.A. § 10-4-1 et seq.) and bonded in accordance therewith must acquire a separate "grain dealer's" license and surety bond if engaging in the activities of a "grain dealer." 1976 Op. Att'y Gen. No. 76-41.

2-9-40. Consignment records; settlement with producer.

(a) Upon the receipt of grain products on a consignment basis and as he handles and disposes of the grain products, every grain dealer shall make a record thereof and shall preserve such record for at least one year. The record shall specify:

(1) The name and address of the producer consigning such grain;

(2) The date of receipt;

(3) The kind and quality of the grain;

(4) The amount sold;

(5) The name and address of the purchaser, provided that where sales total less than $5.00 in value, such sales may be made to the order of "cash";

(6) The selling price; and

(7) The items of expenses connected therewith.

(b) An "account of sales," together with payment in settlement for the shipment, shall be mailed to the producer within 48 hours after the sale of the grain, unless otherwise agreed to in writing.

History. — Ga. L. 1976, p. 512, § 10.

2-9-41. Investigations.

(a) Upon the complaint of any interested person or upon his own initiative, the Commissioner shall have the power to investigate:

(1) The record of any applicant or licensee;

(2) Any transaction involving the solicitation, receipt, sale, or attempted sale of grain;

(3) The failure to pay proper and true accounts and settlements at prompt and regular intervals;

(4) The making of false statements as to condition, quality, or quantity of grain received or in storage;

(5) The making of false statements as to market conditions with intent to deceive;

(6) The failure to make payment for grain received; or

(7) Other alleged injurious transactions.

(b) For such purposes, the Commissioner or his agents may examine the ledgers, books of accounts, memoranda, and other documents which relate to the transaction involved, at the place or places of business of the applicant, licensee, or unlicensed person, partnership, corporation, or other entity, and may take testimony thereon under oath.

History. — Ga. L. 1976, p. 512, § 11;
Ga. L. 1988, p. 748, § 2.

OPINIONS OF THE ATTORNEY GENERAL

Warehouse license-holder required to acquire separate "grain dealer's" license. — Individuals holding warehouse licenses issued pursuant to the Georgia State Warehousing Act, Ga. L. 1953, Nov.-Dec. Sess., p. 412, § 1 et seq. (see now O.C.G.A. § 10-4-1 et seq.) and bonded in accordance therewith must acquire a separate "grain dealer's" license and surety bond if engaging in the activities of a "grain dealer." 1976 Op. Att'y Gen. No. 76-41.

2-9-42. Rules and regulations.

The Commissioner shall adopt and enforce rules and regulations deemed necessary to carry out this article.

History. — Ga. L. 1976, p. 512, § 14.

2-9-42.1. Publication of names, locations, and manner of payment by licensed grain dealers.

The Commissioner may publish in print or electronically the names and locations of licensed grain dealers and the names and locations of those operations certifying that payment will be made on a cash or certified check basis.

History. — Ga. L. 1981, p. 927, § 3; Ga. L. 2010, p. 838, § 10/SB 388.

2-9-43. Injunctions.

In addition to the other remedies provided in this article and notwithstanding the existence of any adequate remedy at law, the Commissioner is authorized to apply to the superior court, which court shall have jurisdiction, upon hearing and for cause shown, to grant a temporary or permanent injunction, or both, restraining any person from violating or continuing to violate this article or from failing or refusing to comply with this article or any rule or regulation adopted by the Commissioner as provided in this article. Such injunction shall be issued without bond.

History. — Ga. L. 1976, p. 512, § 16.

OPINIONS OF THE ATTORNEY GENERAL

Warehouse license-holder required to acquire separate "grain dealer's" license. — Individuals holding warehouse licenses issued pursuant to the Georgia State Warehouse Act, Ga. L. 1953, Nov.-Dec. Sess., p. 412, § 1 (see now O.C.G.A. § 10-4-1 et seq.), and bonded in accordance therewith must acquire a separate "grain dealer's" license and surety bond if engaging in the activities of a "grain dealer." 1976 Op. Att'y Gen. No. 76-41.

2-9-44. Applicability of article.

This article shall not apply to:

(1) Farmers in the sale of grain grown by themselves;

(2) Persons who buy for cash, paying at the time of the purchase in United States currency, certified check, or cashier's check; or

(3) Persons licensed and bonded in accordance with Article 1 of Chapter 4 of Title 10, the "Georgia State Warehouse Act."

History. — Ga. L. 1976, p. 512, § 2; Ga. L. 1977, p. 245, § 1; Ga. L. 1982, p. 3, § 2; Ga. L. 1983, p. 831, § 3.

OPINIONS OF THE ATTORNEY GENERAL

Warehouse license-holder required to acquire separate "grain dealer's" license. — Individuals holding warehouse licenses issued pursuant to the Georgia State Warehouse Act, Ga. L. 1953, Nov.-Dec. Sess., p. 412, § 1 (see now O.C.G.A. § 10-4-1 et seq.), and bonded in accordance therewith must acquire a separate "grain dealer's" license and surety bond if engaging in the activities of a "grain dealer." 1976 Op. Att'y Gen. No. 76-41.

Federally licensed warehousemen do not have to acquire separate bonding and licensing mandated by §§ 2-9-31 and 2-9-34, but are accorded the exemption provided by paragraph (3) of this section. 1978 Op. Att'y Gen. No. 78-11.

RESEARCH REFERENCES

ALR. — Validity of discrimination in license statute or ordinance in favor of farmers selling their own products and against other persons dealing in farm products, 123 A.L.R. 1051.

2-9-45. Penalty.

Any dealer in grain who violates any of the provisions of this article or who interferes with an agent of the Commissioner in the enforcement of this article shall be guilty of a misdemeanor.

History. — Ga. L. 1976, p. 512, § 16.

CHAPTER 10

MARKETING FACILITIES, ORGANIZATIONS, AND PROGRAMS

Article 1

Georgia Building Authority (Markets)

Sec.

2-10-1 through 2-10-39. [Repealed].

Article 2

Farmers' Markets

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Article 4

Roadside Markets Incentive Program

2-10-130 through 2-10-140. [Repealed].

Cross references. — Promotion of agricultural products, Ga. Const. 1983, Art. VII, Sec. III, Para. II. Regulation of warehouses generally, T. 10, C. 4.

ARTICLE 1

GEORGIA BUILDING AUTHORITY (MARKETS)

Cross references. — Authority of Commissioner with regard to establishment, operation, and maintenance of farmers' markets, § 2-10-50 et seq. Georgia Building Authority, § 50-9-1 et seq. Power of state to incur debt generally, Ga. Const. 1983, Art. VII, Sec. IV, Para. I et seq. and § 50-17-20 et seq.

2-10-1 through 2-10-39.

Reserved. Repealed by Ga. L. 2008, p. 224, § 1, effective July 1, 2008.

Editor's notes. — This article was based on Ga. L. 1955, p. 224, §§ 1-8, 10-39; Ga. L. 1957, p. 3, § 1; Ga. L. 1964, p. 85, §§ 1-3; Ga. L. 1967, p. 652, § 1; Ga. L. 1967, p. 866, §§ 1-4; Ga. L. 1972, p. 1015, § 418; Ga. L. 1982, p. 3, § 2; Ga. L. 1983, p. 3, § 46; Ga. L. 1988, p. 426, § 1.

ARTICLE 2

FARMERS' MARKETS

Cross references. — Dealers in agricultural products, T. 2, C. 9.

Administrative rules and regulations. — State Farmers' Market, Official Compilation of the Rules and Regulations of the State of Georgia, Rules of Georgia Department of Agriculture, Chapter 40-9.

RESEARCH REFERENCES

Am. Jur. 2d. — 3 Am. Jur. 2d, Agriculture, § 22 et seq.

C.J.S. — 3 C.J.S., Agriculture, § 156 et seq.

2-10-50. Short title.

This article shall be known as the "Georgia Marketing Act of 1981."

History. — Ga. L. 1981, p. 1354, § 1.

2-10-51. Purpose of article.

This article is intended to promote the handling, packing, transporting, storage, distribution, inspection, and sale of agricultural products and to assist producers and consumers in selling and purchasing such products under fair conditions. It is the further intent and purpose of this article to authorize the Commissioner to control the operation of farmers' markets.

History. — Ga. L. 1981, p. 1354, § 2.

RESEARCH REFERENCES

ALR. — Constitutionality of statutes relating to grinding, packing, or branding of farm products, 73 A.L.R. 1445.

2-10-52. Definitions.

As used in this article, the term:

(1) "Agricultural products" means fruits, vegetables, pecans, nuts, eggs, dairy products, forestry and horticultural products, fish, seafood, meat, poultry, and other such products of farm, field, and water, whether fresh, frozen, canned, or otherwise packaged.

(2) "False pack" means the topping or facing of containers with the best products exposed and poor products concealed underneath.

(3) "Farmers' market" means any place within this state where farmers or producers may sell, bring or send to sell, exhibit, or transship agricultural products; or where buyers may come to buy, inspect, or transport agricultural products; or where such products may be processed or stored for sale, either at wholesale or retail. This term shall include all real and personal property, buildings, warehouses, storage facilities, barns, exhibition halls, and other structures, facilities, utilities, parking areas, streets, tracks, and other appurtenances and facilities, including, but not limited to, restaurants, service stations, and other like facilities of every kind and

character used or useful at such place in promoting the buying, selling, or exchange of agricultural products. Use of such facilities shall not be limited to the buying, selling, or exchange of agricultural products so long as their use promotes the buying, selling, or exchange of such agricultural products as determined by the Commissioner. This definition shall include and not prohibit the sale of grocery items or other items commonly sold or offered for sale in conjunction with the sale of agricultural products.

(4) "Lease" means the creation of a written instrument (a lease) under the terms and conditions of which one party (lessor) out of its own estate grants and conveys to another party or parties (lessee or lessees) an estate for years retaining a reversion in itself after such grant and conveyance.

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

(5) "Person" means any individual, limited or general partnership, association, firm, company, or corporation.

(6) "Real property" means both improved and unimproved real property and shall also include space in and on the real property.

(7) "Rent" means the creation of a written instrument (a rental agreement) the terms and conditions of which create the relationship of landlord and tenant. Under such relationship no estate passes out of the landlord and the tenant has only a usufruct.

(8) "Day," "month," and "year" means "calendar day," "calendar month," and "calendar year."

(9) "State" means the State of Georgia.

History. — Ga. L. 1981, p. 1354, §§ 3, 14; Ga. L. 1990, p. 320, § 1; Ga. L. 2004, p. 1066, § 1.

RESEARCH REFERENCES

C.J.S. — 3 C.J.S., Agriculture, §§ 156 et seq., 169 et seq.

2-10-53. Powers and duties of Commissioner generally.

The Commissioner of Agriculture is charged with the duty of establishing, operating, and maintaining farmers' markets and is charged with the responsibility of enforcing this article. In addition to any other powers conferred on him by this article, he may:

(1) Investigate methods and practices in connection with the production, handling, standardizing, grading, classifying, sorting, weighing, packing, transporting, storing, inspecting, and sale of agricultural products of all kinds within the state and all matters relevant thereto;

(2) Gather, formulate, and disseminate, in such form and at such times as he deems advisable, information relating to the matters included within paragraph (1) of this Code section;

(3) Disseminate, in such form and at such times as he deems advisable, information relating to market conditions, including, but not limited to, the supply, demand, and prices for all agricultural products and such other information as may benefit the producers, purchasers, and consumers of this state;

(4) Ascertain sources of supply of agricultural products and publish in print or electronically the names and addresses of producers and consignors thereof;

(5) Assist and advise in the organization and the operation of cooperatives and other associations in order to improve relations and services among producers, distributors, and consumers;

(6) Investigate delays, embargoes, conditions, practices, charges, and rates in the transportation and handling of agricultural products and, when deemed necessary, cause proceedings to be instituted before the proper authority or tribunal to improve and adjust same and cause the proper proceedings to be instituted to prevent unlawful combinations or agreements in restraint of trade or the fixing of prices;

(7) Take such steps as he deems advisable to prevent the waste or spoilage of agricultural products;

(8) Secure the cooperation and assistance of the United States Department of Agriculture or any other agency or department of the United States or of other states;

(9) Secure the cooperation and assistance of the other departments and agencies of this state, the University of Georgia, the other colleges and universities of the University System of Georgia, and other organizations that may be of assistance; and

(10) Take such other measures as shall be proper for carrying out the purposes of this article.

History. — Ga. L. 1917, p. 77, § 3; Code 1933, § 5-204; Ga. L. 1935, p. 369, §§ 2-4, 13; Ga. L. 1956, p. 215, § 1; Ga. L. 1959, p. 242, § 1; Ga. L. 1981, p. 1354, §§ 4, 5; Ga. L. 2010, p. 838, § 10/SB 388.

JUDICIAL DECISIONS

"Farmers" construed. — It cannot be said that the General Assembly, by the mere use of the word "farmers" preceding the word "market," intended to limit to farmers the sales of farm products in the market, and to exclude other sellers therefrom, provided that their operations conserve the primary purpose of this article to aid Georgia farmers. Newton v. City of Atlanta, 189 Ga. 441, 6 S.E.2d 61 (1939).

Creating or operating market deemed governmental functions. — Activities of the Commissioner, in creating or operating a state farmers' market, are state governmental functions. Newton v. City of Atlanta, 189 Ga. 441, 6 S.E.2d 61 (1939); Barwick v. Roberts, 192 Ga. 783, 16 S.E.2d 867 (1941), cert. denied, 315 U.S. 796, 62 S. Ct. 489, 86 L. Ed. 1197 (1942).

OPINIONS OF THE ATTORNEY GENERAL

Commissioner authorized to establish and operate branch markets. — The General Assembly has invested the Commissioner with the authority to establish and operate branch farmers' markets as an auxiliary or adjunct to main farmers' markets if the Commissioner, in the exercise of a sound discretion, should determine that such a branch market is for the best interest of the state. 1945-47 Op. Att'y Gen. p. 9.

Commissioner authorized to employ reasonable means to prevent waste. — The Commissioner has the power and authority to employ reasonable means to prevent the waste or depreciation of farm products in order to benefit the producers, distributors, and consumers of this state. 1948-49 Op. Att'y Gen. p. 427.

Leasing right-of-way through market prohibited. — Absent legislative authority, the Commissioner may not lease a right-of-way through a farmers' market to a railroad. 1945-47 Op. Att'y Gen. p. 11.

Municipal regulation. — Business operated upon property of state farmers' market is exempted from municipal taxation and regulations of any kind except certain regulations as to police, fire, and health. 1954-56 Op. Att'y Gen. p. 494.

Businesses conducted in the confines of a farmer's market are subject to criminal municipal ordinances. 1950-51 Op. Att'y Gen. p. 335.

Publication of proceedings for distribution authorized. — Upon determination by the Commissioner that the proceedings of the National Association of State Departments of Agriculture are of interest to the agriculture of this state, the Commissioner is authorized to publish such proceedings for distribution. 1960-61 Op. Att'y Gen. p. 1.

Section defines subject matter included in publication. — The subject matter which may be included in a publication is defined in this section. 1945-47 Op. Att'y Gen. p. 18.

RESEARCH REFERENCES

Am. Jur. 2d. — 3 Am. Jur. 2d, Agriculture, §§ 20 et seq., 35 et seq. 52 Am. Jur. 2d, Markets and Marketing, § 33 et seq.

C.J.S. — 3 C.J.S., Agriculture, §§ 7 et seq., 20 et seq., 27 et seq., 165.

ALR. — Power, under statute for stabi-

lization of market for agricultural crops, in respect of crop loans by public agency and the security therefor, 157 A.L.R. 338.

Retroactive effect of zoning regulation, in absence of saving clause, on pending application for building permit, 50 A.L.R.3d 596.

Applicability of zoning regulations to governmental projects or activities, 53 A.L.R.5th 1.

2-10-54. Employees prohibited from engaging in business as dealer in agricultural products.

All full-time employees of the department whose regular work duties involve the operation of any farmers' market are prohibited from engaging in business as a "dealer in agricultural products," as that term is defined in Code Section 2-9-1, during their term of employment.

History. — Ga. L. 1917, p. 77, § 8; Code 1933, § 5-207; Ga. L. 1981, p. 1354, § 6.

RESEARCH REFERENCES

Am. Jur. 2d. — 3 Am. Jur. 2d, Agriculture, § 39 et seq.

C.J.S. — 3 C.J.S., Agriculture, § 10 et seq.

2-10-55. Authority of Commissioner to make inspections, prescribe and collect fees and charges, and assign space on farmers' markets.

(a) In addition to any powers heretofore granted, the Commissioner shall have the authority to:

(1) Inspect all agricultural products coming into Georgia markets or offered for sale within the state;

(2) Prescribe and collect reasonable fees and charges to pay the necessary costs of operating and maintaining farmers' markets; and

(3) Assign space on farmers' markets and make changes in such assignments as circumstances may require.

(b) Nothing contained in this article shall be construed to limit any power or duty conferred upon the Commissioner by existing law.

History. — Ga. L. 1935, p. 369, §§ 5, 7, 8; Ga. L. 1959, p. 242, § 4; Ga. L. 1981, p. 1354, § 7.

Cross references. — Exemption from municipal property taxes and license fees for sale or introduction into municipality of agricultural products raised in state, § 48-5-356.

OPINIONS OF THE ATTORNEY GENERAL

Municipal regulation. — Business operated upon property of state farmers' market is exempted from municipal taxation and regulations of any kind except certain regulations as to police, fire, and health. 1954 Op. Att'y Gen. p. 494.

Those businesses or vendors operating strictly within the state farmer's market

are not subject to any business license fee by the City of Forest Park. 1987 Op. Att'y Gen. No. 87-36.

Those vendors or businesses operating out of the state farmers' market in Forest Park who solicit orders and make deliveries within the City of Forest Park could conceivably be required to obtain a business license from the City of Forest Park. 1987 Op. Att'y Gen. No. 87-36.

Those businesses or vendors operating out of the state farmers' market in Forest Park who solicit orders and subsequently make deliveries in municipalities other than the City of Forest Park would be exempt from any municipal license fee provided that the county in which the municipality is located does not have a population greater than 500,000. 1987 Op. Att'y Gen. No. 87-36.

RESEARCH REFERENCES

Am. Jur. 2d. — 3 Am. Jur. 2d, Agriculture, § 39 et seq.

C.J.S. — 3 C.J.S., Agriculture, § 27 et seq.

2-10-56. Promulgation of rules and regulations by Commissioner.

The Commissioner is authorized to promulgate such rules and regulations as in his judgment may be necessary to conduct and operate farmers' markets properly and to implement this article. Such rules and regulations may include, but are not limited to, rules and regulations to:

(1) Establish procedures for the operation of farmers' markets;

(2) Provide for the maintenance of safety and order;

(3) Provide for health and sanitation;

(4) Establish grades and classes of agricultural products;

(5) Designate places on any market where agricultural products may be sold;

(6) Regulate or prohibit the sale of produce which is below specified grades or produce unfit for human consumption; and

(7) Regulate or prohibit the sale of any agricultural product which is below specified grades or unfit for human consumption.

History. — Ga. L. 1917, p. 77, § 4; Code 1933, § 5-205; Ga. L. 1935, p. 369, § 6; Ga. L. 1959, p. 242, § 3; Ga. L. 1976, p. 678, § 3; Ga. L. 1981, p. 1354, § 8.

Cross references. — Procedures for adoption of rules and regulations, T. 50, C. 13.

JUDICIAL DECISIONS

Cited in Wilder v. Irvin, 423 F. Supp. 639 (N.D. Ga. 1976).

OPINIONS OF THE ATTORNEY GENERAL

Municipal regulation. — Business operated upon property of state farmers' market is exempted from municipal taxation and regulations of any kind except certain regulations as to police, fire, and health. 1954-56 Op. Att'y Gen. p. 494.

Commissioner not obliged to provide formal means of administrative appeal. — The Commissioner has neither a statutory nor a constitutional obligation to provide a formal means of administratively appealing a decision to bar a party from a state-owned and regulated farmers' market. 1965-66 Op. Att'y Gen. No. 66-217.

RESEARCH REFERENCES

Am. Jur. 2d. — 3 Am. Jur. 2d, Agriculture, § 35 et seq.

C.J.S. — 3 C.J.S., Agriculture, §§ 2 et seq., 165.

2-10-57. Authority of Commissioner to provide for safety and security at farmers' markets; police powers.

(a) The Commissioner is authorized to provide for safety and security at the farmers' markets and to make such rules and regulations as are necessary for this purpose. The Commissioner is vested with police powers to enforce this article, rules and regulations promulgated pursuant to this article, and all state laws that govern and control farmers' markets.

(b)(1) The Commissioner is authorized to employ, designate, deputize, and delegate to employees of the department the authority to exercise the police powers provided under subsection (a) of this Code section at the Atlanta State Farmers' Market in Forest Park. Employees who have been so designated by the Commissioner and who have been certified by the Georgia Peace Officer Standards and Training Council as having successfully completed the course of training required by Chapter 8 of Title 35, the "Georgia Peace Officer Standards and Training Act," are authorized to:

(A) Carry firearms authorized or issued by the Commissioner while in the performance of their duties;

(B) Exercise arrest powers;

(C) Enforce the law and order at the farmers' market;

(D) Order and escort off of the farmers' market those persons who are in trespass and remain in trespass by selling produce or other products without a current license or who are otherwise in violation of this article or rules and regulations promulgated pursuant to this article;

(E) Serve and execute warrants;

(F) Authorize to be towed vehicles that;

(i) Park in designated fire lanes; or

(ii) Are not properly licensed under state law or the law of the state of registration and remain parked on the farmers' market without authorization; and

(G) Enter upon and inspect all property owned, leased, rented, controlled, or used at the farmers' market by persons who hold or have applied for licenses under this article for the purpose of determining compliance with the provisions of this article and other laws the administration or enforcement of which is the responsibility of the Commissioner.

(2) From funds appropriated or available to the department, the Commissioner is authorized to provide motor vehicles, uniforms, firearms, and any other equipment and supplies needed by employees of the department to carry out this subsection.

(c) This Code section shall not repeal, supersede, alter, or affect the power of any other law enforcement officer of this state or of any county, municipality, or other political subdivision of this state to enforce the laws of this state on the premises of farmers' markets. At the request of the Commissioner, it shall be the duty of all state, county, municipal, and other law enforcement officers in this state to enforce and to assist the Commissioner and the employees and agents of the department in the enforcement of this article.

History. — Ga. L. 1976, p. 678, § 3; Ga. L. 1981, p. 1354, § 9; Ga. L. 2006, p. 899, § 1/HB 1404.

RESEARCH REFERENCES

Am. Jur. 2d. — 3 Am. Jur. 2d, Agriculture, § 35 et seq.

C.J.S. — 3 C.J.S., Agriculture, §§ 25 et seq., 165.

2-10-58. Acquisition and rental of real property; format of lease execution; closing of farmers' markets.

(a) The Commissioner, acting for and on behalf of the department and in the name of the state, is authorized to:

(1) Acquire, with the approval of the State Properties Commission, real property for the expansion, development, operation, and maintenance thereon of farmers' markets; and

(2) Rent as landlord or lease as lessor without public advertising or competitive bid real property under the custody of or under rental to the department and utilized as a farmers' market for a term (period of time) commencing on the date of the instrument and not exceeding 20 years and for such use and rental and on such other terms and

conditions and to such persons or other entities as he believes, following his negotiation and investigation thereof, to be in the best interests of his office, the department, and the state. The power and authority to rent and lease shall include the power and authority to sublet and sublease.

(b) When the Commissioner acts pursuant to paragraph (1) of subsection (a) of this Code section, the title to the acquired real property shall be in the name of the State of Georgia and the custody of the real property shall be in the department.

(c) When the Commissioner acts pursuant to and under the power and authority to lease set forth in paragraph (2) of subsection (a) of this Code section, the format of the instrument execution shall be as follows:

STATE OF GEORGIA,

Acting by and through its
Department of Agriculture,
a department within the
executive branch of the
state government
of Georgia.

By: (signature line) (SEAL)

Name: (name of
Commissioner
of Agriculture)
Title: Commissioner
of Agriculture

Attest: (signature line) (SEAL)

Name: (name of Secretary
of State)
Title: Secretary of
State of
the State
of Georgia
(Department of Agriculture
seal affixed here)

(Great Seal of the State
of Georgia affixed
to this instrument)

Signed, sealed, and delivered,
(as to [names of Commissioner
of Agriculture and Secretary
of State]) in the presence of:

Unofficial witness

Notary public, official witness

My commission expires

(Notary public seal affixed here)

(d) The Commissioner is further authorized to close a farmers' market. In making the determination of whether a market should be closed, the Commissioner shall consider the need for the particular market from the standpoint of the marketing of agricultural products, the convenience of farmers and consumers, the cost of operating and maintaining the market, and other relevant factors. When a farmers' market is closed by the Commissioner, custody of the real property encompassing the farmers' market may be transferred, with the approval of the Governor, from the department to the State Properties Commission by an executive order of the Governor.

History. — Ga. L. 1935, p. 369, § 1; Ga. L. 1956, p. 45, § 1; Ga. L. 1965, p. 661, § 1; Ga. L. 1981, p. 1354, § 10; Ga. L. 1990, p. 320, § 2.

JUDICIAL DECISIONS

Creating or operating farmers' market deemed governmental functions. — The activities of the Commissioner in creating or operating a state farmers' market are governmental functions. Barwick v. Roberts, 192 Ga. 783, 16 S.E.2d 867 (1941), cert. denied, 315 U.S. 796, 62 S. Ct. 489, 86 L. Ed. 1197 (1942).

OPINIONS OF THE ATTORNEY GENERAL

Establishment of branch markets authorized. — The General Assembly has invested the Commissioner with the authority to establish and operate branch farmers' markets as an auxiliary or adjunct to main farmers' markets if the Commissioner, in the exercise of a sound discretion, should determine that such a branch market is in the best interest of the state. 1945-47 Op. Att'y Gen. p. 9.

Commissioner may not lease right-of-way through farmers' market to railroad, absent legislative authority. 1945-47 Op. Att'y Gen. p. 11.

Commissioner has broad discretion in taking necessary steps to prevent waste or depreciation in value for lack of a ready market. 1948-49 Op. Att'y Gen. p. 427.

The Commissioner is authorized to exercise the Commissioner's discretion in determining whether or not a cold storage plant is essential in order to prevent the waste or spoilage of farm products. 1948-49 Op. Att'y Gen. p. 427.

No provision for lease with option to buy. — Although this section relates to the leasing and other dispositions of state farmers' markets, no provision seems to be made to lease with an option to buy. 1957 Op. Att'y Gen. p. 2.

Municipal regulation. — Business operated upon property of state farmers' market is exempted from municipal taxation and regulations of any kind except certain regulations as to police, fire, and health. 1954-56 Op. Att'y Gen. p. 494.

Transfer of closed market. — Section does not authorize transfer of closed market to party other than the State Proper-

ties Commission. 1965-66 Op. Att'y Gen. No. 65-76.

RESEARCH REFERENCES

Am. Jur. 2d. — 3 Am. Jur. 2d, Agriculture, §§ 20 et seq., 35 et seq. 52 Am. Jur. 2d, Markets and Marketing, § 33 et seq.

C.J.S. — 3 C.J.S., Agriculture, §§ 158 et seq., 161 et seq.

2-10-59. License required to sell in farmers' markets; consent to inspection of property; removal from premises.

(a) In order that the department may better manage the farmers' markets authorized by this article and to thereby facilitate the use of such farmers' markets by the citizens of this state, all persons and their employees, agents, and designees desiring to sell or to offer for sale any items at any farmers' market which charges a gate fee must first obtain a license for this purpose from the Commissioner. A license may be refused, suspended, or revoked in accordance with Code Section 2-10-60.

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

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

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

History. — Ga. L. 1976, p. 678, § 1; Ga. L. 1981, p. 1354, § 11; Ga. L. 2004, p. 1066, § 2.

RESEARCH REFERENCES

Am. Jur. 2d. — 3 Am. Jur. 2d, Agriculture, § 35 et seq.

C.J.S. — 3 C.J.S., Agriculture, § 156 et seq.

ALR. — Validity of discrimination in license statute or ordinance in favor of farmers selling their own products and against other persons dealing in farm products, 123 A.L.R. 1051.

2-10-60. Suspension or revocation of registration, license, or permit; procedure; enforcement of laws, regulations, or orders.

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

(2) If the Commissioner has reasonable cause to believe that an act, practice, or transaction is occurring or is about to occur, and that such act, practice, or transaction would constitute an imminent peril to the public safety or welfare requiring emergency action, the Commissioner may issue an emergency order to be effective immediately. The emergency order shall contain findings to such effect and reasons for the determination, along with notice of right to a hearing. The person or persons to whom the emergency order is issued may within five days of issuance petition the department for a hearing on the administrative order. If such person timely petitions the depart-

ment for a hearing, the administrative order shall be stayed pending any administrative hearing until a final decision is rendered by the Commissioner;

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

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

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

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

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

History. — Ga. L. 1959, p. 242, § 7; Ga. L. 1976, p. 678, § 2; Ga. L. 1980, p. 572, §§ 1, 2; Ga. L. 1981, p. 1354, § 12; Ga. L. 2000, p. 1589, § 3; Ga. L. 2004, p. 1066, § 3.

Editor's notes. — Ga. L. 2000, p. 1589, § 16, not codified by the General Assembly, provides that the amendment to this Code section is applicable with respect to notices delivered on or after July 1, 2000.

Cross references. — Authority of Commissioner to impose penalty in lieu of other action, § 2-2-10.

Law reviews. — For annual survey of administrative law, see 57 Mercer L. Rev. 1 (2005).

RESEARCH REFERENCES

Am. Jur. 2d. — 3 Am. Jur. 2d, Agriculture, § 37 et seq.

C.J.S. — 3 C.J.S., Agriculture, §§ 156 et seq., 169 et seq.

2-10-61. Rules and regulations to continue in effect.

To the extent consistent with this article, the Georgia Department of Agriculture Rules and Regulations for State Farmers' Markets, Chapters 40-9-1 through 40-9-11 of the Secretary of State's Official Compilation of Rules and Regulations for the State of Georgia, adopted or promulgated by the Commissioner of Agriculture pursuant to an Act approved February 25, 1935 (Ga. L. 1935, p. 369), as amended, shall continue in force and effect as rules and regulations pursuant to this article. This article shall be considered as legal authority for those rules and regulations, and any reference in those rules and regulations shall be interpreted and read as a reference to this article. Those rules and regulations shall not be considered insufficient or defective for reason of reference to or stated reliance upon Ga. L. 1935, p. 369, as amended, instead of this article.

History. — Ga. L. 1981, p. 1354, § 13.

Editor's notes. — Ga. L. 1935, p. 369, as amended, referred to in this Code section, was repealed and replaced by this article.

RESEARCH REFERENCES

Am. Jur. 2d. — 3 Am. Jur. 2d, Agriculture, § 35 et seq.

C.J.S. — 3 C.J.S., Agriculture, § 165.

2-10-62. Prohibited acts; penalty.

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

(1) Engage in deceptive or dishonest trade practices;

(2) Do any act or use any language insulting to another tenant or customer; intimidate a shopper into purchasing his or her products; attempt to fix the price of products of any other farmer, vendor, or merchant; or circulate false reports tending to upset or destroy the operation of the market;

(3) Use any profane, abusive, or discourteous language on the market;

(4) Break, deface, or destroy any part of a building upon the market; interfere with electrical fixtures or wiring; or do any act tending to destroy the physical properties of the market;

(5) Move any cull agricultural products from any farmers' market for any purpose other than use as garbage or livestock feed or for dumping;

(6) Sell, offer, or expose for sale any products not meeting the requirements of the laws of this state relating to weights and measures;

(7) Use any false pack;

(8) Sublet any stall or space without the express written approval of the Commissioner;

(9) Fail or refuse to remove any vehicle or property upon direction of the farmers' market manager;

(10) Erect any facility or structure upon a farmers' market without the express written approval of the Commissioner; or

(11) Sell or offer for sale any items at a farmers' market without the license required by subsection (a) of Code Section 2-10-59, if applicable.

(b) Any person who violates any provision of this Code section shall be guilty of a misdemeanor.

History. — Ga. L. 1981, p. 1354, § 14; Ga. L. 2004, p. 1066, § 4.

RESEARCH REFERENCES

Am. Jur. 2d. — 3 Am. Jur. 2d, Agriculture, § 35 et seq.

C.J.S. — 3 C.J.S., Agriculture, § 161 et seq.

ARTICLE 3

COOPERATIVE MARKETING ASSOCIATIONS

Cross references. — Creation and regulation of tobacco warehousemen's associations, § 10-4-170 et seq.

Law reviews. — For article analyzing the need for reform in taxation of agricultural cooperatives, see 5 Ga. L. Rev. 529 (1971).

JUDICIAL DECISIONS

Cited in In re Chicken Antitrust Litig., 560 F. Supp. 963 (N.D. Ga. 1980).

OPINIONS OF THE ATTORNEY GENERAL

Corporation required to make ad valorem tax returns. — A corporation organized under provisions concerning cooperative marketing associations is legally required to make ad valorem tax returns. 1952-53 Op. Att'y Gen. p. 180.

Association's purchase and sale of beer illegal. — Purchase of beer from wholesalers and the retail selling of it by an association is not legal since there is no authorization for the sale of such beverages. 1971 Op. Att'y Gen. No. U71-68.

RESEARCH REFERENCES

Am. Jur. 2d. — 18 Am. Jur. 2d, Cooperative Associations, § 1 et seq.

C.J.S. — 3 C.J.S., Agriculture, §§ 169 et seq., 185 et seq.

ALR. — Legality of combination among farmers, 11 A.L.R. 1185; 130 A.L.R. 1326.

Cooperative marketing of farm products by producers' associations, 25 A.L.R. 1113; 33 A.L.R. 247; 47 A.L.R. 936; 77 A.L.R. 405; 98 A.L.R. 1406; 12 A.L.R.2d 130.

Board of trade or similar organization as affected with public interest subjecting it to state regulation, 54 A.L.R. 304.

Cooperative associations: rights in equity credits or patronage dividends, 50 A.L.R.3d 435.

2-10-80. Short title.

This article may be cited as the "Cooperative Marketing Act."

History. — Ga. L. 1921, p. 139, § 1; Code 1933, § 65-201.

2-10-81. Definitions.

As used in this article, the term:

(1) "Agricultural products" means:

(A) Any horticultural, viticultural, forestry, dairy, livestock, poultry, bee, and farm products; and

(B) Any marine or aquatic animal species, including, but not limited to, shrimp, crabs, oysters, finfish, and clams.

(2) "Association" means any corporation organized under this article.

(3) "Members" means actual members of associations without capital stock and holders of common stock in associations organized with capital stock.

(4) "Persons" means individuals, firms, partnerships, corporations, and associations.

History. — Ga. L. 1921, p. 139, § 1; Code 1933, § 65-201; Ga. L. 1973, p. 835, § 1.

OPINIONS OF THE ATTORNEY GENERAL

Marine fishery products. — Former Code 1933, §§ 65-201 and 62-202 (see now O.C.G.A. §§ 2-10-81 and 2-10-83) relate to certain agricultural products actually produced on farms, and cannot be extended to cover marine fishery products. 1972 Op. Att'y Gen. No. U72-118.

Hardwood cants and rough green lumber. — Hardwood cants (timber prior to being cut into lumber) and rough green

lumber produced by small to medium-sized hardwood sawmills can be considered agricultural products for purposes of O.C.G.A. Art. 3, Ch. 10, T. 2. 1989 Op. Att'y Gen. No. 89-4.

2-10-82. When associations deemed nonprofit.

Associations organized under this article shall be deemed to be nonprofit since they are not organized to make profits for themselves, as such, or for their members, as such, but only for their members as producers.

History. — Ga. L. 1921, p. 139, § 1; Code 1933, § 65-201.

Cross references. — Nonprofit corporations generally, T. 14, C. 3.

JUDICIAL DECISIONS

Cited in Georgia Milk Producers Confederation v. City of Atlanta, 185 Ga. 192, 194 S.E. 181 (1937); Hall v. Georgia Milk Producers Confederation, 61 Ga. App. 676, 7 S.E.2d 330 (1940); Southeast Shippers Ass'n v. Georgia Pub. Serv. Comm'n, 211 Ga. 550, 87 S.E.2d 75 (1955).

2-10-83. Persons who may form cooperative association.

Five or more persons engaged in the production of agricultural products may form a nonprofit, cooperative association, with or without capital stock, under this article.

History. — Ga. L. 1921, p. 139, § 2; Code 1933, § 65-202.

JUDICIAL DECISIONS

Cited in Hall v. Georgia Milk Producers Confederation, 61 Ga. App. 676, 7 S.E.2d 330 (1940).

OPINIONS OF THE ATTORNEY GENERAL

A group of county fishermen cannot, under the Cooperative Marketing Act, establish a cooperative market for handling marine fishery resources. 1972 Op. Att'y Gen. No. U72-118.

Cooperatives of small to mid-sized hardwood sawmills. — Small to mid-sized hardwood sawmills producing hardwood cants (timber prior to being cut into lumber) and rough green lumber could, as producers of an agricultural product, form a cooperative under the Cooperative Marketing Act, O.C.G.A. § 2-10-80 et seq. 1989 Op. Att'y Gen. No. 89-4.

RESEARCH REFERENCES

Am. Jur. 2d. — 18 Am. Jur. 2d, Cooperative Associations, §§ 1, 15, 20.

C.J.S. — 3 C.J.S., Agriculture, § 169 et seq.

ALR. — Cooperative marketing of farm products by producers' association, 25 A.L.R. 1113; 33 A.L.R. 247; 47 A.L.R. 936; 77 A.L.R. 405; 98 A.L.R. 1406; 12 A.L.R.2d 130.

2-10-84. Filing of articles of incorporation; contents; subscription; verification; further proceedings.

(a) Persons desiring to be incorporated under this article must prepare and file in the office of the Secretary of State articles of incorporation setting forth:

(1) The name of the association;

(2) The purpose for which it is formed;

(3) The place where its principal business will be transacted;

(4) The names and addresses of not less than five persons who are to serve as directors for the first term or until the election of their successors;

(5) If organized without capital stock, whether the property rights and interest of each member shall be equal or unequal; and, if unequal, the articles shall set forth the general rule or rules applicable to all members by which the property rights and interests, respectively, of each member may and shall be determined and fixed; and the association shall have the power to admit new members who shall be entitled to share in the property of the association with the old members, in accordance with such general rule or rules, provided that this provision of the charter shall not be altered, amended, or repealed except by the written consent or the vote of three-fourths of the members;

(6) If organized with capital stock, the amount of such stock, the number of shares into which it is divided, and the par value thereof; the capital stock may be divided into preferred and common stock; and if so divided, the articles of incorporation must contain a statement of the number of shares of stock to which preference is granted, the number of shares of stock to which no preference is granted, and the nature and extent of the preference and privileges granted to each.

(b) In addition to the foregoing, the articles of incorporation may contain any provision consistent with law with respect to management; regulation; government; financing; indebtedness; membership; the establishment of voting districts and the election of delegates for representative purposes; and the issuance, retirement, and transfer of its stock, if formed with capital stock; any provisions relative to the way or manner in which it shall operate with respect to its members, officers, or directors; and any other provisions relating to its affairs, provided

that nothing so set forth shall be construed as limiting any of the rights or powers otherwise given to such associations.

(c) The articles of incorporation must be subscribed by the incorporators and verified by one of them before an officer authorized by the law of this state to attest deeds and conveyances. The petition shall be filed and further proceedings shall be had in accordance with the general corporation laws for the incorporation of private companies by the Secretary of State as set forth in Title 14.

History. — Ga. L. 1921, p. 139, § 6; Ga. L. 1924, p. 83, § 1; Code 1933, § 65-203; Ga. L. 1937, p. 473, § 1; Ga. L. 1943, p. 343, § 1; Ga. L. 1980, p. 635, § 1.

OPINIONS OF THE ATTORNEY GENERAL

Freedom in selecting name. — Language of section clearly indicates complete freedom in selection of words constituting title or name of the proposed marketing association. 1954-56 Op. Att'y Gen. p. 61.

Contents of name. — The Secretary of State may properly certify the name of a corporation to be organized as a cooperative marketing association when such name contains therein the word, "Co-Operative," but does not contain any of the words or abbreviations, "Corporation," "Company," "Incorporated," or "Inc.," or any other word indicating a corporation. 1954-56 Op. Att'y Gen. p. 61.

RESEARCH REFERENCES

Am. Jur. 2d. — 18 Am. Jur. 2d, Cooperative Associations, §§ 16, 17.

C.J.S. — 3 C.J.S., Agriculture, § 172.

2-10-85. Amendment of charter.

Amendments of the charter may be authorized at any regular meeting of the stockholders or members or at any special meeting called for that purpose. An amendment must first be approved by two-thirds of the directors and then adopted by a vote representing a majority of a quorum of the members attending a meeting, for which notice of the proposed amendment shall have been given. Amendments to the charter, when so adopted, shall be applied for and secured in accordance with the provisions of the general corporation laws for the amendment of charters of corporations incorporated by the Secretary of State, as provided in Title 14.

History. — Ga. L. 1921, p. 139, § 7; Code 1933, § 65-204; Ga. L. 1980, p. 635, § 2.

RESEARCH REFERENCES

Am. Jur. 2d. — 18 Am. Jur. 2d, Cooperative Associations, § 16.
C.J.S. — 3 C.J.S., Agriculture, § 172.
ALR. — Cooperative associations: validity and enforceability of bylaw amendment reducing benefits available to members, 61 A.L.R.3d 976.

2-10-86. Adoption of bylaws; authorized provisions.

(a) Each association incorporated under this article, within 30 days after its incorporation, shall adopt for its government and management a code of bylaws not inconsistent with the powers granted by this article. A majority vote of a quorum of the members or stockholders attending a meeting shall be sufficient to adopt or amend the bylaws when notice of the proposed bylaw or bylaws is given prior to the meeting.

(b) Under its bylaws each association may provide for any or all of the following matters:

(1) The time, place, and manner of calling and conducting its meetings;

(2) The number of stockholders or members constituting a quorum;

(3) The right of members or stockholders to vote by proxy, by mail, or by both and the conditions, manner, form, and effects of such votes;

(4) The number of directors constituting a quorum;

(5) The qualifications, compensation, duties, and term of office of directors and officers; the time of their election; and the mode and manner of giving notice thereof;

(6) Penalties for violations of bylaws;

(7) The amount of entrance, organization, and membership fees, if any; the manner and method of collecting the same; and the purposes for which they may be used;

(8) The amount which each member or stockholder shall be required to pay annually or from time to time, if at all, to carry on the business of the association; the charge, if any, to be paid by each member or stockholder for services rendered by the association to him or her and the time of payment and manner of collection thereof; and the marketing contract between the association and its members or stockholders, which every member or stockholder may be required to sign;

(9) The number and qualification of members or stockholders of the association and the conditions precedent to membership or ownership of common stock;

(10) The method, time, and manner of permitting members to withdraw or the holders of common stock to transfer their stock and the manner of assignment and transfer of the interests of members and of the shares of common stock;

(11) The conditions upon which and time when the membership of any member shall cease; the automatic suspension of the rights of a member when he or she ceases to be eligible for membership in the association; and the mode, manner, and effect of the expulsion of a member; and

(12) The manner of determining the value of a member's property interest in the association and provision for its purchase by the association upon the death or withdrawal of a member or stockholder or upon the expulsion of a member or forfeiture of his or her membership, provided that, at the option of the association, such value may be determined by conclusive appraisal by the board of directors.

History. — Ga. L. 1921, p. 139, § 8; Code 1933, § 65-207; Ga. L. 1937, p. 473, § 3; Ga. L. 1995, p. 413, § 1.

JUDICIAL DECISIONS

Redemption of capital interests upon member's death. — O.C.G.A. § 2-10-86 grants to cooperative associations full discretion to adopt bylaws relating to the redemption of capital interests in the event of a member's death, without any limitation on the time this redemption is to occur. Georgia Turkey Farms, Inc. v. Hardigree, 187 Ga. App. 200, 369 S.E.2d 803 (1988).

RESEARCH REFERENCES

Am. Jur. 2d. — 18 Am. Jur. 2d, Cooperative Associations, §§ 2, 15 et seq.
C.J.S. — 3 C.J.S., Agriculture, § 172.
ALR. — Cooperative associations: validity and enforceability of bylaw amendment reducing benefits available to members, 61 A.L.R.3d 976.

2-10-87. Directors to manage association; number; election or appointment; compensation; marketing or purchasing contracts with association; vacancies.

(a) The affairs of the association shall be managed by a board of not less than five directors elected by the members or stockholders from their own number.

(b) The bylaws may provide that the territory in which the association has members shall be divided into districts and that the directors shall be elected according to such districts. In such a case the bylaws shall specify the number of directors to be elected by each district and the manner and method of reapportioning the directors and redistrict-

ing the territory covered by the association. The bylaws may provide that primary elections shall be held in each district to elect the directors apportioned to such districts and whether the results of all such elections shall be final or shall be ratified by the next regular meeting of the association.

(c) The bylaws may provide that one or more directors may be appointed by the Commissioner, the dean of the College of Agricultural and Environmental Sciences of the University of Georgia, or any other public official or commission. The director or directors so appointed need not be members or stockholders of the association but shall have the same powers and rights as other directors.

(d) An association may provide a fair remuneration to its officers and directors for their services to the association.

(e) No director, during the term of his or her office, shall be a party to a marketing or purchasing contract with the association the provisions of which differ in any way from the marketing or purchasing contracts generally accorded regular members or holders of common stock of the association in the same trade area, or to any other kind of contract that affects the amount of the association's patronage distributions to the director the terms of which differ from terms generally current in that district.

(f) When a vacancy on the board of directors occurs other than by expiration of term, the remaining members of the board shall fill the vacancy by a majority vote. If the bylaws provide for an election of directors by district, the person filling the vacancy must live in the district for which the vacancy exists.

History. — Ga. L. 1921, p. 139, § 10; Code 1933, § 65-208; Ga. L. 1995, p. 10, § 2; Ga. L. 1995, p. 413, § 2.

RESEARCH REFERENCES

Am. Jur. 2d. — 18 Am. Jur. 2d, Cooperative Associations, §§ 18, 19.

C.J.S. — 3 C.J.S., Agriculture, § 180 et seq.

2-10-88. Election of officers.

(a) The directors shall elect from their number a president and one or more vice-presidents. They shall also elect a secretary and a treasurer, who need not be directors. They may combine the two latter offices and designate the combined office as secretary-treasurer. The treasurer may be a bank or any depositary and, as such, it shall not be considered as an officer but as a function of the board of directors. In such case the secretary shall perform the usual accounting duties of the treasurer,

provided that funds shall be deposited only as authorized by the board of directors.

(b) The charter of the association may provide for the election of its officers by the members of the association and from persons other than the directors thereof. Any provision of the nature referred to in the preceding sentence contained in the charter of an association or an amendment thereto as of March 30, 1965, is ratified and confirmed as though placed therein subsequent to March 30, 1965.

History. — Ga. L. 1921, p. 139, § 11; Code 1933, § 65-209; Ga. L. 1965, p. 395, §§ 1, 2; Ga. L. 1982, p. 3, § 2.

RESEARCH REFERENCES

Am. Jur. 2d. — 18 Am. Jur. 2d, Cooperative Associations, § 18.
C.J.S. — 3 C.J.S., Agriculture, § 180.
ALR. — Remedies for determining right or title to office in unincorporated private association, 82 A.L.R.2d 1169.

2-10-89. Removal of officers or directors.

(a) Any member may bring charges against an officer or director by filing such charges in writing with the secretary of the association together with a petition signed by 10 percent of the members requesting the removal of the officer or director in question. The removal shall be voted upon at the next regular or special meeting of the association. By a vote of a majority of the members, the association may remove the officer or director and fill the vacancy. Prior to the meeting, the director or officer against whom charges have been brought shall be informed in writing of the charges. He shall have an opportunity at the meeting to be heard in person or by counsel and to present witnesses and the person or persons bringing the charges against him shall have the same opportunity.

(b) When the bylaws provide for election of directors by districts with primary elections in each district, the petition for removal of a director shall be signed by 20 percent of the members residing in the district from which he was elected. The board of directors shall call a special meeting of the members residing in that district to consider the removal of the director. By a vote of the majority of the members of that district, the director in question shall be removed from office.

History. — Ga. L. 1921, p. 139, § 13; Code 1933, § 65-210.

RESEARCH REFERENCES

C.J.S. — 3 C.J.S., Agriculture, § 180.

2-10-90. Eligibility as members or stockholders.

Under the terms and conditions prescribed in its bylaws, an association may admit as members or issue common stock only to persons, associations, or corporations composed solely of persons engaged in the production of the agricultural products to be handled by or through the association, including the lessees and tenants of land used for the production of such products and any lessors and landlords who receive as rent all or part of the crop raised on the leased premises. Any such persons, associations of persons, or corporations may be citizens of or organized under the laws of this state or any other state of the United States. If a member of a nonstock association is other than a natural person, such member may be represented by any individual, associate, officer, or member thereof duly authorized in writing.

History. — Ga. L. 1921, p. 139, § 5; Ga. L. 1925, p. 150, § 1; Ga. L. 1929, p. 222, § 2; Code 1933, § 65-205.

RESEARCH REFERENCES

Am. Jur. 2d. — 18 Am. Jur. 2d, Cooperative Associations, § 20 et seq.

C.J.S. — 3 C.J.S., Agriculture, §§ 174, 175 et seq.

2-10-91. Issuance of stock or certificate; liability of member; maximum amount of stock member may own; voting; preferred stock; transfer of stock; purchase of own stock by association.

(a) When a member of an association established without capital stock has paid his membership fee in full, he shall receive a certificate of membership. No association shall issue stock to a member until it has been fully paid for. Promissory notes of the members may be accepted by the association as full or partial payment. The association shall hold the stock as security for the payment of the note, but such retention as security shall not affect the member's right to vote.

(b) Except for debts lawfully contracted between the member and the association, no member shall be liable for the debts of the association in an amount exceeding the sum remaining unpaid on his membership fee or his subscription to the capital stock, including any unpaid balance or any promissory notes given in payment thereof.

(c) No stockholder of a cooperative association shall own more than 20 percent of the common stock of the association; and an association,

in its bylaws, may limit the amount of common stock which one member may own to any amount less than 20 percent of the common stock.

(d) No member or stockholder shall be entitled to more than one vote; provided, however, that this prohibition shall not apply to associations composed of producers of any forestry product or products.

(e) Any association organized with stock under this article may issue preferred stock with or without the right to vote. Such stock may be redeemable or retirable by the association on such terms and conditions as may be provided for by the articles of incorporation and printed on the face of the certificate.

(f) The association may, at any time, except when its debts exceed 50 percent of its assets, buy in or purchase its common stock at the book value thereof and pay for it in cash within one year thereafter. Book value shall be conclusively determined by the board of directors.

History. — Ga. L. 1921, p. 139, § 12; Code 1933, § 65-206; Ga. L. 1943, p. 343, § 2.

JUDICIAL DECISIONS

Individual liability of members. — Individual liability for debts of a corporation cannot be imposed upon all its members by a bylaw adopted by vote of a majority of the members where no provision for such liability is made by statute or charter. Corporations without capital stock are within this rule. Mitcham v. Citizens Bank, 34 Ga. App. 707, 131 S.E. 181 (1925), aff'd, 163 Ga. 796, 136 S.E. 798 (1927).

RESEARCH REFERENCES

Am. Jur. 2d. — 18 Am. Jur. 2d, Cooperative Associations, §§ 15, 16, 20 et seq.

C.J.S. — 3 C.J.S., Agriculture, §§ 174, 175 et seq.

2-10-92. Regular meetings; special meetings generally; notice.

(a) In its bylaws each association shall provide for one or more regular meetings annually.

(b) The board of directors shall have the right to call a special meeting at any time.

(c) Ten percent of the members or stockholders may file a petition stating the specific business to be brought before the association and demand a special meeting at any time. Such meeting shall thereupon be called by the directors.

(d) Notice of all meetings, together with a statement of the purpose thereof, shall be mailed to each member at least ten days prior to the meeting, provided that the bylaws may require instead that such notice

shall be given by publication in a newspaper of general circulation published at the principal place of business of the association.

History. — Ga. L. 1921, p. 139, § 9; Code 1933, § 65-211.

RESEARCH REFERENCES

C.J.S. — 3 C.J.S., Agriculture, § 175 et seq.

ALR. — Notice of meeting of voluntary association, 167 A.L.R. 1233.

2-10-93. Referral of matters to entire membership; special meetings.

Upon demand of one-third of the entire board of directors, any matter that has been approved or passed by the board shall be referred to the entire membership or the stockholders for decision at the next special or regular meeting, provided that a special meeting may be called for the purpose.

History. — Ga. L. 1921, p. 139, § 14; Code 1933, § 65-212.

RESEARCH REFERENCES

C.J.S. — 3 C.J.S., Agriculture, § 175 et seq.

2-10-94. Powers of associations generally.

Each association incorporated under this article shall have the following powers:

(1) To engage in any activity in connection with:

(A) The marketing, selling, harvesting, preserving, drying, processing, canning, packing, storing, handling, shipping, ginning, or utilizing of any agricultural products produced or delivered to it by its members or the manufacturing or marketing of the by-products thereof;

(B) The manufacturing, selling, and supplying to and the purchasing, hiring, or using by its members of supplies, machinery, or equipment;

(C) The terracing of lands or the prevention of soil erosion; and

(D) The financing of any of the activities enumerated in subparagraphs (A) through (C) of this paragraph;

(2) To handle and deal in the agricultural products of nonmembers in an amount equal in value to, but not greater in value than, that handled by it for members;

(3) To borrow money and to make advances to members;

(4) To act as the agent or representative of any member or nonmembers in any of the activities mentioned in paragraphs (1) through (3) of this Code section;

(5) To purchase or otherwise acquire, to hold, own, and exercise all rights of ownership in, and to sell, transfer, or pledge shares of the capital stock or bonds of any corporation or association engaged in any related activity, in the handling or marketing of any of the products handled by the association or in the financing of the association;

(6) To establish reserves and to invest the funds thereof in bonds or such other property as may be provided in the bylaws;

(7) To buy, hold, and exercise all privileges of ownership over such real or personal property as may be necessary or convenient for the conduct and operation of any of the business of the association or as may be incidental thereto;

(8) To apply for, establish, register, secure, own, and develop patents, trademarks, and copyrights;

(9) To do everything necessary, suitable, or proper for the accomplishment of any of the purposes or the attainment of any of the objects enumerated in this Code section or conducive to or expedient for the interest or benefit of the association and to contract accordingly; and

(10) To exercise and possess all powers, rights, and privileges necessary or incidental to the purposes for which the association is organized or to the activities in which it is engaged, along with any other rights, powers, and privileges granted by the laws of this state to ordinary corporations, except such as are inconsistent with express provisions of this article.

History. — Ga. L. 1921, p. 139, §§ 3, 4; Ga. L. 1929, p. 222, § 1; Code 1933, §§ 65-213, 65-214; Ga. L. 1937, p. 473, §§ 4, 5.

JUDICIAL DECISIONS

Manufacture of ice cream from milk supplied by members authorized. — The manufacture of ice cream from milk supplied by its members is one of the authorized powers of a cooperative marketing association organized under the Georgia Cooperative Marketing Act. Forrester v. Georgia Milk Producers Confederation, 66 Ga. App. 696, 19 S.E.2d 183 (1942).

Cited in Hall v. Georgia Milk Producers Confederation, 61 Ga. App. 676, 7 S.E.2d 330 (1940).

OPINIONS OF THE ATTORNEY GENERAL

Hardwood sawmillers who join a cooperative association for the purpose of marketing their products would not have to raise or grow the timber used in the production of their agricultural products, namely, hardwood cants and rough green lumber. 1989 Op. Att'y Gen. No. 89-18.

Association's purchase and sale of beer illegal. — Purchase of beer from wholesalers and the retail selling of it by an association is not legal since there is no authorization for the sale of such beverages. 1971 Op. Att'y Gen. No. U71-68.

RESEARCH REFERENCES

Am. Jur. 2d. — 18 Am. Jur. 2d, Cooperative Associations, §§ 1, 2, 4, 30 et seq.
C.J.S. — 3 C.J.S., Agriculture, §§ 138, 141 et seq., 151, 153. 19 C.J.S., Corporations, §§ 156 et seq., 169 et seq.

ALR. — Cooperative marketing of farm products by producers' association, 25 A.L.R. 1113; 33 A.L.R. 247; 47 A.L.R. 936; 77 A.L.R. 405; 98 A.L.R. 1406; 12 A.L.R.2d 130.

2-10-95. Duration of associations.

Each association incorporated and organized after April 3, 1978, pursuant to this article shall have perpetual duration unless a limited period of duration is provided for and stated in its charter or articles of incorporation or in an amendment thereto. Each association incorporated and organized pursuant to this article which is in existence on April 3, 1978, shall have perpetual duration unless a limited period of duration is thereafter provided for and stated in an amendment to its charter or articles of incorporation.

History. — Code 1933, § 65-213.1, enacted by Ga. L. 1978, p. 1422, § 1.

2-10-96. Use of preferred stock to purchase property interest.

Whenever an association organized under this article with preferred capital stock desires to purchase the stock of any person, firm, corporation, or association or any property or property interest thereof, it may make the purchase, in whole or in part, by exchanging for the acquired interest shares of its preferred capital stock, in an amount which at par value would equal the fair market value of the stock or interest so purchased, as determined by the board of directors. The transfer to the association of the stock or interest so purchased shall be equivalent to payment in cash for the shares of stock issued.

History. — Ga. L. 1921, p. 139, § 16; Code 1933, § 65-216.

2-10-97. Transfer of common stock.

Common stock of cooperative associations organized under this article may only be transferred to other such associations and to individuals, firms, partnerships, and other associations and corporations engaged in the production of agricultural products. Such restrictions must be printed upon every certificate of common stock.

History. — Ga. L. 1939, p. 350, § 2; Code 1933, § 65-228, enacted by Ga. L. 1973, p. 835, § 2.

RESEARCH REFERENCES

Am. Jur. 2d. — 18 Am. Jur. 2d, Cooperative Associations, § 23.
C.J.S. — 3 C.J.S., Agriculture, § 174.

2-10-98. Joining with other nonprofit cooperative associations.

A cooperative association organized under this article may join with other such associations or with individuals, firms, partnerships, or other associations or corporations engaged in the production of agricultural products to form a nonprofit cooperative association, with or without capital stock, under this article and may organize, form, operate, own, control, have an interest in, own stock of, or be a member of any association, with or without capital stock, or any other corporation engaged in any activity authorized by this article.

History. — Ga. L. 1939, p. 350, § 1; Code 1933, § 65-227, enacted by Ga. L. 1973, p. 835, § 2.

RESEARCH REFERENCES

Am. Jur. 2d. — 18 Am. Jur. 2d, Cooperative Associations, §§ 30 et seq.
C.J.S. — 3 C.J.S., Agriculture, § 185 et seq.

2-10-99. Ownership in, control of, or membership in other corporations; warehouse receipts.

An association may organize, form, operate, own, control, have an interest in, own stock of, or be a member of any other corporation or corporations, with or without capital stock, which are engaged in preserving, drying, processing, canning, packing, storing, handling, shipping, ginning, utilizing, manufacturing, marketing, or selling the agricultural products or by-products handled by the association. If such corporations are warehousing corporations, they may issue legal warehouse receipts to the association or to any other person. Such legal

warehouse receipts shall be considered to be adequate collateral to the extent of the current value of the commodity represented thereby. If such warehouse is licensed or licensed and bonded under the laws of this state or the United States, its warehouse receipts shall not be challenged or discriminated against because of ownership or control, whether complete or partial, by the association.

History. — Ga. L. 1921, p. 139, § 20; Code 1933, § 65-217.

RESEARCH REFERENCES

Am. Jur. 2d. — 18 Am. Jur. 2d, Cooperative Associations, § 30 et seq.

C.J.S. — 3 C.J.S., Agriculture, § 182 et seq.

2-10-100. Contracts and agreements between associations.

(a) Upon resolution adopted by its board of directors, any association may enter into all necessary and proper contracts and agreements and may make all necessary and proper stipulations, agreements, contracts, and arrangements with any other cooperative corporation, association, or associations formed in this or in any other state for the cooperative and more economical carrying on of its business or any part or parts thereof.

(b) Any two or more associations may by agreement unite in employing and using or may separately employ and use the same methods, means, and agencies for carrying on and conducting their respective businesses.

History. — Ga. L. 1921, p. 139, § 21; Code 1933, § 65-218.

RESEARCH REFERENCES

C.J.S. — 3 C.J.S., Agriculture, § 182 et seq.

2-10-101. Marketing contracts authorized; provisions; liquidated damages; injunctions and restraining orders; specific performance.

(a) The association and its members may make and execute marketing contracts requiring the members to sell, for any period of time not over ten years, all or any specified part of their agricultural products or specified commodities exclusively to or through the association or any facilities to be created by the association. The contract may provide that the association may sell or resell the products of its members, with or without taking title thereto, and may pay over to its members the resale

price, after deducting all necessary selling, overhead, and other costs and expenses, including (1) dividends on preferred stock and reserves for retiring the stock, if any; (2) other proper reserves; (3) dividends not exceeding 8 percent per annum upon common stock; and (4) other items deemed proper.

(b) The bylaws and the marketing contract may fix, as liquidated damages, specified sums to be paid by the member or stockholder to the association upon the breach by him of any provision of the marketing contract regarding the sale, delivery, or withholding of products and may provide that the member will pay all costs, premiums on bonds, expenses, and fees in case any action is brought upon the contract by the association. Any such provisions shall be valid and enforceable in the courts of this state.

(c) In the event of any breach or threatened breach of a marketing contract by a member, the association shall be entitled to an injunction to prevent the further breach of the contract and to a decree providing for the specific performance thereof. Pending the adjudication of such an action, upon the filing of a verified petition showing the breach or threatened breach and of a sufficient bond, the association shall be entitled to a temporary restraining order and preliminary injunction against the member.

History. — Ga. L. 1921, p. 139, § 15; Code 1933, § 65-215; Ga. L. 1980, p. 924, § 1.

JUDICIAL DECISIONS

Where an action is against corporation and all its members, the petition should be dismissed on the ground of misjoinder of parties. Mitcham v. Citizens Bank, 34 Ga. App. 707, 131 S.E. 181 (1925), aff'd, 163 Ga. 796, 136 S.E. 798 (1927).

Attorney's fees. — Ga. L. 1921, p. 139, § 15, properly construed, authorizes parties contracting in pursuance of the statute to stipulate for the payment of attorney's fees by the member to the association, in the circumstances therein stated. No prior notice of intended suit is requisite to a recovery of such fees in an action for breach of the contract. Former Civil Code 1910, § 4252 (see now O.C.G.A. § 13-1-11) was not applicable. Brown v. Georgia Cotton Growers Coop. Ass'n, 164 Ga. 712, 139 S.E. 417 (1927).

RESEARCH REFERENCES

Am. Jur. 2d. — 18 Am. Jur. 2d, Cooperative Associations, § 30 et seq.

C.J.S. — 3 C.J.S., Agriculture, § 185 et seq.

ALR. — Cooperative marketing of farm products by producers' associations, 25 A.L.R. 1113; 33 A.L.R. 247; 47 A.L.R. 936; 77 A.L.R. 405; 98 A.L.R. 1406; 12 A.L.R.2d 130.

Construction and effect of cooperative farm or dairy products agreement with respect to association's charges and de-

ductions for gathering, grading, processing, shipping, and marketing the products, 90 A.L.R.2d 1142.

Cooperative associations: validity and enforceability of bylaw amendment reducing benefits available to members, 61 A.L.R.3d 976.

Liability of member or former member of marketing or purchasing cooperative for its debts or losses, 96 A.L.R.3d 1243.

2-10-102. Activities in connection with agricultural products and furnishing farm business services generally.

A cooperative association organized under this article may engage in activities in connection with the production of agricultural products and in furnishing farm business services to its members.

History. — Ga. L. 1939, p. 350, § 3; Code 1933, § 65-229, enacted by Ga. L. 1973, p. 835, § 2.

RESEARCH REFERENCES

Am. Jur. 2d. — 18 Am. Jur. 2d, Cooperative Associations, § 30 et seq.

C.J.S. — 3 C.J.S., Agriculture, § 182 et seq.

ALR. — Cooperative marketing of farm products by producers' associations, 25 A.L.R. 1113; 33 A.L.R. 247; 47 A.L.R. 936; 77 A.L.R. 405; 98 A.L.R. 1406; 12 A.L.R.2d 130.

2-10-103. Engaging in business for nonmembers.

During any fiscal year, a cooperative association organized under this article may handle agricultural products of and engage in other business for nonmembers in value equal to but not greater than that for members.

History. — Ga. L. 1939, p. 350, § 4; Code 1933, § 65-230, enacted by Ga. L. 1973, p. 835, § 2.

RESEARCH REFERENCES

Am. Jur. 2d. — 18 Am. Jur. 2d, Cooperative Associations, §§ 30 et seq.

2-10-103.1. Power to acquire debt or equity of, create or own, and control and manage business entities.

A cooperative association organized under this article shall have the powers from time to time (1) to acquire part or all of the debt or equity or both of any corporations, partnerships, or other legal entities engaged in any agricultural or other businesses, (2) to join with others to create or to own all or part of any such entities, and (3) to control and manage such entities. The business of any such entities shall not be

considered to be the business of the cooperative association for purposes of Code Section 2-10-94, Code Section 2-10-103, or any other Code section of this article.

History. — Code 1981, § 2-10-103.1, enacted by Ga. L. 1995, p. 413, § 3.

2-10-104. Annual reports.

Each association formed under this article shall prepare an annual report, on forms furnished by the Secretary of State, indicating the name of the association, its principal place of business, and a general statement of its business operations during the fiscal year. If the association is a stock association, the report shall show the amount of capital stock paid up and the number of stockholders. If the association is a nonstock association, the report shall show the number of members and the amount of membership fees received. The report shall also show the total expenses of operation, the amount of indebtedness or liability, and the balance sheets of the association.

History. — Ga. L. 1921, p. 139, § 17; Code 1933, § 65-221.

2-10-105. License fee; tax exemption.

Each association organized under this article shall pay an annual license fee of $10.00 but shall be exempt from all franchise or license taxes.

History. — Ga. L. 1921, p. 139, § 26; Code 1933, § 65-225.

JUDICIAL DECISIONS

"Franchise" construed. — The General Assembly used the word "franchise" in a loose and general sense as being synonymous with "license." Forrester v. Georgia Milk Producers Confederation, 66 Ga. App. 696, 19 S.E.2d 183 (1942).

Cited in Gold Kist, Inc. v. Jones, 231 Ga. 881, 204 S.E.2d 584 (1974).

RESEARCH REFERENCES

C.J.S. — 3 C.J.S., Agriculture, § 169 et seq.

ALR. — Cooperative corporations or associations formed by producers of agricultural products as within provisions of taxing statutes regarding agricultural products or producers, 100 A.L.R. 439.

Construction and effect of cooperative farm or dairy products agreement with respect to association's charges and deductions for gathering, grading, processing, shipping, and marketing the products, 90 A.L.R.2d 1142.

2-10-106. Distribution of excess income, reserves, or surpluses.

Net income of a cooperative association organized under this article, in excess of additions to reserves, surpluses, and other authorized deductions, may be distributed to members and to nonmember patrons on the basis of patronage. Any distribution of reserves or surpluses at any time shall be made to members at the time distribution is ordered and to other persons entitled thereto on the basis of patronage.

History. — Ga. L. 1939, p. 350, § 5; Code 1933, § 65-231, enacted by Ga. L. 1973, p. 835, § 2.

RESEARCH REFERENCES

Am. Jur. 2d. — 18 Am. Jur. 2d, Cooperative Associations, § 21.

C.J.S. — 3 C.J.S., Agriculture, § 175 et seq.

ALR. — Construction and effect of cooperative farm or dairy products agreement with respect to association's charges and deductions for gathering, grading, processing, shipping, and marketing the products, 90 A.L.R.2d 1142.

2-10-107. Associations not deemed monopolistic or in restraint of trade.

No association organized under this article shall be deemed to be a combination in restraint of trade, an illegal monopoly, or an attempt to lessen competition or fix prices arbitrarily; nor shall the marketing contracts or agreements between the association and its members or any agreement authorized in this article be considered illegal or in restraint of trade.

History. — Ga. L. 1921, p. 139, § 23; Code 1933, § 65-220.

RESEARCH REFERENCES

Am. Jur. 2d. — 18 Am. Jur. 2d, Cooperative Associations, §§ 1 et seq., 6 et seq. 54 Am. Jur. 2d, Monopolies, Restraints of Trade, and Unfair Trade Practices, § 229 et seq.

C.J.S. — 3 C.J.S., Agriculture, § 169 et seq. 58 C.J.S., Monopolies, § 167 et seq.

ALR. — Cooperative marketing of farm products by producers' associations, 25 A.L.R. 1113; 33 A.L.R. 247; 47 A.L.R. 936; 77 A.L.R. 405; 98 A.L.R. 1406; 12 A.L.R.2d 130.

Legality of combination among farmers, 130 A.L.R. 1326.

Who are entitled to benefit of statutes giving right to combine, 166 A.L.R. 161.

2-10-108. Applicability of nonprofit corporation laws.

The general corporation laws of this state applicable to nonprofit corporations, as amended from time to time, and all powers and rights thereunder shall apply to the associations organized under this article,

except where such laws are in conflict or inconsistent with the express provisions of this article.

History. — Ga. L. 1921, p. 139, § 25; Code 1933, § 65-222; Ga. L. 1995, p. 413, § 4.

Cross references. — Nonprofit corporations generally, T. 14, C. 3.

RESEARCH REFERENCES

Am. Jur. 2d. — 18 Am. Jur. 2d, Cooperative Associations, §§ 12, 13, 14.

C.J.S. — 3 C.J.S., Agriculture, § 182 et seq.

2-10-109. Applicability of other laws.

No provisions of law which are in conflict with this article shall be construed as applying to the associations provided for in this article.

History. — Ga. L. 1921, p. 139, § 18; Code 1933, § 65-223.

RESEARCH REFERENCES

Am. Jur. 2d. — 18 Am. Jur. 2d, Cooperative Associations, §§ 12, 13, 14.

2-10-110. Procedure by which other corporations and associations may come under article.

Any corporation or association organized under any statute of this or any other state, by majority vote of its stockholders or members, may be brought under this article by limiting its membership to the classes mentioned in this article, by adopting the other restrictions provided in this article, and by filing articles of incorporation with the Secretary of State, if it has not done so already, and otherwise complying with the general corporation laws for the incorporation of private companies as set forth in Title 14. Such corporations shall be entitled to all the privileges and immunities and shall be subject to all the restrictions contained in this article.

History. — Ga. L. 1921, p. 139, § 22; Ga. L. 1925, p. 150, § 2; Code 1933, § 65-219.

RESEARCH REFERENCES

Am. Jur. 2d. — 18 Am. Jur. 2d, Cooperative Associations, §§ 1 et seq., 12, 13, 14, 20 et seq.

2-10-111. Use of word "cooperative" in business name.

No person, firm, corporation, or association organized or doing business in this state as a cooperative association to market agricultural products shall be entitled to use the word "cooperative" as part of its corporate or other business name or title unless it has complied with this article or Ga. L. 1920, p. 125, Sections 1 through 13.

History. — Ga. L. 1921, p. 139, § 19; Code 1933, § 65-224.

Editor's notes. — Ga. L. 1920, p. 125, §§ 1-13, referred to in this Code section, was codified at Code 1933, Ch. 1, T. 65, but was repealed by Ga. L. 1952, p. 157, § 1. Ga. L. 1952, p. 157, § 2, provided that cooperative corporations formed under the 1920 Act should continue to be governed thereby until or unless they are reincorporated but that the charters of such corporations should not be renewed.

RESEARCH REFERENCES

Am. Jur. 2d. — 18 Am. Jur. 2d, Cooperative Associations, § 1 et seq.

C.J.S. — 3 C.J.S., Agriculture, § 169 et seq.

ARTICLE 4

ROADSIDE MARKETS INCENTIVE PROGRAM

2-10-130 through 2-10-140.

Repealed by Ga. L. 2013, p. 670, § 1/SB 87, effective July 1, 2013.

Editor's notes. — This article was based on Ga. L. 1967, p. 476, § 1-11.

CHAPTER 11

SEEDS AND PLANTS

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2-11-73. Filing complaint; fee; procedure.
2-11-74. Membership of Seed Arbitration Council; terms; chairperson and secretary; sessions; expenses.
2-11-75. Hearings and investigations.
2-11-76. Findings and recommendations.
2-11-77. Rules and regulations.

Cross references. — Preservation of forest resources and other plant life generally, T. 12, C. 6.

ARTICLE 1

GENERAL PROVISIONS

Administrative rules and regulations. — Seed Division, Official Compilation of the Rules and Regulations of the State of Georgia, Rules of Georgia Department of Agriculture, Chapter 40-12.

RESEARCH REFERENCES

C.J.S. — 3 C.J.S., Agriculture, § 84 et seq.

ALR. — Character of contract to raise seed, 29 A.L.R. 647. Warranties and conditions upon sale of seeds, nursery stock, etc., 16 A.L.R. 859; 32 A.L.R. 1241; 62 A.L.R. 451; 117 A.L.R. 470; 168 A.L.R. 581.

2-11-1. Misrepresentation of count or variety of agricultural plants.

As used in this Code section, the term "plant" includes tobacco, tomato, cabbage, onion, pepper, and other agricultural plants. Any person who knowingly misrepresents the count or variety of any such plant shall be guilty of a misdemeanor.

History. — Ga. L. 1958, p. 220, § 1.

RESEARCH REFERENCES

ALR. — Warranties and conditions upon sale of seeds, nursery stock, etc., 16 A.L.R. 859; 32 A.L.R. 1241; 62 A.L.R. 451; 117 A.L.R. 470; 168 A.L.R. 581.

2-11-2. Fraudulent sale of nursery stock or seedlings; misrepresenting fruit or nut trees.

(a) Any person who deceives or defrauds any person in the sale of nursery stock by substituting stock other than that contracted for or different varieties of seedlings than those represented or contracted for or who falsely represents the name, class, description, or condition of any nursery stock or who makes any false statement or promise for the purpose of making a sale of nursery stock shall be guilty of a misdemeanor.

(b) Any person, acting either as principal or agent, who sells any fruit or nut trees representing the same to be of a certain kind, variety, or description and thereafter delivers to the purchaser, in filling such order and completing such sale, any fruit or nut trees of a different kind, variety, or description shall be guilty of a misdemeanor.

History. — Ga. L. 1960, p. 255, §§ 2, 3.

RESEARCH REFERENCES

ALR. — Warranties and conditions upon sale of seeds, nursery stock, etc., 16 A.L.R. 859; 32 A.L.R. 1241; 62 A.L.R. 451; 117 A.L.R. 470; 168 A.L.R. 581.

ARTICLE 2

SALE AND TRANSPORTATION OF SEEDS

2-11-20. Short title.

This article may be cited as the "Georgia Seed Law."

History. — Ga. L. 1941, p. 497, § 10; Ga. L. 1956, p. 217, § 1; Ga. L. 1996, p. 1151, § 1.

2-11-21. Definitions.

As used in this article, the term:

(1) "Advertisement" means all representations, other than those on the label, disseminated in any manner or by any means, relating to any seed within the scope of this article.

(2) "Agricultural seed" means the seeds of grass, forage, cereal, oil, and fiber crops and any other kinds of seeds commonly recognized within this state as agricultural seed, lawn seed, and mixtures of such seeds and may include noxious weed seed when the Commissioner of Agriculture determines that such seed is being used as agricultural seed.

(3) "Bulk" means a volume of seed in a container larger than a typical individual packaging unit for that kind, e.g., bulk bags and boxes, bins, trucks, rail cars, or barges.

(4) "Coated or encrusted seed" means seed that has been covered by a layer or layers of materials that obscure the original shape and size of the seed resulting in a substantial weight increase. The addition of biologicals, pesticides, identifying colorants, dyes, polymers, and other ingredients can be included in this process.

(5) "Dormant seed" means viable seed, excluding hard seed, that fail to germinate when provided the specified germination conditions for the kind of seed in question.

(6) "Flower seed" means the seeds of herbaceous plants grown for their blooms, ornamental foliage, or other ornamental parts and commonly known and sold under the name of flower seeds in this state.

(7) "Germination" means the emergence and development from the seed embryo of those essential structures which, for the kind of seed in question, are indicative of the ability to produce a normal plant under favorable conditions.

(8) "Hard seed" means seed that remain hard at the end of the prescribed test period because they have not absorbed water due to an impermeable seed coat.

(9) "Hybrid" means the first generation of a cross produced by controlling the pollination and by combining: (A) two or more inbred lines; (B) one inbred or a single cross with another single cross or with an open-pollinated variety; or (C) two varieties or species, except open-pollinated varieties of corn (Zea mays) and other open-pollinated crop kinds. The second generation or subsequent generations from such crosses shall not be regarded as hybrids. Hybrid designations shall be treated as variety names and hybrids shall be labeled as hybrids.

(10) "Inert matter" means all matter that is not seed, which includes but is not limited to broken seeds, sterile florets, chaff, fungus bodies, and stones as determined by methods defined by rule. The percent inert matter shall not exceed 3 percent for hybrid field corn, nor 4 percent inert matter for other agricultural crop seed, except as established by rule for special crops. Inert matter will not include coating or pelleting material, fertilizer, or mulch, for which there are no limitations.

(11) "Inoculated seed" means seed that has received a coating of a preparation containing a microbial product, e.g., Rhizobium sp.

(12) "Kind" means one or more related species or subspecies which singly or collectively are known by one common name, as, for example, corn, oats, alfalfa, and cotton.

(13) "Labeling" means a tag or other written, printed, or graphic representations on any container or accompanying any lot of bulk seeds, including such representations as those on invoices, purporting to set forth the information required on the seed label by this article.

(14) "Lawn and turf" pertains to seeds of the grass family (Poaceae) that are used within the industry for lawn and turf applications.

(15) "Lot" means a definite quantity of seed identified by a lot number or other mark, every portion or bag of which is uniform within recognized tolerances for the factors which are required to appear in the labeling.

(16) "Mixture," "mix," or "mixed" means seed consisting of more than one kind or variety or both, each in excess of 5 percent by weight of the whole.

(17) "Noxious weed seeds" include "prohibited noxious weed seeds" and "restricted noxious weed seeds," as defined in subparagraphs (A) and (B) of this paragraph, provided that the Commissioner of Agriculture may, through the promulgation of regulations, establish a list of seeds included under subparagraphs (A) and (B), whenever the Commissioner finds that such seeds conform to the respective definitions.

(A) "Prohibited noxious weed seeds" are those weed seeds that are prohibited from being present in agricultural, vegetable, flower, tree, or shrub seed. They are the seed of weeds that are highly destructive and difficult to control by good cultural practices and the use of herbicides.

(B) "Restricted noxious weed seeds" are those weed seeds that are very objectionable in fields, lawns, and gardens of this state but can be controlled by good cultural practice.

(18) "Other crop seed" means seed of plants grown as crops (other than the kind or variety included in the pure seed) as determined by methods defined by rule.

(19) "Pelleted seed" means coated or encrusted seed that also improves the plantibility or singulation of the seed.

(20) "Person" means an individual, partnership, corporation, company, association, receiver, trustee, or agent.

(21) "Private hearing" means a discussion of facts between the person charged with a violation and representatives of the Georgia Department of Agriculture.

(22) "Pure seed" means all seeds of each kind and variety under consideration that are present in excess of 5 percent of the whole. Kinds or varieties shown on a label as components of a mixture in amounts 5 percent or less of the whole may be considered pure seed when shown on a label as components of a mixture.

(23) "Record" means all information relating to the lot, identification, source, origin, variety, amount, processing, blending, testing, labeling, and distribution of the seed and includes a file sample thereof.

(24) "Seed" means the true seeds of all field crops, vegetables, flowers, trees, and shrubs, and any naturally occurring vegetative propagule, excluding plant parts of hybrids.

(25) "Seizure" means a legal process carried out by court order against a definite amount of seed.

(26) "Stop sale" means an administrative order provided by law restraining the sale, use, disposition, and movement of a definite amount of seed.

(27) "Treated" means seed that has received a minimal covering according to the manufacturer's recommended rate of a substance or process which is designed to reduce or control certain disease organisms, insects, or other pests attacking such seed or seedlings growing therefrom and the covering substance may contain identifying colorants and dyes.

(28) "Tree and shrub seeds" means seeds of woody plants commonly known and sold as tree or shrub seeds in this state.

(29) "Variety" means a subdivision of a kind that is distinct, uniform, and stable; "distinct" in the sense that the variety can be differentiated by one or more identifiable morphological, physiological, or other characteristics from all other varieties of public knowledge; "uniform" in the sense that the variations in essential and distinctive characteristics are describable; and "stable" in the sense that the variety will remain unchanged in its essential and distinctive characteristics and its uniformity when reproduced or reconstituted.

(30) "Vegetable seeds" means the seeds of those crops which are grown in gardens and on farms and are generally known and sold under the name of vegetable or herb seeds in this state.

(31) "Weed seeds" means the seeds of all plants generally recognized as weeds within this state, and determined by methods defined by rule, and includes the prohibited and restricted noxious weed seeds.

History. — Ga. L. 1941, p. 497, § 1; Ga. L. 1956, p. 217, § 2; Ga. L. 1996, p. 1151, § 1; Ga. L. 1998, p. 128, § 2.

2-11-22. Labeling requirements.

(a) **Labeling required.** Each bag, container, package, or bulk of seeds which is sold, offered for sale, exposed for sale, or transported within this state for planting purposes shall bear thereon or have attached thereto in a conspicuous place a plainly written or printed label or tag in the English language, giving the information specified in subsections (b) through (j) of this Code section, which statement shall not be modified or denied in the labeling or on another label attached to the container. The labeler is responsible to assure that the required

labeling is applied to each container or, in the case of bulk seed, that required labeling is shown on the invoice. All invoices and records pertaining to the shipment or sale of seed must show each lot number.

(b) **Treated seeds.** For all treated seeds, as defined in this article, for which a separate label may be used, the following information shall be given:

(1) A word or statement that the seed has been treated;

(2) The commonly accepted, coined, chemical, or abbreviated chemical (generic) name of the applied substance and the rate of application;

(3) If the level of treatment exceeds the established tolerance or is not subject to an exemption to a tolerance, a caution statement, such as "Do not use for food or feed or oil purposes." The caution for mercurials and similarly toxic substances shall be a poison statement or symbol and the label shall carry the words "poison treated"; and

(4) If the seed is treated with an inoculant, the label must state the inoculant manufacturer's lot number and expiration date as listed on the inoculant's original package.

(c) **Agricultural seed.** For agricultural seed the following information shall be given except for grass seed mixtures as provided in subsection (d) of this Code section; and for hybrids that contain less than 95 percent hybrid seed as provided in subsection (j) of this Code section:

(1) The commonly accepted name of kind and variety of each agricultural seed component in excess of 5 percent of the whole and the percentage by weight of each in the order of its predominance. Where more than one component is required to be named, the word "mixture" or the word "mixed" shall be shown conspicuously on the label, provided that the Commissioner may, through the promulgation of regulations, allow certain kinds of seed to be labeled "mixed" without showing the percentage of each variety present;

(2) The net weight;

(3) The lot number or other lot identification;

(4) The origin (state or foreign country);

(5) The percentage by weight of all weed seeds;

(6) The name and rate of occurrence per pound of each kind of restricted noxious weed seed present;

(7) The percentage by weight of crop seeds other than those required to be named on the label;

(8) The percentage by weight of inert matter;

(9) For each named agricultural seed:

(A) The percentage of germination, exclusive of hard seed or dormant seed;

(B) The percentage of hard seed or dormant seed, if present; and

(C) The calendar month and year the test was completed to determine such percentage;

following the information given pursuant to subparagraphs (A) and (B) of this paragraph, the "total germination and hard seed" or "total germination and dormant seed" may be stated as such, if desired; and

(10) The name and address of the person who labeled the seed or who sells, offers, or exposes the seed for sale within this state.

(d) For seed mixtures for lawn or turf purposes or both lawn and turf purposes the following information shall be given:

(1) The word "mixed" or "mixture" shall be stated with the name of the mixture;

(2) The headings "pure seed" and "germination" or "germ" shall be used in the proper places;

(3) The net weight;

(4) The lot number or other lot identification;

(5) Commonly accepted name of kind, variety, and origin of each agricultural seed component in excess of 5 percent of the whole and the percentage by weight of pure seed in order of its predominance and in columnar form;

(6) Percentage by weight of agricultural seed other than those required to be named on the label (which shall be designated as "crop seed");

(7) The percentage by weight of inert matter;

(8) Percentage by weight of all weed seeds;

(9) Noxious weeds that are required to be labeled will be listed under the heading "noxious weed seeds";

(10) For each agricultural seed named under paragraph (5) of this subsection;

(A) Percentage of germination, exclusive of dormant seed;

(B) Percentage of dormant seed, if present; and

(C) The calendar month and year the test was completed to determine such percentages. The test date for each component may be labeled or, if each component does not show a test date, the oldest test date shall be used for the mixture; and

(11) Name and address of the person who labeled said seed or who sells, offers, or exposes said seed for sale within the state.

(e) For agricultural seeds that are coated or pelleted:

(1) Percentage by weight of pure seed with coating or pelleting material removed;

(2) Percentage by weight of coating or pelleting material;

(3) Percentage by weight of inert material exclusive of coating or pelleting material;

(4) Percentage of germination is to be determined on 400 pellets with or without seeds;

(5) In addition to the provisions of paragraphs (1) through (4) of this subsection, labeling of coated or pelleted seed shall comply with the requirements of this Code section for the specific seed kind.

(f) For vegetable seeds in containers of one pound or less or preplanted containers, mats, tapes, or other planting devices, the following information shall be given:

(1) The name of kind and variety of seed;

(2) The lot number or other lot identification;

(3) The year for which the seed was packed for sale as "Packed for _____" or the percent germination and the calendar month and year the test was completed to determine such percentage;

(4) For seed which germinate less than the standard last established by the Commissioner under this article:

(A) The percentage of germination, exclusive of hard seed or dormant seed;

(B) The percentage of hard seed or dormant seed, if present;

(C) The calendar month and year the test was completed to determine such percentage; and

(D) For seed that germinate less than the standard last established by the Commissioner, the words "below standard" in not less than eight-point type must be printed or written with permanence on the face of the label, in addition to the other information required, provided that no seed marked "below standard" shall be

sold if it falls more than 20 percent below the established standard for such seed;

(5) The name and address of the person who labeled the seed or who sells, offers, or exposes the seed for sale within this state; and

(6) For seeds placed in a germination medium, mat, tape, or other device in such a way as to make it difficult to determine the quantity of seed without removing the seeds from the medium, mat, tape, or device, a statement to indicate the minimum number of seeds in the container.

(g) **Vegetable seeds in containers of more than one pound.**

(1) For vegetable seeds in containers of more than one pound, the following information shall be given:

(A) The name of each kind and variety present in excess of 5 percent and the percentage by weight of each in order of its predominance;

(B) The net weight or seed count;

(C) The lot number or other lot identification;

(D) For each named vegetable seed:

(i) The percentage of germination, exclusive of hard seed or dormant seed;

(ii) The percentage of hard seed or dormant seed, if present; and

(iii) The calendar month and year the test was completed to determine such percentages;

following the information given pursuant to such divisions (i) and (ii) of this subparagraph, the "total germination and hard seed" or the "total germination and dormant seed" may be stated as such, if desired; and

(E) The name and address of the person who labeled the seed or who sells, offers, or exposes the seed for sale within this state.

(2) The labeling requirements for vegetable seeds in containers of more than one pound shall be deemed to have been met if the seed is weighed from a properly labeled container in the presence of the purchaser.

(h) For flower seed in packets prepared for use in home gardens or household plantings or flower seed in preplanted containers, mats, tapes, or other planting devices, the following information shall be given:

(1) For all kinds of flower seeds:

(A) The name of the kind and variety or a statement of type and performance characteristics as prescribed in the rules promulgated under this article;

(B) The calendar month and year the seed was tested or the year for which the seed was packaged;

(C) The lot number or other lot identification;

(D) The net weight or seed count; and

(E) The name and address of the person who labeled said seed or who sells, offers, or exposes said seed for sale within this state;

(2) For flower seed kinds for which standard testing procedures are prescribed and that germinate less than the germination standard last established by rule under this article:

(A) Percentage of germination, exclusive of hard seed or dormant seed;

(B) Percentage of hard seed or dormant seed, if present; and

(C) The words "below standard" in not less than eight-point type; and

(3) For flower seeds placed in a germination medium, mat, tape, or other device in such a way as to make it difficult to determine the quantity of seed without removing the seed from the medium, mat, tape, or device, a statement to indicate the minimum number of seeds in the container.

(i) For flower seed in containers other than packets and other than preplanted containers, mats, tapes, or other planting devices and not prepared for use in home flower gardens or household plantings, the following information shall be given:

(1) The name of the kind and variety or a statement of type and performance characteristics as prescribed in the rules promulgated under this article and for wildflowers the genus and species and, if appropriate, the subspecies;

(2) The lot number or other lot identification;

(3) The net weight or seed count;

(4) For wildflower seed only with a pure seed percentage of less than 90 percent:

(A) The percentage, by weight, of each component listed in order of their predominance;

(B) The percentage by weight of weed seed if present; and

(C) The percentage by weight of inert matter;

(5) For those seed kinds for which standard testing procedures are prescribed:

(A) Percentage of germination, exclusive of hard seed or dormant seed;

(B) Percentage of hard seed or dormant seed, if present;

(C) The calendar month and year that the seed was tested or the year for which the seed was packaged; and

(D) For flower seed kinds that germinate less than the germination standard last established by rule under this article, the words "below standard" in not less than eight-point type;

(6) For those kinds of seed for which standard testing procedures are not available, the year of production or collection; and

(7) The name and address of the person who labeled the seed or who sells, offers, or exposes the seed for sale within this state.

(j) For hybrid agricultural and vegetable seed, the following is required:

(1) If any one kind or kind and variety of seed present in excess of 5.0 percent is hybrid seed, it shall be designated hybrid on the label. The percentage that is hybrid shall be at least 95 percent of the percentage of pure seed shown unless the percentage of pure seed which is hybrid seed is shown separately. If two or more kinds or varieties are present in excess of 5.0 percent and are named on the label, each that is hybrid shall be designated as hybrid on the label. Any one kind or kind and variety that has pure seed which is less than 95 percent but more than 90 percent hybrid seed as a result of incompletely controlled pollination in a cross shall be labeled to show the percentage of pure seed that is hybrid seed. No kind or variety of seed shall be labeled as hybrid if the pure seed contains less than 90 percent hybrid seed;

(2) Hybrid wheat, hybrid millet, and other hybrids to be established by rule shall be labeled the same as all other hybrids except that if any one kind or kind and variety that has pure seed which is less than 95 percent but more than 75 percent hybrid seed as a result of incompletely controlled pollination shall be labeled to show the percentage of pure seed that is hybrid seed. No one kind or variety of seed shall be labeled as hybrid if the pure seed contains less than 75 percent hybrid seed. Any seed containing less than 95 percent hybrids must be labeled as a mixture; and

(3) In addition to the provisions of paragraph (1) of this subsection, labeling of hybrid agricultural and vegetable seed shall comply with the requirements of this Code section for the specific seed kind and, if appropriate, quantity.

History. — Ga. L. 1941, p. 497, § 2; Ga. L. 1956, p. 217, § 3; Ga. L. 1982, p. 3, § 2; Ga. L. 1996, p. 1151, § 1; Ga. L. 1998, p. 128, § 2.

Code Commission notes. — Pursuant to Code Section 28-9-5, in 1996, a colon was substituted for a semicolon at the end of the introductory language of paragraph (i)(5).

Administrative rules and regulations. — Label requirements, Official Compilation of the Rules and Regulations of the State of Georgia, Rules of Georgia Department of Agriculture, Seed Division, Subject 40-12-5.

RESEARCH REFERENCES

Am. Jur. 2d. — 3 Am. Jur. 2d, Agriculture, § 48 et seq.

2-11-23. Prohibited acts.

(a) No person shall sell, offer for sale, expose for sale, or transport for sale any agricultural, vegetable, flower, tree, or shrub seed within this state:

(1) Unless the test to determine the percentage of germination required in Code Section 2-11-22 shall have been completed within a nine-month period, exclusive of the calendar month in which the test was completed, immediately prior to sale, exposure for sale, offering for sale, or transportation. This prohibition does not apply to agricultural or vegetable seed in hermetically sealed containers. Agricultural or vegetable seeds packaged in hermetically sealed containers under the conditions defined in rules and regulations promulgated under the provisions of this article may be sold, exposed for sale, or offered for sale or transportation for a period of 24 months after the last day of the month that the seeds were tested for germination prior to packaging. If seeds in hermetically sealed containers are sold, exposed for sale, or offered for sale or transportation more than 24 months after the last day of the month in which they were tested prior to packaging, they must have been retested within a nine-month period, exclusive of the calendar month in which the retest was completed, immediately prior to sale, exposure for sale, or offering for sale or transportation;

(2) Not labeled in accordance with this article or having false, misleading, or illegible labeling;

(3) Pertaining to which there has been a false or misleading advertisement;

(4) Consisting of or containing prohibited noxious weed seeds;

(5) Consisting of or containing restricted noxious weed seeds per pound in excess of the number prescribed by rules and regulations promulgated under this article or in excess of the number declared on the label attached to the container of the seed or associated with the seed;

(6) Represented to be "certified seed," "registered seed," or "foundation seed," unless it has been produced and labeled in accordance with the procedures and in compliance with rules and regulations of a legally authorized seed certification agency; or

(7) Labeled with a variety name but not certified by an official seed certifying agency when it is a variety for which a United States certificate of plant variety protection under the Plant Variety Protection Act (7 U.S.C. Section 2321, et seq.) specifies sale only as a class of certified seed, provided that seed from a certified seed lot may be labeled as to variety name when used in a mixture by, or with the approval of, the owner of the variety.

(b) It shall be unlawful for any person within this state:

(1) To detach, alter, deface, or destroy any label provided for in this article or the rules and regulations made and promulgated hereunder or to alter or substitute seed in a manner that may defeat the purpose of this article;

(2) To disseminate any false or misleading advertisements concerning seeds in any manner that may defeat the purpose of this article;

(3) To hinder or obstruct, in any way, any authorized person in the performance of his or her duties under this article;

(4) To fail to comply with a "stop sale" order or to move from the premises or dispose of any lot of seed or the tags attached thereto held under a "stop sale" order, except with express permission of the enforcing officer and for the purpose specified thereby;

(5) To use the word "trace" as a substitute for any statement which is required;

(6) To use the words "or better," "more than," "less than," or similar words in connection with any information required on purity analyses;

(7) To use the word "type" in any labeling in connection with the name of any agricultural seed variety; or

(8) To alter or falsify any seed label, seed test, laboratory report, record, or other document pertaining to seed dealings for the purpose

of defrauding or misleading the purchaser or to create a misleading impression as to kind or variety, history, quality, or origin of seed.

History. — Ga. L. 1941, p. 497, § 3; Ga. L. 1956, p. 217, § 4; Ga. L. 1996, p. 1151, § 1; Ga. L. 1998, p. 128, § 2.

RESEARCH REFERENCES

Am. Jur. 2d. — 3 Am. Jur. 2d, Agriculture, § 48 et seq.

C.J.S. — 3 C.J.S., Agriculture, § 84 et seq.

ALR. — Warranties and conditions upon sale of seeds, nursery stock, etc., 16 A.L.R. 859; 32 A.L.R. 1241; 62 A.L.R. 451; 117 A.L.R. 470; 168 A.L.R. 581.

Validity, construction, and application of statutes or ordinances directed against false or fraudulent statements in advertisements, 89 A.L.R. 1004.

2-11-24. Records and samples to be kept; inspection thereof.

Each person whose name or approved A.M.S. code number or other approved designation appears on the label as handling seed subject to this article shall keep, for a period of two years, complete records of each lot of agricultural, vegetable, flower, tree, or shrub seed handled and shall keep, for one year, a file sample of each lot of seed after final disposition of such lot. All such records and samples pertaining to the shipment or shipments involved shall be accessible for inspection by the Commissioner or the Commissioner's agent during customary business hours.

History. — Ga. L. 1956, p. 217, § 5; Ga. L. 1996, p. 1151, § 1.

2-11-25. Powers and duties of Commissioner — Generally.

The duty of enforcing this article and the carrying out of its provisions and requirements shall be vested in the Commissioner of Agriculture, who may act through his or her authorized agents. He shall have authority:

(1) To sample, test, make analysis of, and inspect any seed transported, sold, or offered or exposed for sale within this state for planting purposes, at such time and place and to such extent as may be deemed necessary to determine whether such seed is in compliance with this article;

(2) To enter upon any public or private premises during regular business hours in order to have access to seeds and the records connected therewith subject to this article and rules and regulations promulgated hereunder;

(3) To issue and enforce a written or printed "stop sale" order to the person or vendor of any seed which is in violation or is believed to be

in violation of any of the provisions of this article or rules and regulations promulgated hereunder;

(4) To furnish adequate facilities for testing seed and to employ qualified persons for making such tests;

(5) To publish in print or electronically or cause to be published the results of the examination, analysis, and testing of any agricultural or vegetable seed sampled in accordance with this article, together with any other information that the Commissioner may deem advisable;

(6) To provide that any person in this state shall have the privilege of submitting seed samples for testing, subject to the charges made for samples submitted as prescribed in rules and regulations promulgated under this article; provided, however, that seed samples shall be tested without charge for farmers who do not have a seed license; and

(7) To cooperate with the United States Department of Agriculture in the enforcement of the Federal Seed Act.

History. — Ga. L. 1941, p. 497, § 5; Ga. L. 1956, p. 217, § 7; Ga. L. 1996, p. 1151, § 1; Ga. L. 2010, p. 838, § 10/SB 388.

U.S. Code. — The Federal Seed Act, referred to in this Code section, is codified at 7 U.S.C. § 1551 et seq.

2-11-26. Powers and duties of Commissioner — Licensing authority; penalties.

(a) For the purpose of carrying out this article, the Commissioner, who may act through his or her authorized agents, is authorized to issue a license to each retail and wholesale seed dealer, such license to be applied for by each seed dealer upon forms furnished for such purpose. A separate license shall be required for each point of sale, from which seed are sold, offered for sale, or exposed for sale. Out-of-state wholesale and retail seed dealers who sell or ship seed into this state shall obtain a license in the same manner. Such licenses shall be renewable in August of every third year following issuance. A fee in an amount fixed by rule or regulation of the Commissioner at not less than $70.00 nor more than $100.00 per annum shall be charged for such license. Any fees collected pursuant to this Code section shall be retained pursuant to the provisions of Code Section 45-12-92.1.

(b) The Commissioner may enter an order imposing one or more of the following penalties against any person who violates any of the provisions of this chapter or the rules promulgated under this article or who impedes, obstructs, hinders, or otherwise prevents or attempts to prevent the Commissioner or the Commissioner's agent in the performance of his or her duty in connection with the provisions of this article:

(1) Issuance of a warning letter;

(2) Imposition of an administrative fine not more than $1,000.00 per occurrence, suspension of a license, or both; or

(3) Revocation of the seed dealer's license.

Actions stated in paragraphs (2) and (3) of this subsection shall be preceded by a departmental hearing to consider evidence that the licensee has violated this article or any rule or regulation promulgated under this article.

(c) No person who has not complied with this Code section shall sell or offer for sale any seed within this state.

History. — Ga. L. 1956, p. 217, §§ 7, 12; Ga. L. 1996, p. 1151, § 1; Ga. L. 2010, p. 9, § 1-7/HB 1055.

Cross references. — Authority of Commissioner to impose penalty in lieu of other action, § 2-2-10.

2-11-27. Powers and duties of Commissioner — Treatment of itinerant vendors generally; bond.

Reserved. Repealed by Ga. L. 1996, p. 1151, § 1, effective July 1, 1997.

Editor's notes. — This Code section was based on Ga. L. 1956, p. 217, §§ 7, 12.

2-11-28. Powers and duties of Commissioner — Rule-making authority.

The Commissioner shall have authority to promulgate and enforce such rules and regulations as the Commissioner may deem necessary to carry out or make effective this article. Such rules and regulations may:

(1) Provide such additional definitions of terms as the Commissioner believes are needed;

(2) Provide a noxious weed list and add to or subtract therefrom from time to time;

(3) Prescribe minimum standards of germination and purity and maximum amounts of inert matter and weed seed;

(4) Prescribe the maximum number of weed seeds per pound allowed for each type of restricted noxious weed;

(5) Specify the methods of sampling, inspecting, analysis, testing, and examination of seed and the tolerance to be followed in the administration of this article, which shall be in general accord with the officially prescribed practice in interstate commerce;

(6) Prescribe the form of tags or labels;

(7) Fix the number of tests allowed to any one person, firm, corporation, etc.;

(8) Fix charges for tests made;

(9) Prescribe minimum standards for seed vigor when such standards have been developed and standardized by the Association of Official Seed Analysts (AOSA) and to require the results of any seed vigor test to be placed upon seed labels; and

(10) Prescribe such other rules and regulations as may be necessary to secure the efficient enforcement of this article.

History. — Ga. L. 1956, p. 217, § 9; Ga. L. 1996, p. 1151, § 1.

2-11-29. Seed Advisory Committee created; selection of members; compensation; duties.

Reserved. Repealed by Ga. L. 1996, p. 1151, § 1, effective July 1, 1997.

Editor's notes. — This Code section was based on Ga. L. 1956, p. 217, § 10; Ga. L. 1972, p. 1015, § 12; Ga. L. 1988, p. 426, § 1; Ga. L. 1995, p. 10, § 2.

2-11-30. Seizure of seed for violation of article; disposition thereof.

Any seed sold, offered for sale, or exposed for sale in violation of this article or rules and regulations promulgated under this article shall be subject to seizure on the complaint of any authorized agent of the Commissioner to the superior court of the county where the seed is located. If the court finds the seed to be in violation of this article and orders its condemnation, the seed shall be destroyed, reprocessed, relabeled, or otherwise disposed of in compliance with the laws of this state and as directed by the court. In no instance shall the court order such disposition of seed without first having given the claimant an opportunity to apply to the court for the release of the seed or for permission to process or relabel it to bring it into compliance with this article.

History. — Ga. L. 1941, p. 497, § 6; Ga. L. 1956, p. 217, § 8; Ga. L. 1996, p. 1151, § 1.

RESEARCH REFERENCES

ALR. — Lawfulness of seizure of property used in violation of law as prerequisite to forfeiture action or proceeding, 8 A.L.R.3d 473.

2-11-31. Injunctions.

The Commissioner is authorized to apply for and the court is authorized to grant a temporary or permanent injunction restraining any person from violating or continuing to violate any of the provisions of this article or rules and regulations promulgated under this article, notwithstanding the existence of other remedies at law. Such injunctions shall be issued without bond.

History. — Ga. L. 1956, p. 217, § 8; Ga. L. 1996, p. 1151, § 1.

2-11-32. Exemption from article.

No person or vendor shall be subject to the penalties of this article for having sold or offered or exposed for sale in this state any seed incorrectly labeled or represented as to variety or origin when the variety or origin of such seed could not be identified by examination thereof, unless he or she failed to obtain an invoice, grower's declaration, or other document indicating variety and origin and failed to take such other precautions as were necessary or required to ensure that the identity and variety of the seed were as stated.

History. — Ga. L. 1941, p. 497, § 4; Ga. L. 1956, p. 217, § 6; Ga. L. 1996, p. 1151, § 1.

2-11-33. Applicability of Code Sections 2-11-21 and 2-11-22.

Code Sections 2-11-21 and 2-11-22 shall not apply:

(1) To seed sold by a farmer or grower to a seed dealer or conditioner or in storage in or consigned to a seed cleaning or conditioning establishment for cleaning or processing, provided that any labeling or other representation which may be made with respect to uncleaned seed shall be subject to this article;

(2) To seed grown by a farmer or other person, who sells it as such, when it is sold at his or her own farm and he or she does not advertise or transfer it by any public carrier provided such activity is not in conflict with paragraph (7) of subsection (a) of Code Section 2-11-23 or requirements of the United States Plant Variety Protection Act;

(3) To seed or grain not intended for planting purposes, provided that such seed or grain sold to a farmer or consumer which could be used for planting purposes shall be marked or tagged "for feed" or "not for planting"; and

(4) To any carrier, in respect to any seed transported or delivered for transportation in the ordinary course of its business as a carrier,

if such carrier is not engaged in producing, processing, or marketing agricultural or vegetable seed which is subject to this article.

History. — Ga. L. 1941, p. 497, § 4; Ga. L. 1956, p. 217, § 6; Ga. L. 1996, p. 1151, § 1.

2-11-34. Penalty for violations of article or rules and regulations; Commissioner authorized to utilize warning for minor violations.

(a) Any person or vendor violating any of the provisions of this article or rules and regulations promulgated under this article shall be guilty of a misdemeanor.

(b) When the Commissioner or any of the Commissioner's authorized agents find that a person has violated any of the provisions of this article or rules and regulations promulgated under this article, the Commissioner may institute proceedings in the superior court of the county in which the violation occurred to have such person convicted therefor or may file with the prosecuting attorney, with the view of prosecution, such evidence as may be deemed necessary.

(c) It shall be the duty of each prosecuting attorney to whom any violation is reported to cause appropriate proceedings to be instituted and prosecuted against the accused.

(d) Nothing in this article shall be construed as requiring the Commissioner or any of the Commissioner's authorized agents to report, for prosecution or for the institution of seizure proceedings, minor violations of this article when the Commissioner believes that the public interest will best be served by a suitable notice of warning in writing.

History. — Ga. L. 1941, p. 497, § 7; Ga. L. 1956, p. 217, § 11; Ga. L. 1996, p. 1151, § 1.

2-11-35. Local regulation prohibited.

(a) No county, municipal corporation, consolidated government, or other political subdivision of this state shall adopt or continue in effect any ordinance, rule, regulation, or resolution regulating the labeling, packaging, sale, storage, transportation, distribution, notification of use, or use of seeds.

(b) This Code section shall in no way prohibit or impair the legal right of any county, municipal corporation, consolidated government, or other political subdivision of this state to issue business licenses or to make zoning decisions.

History. — Code 1981, § 2-11-35, enacted by Ga. L. 2005, p. 45, § 1/SB 87.

2-11-36. Seeds used in production of low THC oil.

This article shall not apply to seeds used for the production of low THC oil in accordance with Article 9 of Chapter 12 of Title 16 and no person shall be subject to regulation or penalties pursuant to this article for growing, selling, offering for sale, exposing for sale, or transporting in this state any seed used for the lawful production of low THC oil pursuant to Article 9 of Chapter 12 of Title 16.

History. — Code 1981, § 2-11-36, enacted by Ga. L. 2019, p. 43, § 5/HB 324.

Effective date. — This Code section became effective July 1, 2019.

Editor's notes. — Ga. L. 2019, p. 43, § 1/HB 324, not codified by the General Assembly, provides that: "This Act shall be known and may be cited as 'Georgia's Hope Act.'"

Ga. L. 2019, p. 43, § 2/HB 324, not codified by the General Assembly, provides that: (a) The General Assembly finds that the establishment of the Low THC Oil Patient Registry in 2015 allows Georgia patients to possess low THC oil but provides no way to access low THC oil. The General Assembly finds that thousands of Georgians have serious medical conditions that can be improved by the medically approved use of cannabis and that the law should not stand between them and treatment necessary for life and health. The General Assembly finds that the purpose of this Act is to allow the legitimate use of medical cannabis for health care, including palliative care. The General Assembly finds that this Act does not in any way diminish this state's strong public policy and laws against illegal drug use, nor should it be deemed in any manner to advocate, authorize, promote, or legally or socially accept the use of marijuana for children or adults for any nonmedical use.

"(b) The General Assembly further finds that:

"(1) Low THC oil can offer significant medical benefits to patients;

"(2) Low THC oil can only be derived from the cannabis plant;

"(3) A carefully constructed system of in-state cultivation to benefit only those patients authorized by Georgia law and approved by their physician would benefit patients within the State of Georgia;

"(4) The State of Georgia is deeply opposed to any recreational or nonmedical use of marijuana, and any system to help patients access low THC oil should be as limited in scope as possible;

"(5) Business opportunities resulting from a system of in-state cultivation should be inclusive of minority, women, and veteran owned businesses;

"(6) Businesses resulting from this Act should include at least 20 percent participation by minority, women, and veteran owned businesses as licensees, suppliers, and partners of businesses licensed under this Act; and

"(7) The State of Georgia should encourage active participation by minority, women, and veteran owned businesses, as well as take any steps necessary to ensure there is no discrimination in the issuance of licenses or participation in business activities resulting from this Act."

ARTICLE 3

CERTIFICATION OF SEEDS AND PLANTS

OPINIONS OF THE ATTORNEY GENERAL

Purpose of article is to protect the purchasers of seed by requiring seed dealers to be registered and licensed by the Commissioner. 1954-56 Op. Att'y Gen. p. 16.

RESEARCH REFERENCES

Am. Jur. 2d. — 3 Am. Jur. 2d, Agriculture, § 51 et seq.

2-11-50. Legislative intent.

The General Assembly declares that for the purpose of fostering improved agricultural methods, promoting advances in agricultural fields, and giving legal status to an existing practice and for the general welfare of the people it is necessary to establish as a policy of this state a method for protecting the public in the guarantee of the high quality of seeds and plants for various agricultural pursuits. It is the intent of the General Assembly to carry out that policy by this article, protecting the public from false claims and unwarranted statements as to genetic identity, varietal purity, and germinating viability of seeds and plants presented and claimed to be foundation, registered, or certified.

History. — Ga. L. 1956, p. 16, § 2; Ga. L. 1996, p. 1151, § 2.

2-11-51. Definitions.

For the purposes of this article, the term:

(1) "Certified seed" means the progeny of foundation, registered, or in special cases certified seed which meets the standards of the official seed certifying agency.

(2) "Foundation seed" means the progeny of breeder's seed or in special cases the progeny of foundation seed which meets the standards of the official seed certifying agency.

(3) "Plant" means seedlings, nursery stock, roots, tubers, bulbs, cuttings, and other parts used in the propagation of field crops, vegetables, fruits, flowers, trees, or other plants.

(4) "Registered seed" means the progeny of foundation seed and meets the standards of the official seed certifying agency.

(5) "Seed" means the true seeds of all field crops, vegetables, flowers, trees, or other plants.

(6) "Variety" carries its original meaning and includes "strains" of varieties which are sufficiently different from the parent variety to justify special designation.

History. — Ga. L. 1956, p. 16, § 1; Ga. L. 1996, p. 1151, § 2.

2-11-52. Designation of agency for certification of seeds and plants; liability for damages resulting from certification work; immunity.

In order to execute the policy stated in Code Section 2-11-50, the dean of the College of Agricultural and Environmental Sciences of the University of Georgia is authorized to provide for seed, plant, and variety certification and labeling. The dean shall designate a certifying agency, provided that such designee must be in good standing with the Association of Official Seed Certifying Agencies. The College of Agricultural and Environmental Sciences of the University of Georgia shall not be held responsible for any claim, debt, obligation, or damage of any kind to any person in conducting certification work or in the work of the certifying agent. The certifying agency so designated by the dean shall, along with its employees, be immune from liability to the same extent as the state and state officers and employees under Article 2 of Chapter 21 of Title 50, "The Georgia Tort Claims Act."

History. — Ga. L. 1956, p. 16, § 3; Ga. L. 1995, p. 10, § 2; Ga. L. 1996, p. 1151, § 2; Ga. L. 2012, p. 1129, § 1/SB 390.

Law reviews. — For annual survey on administrative law, see 64 Mercer L. Rev. 39 (2012).

2-11-53. False use of evidence of certification in sale of seeds or plants.

It shall be a misdemeanor for any person, firm, association, or corporation selling seeds or plants in this state to use any evidence of certification, including specially designed tags or any tags similar thereto or the word "certified," on any package of seeds or plants, unless such seeds or plants have been duly inspected and certified as provided for in this article or have been inspected and certified by a legally constituted agency of another state or foreign country. The duty of enforcing this Code section shall be vested in the Commissioner.

History. — Ga. L. 1956, p. 16, § 4; Ga. L. 1996, p. 1151, § 2.

OPINIONS OF THE ATTORNEY GENERAL

Fingerprinting of offenders not required. — This offense is not one for which those charged with a violation are to be fingerprinted. 1996 Op. Att'y Gen. No. 96-17.

ARTICLE 4

SEED ARBITRATION COUNCIL

Administrative rules and regulations. — Seed arbitration, Official Compilation of the Rules and Regulations of the State of Georgia, Rules of Georgia Department of Agriculture, Seed Division, Subject 40-12-6.

RESEARCH REFERENCES

Am. Jur. Proof of Facts. — Bias of Arbitrator, 2 POF2d 709.

2-11-70. Purpose; creation of Seed Arbitration Council.

(a) The intent and purpose of this article are to provide a method for assisting farmers, persons purchasing seed and commercial fruit and nut trees, and persons selling seed and commercial fruit and nut trees in determining the validity of complaints of seed and commercial fruit and nut trees purchasers against seed and commercial fruit and nut tree sellers relating to the quality and performance of the seed and the identity of the variety of fruit and nut trees by establishing a committee to investigate, hold informal hearings, make findings, and render recommendations in the nature of arbitration proceedings where damages suffered by seed and commercial fruit and nut trees purchasers are caused by the alleged failure of the seed to perform as represented or to conform to the description on the labeling thereof as required by law or to be the variety of fruit or nut tree represented by the seller.

(b) In order to effectuate the intent and purpose set out in subsection (a) of this Code section, there is created the "Seed Arbitration Council."

History. — Code 1981, § 2-11-70, enacted by Ga. L. 1994, p. 1761, § 1; Ga. L. 1995, p. 10, § 2; Ga. L. 1996, p. 1151, § 3.

2-11-71. Definitions.

As used in this article, the term:

(1) "Commissioner" means the Commissioner of Agriculture or the designated official or department employed by the Department of Agriculture of this state.

(2) "Council" means the Seed Arbitration Council.

(3) "Person" means an individual, firm, partnership, corporation, or company.

(4) "Purchaser" means the person who buys agricultural, flower, tree, shrub, or vegetable seed subject to Article 2 of this chapter or any commercial fruit or nut tree.

(5) "Seller" means any person who sells seed, including but not limited to the person who sold the seed to the purchaser and the person who actually labeled the seed that is the subject of the council's investigation and any person who sells commercial fruit or nut trees.

History. — Code 1981, § 2-11-71, enacted by Ga. L. 1994, p. 1761, § 1; Ga. L. 1996, p. 1151, § 3.

2-11-72. Notice of requirements for filing complaint printed on seed container, label, or invoice; effect of failure to provide notice.

(a) At the time of purchase of agricultural, vegetable, flower, tree, or shrub seed, except for vegetable and flower seed in packets weighing less than one pound for use in home gardens or household plantings or at the time of purchase of any commercial fruit or nut tree, language setting forth the requirement for filing a complaint shall be legibly typed or printed on the seed container, on the label affixed thereto, or printed on the invoice covering bulk seed or on a label attached to or on the invoice covering the commercial fruit or nut tree.

(b) Such language shall be in addition to the labeling requirements specified in Code Section 2-11-22 and shall contain a notice in a form acceptable in interstate trade as prescribed by rule and regulation promulgated by the Commissioner.

(c) If language setting forth the requirement is not so placed on the seed container, label, or invoice covering bulk seed or on a label or invoice covering the commercial fruit or nut tree, the filing of a complaint by the buyer shall not be required as a prerequisite to maintaining a legal action against the seller as provided in Code Section 2-11-73.

History. — Code 1981, § 2-11-72, enacted by Ga. L. 1994, p. 1761, § 1; Ga. L. 1996, p. 1151, § 3.

2-11-73. Filing complaint; fee; procedure.

(a) When any farmer or seed purchaser alleges to have been damaged by the failure of any agricultural, flower, tree, shrub, or vegetable

seed, except for vegetable and flower seed in packets weighing less than one pound for use in home gardens or household plantings, to conform to or perform as represented by the label required to be attached to such seed under Code Section 2-11-22 or by warranty or as a result of negligence, as a prerequisite to the purchaser's right to maintain a legal action against the seller, the purchaser shall submit a complaint against the seller alleging the damages sustained or to be sustained and shall file such complaint with the Commissioner in time for the seed, crop, or plants to be inspected to determine if the alleged deficiencies warrant arbitration. Whenever any farmer or commercial fruit or nut tree purchaser alleges to have been damaged by the failure of any commercial fruit or nut tree to be the variety represented by the label or invoice or by warranty or as the result of negligence, as a prerequisite to the purchaser's right to maintain a legal action against the seller, the purchaser shall submit a complaint against the seller alleging the damages sustained or to be sustained and shall file such complaint with the Commissioner in time for the trees to be inspected to determine if the alleged deficiencies warrant arbitration. Upon receipt, the Commissioner shall send a copy of the complaint to the seller by registered or certified mail or statutory overnight delivery.

(b) A filing fee of $75.00 shall be paid to the Commissioner with each complaint filed. Such fee shall be recovered from the seller upon recommendation of the Seed Arbitration Council. The filing fee shall be forfeited if the complaint is independently settled between the purchaser and seller prior to the informal hearing scheduled by the council. Such independent settlement serves to close the file on the complaint.

(c) Within ten days after the receipt of a copy of the complaint, the seller shall file with the Commissioner a response to said complaint. Upon receipt, the Commissioner shall send a copy of the response to the purchaser by registered or certified mail or statutory overnight delivery.

(d) Upon gathering the complaint and the response, the Commissioner shall refer the complaint and the response to the Seed Arbitration Council as provided in Code Section 2-11-75 for investigation, informal hearing, findings, and recommendations on the complaint.

(e) Upon receipt of findings and recommendations of the Seed Arbitration Council, the Commissioner shall transmit said items to the purchaser and seller by registered or certified mail or statutory overnight delivery.

(f) The purchaser and seller shall give written notice to the Commissioner of the acceptance or rejection of the council's recommendations within 30 days of the date the decision is mailed to the purchaser and seller.

History. — Code 1981, § 2-11-73, enacted by Ga. L. 1994, p. 1761, § 1; Ga. L. 1996, p. 1151, § 3; Ga. L. 2000, p. 1589, § 3; Ga. L. 2012, p. 1129, § 2/SB 390.

Editor's notes. — Ga. L. 2000, p. 1589, § 16, not codified by the General Assembly, provides that the amendment to this Code section is applicable with respect to notices delivered on or after July 1, 2000.

2-11-74. Membership of Seed Arbitration Council; terms; chairperson and secretary; sessions; expenses.

(a) The Seed Arbitration Council shall be composed of five members. One member and one alternate shall be appointed upon the recommendation of each of the following individuals or executive committee:

(1) The associate dean for the Cooperative Extension Service of the University of Georgia;

(2) The associate dean for the experiment stations of the College of Agricultural and Environmental Sciences of the University of Georgia;

(3) The president of the Georgia Farm Bureau Federation;

(4) The executive committee of the Georgia Seedsmen's Association; and

(5) The Commissioner of Agriculture.

(b) Each member and each alternate shall continue to serve until a replacement has been recommended by his or her appointing official. Alternate members shall serve only in the absence of the member for whom such person is an alternate.

(c) The council shall annually elect a chairperson and a secretary from its membership. The chairperson shall conduct the meetings and deliberations of the council and direct all activities. The secretary shall keep accurate records of all the meetings and deliberations and perform such other duties as the chairperson may direct.

(d) The council may be called into session upon the direction of the chairperson or by the Commissioner to consider matters referred to it by the Commissioner.

(e) Members of the council shall receive no compensation for the performance of their duties but shall be reimbursed for travel expenses by each representing organization.

History. — Code 1981, § 2-11-74, enacted by Ga. L. 1994, p. 1761, § 1; Ga. L. 1995, p. 10, § 2; Ga. L. 1996, p. 1151, § 3.

2-11-75. Hearings and investigations.

(a) Upon receipt of a seed buyer complaint or a commercial fruit or nut tree buyer complaint and a seller response, the council shall schedule a hearing date within ten days and shall make a full and complete investigation of the matters stated in the complaint.

(b) Hearings scheduled by the council shall be conducted in Tifton, Macon, Athens, or Rome, Georgia, whichever is most convenient to the farmer or other seed or commercial fruit or nut tree purchaser filing the complaint, such determination to be made by the chairperson.

(c) The Commissioner shall provide administrative support for the council and shall adopt rules and regulations to govern investigations and hearings.

(d) In conducting its investigation, the council, in addition to other activities deemed necessary, is authorized to:

(1) Examine the purchaser on the use of the seed or commercial fruit or nut tree or trees about which the complaint is filed, the purchaser's operation and the seller on the packaging and labeling, and the seller's operations on the seed or commercial fruit or nut tree or trees alleged to be faulty or of a different variety;

(2) Grow to production a representative sample of the alleged faulty seed through the facilities of the state and under the supervision of the Commissioner, as deemed necessary;

(3) Hold informal hearings at a reasonable time as directed by the chairperson. At such hearing, the purchaser and seller shall be allowed to present their side of the dispute before the council. Attorneys may be present, provided that no attorney may participate directly in the proceeding; and

(4) Seek evaluations from authorities in allied disciplines when deemed necessary.

(e) Any investigation made by fewer than all of the councilmembers shall be by authority of a written directive by the chairperson, and such investigation shall be summarized in writing and considered by the council in reporting its findings and recommendations.

(f) The Attorney General shall provide legal services for the council.

History. — Code 1981, § 2-11-75, enacted by Ga. L. 1994, p. 1761, § 1; Ga. L. 1996, p. 1151, § 3.

2-11-76. Findings and recommendations.

(a) After completion of the informal hearing by the council, a report of findings and recommendations shall be transmitted to parties present at the arbitration process pursuant to subsection (e) of Code Section 2-11-73. In such report, the council may make any recommendations it deems fair and equitable under the circumstances presented. These recommendations are up to the discretion of the council and may include, but are not limited to, the following:

(1) That no action be taken;

(2) That money damages be paid to the purchaser as a result of the alleged failure of the seed to conform to or perform as represented by the seed label, container, or invoice;

(2.1) That money damages be paid to the purchaser of a commercial fruit or nut tree or trees as a result of the alleged failure of the tree or trees to be the variety represented to the purchaser. Such damages shall not be less than three times the purchase price in the case of fruit trees or six times the purchase price in the case of nut trees;

(3) That the seller reimburse the purchaser for the amount of the filing fee paid to enter the arbitration process; or

(4) Such other recommendation found by the council to be fair and equitable to the parties.

(b) In any litigation involving a complaint which has been the subject of arbitration under this Code section, any party may introduce the report of arbitration as evidence of the facts found in the report as the court may see fit. Findings and conclusions of the council are not admissible as evidence. However, the court may take into account any determinations of the council with respect to the failure of any party to cooperate in the arbitration proceedings.

History. — Code 1981, § 2-11-76, enacted by Ga. L. 1994, p. 1761, § 1; Ga. L. 1996, p. 1151, § 3.

2-11-77. Rules and regulations.

Pursuant to Chapter 13 of Title 50, the "Georgia Administrative Procedure Act," the Commissioner shall have authority to promulgate and enforce such rules and regulations as may be deemed necessary to carry out the provisions of this article.

History. — Code 1981, § 2-11-77, enacted by Ga. L. 1994, p. 1761, § 1; Ga. L. 1996, p. 1151, § 3.

CHAPTER 12

FERTILIZERS, LIMING MATERIALS, AND SOIL AMENDMENTS

Article 1

Fertilizers

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Article 4

Horticultural Growing Media

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ARTICLE 1

FERTILIZERS

Cross references. — Exemption of commercial fertilizers from property taxation, § 48-5-43.

Editor's notes. — Ga. L. 1997, p. 1271, § 1, effective July 1, 1997, repealed the Code sections formerly codified at this article and enacted the current article. The former article, relating to the Georgia Plant Food Act of 1989, consisted of Code Sections 2-12-1 through 2-12-21, and was based on Ga. L. 1960, p. 916, §§ 1-8, 10, 11, 14-21, 24; Ga. L. 1970, p. 609, §§ 1-10, 12-20, 22; Ga. L. 1978, p. 218 §§ 1-3; Ga. L. 1980, p. 1150, §§ 1-4, 6; Ga. L. 1982, p. 3, § 2; Ga. L. 1989, p. 473, § 1; Ga. L. 1990, p. 8, § 2; Ga. L. 1996, p. 841, § 1.

Administrative rules and regulations. — Fertilizers, Official Compilation of the Rules and Regulations of the State of Georgia, Rules of Georgia Department of Agriculture, Chapter 40-6.

RESEARCH REFERENCES

Am. Jur. 2d. — 3 Am. Jur. 2d, Agriculture, § 52.

C.J.S. — 3 C.J.S., Agriculture, § 93 et seq.

2-12-1. Short title.

This article shall be known and may be cited as the "Georgia Fertilizer Act of 1997."

History. — Code 1981, § 2-12-1, enacted by Ga. L. 1997, p. 1271, § 1.

JUDICIAL DECISIONS

Cited in King v. AMOCO, 182 Ga. App. 838, 357 S.E.2d 291 (1987).

2-12-2. Definitions.

As used in this article, the term:

(1) "Brand" means a term, design, or trademark used in connection with one or several grades of fertilizer.

(2) "Bulk fertilizer" means a fertilizer distributed in a nonpackaged form.

(3) "Commercial value" means the average retail value per unit of primary plant nutrient in dollars and cents. Such values shall be established by the Commissioner annually and may be established without a hearing except where objections are filed thereto. In the event written objections are filed within 20 days after establishment of such values, those objecting shall be afforded a hearing in accordance with Chapter 13 of Title 50, the "Georgia Administrative Procedure Act," and the effective date of such values shall be postponed pending the outcome of such hearing. The values as established by the Commissioner shall be used in computing the dollar rates of penalties as provided in this article. The commercial value as established in accordance with this article is provided as a guide in determining the actual value of the product and shall not in any manner attempt to fix, regulate, or control the sales price of fertilizer or fertilizer materials. "Guaranteed commercial value" means the value of a ton of fertilizer calculated by multiplying the established commercial values of the primary plant nutrients by the primary plant nutrient guarantees. "Found commercial value" means the value of a ton of fertilizer calculated by multiplying the established commercial values of the primary plant nutrients by the percentages of primary plant nutrients found by laboratory analysis.

(4) "Custom-mixed specialty fertilizer" means a specialty fertilizer blended according to the specifications that are furnished to a licensee by or for a consumer prior to manufacturing.

(5) "Deficiency" means the amount of nutrient, found by analysis, less than that guaranteed, which may result from a lack of nutrient ingredients or from lack of uniformity.

(6) "Distribute" means to offer for sale, sell, exchange, barter, or otherwise supply or make available fertilizer in this state.

(7) "Distributor" means any person who distributes.

(8) "Fertilizer" means any substance containing one or more recognized plant nutrients which is used for its plant nutrient content and which is designed for use or claimed to have value in promoting plant growth, except unmanipulated animal and vegetable manures, marl, lime, limestone, wood ashes, boiler ashes produced by the pulp and paper industry, and other products exempted by regulation by the Commissioner, but does not include any material for which the distributor compensates, by any means, the property owner or property custodian which is receiving the material.

(9) "Fertilizer material" means a fertilizer which either:

(A) Contains important quantities of no more than one of the primary plant nutrients: nitrogen (N), phosphate (P_2O_5), and potash (K_2O);

(B) Has 85 percent or more of its plant nutrient content present in the form of a single chemical compound; or

(C) Is derived from a plant or animal residue or by-product or natural material deposit which has been processed in such a way that its content of plant nutrients has not been materially changed except by purification and concentration.

(10) "Grade" means the percentage of total nitrogen (N), available phosphate (P_2O_5), and soluble potash (K_2O) stated in whole numbers in the same terms, order, and percentages as in the guaranteed analysis; provided, however, that specialty fertilizers, fertilizer materials, bone meal, manures, and similar materials may be guaranteed in fractional units of less than 1 percent of total nitrogen (N), available phosphate (P_2O_5), and soluble potash (K_2O).

(11) "Guaranteed analysis" means the minimum percentage of plant nutrients claimed in the following order and form:

(A) Total nitrogen (N) __ Percent (%)

Available phosphate (P_2O_5) __ Percent (%)

Soluble potash (K_2O) __ Percent (%)

(B) For unacidulated mineral phosphatic material and basic slag, bone, tankage, and other organic phosphatic materials, the total phosphate or degree of fineness, or both, may also be guaranteed; and

(C) Guarantees for plant nutrients other than total nitrogen (N), available phosphate (P_2O_5), and soluble potash (K_2O) are permitted or may be required by regulation by the Commissioner. The guarantees for such other nutrients shall be expressed in the form of the element, or in other forms as the Commissioner may require by regulation. The source (oxides, salts, chelates, etc.) of such other nutrients may be required by regulation to be stated on the application for registration and may be included on the label. Other beneficial substances or compounds, determinable by laboratory methods, also may be guaranteed by permission of the Commissioner. When any plant nutrients or other substances or compounds are guaranteed, they shall be subject to inspection and analysis in accord with the methods and regulations prescribed by the Commissioner.

(12) "Industrial by-product" means any industrial waste or by-product which contains plant nutrients.

(13) "Investigational allowance" means an allowance for variations inherent in the taking, preparation, and analysis of an official sample of fertilizer.

(14) "Label" means the display of all written, printed, or graphic matter, upon the immediate container, or a statement accompanying a fertilizer.

(15) "Labeling" means all written, printed, or graphic matter, upon or accompanying any fertilizer or advertisements, brochures, posters, and television and radio announcements used in promoting the sale of such fertilizer.

(16) "Licensee" means the person who receives a license to distribute fertilizer under the provisions of this article.

(17) "Lot" means that amount of fertilizer on hand and actually covered by the official sample at the time and place of sampling. In determining plant nutrient deficiencies and penalties under this article, the term "lot" means that amount of fertilizer included in a single delivery. The amount of fertilizer in such delivery shall be deemed deficient and subject to the penalties provided by law, provided that at least 20 percent of such delivery is on hand at the time the official sample is drawn.

(18) "Mixed fertilizer" means a fertilizer containing any combination or mixture of fertilizer materials.

(19) "Official sample" means a sample of fertilizer taken by the Commissioner using methods adopted by the Commissioner by regulation in accordance with subsection (b) of Code Section 2-12-7.

(20) "Percent" or "percentage" means the percentage by weight.

(21) "Person" means an individual, partnership, association, firm, corporation, or any combination thereof.

(22) "Primary plant nutrients" means total nitrogen (N), available phosphate (P_2O_5), and soluble potash (K_2O).

(23) "Secondary" or "micro" plant nutrients means any elements or substances recognized by the Commissioner as being agronomically or horticulturally useful in promoting plant growth, other than primary plant nutrients.

(24) "Specialty fertilizer" means a fertilizer distributed for nonfarm use, such as, but not limited to, home gardens, household plants, lawns, shrubbery, flowers, golf courses, municipal parks, cemeteries, greenhouses, and nurseries. The term "specialty fertil-

izer" also includes any fertilizer distributed in packages having a net weight of 10 pounds or less.

(25) "Ton" means a net weight of 2,000 pounds avoirdupois.

(26) "Unit" of a plant nutrient means 20 pounds or 1 percent of a ton.

(27) "Unmanipulated manure" means the excreta of animals when not artificially mixed with any material or materials other than those which have been used for bedding, sanitary, or feeding purposes for such animals or for the preservation of the manure, or when such excreta has not been subjected to processing other than composting, and provided such composted products are distributed in bulk only.

History. — Code 1981, § 2-12-2, enacted by Ga. L. 1997, p. 1271, § 1; Ga. L. 1998, p. 128, § 2; Ga. L. 2019, p. 91, § 3/HB 512.

The 2019 amendment, effective April 18, 2019, added ", but does not include any material for which the distributor compensates, by any means, the property owner or property custodian which is receiving the material" at the end of paragraph (8).

2-12-3. Commissioner to administer article.

This article shall be administered by the Commissioner of Agriculture of the State of Georgia. In such administration, the Commissioner may use any employee of the Georgia Department of Agriculture or other designated agent.

History. — Code 1981, § 2-12-3, enacted by Ga. L. 1997, p. 1271, § 1.

2-12-4. Licensing requirements generally; fees; renewal; contents.

(a) No person whose name appears upon the label of a fertilizer shall distribute that fertilizer in Georgia until a fertilizer license has been obtained from the Commissioner. All licenses expire on the thirtieth day of June each year. The license fee shall be $100.00 per year and must be renewed annually with fees paid by July 1 of each year. If the license renewal fee is not paid by July 1, the applicable license fee shall increase in the manner prescribed by regulation. Any fees collected pursuant to this Code section shall be retained pursuant to the provisions of Code Section 45-12-92.1.

(b) An application for license shall be made on forms furnished by or otherwise acceptable to the Commissioner and shall include:

(1) The name and address of the licensee;

(2) The name and address of each production location in the state. The licensee shall inform the Commissioner in writing of any

additional production locations established during the period of the license; and

(3) Any other information as prescribed by regulation.

(c)(1) No licensee shall distribute in this state a specialty fertilizer until it is registered with the Commissioner by the licensee whose name appears on the label, provided that custom-mixed specialty fertilizer shall not be required to be registered. An application for registration for each brand of each grade of specialty fertilizer shall be made on a form furnished by or otherwise acceptable to the Commissioner. Labels for each brand of each grade shall accompany the application. For all specialty products sold in container sizes of ten pounds or less, the annual registration fee shall be $60.00 for each brand of each grade. Such fee shall be submitted with the registration and a renewal fee of $60.00 shall be due each July 1.

(2) If the registration renewal fee is not paid by July 1, the registration fee shall increase in the manner prescribed by regulation. No registration fee is required on specialty products sold in container sizes of over ten pounds. Upon the approval of the application for registration by the Commissioner, a copy of the registration shall be furnished to the applicant. Such registration shall be considered permanent so long as no changes or deviations are made in the labels of such products and the required registration fee is paid.

(3) The application for registration shall include the following information:

(A) The brand and grade;

(B) The guaranteed analysis;

(C) The sources of all plant nutrients;

(D) The name and address of the licensee;

(E) The net weight or weights; and

(F) Any other information as prescribed by regulation.

History. — Code 1981, § 2-12-4, enacted by Ga. L. 1997, p. 1271, § 1; Ga. L. 2010, p. 9, § 1-8/HB 1055.

Editor's notes. — In light of the similarity of the statutory provisions, annotations decided under former Code 1910, § 1771 are included in the annotations for this Code section.

JUDICIAL DECISIONS

Contract of sale void unless fertilizers registered. — Where a contract for the purchase of fertilizers specifically provides the source from which phosphoric acid, nitrogen, or potash is to be derived, and where the fertilizer is furnished in accordance with a special order, the contract of sale is void unless the fertilizers so

furnished have been registered as provided by this section. Hodges v. Montezuma Fertilizer Co., 150 Ga. 248, 103 S.E. 231 (1920) (decided under former Code 1910, § 1771).

RESEARCH REFERENCES

C.J.S. — 3 C.J.S., Agriculture, § 93 et seq.

ALR. — Constitutionality, construction, and application of statutes relating to testing or sampling of agricultural fertilizers, 105 A.L.R. 348; 147 A.L.R. 765.

2-12-5. Nonresident licensees.

Every nonresident licensee, at the time of licensing and before distributing his or her fertilizer product or products in this state, shall comply with Chapter 5 of this title, the "Department of Agriculture Registration, License, and Permit Act."

History. — Code 1981, § 2-12-5, enacted by Ga. L. 1997, p. 1271, § 1.

Editor's notes. — In light of the similarity of the statutory provisions, annotations decided under former Code 1910, § 1772 and former Ga. L. 1929, p. 228 are included in the annotations for this Code section.

JUDICIAL DECISIONS

Purpose of section is to inform a purchaser of the percentage of components in each sack of fertilizer. Terry v. Swift & Co., 21 Ga. App. 431, 94 S.E. 658 (1917) (decided under former Code 1910, § 1772).

Sale of fertilizer not void for noncompliance. — Where a vendor of fertilizer in this state sells certain sacks of fertilizer which were not tagged or branded, the failure to comply with the former provisions did not render the sale void and did not render a mortgage note given by the purchaser to the vendor for the purchase price of the fertilizer void and unenforceable. Blackshear Mfg. Co. v. Perry, 48 Ga. App. 355, 172 S.E. 585 (1934) (decided under former Ga. L. 1929, p. 228).

2-12-6. Labeling of fertilizer.

(a) Any fertilizer distributed in this state in containers shall have placed on or affixed to the container a label setting forth in clearly legible and conspicuous form the following information:

(1) Net weight;

(2) Brand and grade, provided that the grade shall not be required when no primary plant nutrients are claimed;

(3) Guaranteed analysis;

(4) Name and address of the licensee, provided that when the product is not actually manufactured by the licensee, the name of the licensee on the label may be further qualified by either of the following statements:

(A) Made for (name of licensee); or

(B) Distributed by (name of licensee);

(5) Sources from which all plant nutrients are derived, if added, guaranteed, claimed, or advertised; and

(6) Any other information as prescribed by regulation.

(b) In the case of bulk shipments, the information, as specified in paragraphs (1) through (5) of subsection (a) of this Code section in written or printed form shall accompany delivery and be supplied to the purchaser at time of delivery.

(c) Custom-mixed specialty fertilizer shall be labeled as specified in paragraphs (1) through (5) of subsection (a) of this Code section.

History. — Code 1981, § 2-12-6, enacted by Ga. L. 1997, p. 1271, § 1.

Editor's notes. — In light of the similarity of the statutory provisions, annotations decided under former Code 1910, §§ 1173 and 1783 and former Ga. L. 1929, pp. 228-232 are included in the annotations for this Code section.

JUDICIAL DECISIONS

Contents of certified copy of analysis in misbranding action. — A certified copy of an analysis of fertilizers to be used in an action for false and incorrect branding should not contain a statement as to the penalty or damage for which the manufacturer or dealer might be deemed to be liable; only the mathematical result of the chemical analysis should be stated. Georgia Fertilizer Co. v. Walker, 45 Ga. App. 68, 163 S.E. 277 (1932) (decided under former Code 1910, §§ 1173, 1783).

Inspection of subsample not required. — This section does not require each subsample of each lot of fertilizer or fertilizer material inspected to be separately analyzed. Blackshear Mfg. Co. v. Talmadge, 173 Ga. 703, 161 S.E. 256 (1931) (decided under former Ga. L. 1929, pp. 228-232).

RESEARCH REFERENCES

C.J.S. — 3 C.J.S., Agriculture, § 93 et seq.

2-12-7. Inspection of fertilizer; methods of sampling and analysis; distribution of results.

(a) It shall be the duty of the Commissioner to sample, inspect, make analyses of, and test fertilizers distributed within this state and inspect the storage of bulk fertilizer at any time and place and to such extent as he or she may deem necessary to determine whether such fertilizers are in compliance with the provisions of this article. The Commissioner is authorized to enter upon any public or private premises or carriers during business hours in order to have access to fertilizers subject to provisions of this article and the regulations pertaining thereto, and to the records relating to their distribution and storage.

(b) The methods of sampling and analysis shall be those adopted by the Commissioner by regulation.

(c) The Commissioner, in determining for administrative purposes whether any fertilizer is deficient in plant food, shall be guided by the terms "lot" and "official sample" as defined in paragraphs (17) and (19) of Code Section 2-12-2.

(d) The results of official analysis of fertilizers and portions of official samples shall be distributed by the Commissioner as provided by regulation. Official samples establishing a penalty for nutrient deficiency shall be retained for a minimum of 90 days from issuance of a deficiency report.

History. — Code 1981, § 2-12-7, enacted by Ga. L. 1997, p. 1271, § 1.

OPINIONS OF THE ATTORNEY GENERAL

Fertilizer inspection fees must be collected on sales to federal government and its various installations. 1963-65 Op. Att'y Gen. p. 295.

2-12-8. Inspection fees; quarterly report; collection penalty; effect of failure to file report and pay assessment.

(a) There shall be paid to the Commissioner for all fertilizer distributed in this state to nonlicensees an inspection fee at the rate of 60¢ per ton, provided that sales or exchanges between licensees and sales of containers of ten pounds or less are exempted from such fee; and provided, further, that the Commissioner may exempt by regulation certain other types of fertilizer from the inspection fee, when deemed appropriate. Any fees collected pursuant to this Code section shall be retained pursuant to the provisions of Code Section 45-12-92.1.

(b)(1) Each licensee distributing fertilizer in this state shall file with the Commissioner a quarterly report of the total tons of fertilizer distributed by such licensee in the state to nonlicensees for the quarterly period ending on the last day of March, June, September, and December. This and such other information as the Commissioner may require by regulation shall be supplied on forms furnished by or acceptable to the Commissioner. A quarterly tonnage report is required even if no reportable tonnage has been sold, provided that licensees which only distribute specialty fertilizer in containers of ten pounds or less shall not be required to submit these quarterly reports.

(2) The report shall be due on or before 30 days following the close of the filing period, and the inspection fee at the rate stated in subsection (a) of this Code section shall be included with the report. If the tonnage report is not filed and the payment of inspection fees is

not made within 30 days after the end of the specified filing period, a penalty fee of 10 percent of the amount due or $10.00, whichever is greater, shall be assessed against the licensee and added to the amount due.

(3) A report not filed for six months or a fee or an assessed penalty which remains unpaid for six months shall constitute cause for the revocation of all registrations and licenses. Any fees owed shall constitute a debt to be collected by the Commissioner and may become the basis for legal action against the licensee.

(c) When more than one person is involved in the distribution of a fertilizer, the licensee who finally distributes a fertilizer to a nonlicensee shall be responsible for reporting the tonnage and paying the inspection fees.

History. — Code 1981, § 2-12-8, enacted by Ga. L. 1997, p. 1271, § 1; Ga. L. 1998, p. 128, § 2; Ga. L. 2010, p. 9, § 1-9/HB 1055.

RESEARCH REFERENCES

ALR. — Constitutionality, construction, and application of statutes relating to testing or sampling of agricultural fertilizers, 105 A.L.R. 348; 147 A.L.R. 765.

2-12-9. Penalties for plant food deficiencies; time for payment; effect of failure to pay; alteration of content of fertilizer by recipient.

(a) **Total nitrogen (N), available phosphate (P_2O_5), and soluble potash (K_2O).**

(1) If the analysis of the official sample shows that a fertilizer is deficient in one or more of its guaranteed primary plant nutrients beyond the investigational allowances set forth in the regulations, the penalty shall be 10 percent of the guaranteed commercial value of the lot. In cases where the found commercial value of the lot is less than the guaranteed commercial value of the lot, an additional penalty of two times the difference in the found commercial value of the lot and the guaranteed commercial value of the lot shall be assessed.

(2) Where there is no deficiency in primary plant nutrients beyond the investigational allowances set forth in the regulations, but where the found commercial value of the lot is not at least 97 percent of the guaranteed commercial value of the lot the penalty for the lot sampled shall be four times the difference between the found commercial value of the lot and the guaranteed commercial value of the lot.

(b) **Chlorine in tobacco fertilizer.** If the chlorine content of any lot of fertilizer branded for tobacco is more than five-tenths of 1 percent

greater than the maximum amount guaranteed, a penalty shall be assessed equal to 10 percent of the guaranteed commercial value of the lot for each additional five-tenths of 1 percent, or fraction thereof, of chlorine in excess.

(c) **Secondary and micro plant nutrients.** If the analysis of the official sample shows that a fertilizer is deficient in secondary or micro plant nutrients, beyond the investigational allowances as set forth in the regulations, a penalty of $5.00 per ton per each element found deficient shall be assessed.

(d) **Payment of penalties.** All penalties must be paid within 31 calendar days after notice of assessment is made to the licensee. Penalties are assessed to the licensee and must be paid to the consumer through the Commissioner by check, or in case of indebtedness of the consumer to the seller, a credit memorandum. If a consumer cannot be found, the amount of the penalty payment shall be paid to the Georgia Department of Agriculture. Failure to pay penalties within 60 days after notice shall be sufficient grounds for the revocation of the licensee's license. The licensee who finally distributes a fertilizer to the nonlicensee shall be responsible for paying the penalty.

(e) If upon satisfactory evidence, a person is shown to have altered the content of a fertilizer shipped to him or her by a licensee, either intentionally or unintentionally, or to have mixed or commingled fertilizer from two or more suppliers such that the result of either alteration changes the analysis of the fertilizer as originally guaranteed, then that person shall become responsible for obtaining a fertilizer license and shall be held liable for all penalty payments and be subject to other provisions of this article, including seizure, condemnation, and stop sale.

(f) A deficiency in an official sample of mixed fertilizer resulting from nonuniformity is not distinguishable from a deficiency due to actual plant nutrient shortage and is properly subject to official action.

History. — Code 1981, § 2-12-9, enacted by Ga. L. 1997, p. 1271, § 1.

Cross references. — Authority of Commissioner to impose penalty in lieu of other action, § 2-2-10.

RESEARCH REFERENCES

ALR. — Recovery of cumulative statutory penalties, 71 A.L.R.2d 986.

2-12-10. Distribution of misbranded fertilizer prohibited; when misbranded.

No person shall distribute misbranded fertilizer. A fertilizer shall be deemed to be misbranded if:

(1) Its labeling is false or misleading in any particular;

(2) It is distributed under the name of another fertilizer product;

(3) It is not labeled as required in Code Section 2-12-6 and in accordance with regulations prescribed under this article; or

(4) It purports to be or is represented as a fertilizer or is represented as containing a plant nutrient or fertilizer, unless such plant nutrient or fertilizer conforms to the definition of identity, if any, prescribed by regulations of the Commissioner. In adopting such regulations the Commissioner shall give due regard to commonly accepted definitions and official fertilizer terms.

History. — Code 1981, § 2-12-10, enacted by Ga. L. 1997, p. 1271, § 1.

Cross references. — Authority of Commissioner to impose penalty in lieu of other action, § 2-2-10.

2-12-11. Distribution of adulterated fertilizer prohibited; when adulterated.

No person shall distribute an adulterated fertilizer product. A fertilizer shall be deemed to be adulterated if:

(1) It contains any deleterious or harmful ingredient in sufficient amount to render it injurious to beneficial plant, animal, human, or aquatic life or to soil or water when applied in accordance with directions for use on the label or if adequate warning statements or directions for use which may be necessary to protect plant, animal, human, or aquatic life or soil or water are not shown upon the label;

(2) Its composition falls below or differs from that which it is purported to possess by its labeling; or

(3) It contains unwanted crop seed or weed seed.

History. — Code 1981, § 2-12-11, enacted by Ga. L. 1997, p. 1271, § 1.

Editor's notes. — In light of the similarity of the statutory provisions, annotations decided under former Ga. L. 1929, pp. 228, 229 are included in the annotations for this Code section.

JUDICIAL DECISIONS

Sale of fertilizer not void for noncompliance with paragraph (2). — Where a vendor of fertilizer in this state sells certain sacks of fertilizer which are not tagged or branded, the failure to comply with paragraph (2) of this section does not render the sale void and does not render a mortgage note given by the purchaser to the vendor for the purchase price of the fertilizer void and unenforceable. Blackshear Mfg. Co. v. Perry, 48 Ga. App. 355, 172 S.E. 585 (1934) (decided under former Ga. L. 1929, pp. 228, 229).

2-12-12. Determination of value of ingredients; prohibition of use or deletion from label.

The Commissioner is authorized to determine whether an ingredient listed on the label or otherwise advertised as an ingredient and used in the mixing of any fertilizer contributes to plant growth. If any such ingredient is found to be worthless, harmful, or deceptive, the Commissioner may prohibit its use or require that it be deleted from the label.

History. — Code 1981, § 2-12-12, enacted by Ga. L. 1997, p. 1271, § 1.

2-12-13. Short weight penalty; adjustment of invoice.

(a) If any fertilizer in the possession of the consumer is found by the Commissioner to be short in weight, the licensee of such fertilizer shall within 30 days after official notice from the Commissioner submit to the consumer a penalty payment of four times the commercial value of the shortage in weight of the lot.

(b) If any fertilizer offered for sale is found by the Commissioner to be short in weight, the fertilizer shall be returned for reprocessing at the expense of the licensee.

History. — Code 1981, § 2-12-13, enacted by Ga. L. 1997, p. 1271, § 1.

2-12-14. Exchange between licensees not restricted.

Nothing in this article shall be construed to restrict, subject to inspection fees, or regulate the sale or exchange of fertilizer to other licensees who mix fertilizer materials for sale or to prevent the free and unrestricted shipment of fertilizer to licensees.

History. — Code 1981, § 2-12-14, enacted by Ga. L. 1997, p. 1271, § 1.

2-12-15. Adoption, enforcement, and promulgation of rules and regulations generally; sharing of information.

For the enforcement and implementation of this article, the Commissioner is authorized to prescribe and adopt, according to the provisions of Chapter 13 of Title 50, the "Georgia Administrative Procedure Act," and enforce such reasonable rules and regulations relating to the distribution of fertilizers as the Commissioner finds necessary to carry into effect the full intent and meaning of this article and to ensure ethical practices in the sale, delivery, and return of fertilizer. The Commissioner is also authorized to promulgate and adopt rules and

regulations relative to fertilizers derived from industrial by-products which may include, but not be limited to, application rates, proper conditions for application, application record keeping and retention, development and use of site-specific nutrient management plans, and storage and containment in or on lands where fertilizers are applied. The Commissioner is further authorized to share such information and consult with other agencies such as, but not limited to, the Environmental Protection Division of the Department of Natural Resources and the United States Department of Agriculture's Natural Resources Conservation Service.

History. — Code 1981, § 2-12-15, enacted by Ga. L. 1997, p. 1271, § 1; Ga. L. 2019, p. 91, § 4/HB 512.

The 2019 amendment, effective April 18, 2019, added the second and third sentences.

2-12-16. Revocation or denial of license; cancellation or refusal of registration.

The Commissioner is authorized to revoke the license and cancel registrations of any licensee or to refuse to register products or issue a plant food license upon satisfactory evidence that the licensee or person has used fraudulent or deceptive practices in the evasion or attempted evasion of this article or of any rules and regulations promulgated under this article. No license shall be revoked or denied or no registration shall be canceled or refused until the licensee or person has been notified by certified mail or statutory overnight delivery, return receipt requested, of the time and place of the hearing and has been given an opportunity to appear and be heard according to the provisions of Chapter 13 of Title 50, the "Georgia Administrative Procedure Act."

History. — Code 1981, § 2-12-16, enacted by Ga. L. 1997, p. 1271, § 1; Ga. L. 2000, p. 1589, § 3.

Editor's notes. — Ga. L. 2000, p. 1589, § 16, not codified by the General Assembly, provides that the amendment to this Code section is applicable with respect to notices delivered on or after July 1, 2000.

2-12-17. Stop sale, stop use, or removal orders.

The Commissioner may issue and enforce a written or printed stop sale, stop use, or removal order to the owner or custodian of any lot of fertilizer and order such person to hold such lot at a designated place when the Commissioner finds said fertilizer is being offered or exposed for sale in violation of any of the provisions of this article until the law has been complied with and said fertilizer is released in writing by the Commissioner or said violation has been otherwise legally disposed of by written authority. The Commissioner shall release the fertilizer so withdrawn when the requirements of the provisions of this article have been complied with and all costs and expenses incurred in connection with the withdrawal have been paid.

History. — Code 1981, § 2-12-17, enacted by Ga. L. 1997, p. 1271, § 1.

Cross references. — Authority of Commissioner to impose penalty in lieu of other action, § 2-2-10.

2-12-18. Seizure, condemnation, and disposition of nonconforming fertilizer.

In addition to stop sale, stop use, or removal orders, any lot of fertilizer not in compliance with the provisions of this article shall be subject to seizure on complaint of the Commissioner to the court of competent jurisdiction in the area in which such fertilizer is located. If the court finds such fertilizer to be in violation of this article and orders the condemnation of such fertilizer, it shall be disposed of in any manner consistent with the quality of the fertilizer and the laws of this state, provided that in no instance shall the disposition of such fertilizer be ordered by the court without first giving the claimant an opportunity to apply to the court for release of such fertilizer or for permission to process or relabel such fertilizer to bring it into compliance with this article.

History. — Code 1981, § 2-12-18, enacted by Ga. L. 1997, p. 1271, § 1.

RESEARCH REFERENCES

ALR. — Lawfulness of seizure of property used in violation of law as prerequisite to forfeiture action or proceeding, 8 A.L.R.3d 473.

2-12-19. Injunctions.

The Commissioner is authorized to apply for and the court is authorized to grant a temporary or permanent injunction restraining any person from violating or continuing to violate any of the provisions of this article or any rule or regulation promulgated under this article notwithstanding the existence of other remedies at law. Any such injunction may be issued without bond.

History. — Code 1981, § 2-12-19, enacted by Ga. L. 1997, p. 1271, § 1.

2-12-20. Notice of violations; administrative hearing; penalty for violation; prosecution.

(a) If it shall appear from the examination of any fertilizer that any of the provisions of this article or the rules and regulations issued pursuant to this article have been violated, the Commissioner shall cause notice of the violations to be given to the licensee, distributor, or processor from whom such sample was taken. Any person so notified

shall be given opportunity to be heard in accordance with Chapter 13 of Title 50, the "Georgia Administrative Procedure Act." If it appears after such hearing, either in the presence or absence of the person so notified, that any of the provisions of this article or the rules and regulations issued pursuant to this article have been violated, the Commissioner may certify the facts to the proper prosecuting attorney.

(b) Any person violating any of the provisions of this article shall be guilty of a misdemeanor.

(c) Nothing in this article shall be construed as requiring the Commissioner to report cases for prosecution or for the institution of seizure proceedings as a result of minor violations of this article when he or she believes that the public interest will be best served by a suitable notice of warning in writing or other methods.

(d) It shall be the duty of each prosecuting attorney to whom any violation is reported to cause appropriate proceedings to be instituted and prosecuted in a court of competent jurisdiction without delay.

History. — Code 1981, § 2-12-20, enacted by Ga. L. 1997, p. 1271, § 1.

RESEARCH REFERENCES

C.J.S. — 3 C.J.S., Agriculture, § 93 et seq.

2-12-21. Local regulation prohibited.

(a) No county, municipal corporation, consolidated government, or other political subdivision of this state shall adopt or continue in effect any ordinance, rule, regulation, or resolution regulating the registration, labeling, packaging, sale, storage, transportation, distribution, use, or application of fertilizer.

(b) This Code section shall in no way prohibit or impair the legal right of any county, municipal corporation, consolidated government, or other political subdivision of this state to issue business licenses or to make zoning decisions.

History. — Code 1981, § 2-12-21, enacted by Ga. L. 2005, p. 1030, § 1/SB 88.

Code Commission notes. — Pursuant to Code Section 28-9-5, in 2005, Code Section 2-12-22, as enacted by Ga. L. 2005, p. 1030, § 1, was redesignated as Code Section 2-12-21.

Editor's notes. — Ga. L. 1997, p. 1271, § 1, repealed former Code Section 2-12-21, relating to notice of violations and administrative hearings. The former Code section was based on Ga. L. 1960, p. 916, §§ 19, 26; Ga. L. 1970, p. 609, § 16; Code 1981, § 2-12-22; Code 1981, § 2-12-21, as redesignated by Ga. L. 1989, p. 473, § 1.

ARTICLE 2

LIMING MATERIALS

Editor's notes. — Ga. L. 1996, p. 1183, § 1, effective July 1, 1996, repealed the Code sections formerly codified at this article and enacted the current article. The former article consisted of Code Sections 2-12-40 through 2-12-54 and was based on Ga. L. 1959, p. 306, §§ 1-9; Ga. L. 1963, p. 499, §§ 1-12; Ga. L. 1967, p. 287, § 1; Ga. L. 1976, p. 1595, §§ 1-13; Ga. L. 1978, p. 1506, §§ 1-4.

Administrative rules and regulations. — Liming materials, Official Compilation of the Rules and Regulations of the State of Georgia, Rules of Georgia Department of Agriculture, Chapter 40-27.

2-12-40. Short title.

This article shall be known and may be cited as the "Georgia Liming Materials Act of 1996."

History. — Code 1981, § 2-12-40, enacted by Ga. L. 1996, p. 1183, § 1.

2-12-41. Definitions.

As used in this article, the term:

(1) "Agricultural liming material" means a product whose calcium and magnesium compounds are capable of neutralizing soil acidity and which is sold or distributed for that purpose. Agricultural liming materials may either be in solid or liquid (suspension) form. The following are types of agricultural liming materials:

(A) "Burnt lime" is a material made from limestone which consists essentially of calcium oxide or a combination of calcium oxide with magnesium oxide.

(B) "Calcitic liming materials" are those materials composed wholly or primarily of calcium carbonate.

(C) "Dolomitic liming materials" are those materials composed of calcium and magnesium carbonates.

(D) "Hydrated lime" is a material, made from burnt lime, which consists of calcium hydroxide or a combination of calcium hydroxide with magnesium oxide or magnesium hydroxide or both.

(E) "Industrial by-product" is any industrial waste or by-product containing calcium or calcium and magnesium compounds which will neutralize soil acidity.

(F) "Limestone" is a material consisting essentially of calcium carbonate or a combination of calcium carbonate with magnesium carbonate which is capable of neutralizing soil acidity.

(G) "Marl" is a granular or loosely consolidated earthy material composed largely of seashell fragments and calcium carbonate.

(2) "Brand" means the term, designation, trademark, product name, or other specific designation under which individual agricultural liming materials are offered for sale.

(3) "Bulk" means in nonpackaged form.

(4) "Calcium carbonate equivalent" or "neutralizing value" means the acid neutralizing capacity of an agricultural liming material expressed as weight percentage of calcium carbonate.

(5) "Commissioner" means the Commissioner of Agriculture of the State of Georgia.

(6) "Distribute" means to offer for sale, sell, exchange, barter, or otherwise supply or make available agricultural liming material in this state.

(7) "Distributor" means any person who distributes.

(8) "Fineness" means the percentage by weight of the liming material which will pass the United States Standard Sieve Series of specified sizes. The Commissioner shall establish by regulation the sieve sizes and minimum percentages required to pass such sieves for agricultural liming materials.

(9) "Investigational allowance" means an allowance for variations inherent in the taking, preparation, and analysis of an official sample of agricultural liming material.

(10) "Label" means any written or printed matter on or attached to the package or on the delivery ticket which accompanies bulk shipments.

(11) "Labeling" means all written, printed, or graphic matter upon or accompanying any liming material or any advertisements, brochures, posters, or television or radio announcements used in promoting the sale of such liming material.

(12) "Licensee" means the person who is responsible for guaranteeing agricultural liming materials and who receives a lime license to distribute agricultural liming materials under the provisions of this article.

(13) "Lot" means that amount of agricultural liming material on hand and actually covered by the official sample at the time and place of sampling. In determining deficiencies in and penalties on agricultural liming materials under this article, deficiencies and penalties shall be calculated on the actual tonnage present at the time of sampling, provided that, if at the time of sampling at least 20 percent

of the single delivery is present, the total amount in the single shipment shall be subject to penalty.

(14) "Official sample" means any sample of agricultural liming material taken by the Commissioner or the Commissioner's agent and designated "official" by the Commissioner.

(15) "Percent" or "percentage" means by weight.

(16) "Person" means an individual, partnership, association, firm, or corporation.

(17) "Ton" means a net weight of 2,000 pounds avoirdupois.

History. — Code 1981, § 2-12-41, enacted by Ga. L. 1996, p. 1183, § 1.

2-12-42. Administration of article.

This article shall be administered by the Commissioner of Agriculture of the State of Georgia.

History. — Code 1981, § 2-12-42, enacted by Ga. L. 1996, p. 1183, § 1.

2-12-43. Licenses required; application, annual renewal, fees, revocation; registration of products; application, fees, cancellation.

(a)(1) Each person whose name appears on the label of an agricultural liming material or who is responsible for guaranteeing such liming material must obtain a lime license from the Commissioner before distributing such product in Georgia.

(2) All licenses shall expire on June 30 of each year. The application for a license shall be submitted to the Commissioner on forms furnished by or otherwise acceptable to the Commissioner. Upon approval by the Commissioner, a copy of the license shall be furnished to the applicant. A new licensee shall pay a license fee of $70.00. Thereafter, the license fee shall be based on the annual tonnage of liming materials sold in Georgia by the licensee in the previous 12 month period ending June 30, in accordance with the following:

(A) A $100.00 annual fee for licensees having sales of 10,000 tons or more of liming materials in this state; or

(B) A $70.00 annual fee for licensees having sales of less than 10,000 tons of liming materials in this state.

A lime license must be renewed annually and fees shall be received by July 1 of each calendar year, or the applicable license fee shall

increase in the manner prescribed in the rules and regulations. Such license may be revoked for cause, after due notice and hearing, for a violation of this article or any rules or regulations adopted by the Commissioner pursuant to this article. Any fees collected pursuant to this Code section shall be retained pursuant to the provisions of Code Section 45-12-92.1.

(b)(1) No licensee shall distribute in this state an agricultural liming material until such product is registered with the Commissioner by the licensee whose name appears on the label. An application for registration for each brand and product name of liming materials shall be made on forms furnished by or otherwise acceptable to the Commissioner. Labels for each brand and product name shall accompany the application. The registration fee shall be $70.00 per product. Such fee shall be submitted with the registration, and a renewal fee of $70.00 shall be due each July 1. If renewal registration fees are not received by July 1 of each calendar year, the registration fee shall increase in the manner prescribed in the rules and regulations. Upon approval by the Commissioner, a copy of the registration shall be furnished to the applicant. Such registrations shall be considered permanent so long as no changes or deviations are made in the labels of such products and so long as the registration fees are paid as specified in this article and the rules and regulations of the Commissioner. Such registrations may be canceled for cause, after due notice and hearing, for a violation of this article or any rules and regulations adopted by the Commissioner pursuant to this article.

(2) A distributor shall not be required to register any brand of agricultural liming material which is already registered under this article by another person, provided the label does not differ in any respect.

History. — Code 1981, § 2-12-43, enacted by Ga. L. 1996, p. 1183, § 1; Ga. L. 1997, p. 143, § 2; Ga. L. 2010, p. 9, § 1-10/HB 1055.

2-12-44. Semiannual tonnage statements.

Each licensee shall submit semiannually to the Commissioner, on forms furnished by or acceptable to the Commissioner, a statement as to the total tons of liming material sold by such licensee. This and such other information as the Commissioner may require by regulations shall be supplied for the reporting periods of July 1 through December 31 and January 1 through June 30. Reports shall be received by the Commissioner no later than 30 days after the close of the reporting period.

History. — Code 1981, § 2-12-44, enacted by Ga. L. 1996, p. 1183, § 1.

2-12-45. Labeling requirements.

(a) Agricultural liming materials sold, offered, or exposed for sale in this state shall have affixed to each container in a conspicuous manner on the outside thereof a plainly printed or stamped label, tag, or statement, or in the case of bulk sales, a delivery slip setting forth at least the following information:

(1) The name and principal office address of the licensee, manufacturer, or distributor;

(2) The brand or trade name of the material;

(3) The identification of the product as to the type of the agricultural liming material;

(4) The net weight of the agricultural liming material;

(5) The guaranteed calcium carbonate equivalent (neutralizing value). The minimum calcium carbonate equivalent shall be prescribed for various agricultural liming materials by regulation;

(6) The guaranteed content of elemental calcium (Ca);

(7) In the case of dolomitic limestone, the guaranteed content of elemental magnesium (Mg). The minimum magnesium content for dolomitic liming materials shall be established by regulations;

(8) The percent by weight passing through U.S. Standard sieves as prescribed by regulations; and

(9) The percent moisture. The maximum moisture content will be prescribed by regulation.

(b) No information or statement shall appear on any package, label, delivery slip, or advertising matter which is misleading to the purchaser as to the quality, analysis, type, or composition of any agricultural liming material. No oral or written statement or claim which is false or misleading as to the comparative value or effectiveness of liming materials shall be made in any labeling, promotion, or advertising medium.

History. — Code 1981, § 2-12-45, enacted by Ga. L. 1996, p. 1183, § 1.

Cross references. — False advertising generally, § 10-1-420 et seq.

RESEARCH REFERENCES

ALR. — Constitutionality of statutes requiring notice by label or otherwise of the fact that product is imported, or as to place of production, 124 A.L.R. 572.

2-12-46. Analysis and sampling by Commissioner.

(a) It shall be the duty of the Commissioner, who may act through his or her authorized agent, to sample, inspect, make analyses of, and test agricultural liming materials distributed within this state as the Commissioner may deem necessary to determine whether such agricultural liming materials are in compliance with the provisions of this article. The Commissioner, individually or through his or her agent, is authorized to enter upon any public or private premises or carrier during regular business hours in order to have access to agricultural liming material subject to the provisions of this article and regulations pertaining thereto and to the records relating to their distribution.

(b) The methods of analysis and sampling shall be those adopted by the Association of Official Analytical Chemists (AOAC) or such other methods approved by the Commissioner.

(c) The results of official analyses of agricultural liming materials and portions of official samples shall be distributed by the Commissioner as provided for by regulation.

History. — Code 1981, § 2-12-46, enacted by Ga. L. 1996, p. 1183, § 1; Ga. L. 1997, p. 143, § 2.

2-12-47. Sale of noncomplying or toxic material prohibited.

(a) No agricultural liming material shall be sold or offered for sale in this state unless it complies with the provisions of this article and rules and regulations adopted pursuant to this article.

(b) No agricultural liming material shall be sold or offered for sale in this state which contains toxic materials in quantities determined by the Commissioner which may be injurious to plants or animals.

History. — Code 1981, § 2-12-47, enacted by Ga. L. 1996, p. 1183, § 1.

2-12-48. Penalties for deficient materials.

If the analysis of an official sample shows that an agricultural liming material is deficient in one or more of its guarantees beyond the investigational allowances set forth in the regulations of the Commissioner, the following penalties shall be assessed in accordance with the following provisions:

(1) In the event the neutralizing value (calcium carbonate equivalent) is found deficient, the penalty shall be 50¢ per percentage point or fraction thereof on all liming materials;

(2) In the event the magnesium (Mg) is found to be deficient, the penalty shall be $1.00 per percentage point or fraction thereof on all liming materials;

(3) When an official sample does not meet screen specifications as set forth in this article, the penalty shall be 50¢ per percentage point or fraction thereof for each sieve size failing to meet its guarantee;

(4) If the moisture content of an official sample exceeds the guarantee, a penalty of $1.00 per ton shall be assessed for each increase in moisture of 5 percent or fraction thereof;

(5) When an official sample is subject to a penalty, the tonnage represented by the official sample shall be subject to a minimum penalty of $10.00 and a maximum penalty not to exceed the actual retail value of the liming material; and

(6) Penalty payments will be made to the consumer, when known, through the office of the Commissioner. If the consumer is unknown, the penalty payment will be made to the Commissioner to be deposited in the state treasury.

History. — Code 1981, § 2-12-48, enacted by Ga. L. 1996, p. 1183, § 1.

RESEARCH REFERENCES

ALR. — Recovery of cumulative statutory penalties, 71 A.L.R.2d 986.

2-12-49. Rules and regulations; sharing of information.

The Commissioner, after reasonable notice and hearing, is authorized to promulgate and adopt rules and regulations for the administration of this article. The Commissioner is also authorized to promulgate and adopt rules and regulations relative to liming materials derived from industrial by-products which may include, but not be limited to, application rates, proper conditions for application, application record keeping and retention, development and use of site-specific nutrient management plans, and storage and containment in or on lands where liming materials are applied. The Commissioner is further authorized to share such information and consult with other agencies such as, but not limited to, the Environmental Protection Division of the Department of Natural Resources and the United States Department of Agriculture's Natural Resources Conservation Service.

History. — Code 1981, § 2-12-49, enacted by Ga. L. 1996, p. 1183, § 1; Ga. L. 2019, p. 91, § 5/HB 512.

The 2019 amendment, effective April 18, 2019, substituted "adopt" for "enforce" in the middle of the first sentence, and

added the second and third sentences.

2-12-50. Notice and prosecution of violations; hearings; penalty.

(a) If it appears to the Commissioner or the Commissioner's agents that this article or the rules and regulations issued under this article have been violated, the Commissioner shall cause notice of the violation to be given to the licensee, distributor, or person responsible; and the persons notified shall be given an opportunity to be heard in accordance with Chapter 13 of Title 50, the "Georgia Administrative Procedure Act." If it appears after such hearing that any of the provisions of this article or the rules and regulations issued pursuant to this article have been violated, the Commissioner may certify the facts to the court having jurisdiction for prosecution as a misdemeanor or other appropriate action.

(b) Any person violating any provision of this article shall be guilty of a misdemeanor.

(c) Nothing in this article shall be construed as requiring the Commissioner to report a violation of this article for prosecution or for the institution of seizure proceedings when the Commissioner believes that the public interest will best be served by other methods.

History. — Code 1981, § 2-12-50, enacted by Ga. L. 1996, p. 1183, § 1.

ARTICLE 3

SOIL AMENDMENTS

Administrative rules and regulations. — Soil amendments, Official Compilation of the Rules and Regulations of the State of Georgia, Rules of Georgia Department of Agriculture, Chapter 40-31.

2-12-70. Short title.

This article shall be known as the "Georgia Soil Amendment Act of 1976."

History. — Ga. L. 1976, p. 359, § 1.

2-12-71. Definitions.

As used in this article, the term:

(1) "Adulterated" means any soil amendment:

(A) Which contains any deleterious or harmful agent in sufficient quantity to be injurious to beneficial plants, animals, or

aquatic life when applied in accordance with the directions for use shown on the label;

(B) Whose composition differs substantially from that offered in support of registration or shown on the label; or

(C) Which contains noxious weed seed.

(2) "Bulk" means in nonpackaged form.

(3) "Distribute" means to import, consign, offer for sale, sell, barter, or otherwise supply soil amendments to any person in this state.

(4) "Distributor" means any person who imports, consigns, sells, offers for sale, barters, or otherwise supplies soil amendments in this state.

(5) "Label" means the display of written, printed, or graphic matter upon the immediate container of the soil amendment.

(6) "Labeling" means all written, printed, or graphic matter accompanying any soil amendment and all advertisements, brochures, posters, and television, radio, and oral claims used in promoting its sale.

(7) "Percent" or "percentage" means the parts per 100 by weight.

(8) "Person" means an individual, partnership, association, corporation, or other organized body.

(9) "Product name" means the designation under which a soil amendment is offered for distribution.

(10) "Registrant" means any person who registers a soil amendment under this article.

(11) "Soil amendment" means any substance intended for changing the characteristics of soil or other growth medium for the purposes of:

(A) Increasing penetrability of water or air;

(B) Increasing water-holding capacity;

(C) Alleviating or decreasing soil compaction; or

(D) Otherwise altering the soil or other medium in such manner that the physical properties are materially enhanced.

The term "soil amendment" does not include any substance for which nutritional claims are made, such as, but not limited to, commercial fertilizers, liming materials, or unmanipulated vegetable or animal manures.

History. — Ga. L. 1976, p. 359, § 3.

2-12-72. Commissioner to administer article.

This article shall be administered by the Commissioner of Agriculture.

History. — Ga. L. 1976, p. 359, § 2.

2-12-73. Registration required; proof of claims or value; fee.

(a) Every soil amendment distributed in this state shall be registered with the Commissioner on forms obtained from the Commissioner's office. The applicant for registration shall provide such information as the Commissioner may require by regulation after opportunity for public hearing.

(b) In determining the acceptability of any product for registration, the Commissioner may require proof of claims made for the soil amendment. If no specific claims are made, the Commissioner may require proof of the usefulness and value of the soil amendment. As evidence of proof, the Commissioner may rely on experimental data furnished by the applicant and may require that such data be developed from tests conducted under conditions identical to or closely related to those conditions present in this state. The Commissioner may reject any data not developed under such conditions and may rely on the advice of the University of Georgia College of Agricultural and Environmental Sciences experiment station personnel or other university personnel in evaluating data for registration.

(c) The registration fee shall be $55.00 per year for each product. Registration shall expire on December 31, annually, unless an application for renewal has been received prior to the expiration date. Any fees collected pursuant to this Code section shall be retained pursuant to the provisions of Code Section 45-12-92.1.

History. — Ga. L. 1976, p. 359, § 4; Ga. L. 1995, p. 10, § 2; Ga. L. 2010, p. 9, § 1-11/HB 1055.

2-12-74. Refusal or revocation of registration.

The Commissioner shall refuse to register any soil amendment which fails to comply with this article. He may revoke any registration, after opportunity for hearing, upon satisfactory evidence that the registrant or any of his designated agents has used fraudulent or deceptive practices in the distribution of any soil amendment.

History. — Ga. L. 1976, p. 359, § 13.
Cross references. — Authority of Commissioner to impose penalty in lieu of other action, § 2-2-10.

2-12-75. Semiannual reports to be filed; failure to file or false filing as ground for registration revocation.

Each registrant shall keep accurate records of his sales and shall file semiannual reports covering the periods January 1 through June 30 and July 1 through December 31. Such reports shall be due within 30 days from the date of the close of each such period. If the report is not filed within the 30 day period or is false in any respect, the Commissioner may revoke the registration.

History. — Ga. L. 1976, p. 359, § 7.
Cross references. — Authority of Commissioner to impose penalty in lieu of other action, § 2-2-10.

2-12-76. Labeling requirements.

Every soil amendment container shall be labeled on the face or display side in a readable and conspicuous form showing:

(1) The product name;

(2) A statement of claim or purpose, if any are made;

(3) Adequate directions for use;

(4) The net weight or volume; and

(5) The name and address of the registrant.

History. — Ga. L. 1976, p. 359, § 5.

2-12-77. When soil amendment deemed misbranded.

A soil amendment shall be considered misbranded if:

(1) Its label or labeling is false or misleading in any particular;

(2) It is distributed under the name of another soil amendment; or

(3) It is represented as a soil amendment or is represented to contain a soil amendment unless such soil amendment conforms to the definition, if any, prescribed by the Commissioner by regulation.

History. — Ga. L. 1976, p. 359, § 6.

2-12-78. Inspection, sampling, and analysis.

The Commissioner or his designated agents are authorized to enter upon any public or private property during regular working hours for the purpose of inspecting or sampling any soil amendment to determine if such amendment is being distributed in compliance with this article. In the examination of such samples, the Commissioner may rely on

such tests as he may establish by regulation as necessary for the enforcement of this article.

History. — Ga. L. 1976, p. 359, § 9.

2-12-79. Prohibited acts.

It shall be a violation of this article for any person to:

(1) Distribute an unregistered soil amendment;

(2) Distribute an unlabeled soil amendment;

(3) Distribute a misbranded soil amendment;

(4) Distribute an adulterated soil amendment;

(5) Fail to comply with a stop sale, use, or removal order; or

(6) Fail to submit semiannual reports.

History. — Ga. L. 1976, p. 359, § 8.

2-12-80. Promulgation and adoption of rules and regulations; sharing of information.

The Commissioner is authorized to promulgate and adopt such rules and regulations as may be necessary to enforce this article. Such regulations may relate to, but shall not be limited to, methods of inspection and examination, designation of ingredients, and identity of products. The Commissioner is also authorized to promulgate and adopt rules and regulations relative to soil amendments derived from industrial by-products which may include, but not be limited to, application rates, proper conditions for application, application record keeping and retention, development and use of site-specific nutrient management plans, and storage and containment in or on lands where soil amendments are applied. The Commissioner is further authorized to share such information and consult with other agencies such as, but not limited to, the Environmental Protection Division of the Department of Natural Resources and the United States Department of Agriculture's Natural Resources Conservation Service.

History. — Ga. L. 1976, p. 359, § 14; Ga. L. 2019, p. 91, § 6/HB 512.

The 2019 amendment, effective April 18, 2019, added the third and fourth sentences.

2-12-81. Stop sale, use, and removal orders.

The Commissioner may issue and enforce a written or printed stop sale, use, or removal order to the owner or custodian of any lot of soil amendment, ordering him to hold at a designated place any such lot of

soil amendment which the Commissioner determines does not comply with this article. When such soil amendment has been made to comply with this article, it shall be released in writing by the Commissioner.

History. — Ga. L. 1976, p. 359, § 10.

2-12-82. Injunctions.

The Commissioner may bring an action to enjoin the violation or threatened violation of this article or the regulations adopted under this article in the superior court of the appropriate county.

History. — Ga. L. 1976, p. 359, § 11.

2-12-83. Penalties.

Any person violating any of the provisions of this article or the regulations adopted under this article shall be guilty of a misdemeanor.

History. — Ga. L. 1976, p. 359, § 12.

ARTICLE 4

HORTICULTURAL GROWING MEDIA

2-12-100. Short title.

This article shall be known and may be cited as the "Georgia Horticultural Growing Media Act."

History. — Code 1981, § 2-12-100, enacted by Ga. L. 1993, p. 986, § 1.

2-12-101. Purpose.

Horticultural growing media are one of the foundations of successful horticultural businesses. As such, it is vital that growers are adequately informed of the basic contents of such media. The purpose of this article is to ensure that horticultural growing media are accurately labeled to reflect their known composition and are suitable for their intended purpose.

History. — Code 1981, § 2-12-101, enacted by Ga. L. 1993, p. 986, § 1.

2-12-102. Definitions.

As used in this article, the term:

(1) "Bulk" means not in a package or in packages of one cubic yard or more.

(2) "Commissioner" means the Commissioner of Agriculture, any employee of the Department of Agriculture, or any other person authorized by the Commissioner to act on behalf of the Commissioner.

(3) "Custom medium" means a horticultural growing medium which is prepared to exact specifications of the person who will be planting in the medium and delivered directly to that person without intermediate or further distribution.

(4) "Department" means the Georgia Department of Agriculture.

(5) "Distribute" means to offer for sale, sell, barter, exchange, or otherwise supply or make available.

(6) "Horticultural growing medium" means any substance or mixture of substances which is promoted as or is intended to function as an artificial soil for the managed growth of horticultural crops.

(7) "Label" means the display of all written, printed, or graphic matter on or attached to the immediate container accompanying the lot of horticultural growing medium.

(8) "Labeling" means, in addition to the label, any written, printed, or graphic matter accompanying any horticultural growing medium or any advertisements, brochures, posters, television or radio announcements, or any other oral or written material used in promoting a horticultural growing medium.

(9) "Person" means individuals, partnerships, corporations, other organized bodies or entities, or any combination thereof.

(10) "Registrant" means the person whose name appears on the label of a horticultural growing medium and who is responsible for labeling such medium.

History. — Code 1981, § 2-12-102, enacted by Ga. L. 1993, p. 986, § 1.

2-12-103. Administration and enforcement.

The Commissioner is authorized to administer and enforce the provisions of this article through the utilization of personnel and facilities of the department.

History. — Code 1981, § 2-12-103, enacted by Ga. L. 1993, p. 986, § 1.

2-12-104. Authority of Commissioner.

The Commissioner is authorized to:

(1) Cooperate with and, as the Commissioner may deem necessary, enter into written agreements with any other agency of this state, another state, or the federal government or any other organization or entity that may be of assistance;

(2) Inspect or cause to be inspected by duly authorized employees any lands, facilities, equipment, materials, substances, or products used for preparation, distribution, or labeling of horticultural growing media. For this purpose, the Commissioner shall have the power to enter into or upon any place during regular business hours upon notice and to open and sample any bulk material, bundle, package, or other container containing or thought to contain any horticultural growing medium, or to inspect labels or labeling;

(3) Require every person registering any horticultural growing medium in this state to furnish on forms supplied by the Commissioner such information as the Commissioner may require to ascertain the accuracy and truthfulness of any label, labeling, or composition of any horticultural growing medium;

(4) Place a stop sale order on any horticultural growing medium if the composition thereof is inaccurately or untruthfully labeled;

(5) Adopt, in accordance with Chapter 13 of Title 50, the "Georgia Administrative Procedure Act," such rules and regulations as the Commissioner deems necessary to ensure the accuracy or truthfulness of labels or labeling or content of horticultural growing media, including but not limited to:

(A) Requiring that all registrants of horticultural growing media register each product name with the Commissioner and supply the Commissioner with a complete label and labeling for each product name;

(B) Requiring that all registrants of horticultural growing media supply analyses of horticultural growing media they have distributed, upon request of the Commissioner;

(C) Specifying the contents of the label and the manner of expressing the contents required on each package or accompanying each shipment of horticultural growing media;

(D) Requiring an annual registration fee for each product registered of not more than $100.00 per product nor more than $1,500.00 per registrant;

(E) Establishing a stop sale procedure for horticultural growing media which do not meet the requirements of this article or the rules and regulations of the Commissioner;

(F) Determining the suitability of any horticultural growing medium for its intended purpose; and

(G) Requiring data and proof of usefulness from registrants of horticultural growing media in order to determine suitability for its intended purpose.

History. — Code 1981, § 2-12-104, enacted by Ga. L. 1993, p. 986, § 1.

2-12-105. Assessment and collection of cost of registration.

For the purpose of defraying expenses of registration under this article, the Commissioner may assess and collect the cost thereof with any surplus to be paid into the state treasury.

History. — Code 1981, § 2-12-105, enacted by Ga. L. 1993, p. 986, § 1.

2-12-106. Exemptions.

(a) Distribution of horticultural growing media planted with live plant material is exempt from the labeling and registration requirements imposed pursuant to this article.

(b) Distribution of custom media is exempt from the registration requirements imposed pursuant to this article provided it is prepared for a single purchaser and is not held for distribution to other purchasers.

(c) Distribution of horticultural growing media containing plant nutrients shall be exempt from the requirements of Article 1 of this chapter, the "Georgia Plant Food Act of 1989."

History. — Code 1981, § 2-12-106, enacted by Ga. L. 1993, p. 986, § 1; Ga. L. 1995, p. 10, § 2.

2-12-107. Revocation, denial, cancellation, and refusal of registration.

The Commissioner is authorized to revoke and cancel registrations of any person or to refuse to register horticultural growing media upon satisfactory evidence that the registrant or person has used fraudulent or deceptive practices in the evasion or attempted evasion of this article or of any rules and regulations promulgated under this article. No

registration shall be revoked, denied, canceled, or refused until the registrant or person has been notified by certified mail or statutory overnight delivery, return receipt requested, of the time and place of the hearing and has been given an opportunity to appear and be heard by the Commissioner or the Commissioner's authorized representative.

History. — Code 1981, § 2-12-107, enacted by Ga. L. 1993, p. 986, § 1; Ga. L. 2000, p. 1589, § 3.

Editor's notes. — Ga. L. 2000, p. 1589, § 16, not codified by the General Assembly, provides that the amendment to this Code section is applicable with respect to notices delivered on or after July 1, 2000.

Code Commission notes. — Pursuant to Code Section 28-9-5, in 1993, "canceled" was substituted for "cancelled" in the second sentence.

2-12-108. Injunctions against violations.

The Commissioner is authorized to apply for and the court is authorized to grant a temporary or permanent injunction restraining any person from violating or continuing to violate any of the provisions of this article or any rule or regulation promulgated under this article notwithstanding the existence of other remedies at law. Any such injunction may be issued without bond.

History. — Code 1981, § 2-12-108, enacted by Ga. L. 1993, p. 986, § 1.

2-12-109. Prohibited acts.

It shall be unlawful for any person to:

(1) Distribute an unregistered horticultural growing medium, except one exempted from the registration requirements of this article;

(2) Distribute a horticultural growing medium if the label or labeling thereof does not accurately reflect its composition;

(3) Distribute a horticultural growing medium which is unsuitable for its intended purpose or which contains substances at a level harmful to plant growth;

(4) Fail to supply the Commissioner with analyses of a horticultural growing medium when requested by the Commissioner or a person authorized by the Commissioner or this article to make such requests;

(5) Fail to cease distribution of any horticultural growing medium for which the Commissioner has issued a stop sale order; or

(6) Obstruct the Commissioner in the performance of the Commissioner's duties under this article.

History. — Code 1981, § 2-12-109, enacted by Ga. L. 1993, p. 986, § 1.

2-12-110. Penalty.

Any person violating any provision of this article shall be guilty of a misdemeanor.

History. — Code 1981, § 2-12-110, enacted by Ga. L. 1993, p. 986, § 1.

CHAPTER 13

COMMERCIAL FEEDS

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2-13-23. Criminal penalty.

Administrative rules and regulations. — Commercial feeding stuffs, Official Compilation of the Rules and Regulations of the State of Georgia, Rules of Georgia Department of Agriculture, Chapter 40-5.

Grain dealers, Official Compilation of the Rules and Regulations of the State of Georgia, Rules of Georgia Department of Agriculture, Chapter 40-25.

2-13-1. Definitions.

As used in this chapter, the term:

(1) "Brand name" means any word, name, symbol, or device or any combination thereof identifying the commercial feed of a distributor or licensee and distinguishing it from that of others.

(2) "Commercial feed" means all materials except whole, unmixed seed, when not adulterated within the meaning of Code Section 2-13-10, which are distributed for use as feed or for mixing in feed, provided that the Commissioner, by regulation, may exempt from this definition or from specific provisions of this chapter commodities such as hay, straw, stover, silage, cobs, husks, hulls, raw meat, and

individual chemical compounds or substances when such materials are not intermixed or mixed with other materials and are not adulterated within the meaning of Code Section 2-13-10.

(3) "Customer-formula feed" means commercial feed which consists of a mixture of commercial feeds, feed ingredients, or both, each batch of which is manufactured according to the specific instructions of the final purchaser.

(4) "Distribute" means to offer for sale, sell, exchange, or barter commercial feed.

(5) "Distributor" means any person who distributes.

(6) "Drug" means any article intended for use in the diagnosis, cure, mitigation, treatment, or prevention of disease in animals other than man and any article other than feed intended to affect the structure or any function of the animal body.

(7) "Feed ingredient" means each of the constituent materials making up a commercial feed.

(8) "Label" means a display of written, printed, or graphic matter upon or affixed to the container in which a commercial feed is distributed or on the invoice or delivery slip with which a commercial feed is distributed.

(9) "Labeling" means all labels and other written, printed, or graphic matter upon a commercial feed or any of its containers or wrappers or accompanying such commercial feed.

(9.1) "Licensee" means a person who obtains a commercial feed license.

(10) "Manufacture" means to grind, mix or blend, or package or to process further a commercial feed for distribution.

(11) "Mineral feed" means a commercial feed intended to supply primarily mineral elements or inorganic nutrients.

(12) "Official sample" means a sample of feed taken by the Commissioner or his agent in accordance with subsection (c), (e), or (f) of Code Section 2-13-13.

(13) "Owner" means a corporation or the stockholders thereof, a partnership, or an individual.

(14) "Percent" or "percentages" means percentages by weight.

(15) "Person" includes an individual, a partnership, a corporation, and an association.

(16) "Pet" means any domesticated animal normally maintained in or near the household of its owner.

(17) "Pet food" means any commercial feed prepared and distributed for consumption by dogs or cats.

(18) "Product name" means the name of the commercial feed which identifies it as to kind, class, or specific use.

(18.1) "Specialty pet" means any domesticated animal normally maintained in a cage or tank, such as, but not limited to, gerbils, hamsters, birds, fish, and turtles.

(18.2) "Specialty pet food" means any commercial feed prepared and distributed for consumption by specialty pets, but not including feeds for horses, rabbits, and wild birds.

(19) "Ton" means a net weight of 2,000 pounds avoirdupois.

History. — Code 1933, § 42-202, enacted by Ga. L. 1972, p. 10, § 1; Ga. L. 1992, p. 3018, § 1.

RESEARCH REFERENCES

C.J.S. — 36A C.J.S., Food, § 1.
ALR. — Validity of statute or ordinance as to "containers," 5 A.L.R. 1068; 101 A.L.R. 862.

2-13-2. Commissioner to administer chapter.

This chapter shall be administered by the Commissioner of Agriculture.

History. — Code 1933, § 42-201, enacted by Ga. L. 1972, p. 10, § 1.

2-13-3. Cooperation with other agencies and associations.

The Commissioner may cooperate and enter into agreements with governmental agencies of this state, other states, agencies of the federal government, and private associations in order to carry out the purpose and provisions of this chapter.

History. — Code 1933, § 42-215, enacted by Ga. L. 1972, p. 10, § 1.

2-13-4. Publication of information as to sales, production, use, and analyses.

The Commissioner may publish, in such forms as he may deem proper, information concerning the sales of commercial feeds, together with such data on their production and use as he may consider advisable and a report of the results of the analyses of official samples of commercial feeds sold within this state as compared with the

analyses guaranteed in the registration and on the label. The information concerning production and use of commercial feed shall not disclose the operations of any person.

History. — Code 1933, § 42-216, enacted by Ga. L. 1972, p. 10, § 1; Ga. L. 1992, p. 3018, § 2.

2-13-5. Disclosure of protected information.

Any person who uses to his own advantage or reveals to anyone other than the Commissioner, officers of the department, or the courts, when relevant in any judicial proceeding, any information acquired under the authority of this chapter concerning any method, records, formulations, or processes which as trade secrets are entitled to protection, shall be guilty of a misdemeanor, provided that this prohibition shall not be deemed to prohibit the Commissioner or his duly authorized agent from exchanging information of a regulatory nature with duly appointed officials of the United States government or the governments of other states, when such officials are similarly prohibited by law from revealing this information.

History. — Code 1933, § 42-211, enacted by Ga. L. 1972, p. 10, § 1.

2-13-6. License required for distribution; product registration; fees; refusal or cancellation of license or registration.

(a) No person who manufactures a commercial feed within this state or whose name appears on the label of a commercial feed (guarantor), shall distribute a commercial feed in this state without first obtaining a commercial feed license from the Commissioner. No distributor may cause a commercial feed to be distributed in this state without first obtaining a commercial feed license; provided, however, that the Commissioner by rule or regulation may exempt certain distributors. Application for a commercial feed license shall be made on forms provided by the Commissioner that identify the manufacturer's or guarantor's or distributor's name, place of business, and location of each manufacturing facility in the state and such other appropriate information as may be deemed necessary for enforcement of this chapter.

(b) All licenses shall expire on December 31 of each year. Licenses are not transferable and no credit or refund may be granted for licenses held for less than one full year. All commercial feed licenses must be renewed by January 1 of each year. The license fee shall be based upon the number of tons of commercial feed distributed in this state during the preceding 12 month period ending December 31, provided that

tonnage of small-package products subject to registration as specified in subsection (d) of this Code section shall not be used in calculating the license fee due. The amount of the license fee shall be based upon the schedule as prescribed in the rules and regulations of the Commissioner but shall not be less than $75.00 nor more than $2,000.00 per annum. Any fees collected pursuant to this Code section shall be retained pursuant to the provisions of Code Section 45-12-92.1.

(c) A commercial feed license must be renewed annually and fees shall be paid by January 31 of each calendar year, or the applicable license fee shall increase in the manner prescribed in the rules and regulations of the Commissioner.

(d) No licensee shall distribute in this state a pet food or a specialty pet food in packages of ten pounds or less which has not been registered. The application for registration shall be submitted to the Commissioner on forms furnished by or acceptable to the Commissioner. All registrations expire on December 31 of each year. An annual registration fee of an amount prescribed in the rules and regulations of the Commissioner is due by January 1. Such registration fee shall be $40.00 per product registered, provided that the total of all such registration fees shall not exceed $2,000.00 per annum for any licensee.

(e) Annual registration fees received after January 31 shall be subject to a delinquent penalty as prescribed in the rules and regulations of the Commissioner.

(f) The license and registration fees provided by this Code section shall not exceed a total amount of $2,000.00 per annum for any licensee.

(g) The Commissioner is empowered to refuse the commercial feed license application or product registration of any firm not deemed to be in compliance with the provisions of this chapter and to cancel any commercial feed licenses or product registrations subsequently found not to be in compliance with this chapter, provided that no commercial feed license or product registration shall be refused or canceled unless the licensee has been given an opportunity to be heard before the Commissioner and to amend his application or take corrective action in order to comply with the requirements of this chapter.

(h) The Commissioner may request copies of labels and labeling in order to determine compliance with the provisions of this chapter.

History. — Ga. L. 1945, p. 213, § 3; Code 1933, § 42-203, enacted by Ga. L. 1972, p. 10, § 1; Ga. L. 1992, p. 3018, § 3; Ga. L. 2010, p. 9, § 1-12/HB 1055.

Cross references. — Annual license fee for grain dealers, commercial feed dealers, and grain warehousemen, § 2-1-5.

RESEARCH REFERENCES

Am. Jur. 2d. — 35 Am. Jur. 2d, Food, §§ 3 et seq., 49 et seq.
C.J.S. — 36A C.J.S., Food, § 4 et seq.

2-13-7. Compliance with Chapter 5 of this title.

Every nonresident licensee, at the time of licensing and before distributing commercial feed in this state, shall comply with Chapter 5 of this title, the "Department of Agriculture Registration, License, and Permit Act."

History. — Ga. L. 1945, p. 213, § 10; Code 1933, § 42-213, enacted by Ga. L. 1972, p. 10, § 1; Ga. L. 1992, p. 3018, § 4.

Cross references. — Maintenance of registered office and registered agents in state by corporations, § 14-2-501 et seq.

2-13-8. Labeling requirements.

(a) A commercial feed, other than a customer-formula feed, shall be accompanied by a label bearing the following information:

(1) The net weight, which may be stated in metric units in addition to the required avoirdupois units;

(2) The product name and the brand name, if any, under which the commercial feed is distributed;

(3) The guaranteed analysis stated in such terms as the Commissioner, by regulation, determines is required to advise the user of the composition of the feed or to support claims made in the labeling. In all cases the substances or elements must be determinable by laboratory methods, such as the methods published by the Association of Official Analytical Chemists;

(4) The common or usual name of each ingredient used in the manufacture of the commercial feed, listed in descending order of predominance by weight; provided, however, that for any commercial feed other than equine feed, the Commissioner, by regulation, may permit the use of a collective term for a group of ingredients which performs a similar function or exempt such commercial feeds or any group thereof from this requirement of an ingredient statement if the Commissioner finds that such statement is not required in the interest of consumers;

(5) The name and the principal mailing address of the manufacturer or the person responsible for distributing the commercial feed;

(6) Adequate directions for use for all commercial feeds containing drugs and for such other feeds as the Commissioner may require by regulation as necessary for their safe and effective use; and

(7) Such precautionary statements as the Commissioner, by regulation, determines are necessary for the safe and effective use of the commercial feed.

(b) A customer-formula feed shall be accompanied by a label, invoice, delivery slip, or other shipping document bearing the following information:

(1) The name and address of the manufacturer;

(2) The name and address of the purchaser;

(3) The date of delivery;

(4) The product name and brand name, if any, and the net weight of each commercial feed used in the mixture;

(5) The net weight of every other ingredient used;

(6) Adequate directions for use for all customer-formula feeds containing drugs and for such other feeds as the Commissioner may require, by regulation, as necessary for their safe and effective use;

(7) Such precautionary statements as the Commissioner, by regulation, determines are necessary for the safe and effective use of the customer-formula feed; and

(8) If a drug-containing product is used:

(A) The purpose of the medication (claim statement); and

(B) The established name of each active drug ingredient and the level of each drug used in the final mixture expressed in accordance with regulations.

History. — Code 1933, § 42-204, enacted by Ga. L. 1972, p. 10, § 1; Ga. L. 1992, p. 3018, § 5; Ga. L. 2007, p. 165, § 1/HB 122.

Administrative rules and regulations. — Labeling, Official Compilation of the Rules and Regulations of the State of Georgia, Rules of Georgia Department of Agriculture, Commercial Feeding Stuffs, Subject 40-5-2.

RESEARCH REFERENCES

Am. Jur. 2d. — 35 Am. Jur. 2d, Food, § 23 et seq.

C.J.S. — 36A C.J.S., Food, §§ 38, 39, 44, 45.

ALR. — Constitutionality of statutes requiring notice by label or otherwise of the fact that product is imported, or as to place of production, 124 A.L.R. 572.

2-13-9. When commercial feed deemed misbranded.

A commercial feed shall be deemed to be misbranded:

(1) If its labeling is false or misleading in any particular;

(2) If it is distributed under the name of another commercial feed;

(3) If it is not labeled as required in Code Section 2-13-8;

(4) If it purports to be or is represented as a commercial feed or if it purports to contain or is represented as containing a commercial feed ingredient, unless such commercial feed or feed ingredient conforms to the definition, if any, prescribed by regulation by the Commissioner; or

(5) If any word, statement, or other information required by or under the authority of this chapter to appear on the label or labeling is not prominently placed thereon with such conspicuousness (as compared with other words, statements, designs, or devices in the labeling) and in such terms as to render it likely to be read and understood by the ordinary individual under customary conditions of purchase and use.

History. — Code 1933, § 42-205, enacted by Ga. L. 1972, p. 10, § 1.

RESEARCH REFERENCES

Am. Jur. 2d. — 35 Am. Jur. 2d, Food, § 24 et seq.

C.J.S. — 36A C.J.S., Food, §§ 38, 39, 44, 45.

2-13-10. When commercial feed deemed adulterated.

A commercial feed shall be deemed to be adulterated:

(1) If it bears or contains any poisonous or deleterious substance which may render it injurious to health, provided that, if the substance is not an added substance, such commercial feed shall not be considered adulterated under this paragraph if the quantity of such substance in such commercial feed does not ordinarily render it injurious to health;

(2) If it bears or contains any added poisonous, added deleterious, or added nonnutritive substance which is unsafe within the meaning of Section 406 of the Federal Food, Drug, and Cosmetic Act, other than one which is:

(A) A pesticide chemical in or on a raw agricultural commodity; or

(B) A food additive;

(3) If it is, bears, or contains any food additive which is unsafe within the meaning of Section 409 of the Federal Food, Drug, and Cosmetic Act;

(4) If it is a raw agricultural commodity and it bears or contains a pesticide chemical which is unsafe within the meaning of Section

408(a) of the Federal Food, Drug, and Cosmetic Act, provided that where a pesticide chemical has been used in or on a raw agricultural commodity in conformity with an exemption granted or a tolerance prescribed under Section 408 of the Federal Food, Drug, and Cosmetic Act and such raw agricultural commodity has been subjected to processing, such as canning, cooking, freezing, dehydrating, or milling, the residue of such pesticide chemical remaining in or on such processed feed shall not be deemed unsafe if such residue in or on the raw agricultural commodity has been removed to the extent possible in good manufacturing practice and the concentration of such residue in the processed feed is not greater than the tolerance prescribed for the raw agricultural commodity, unless the feeding of such processed feed will result or is likely to result in a pesticide residue in the edible product of the animal which is unsafe within the meaning of Section 408(a) of the Federal Food, Drug, and Cosmetic Act;

(5) If it is, bears, or contains any color additive which is unsafe within the meaning of Section 706 of the Federal Food, Drug, and Cosmetic Act;

(6) If any valuable constituent has been in whole or in part omitted or abstracted therefrom or replaced by any less valuable substance;

(7) If its composition or quality falls below or differs from that which it is purported or is represented to possess by its labeling;

(8) If it contains a drug and the methods used in or the facilities or controls used for its manufacture, processing, or packaging do not conform to current good manufacturing practice regulations promulgated by the Commissioner to assure that the drug meets the requirements of this chapter as to safety and has the identity and strength and meets the quality and purity characteristics which it purports or is represented to possess. In promulgating such regulations, the Commissioner shall adopt the current good manufacturing practice regulations for Type A medicated articles and Type B and Type C medicated feeds established under authority of the Federal Food, Drug, and Cosmetic Act, unless he determines that they are not appropriate to the conditions which exist in this state;

(9) If it contains viable or poisonous weed seeds in amounts exceeding the limits which the Commissioner shall establish by rule or regulation; or

(10) If it is, or it bears or contains any new animal drug which is, unsafe within the meaning of Section 512 of the Federal Food, Drug, and Cosmetic Act.

History. — Code 1933, § 42-206, enacted by Ga. L. 1972, p. 10, § 1; Ga. L. 1982, p. 3, § 2; Ga. L. 1992, p. 3018, § 6.

U.S. Code. — The Federal Food, Drug, and Cosmetic Act, referred to in this Code section, is codified at 21 U.S.C. § 301 et seq. Section 406 of the Act is codified at 21 U.S.C. § 346. Section 408 of the Act is codified at 21 U.S.C. § 346a. Section 409 of the Act is codified at 21 U.S.C. § 348. Section 706 of the Act is codified at 21 U.S.C. § 376.

Administrative rules and regulations. — Adulterants, Official Compilation of the Rules and Regulations of the State of Georgia, Rules of Georgia Department of Agriculture, Commercial Feeding Stuffs, Subject 40-5-6.

RESEARCH REFERENCES

Am. Jur. 2d. — 35 Am. Jur. 2d, Food, § 20 et seq.

C.J.S. — 36A C.J.S., Food, §§ 23, 24.

ALR. — What is "drug" within meaning of § 201(g)(1) of Federal Food, Drug, and Cosmetic Act (21 USCS § 321(g)(1)), 127 A.L.R. Fed. 141.

2-13-11. Prohibited acts.

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

(1) The manufacture or distribution of any commercial feed that is adulterated or misbranded;

(2) The adulteration or misbranding of any commercial feed;

(3) The distribution of agricultural commodities, such as whole seed, hay, straw, stover, silage, cobs, husks, and hulls, which are adulterated within the meaning of Code Section 2-13-10;

(4) The removal or disposal of a commercial feed in violation of an order under Code Section 2-13-14;

(5) The failure or refusal to obtain a commercial feed license or small package registration in accordance with Code Section 2-13-6;

(6) The violation of Code Section 2-13-5; and

(7) The waiving by the Commissioner of any penalties imposed under this chapter.

History. — Code 1933, § 42-207, enacted by Ga. L. 1972, p. 10, § 1; Ga. L. 1992, p. 3018, § 7.

RESEARCH REFERENCES

Am. Jur. 2d. — 35 Am. Jur. 2d, Food, §§ 20 et seq., 24 et seq.

C.J.S. — 36A C.J.S., Food, § 41 et seq.

2-13-12. Establishment of standards for feeds; adoption of rules and regulations.

(a) The Commissioner is authorized to establish standards for commercial feeds.

(b) The Commissioner is authorized to promulgate such rules and regulations for commercial feeds and pet foods as are specifically authorized in this chapter and such other reasonable rules and regulations as may be necessary for the efficient enforcement of this chapter. In the interest of uniformity, the Commissioner, by regulation, shall adopt, unless he determines that they are inconsistent with this chapter or are not appropriate to conditions which exist in this state, the following:

(1) The official definitions of feed ingredients and official feed terms adopted by the Association of American Feed Control Officials, Incorporated, and published in the 1992 official publication of that organization and supplements thereto; and

(2) Any regulation promulgated pursuant to the authority of the Federal Food, Drug, and Cosmetic Act and supplements thereto.

History. — Code 1933, § 42-208, enacted by Ga. L. 1972, p. 10, § 1; Ga. L. 1992, p. 3018, § 8.

U.S. Code. — The Federal Food, Drug, and Cosmetic Act, referred to in this Code section, is codified at 21 U.S.C. § 301 et seq.

RESEARCH REFERENCES

Am. Jur. 2d. — 35 Am. Jur. 2d, Food, § 3 et seq.

C.J.S. — 36A C.J.S., Food, § 3 et seq.

2-13-13. Inspections authorized; receipt for samples; warrant; methods of sampling and analysis generally; forwarding of results.

(a) For the purpose of enforcing this chapter and in order to determine whether its provisions have been complied with, including whether or not any operations may be subject to such provisions, officers or employees duly designated by the Commissioner, upon presenting appropriate credentials to the owner, operator, or agent in charge, are authorized to enter, during normal business hours, any factory, warehouse, or establishment within this state in which commercial feeds are manufactured, processed, packed, or held for distribution and any vehicle being used to transport or hold such feeds and to inspect, at reasonable times, within reasonable limits, and in a reasonable manner, such factory, warehouse, establishment, or vehicle

and all pertinent equipment, finished and unfinished materials, containers, and labeling therein. The inspection may include the verification of only such records and production and control procedures as may be necessary to determine compliance with the good manufacturing practice regulations established under paragraph (8) of Code Section 2-13-10. Each such inspection shall be commenced and completed with reasonable promptness. Upon completion of the inspection, the person in charge of the facility or vehicle shall be so notified.

(b) If the officer or employee making such inspection of a factory, warehouse, or other establishment has obtained a sample in the course of the inspection, upon completion of the inspection and prior to leaving the premises he shall give to the owner, operator, or agent in charge thereof a receipt describing the samples obtained.

(c) If the owner of any factory, warehouse, or establishment described in subsection (a) of this Code section or his agent refuses to admit the Commissioner or his agent to inspect the premises in accordance with subsection (a), the Commissioner is authorized to obtain from any court of this state a warrant directing such owner or his agent to submit the premises described in such warrant to inspection.

(d) For the purpose of enforcing this chapter, the Commissioner or his duly designated agent is authorized to enter upon any public or private premises, including any vehicle of transport, during regular business hours, to have access to, to obtain samples of, and to examine records relating to distribution of commercial feeds.

(e) Sampling and analysis shall be conducted in accordance with methods published by the Association of Official Analytical Chemists or with other generally recognized methods.

(f) The results of all analyses of official samples shall be forwarded by the Commissioner to the person named on the label and to the purchaser. When the inspection and analysis of an official sample indicates that a commercial feed has been adulterated or misbranded and upon request within ten days following receipt of the analysis, the Commissioner shall furnish to the licensee a portion of the sample concerned.

(g) The Commissioner, in determining for administrative purposes whether a commercial feed is deficient in any component, shall be guided by the official sample as defined in paragraph (12) of Code Section 2-13-1 and obtained and analyzed as provided for in subsections (c), (e), and (f) of this Code section.

History. — Ga. L. 1945, p. 213, §§ 5, 8; Ga. L. 1956, p. 346, § 8; Code 1933, § 42-209, enacted by Ga. L. 1972, p. 10, § 1; Ga. L. 1982, p. 3, § 2; Ga. L. 1992, p. 3018, § 9.

RESEARCH REFERENCES

Am. Jur. 2d. — 35 Am. Jur. 2d, Food, §§ 12, 13.
C.J.S. — 36A C.J.S., Food, §§ 19, 20.

2-13-14. Issuance and enforcement of withdrawal from distribution orders; condemnation and confiscation authorized; disposition of condemned feed.

(a) **Withdrawal from distribution orders.** When the Commissioner or his authorized agent has reasonable cause to believe that any lot of commercial feed is being distributed in violation of this chapter or any of the prescribed regulations under this chapter, he may issue and enforce a written or printed withdrawal from distribution order, warning the distributor not to dispose of the lot of commercial feed in any manner until written permission is given by the Commissioner or the court. The Commissioner shall release the lot of commercial feed so withdrawn when such provisions and regulations have been complied with. If compliance is not obtained within 30 days, the Commissioner may begin, or upon request of the distributor or licensee shall begin, proceedings for condemnation.

(b) **Condemnation and confiscation.** Any lot of commercial feed not in compliance with such provisions and regulations shall be subject to seizure on complaint of the Commissioner to the superior court of the county in which the commercial feed is located. If the court finds the commercial feed to be in violation of this chapter and orders the condemnation of the commercial feed, it shall be disposed of in any manner consistent with the quality of the commercial feed and the laws of this state, provided that in no instance shall the disposition of the commercial feed be ordered by the court without first giving the claimant an opportunity to apply to the court for release of the commercial feed or for permission to process or relabel the commercial feed to bring it into compliance with this chapter.

History. — Ga. L. 1945, p. 213, § 13; Code 1933, § 42-210, enacted by Ga. L. 1972, p. 10, § 1; Ga. L. 1992, p. 3018, § 10.

2-13-15 through 2-13-17.

Reserved. Repealed by Ga. L. 1992, p. 3018, §§ 11-13, effective May 4, 1992.

Editor's notes. — These Code sections, concerning civil penalties and the cumulative nature of penalties, were based on Ga. L. 1945, p. 213, § 12; Ga. L. 1956, p. 346, § 3; Code 1933, § 42-211, enacted by Ga. L. 1972, p. 10, § 1; Ga. L. 1945, p. 213, § 6; Ga. L. 1956, p. 346, § 1; Ga. L. 1987,

p. 3, § 2; Ga. L. 1945, p. 213, § 8; Ga. L. 1956, p. 346, § 2.

2-13-18. Injunctions.

The Commissioner is authorized to apply for and the court to grant a temporary or permanent injunction restraining any person from violating or continuing to violate this chapter or any rule or regulation promulgated under this chapter, notwithstanding the existence of other remedies at law. Such injunction shall be issued without bond.

History. — Code 1933, § 42-211, enacted by Ga. L. 1972, p. 10, § 1.

2-13-19. Initiation of prosecutions.

(a) It shall be the duty of the Attorney General or each district attorney of a superior court to whom any violation is reported by the Commissioner or his representative to cause appropriate proceedings to be instituted and prosecuted in a court of competent jurisdiction without delay. Before the Commissioner reports a violation for such prosecution, an opportunity shall be given the distributor to present his view to the Commissioner.

(b) Nothing in this chapter shall be construed as requiring the Commissioner or his representative to report for prosecution, to institute seizure proceedings, or to issue a withdrawal from distribution order as a result of minor violations of the chapter or when he believes the public interest will best be served by suitable notice or warning in writing.

History. — Code 1933, § 42-211, enacted by Ga. L. 1972, p. 10, § 1.

2-13-20. Certificate of state chemist or other state employee as prima-facie evidence.

In any controversy or prosecution arising under this chapter, a certificate of the state chemist or other state employee making an analysis or inspection, duly sworn to by the state chemist or the employee, shall be prima-facie evidence of the facts therein certified.

History. — Code 1933, § 42-214, enacted by Ga. L. 1972, p. 10, § 1.

JUDICIAL DECISIONS

Cited in Swift & Co. v. Morgan & Sturdivant, 214 F.2d 115 (5th Cir. 1954).

RESEARCH REFERENCES

Am. Jur. 2d. — 35 Am. Jur. 2d, Food, § 69.
C.J.S. — 36A C.J.S., Food, § 90.

2-13-21. Applicability of "Georgia Administrative Procedure Act."

The provisions of this chapter pertaining to rule making, the issuance, revocation, or denial of licenses and registrations, and other administrative actions authorized under this chapter shall be subject to and conducted in accordance with Chapter 13 of Title 50, the "Georgia Administrative Procedure Act."

History. — Code 1933, § 42-211, enacted by Ga. L. 1972, p. 10, § 1; Ga. L. 1992, p. 3018, § 14.

2-13-22. Exemptions from chapter; when chapter may be waived.

(a) This chapter shall not apply to any commercial feeds that have been manufactured or produced by any person, partnership, firm, or corporation for the purpose of feeding his, their, or its own domestic animals, livestock, or poultry.

(b) This chapter shall not apply to any commercial feeds whenever the purchaser of such commercial feeds desires to waive this chapter in regard to a particular manufacturer, seller, or producer of commercial feeds and the manufacturer, seller, or producer agrees to waive this chapter. No valid waiver may be executed unless the owner of the domestic animals, livestock, or poultry owns an interest in the feed manufacturing concern or the manufacturing concern owns an interest in the domestic animals, livestock, or poultry. The waiver shall be in writing, signed by both parties, and filed with the department. At any time after the waiver is on file, either party to the waiver may direct, in writing, that the department withdraw the waiver.

History. — Code 1933, § 42-212, enacted by Ga. L. 1972, p. 10, § 1.

2-13-23. Criminal penalty.

Any person who violates any of the provisions of this chapter or who impedes, hinders, or otherwise prevents or attempts to prevent the Commissioner or his duly authorized agent in the performance of his duty in connection with this chapter shall be guilty of a misdemeanor.

History. — Code 1933, §§ 42-211, 42-9922, enacted by Ga. L. 1972, p. 10, § 1.

CHAPTER 14

SALE OF AGRICULTURAL AND FOREST PRODUCTS

Article 1

General Provisions [Reserved]

Article 2

Cotton

Sec.
2-14-20. Sale of cottonseed hulls without having weight stamped on package.

Article 3

Honeybees

2-14-40. License required for sale of bees; fee; revocation of license.
2-14-41. Powers of Commissioner generally; promulgation and enforcement of rules, ordinances, and regulations.
2-14-41.1. Prohibition against restriction of honeybee production or maintenance.
2-14-42. Inspections authorized generally.
2-14-43. Inspection of honeybee colonies; assistance in inspection.
2-14-44. Disposition of infected bees or fixtures.
2-14-45. Compensation for destroyed property authorized; appraisal.
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Article 4

Pecans

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Article 5

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2-14-133. Rules and regulations; enforcement of article.
2-14-134. Violations; criminal penalties.
2-14-135. Civil penalties; injunctions.
2-14-136. Marketing season shipping date.
2-14-137. Standards for grades.
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Article 7

Pick-your-own Farm Operations

2-14-150. Legislative declarations; intent.
2-14-151. Definitions.
2-14-152. Liability of farm owner or operator.
2-14-153. Warning notices required; effect of failure to comply with notice requirements.

Cross references. — Exemption from municipal property taxes and license fees for sale or introduction into municipality of agricultural products raised in state, § 48-5-356.

ARTICLE 1

GENERAL PROVISIONS

Reserved

ARTICLE 2

COTTON

2-14-20. Sale of cottonseed hulls without having weight stamped on package.

Any person, firm, or corporation who sells cottonseed hulls in bales or packages without having the weight thereof plainly stamped or branded on each bale or package shall be guilty of a misdemeanor.

History. — Ga. L. 1901, p. 63, § 1; Penal Code 1910, § 566; Code 1933, § 5-9913.

Cross references. — Use and advertisement of weights and measures generally, § 10-2-1. Warehouse storage of cotton generally, § 10-4-70 et seq.

RESEARCH REFERENCES

C.J.S. — 3 C.J.S., Agriculture, § 84 et seq.

ALR. — Cotton industry as affected with a public interest, 23 A.L.R. 1478; 74 A.L.R. 1079.

Constitutionality of statutes relating to grinding, packing, or branding of farm products, 73 A.L.R. 1445.

ARTICLE 3

HONEYBEES

Cross references. — Penalty for labeling as "honey" or "imitation honey" any product other than pure honey manufactured by honeybees, § 26-2-32.

RESEARCH REFERENCES

ALR. — Beekeeping regulation: validity and construction, 55 A.L.R.4th 1223.

2-14-40. License required for sale of bees; fee; revocation of license.

(a) All persons, firms, or corporations desiring to carry on as a business the sale of bees, queens, nuclei, etc., shall apply to the Commissioner of Agriculture as ex officio state entomologist for a license to do so. The application shall be accompanied by a fee of $25.00. All fees so collected shall be turned over to the Office of the State Treasurer.

(b) The Commissioner, upon investigation of the party so applying and at his discretion, shall issue a license to the same. Such license shall be revoked by the Commissioner if the licensee fails to comply with this article or to carry out the rules and regulations established by the Commissioner.

(c) Any person, firm, or corporation attempting to carry on as a business the sale of bees, queens, nuclei, etc., without the license required by subsection (a) of this Code section or after such license has been revoked shall be guilty of a misdemeanor and upon conviction shall be punished as provided in Code Section 2-14-47.

History. — Ga. L. 1921, p. 260, § 1; Ga. L. 1931, p. 7, § 98A; Code 1933, §§ 5-901, 5-9929; Ga. L. 1993, p. 1402, § 18; Ga. L. 2010, p. 863, § 2/SB 296.

OPINIONS OF THE ATTORNEY GENERAL

The Entomology Act of 1937 (see now O.C.G.A. § 2-7-1 et seq.) does not by implication repeal the law on honebees (see now O.C.G.A. § 2-14-140 et seq.). 1945-47 Op. Att'y Gen. p. 5.

Section clearly indicates legislative purpose to impose criminal liability. 1970 Op. Att'y Gen. No. 70-155.

2-14-41. Powers of Commissioner generally; promulgation and enforcement of rules, ordinances, and regulations.

The Commissioner shall have full and plenary power to deal with the American and European foul brood, all other contagious and infectious honeybee diseases, Africanized bees, or any other threat to honeybees. He shall have full power and authority to make, promulgate, and enforce such rules, ordinances, and regulations and to do and perform such acts, through his agents or otherwise, as in his judgment may be necessary to curtail, eradicate, or prevent the introduction, spread, or dissemination of any and all contagious diseases, Africanized bees, or any other threat to honeybees. All such rules, ordinances, and regulations shall have the force and effect of law.

History. — Ga. L. 1920, p. 160, § 2; Ga. L. 1931, p. 7, § 98; Code 1933, § 5-902; Ga. L. 1990, p. 373, § 1.

OPINIONS OF THE ATTORNEY GENERAL

The Entomology Act of 1937, Ga. L. 1937, p. 659, § 1 (see now O.C.G.A. § 2-7-1 et seq.) did not by implication repeal former Code 1933, § 5-902 (see now O.C.G.A. § 2-14-41). 1945-47 Op. Att'y Gen. p. 5.

Extent of repeal of chief entomologist's powers. — The previous powers and duties of the state (now chief) entomologist were only repealed and supplanted by Ch. 7 of this title to the extent that they related to the subjects dealt with in that chapter. 1945-47 Op. Att'y Gen. p. 5.

Proper agency to enforce this article, see 1945-47 Op. Att'y Gen. p. 5.

2-14-41.1. Prohibition against restriction of honeybee production or maintenance.

No county, municipal corporation, consolidated government, or other political subdivision of this state shall adopt or continue in effect any ordinance, rule, regulation, or resolution prohibiting, impeding, or restricting the establishment or maintenance of honeybees in hives. This Code section shall not be construed to restrict the zoning authority of county or municipal governments.

History. — Code 1981, § 2-14-41.1, enacted by Ga. L. 1994, p. 1716, § 1; Ga. L. 1995, p. 10, § 2.

2-14-42. Inspections authorized generally.

The Commissioner and his agents and employees shall have the authority to enter any depot, express office, storeroom, warehouse, or other premises for the purpose of inspecting any honeybees or beekeeping fixtures or appliances therein in order to ascertain whether such

bees or fixtures are infected with any contagious or infectious diseases, have become Africanized, or pose any other threat to honeybees. They may also make such inspections when they have reason to believe that any honeybees or beekeeping fixtures or appliances on the premises have been or are being transported in violation of this article.

History. — Ga. L. 1920, p. 160, § 3; Code 1933, § 5-904; Ga. L. 1990, p. 373, § 2.

2-14-43. Inspection of honeybee colonies; assistance in inspection.

The Commissioner may require the registration and inspection of honeybee colonies as needed. Such inspections shall be made for the primary purpose of combating the spread of bee diseases, Africanized bees, or any other threat to honeybees in this state. All persons subject to this article shall be provided a reasonable opportunity to assist the inspectors in the inspection of such colonies.

History. — Ga. L. 1966, p. 192, § 1; Code 1933, § 5-907, enacted by Ga. L. 1970, p. 197, § 1; Ga. L. 1990, p. 373, § 3; Ga. L. 2003, p. 794, § 1.

2-14-44. Disposition of infected bees or fixtures.

The Commissioner, through his agents or employees, may require the removal from this state of any honeybees or beekeeping fixtures which have been brought into the state in violation of this article. If he finds that any bees or fixtures are infected with any contagious or infectious disease or that such bees or fixtures have been exposed to danger of infection by such diseases, that any honeybees have become Africanized, or that honeybees are confronted with any other threat in this state, the Commissioner may require the destruction, treatment, or disinfection of any such infected or exposed bees, hives, fixtures, or appliances.

History. — Ga. L. 1920, p. 160, § 3; Code 1933, § 5-905; Ga. L. 1990, p. 373, § 4.

2-14-45. Compensation for destroyed property authorized; appraisal.

Whenever bees, hives, or other equipment are ordered destroyed pursuant to Code Section 2-14-44, the Commissioner shall appraise the property to be destroyed. If the Commissioner and the owner are unable to agree on the value, the Commissioner and the owner shall each appoint one disinterested appraiser. These two appraisers shall appoint

a third disinterested appraiser. The three appraisers thus appointed shall appraise the property. When the property is destroyed, the Commissioner shall pay any Georgia resident beekeeper whose property is destroyed a sum equal to 50 percent of the appraised value of the property destroyed from any funds appropriated for that specific purpose, provided that in no event shall the compensation paid to any such owner exceed $25.00 per colony. For the purposes of this Code section, the term "property" shall include bees, hives, frames, and other equipment.

History. — Code 1933, § 5-908, enacted by Ga. L. 1970, p. 197, § 1; Ga. L. 1975, p. 705, § 1; Ga. L. 1980, p. 713, § 1; Ga. L. 1990, p. 373, § 5; Ga. L. 1992, p. 1121, § 1; Ga. L. 1996, p. 797, § 1.

RESEARCH REFERENCES

ALR. — Law of bees, 29 A.L.R. 352.
Liability for injury or damage caused by bees, 86 A.L.R.2d 791.

2-14-46. Importation of honeybees or secondhand equipment prohibited without special permit.

The shipment or movement into this state of any honeybees on comb, honeybees in hives, secondhand beehives, honeycomb, frames, used bee shipping cages, secondhand honey containers, or other used beekeeping fixtures is prohibited, except under special permit issued by the Commissioner under such rules and regulations as may be prescribed by him in accordance with Code Section 2-14-41.

History. — Ga. L. 1920, p. 160, § 4; Code 1933, § 5-906; Ga. L. 1947, p. 1158, § 3.

2-14-47. Penalty for violation of article or rules or regulations.

Any person, firm, or corporation violating any of the provisions of this article or any of the rules or regulations of the Commissioner adopted in accordance with this article shall be guilty of a misdemeanor and upon conviction shall be punished by a fine of not more than $500.00 or by imprisonment for not more than six months in the county jail.

History. — Ga. L. 1920, p. 160, § 5; Code 1933, § 5-9930.

OPINIONS OF THE ATTORNEY GENERAL

Section indicates legislative purpose to impose criminal liability. 1970 Op. Att'y Gen. No. 70-155.

ARTICLE 4

PECANS

Cross references. — Failure to pay for pecans, § 16-9-58. Ownership rights in pecans falling onto public rights of way, § 44-12-240 et seq. Pecan equipment, sales and use tax exemption, § 48-8-3.

Administrative rules and regulations. — Additional regulations applicable to pecans, Official Compilation of the Rules and Regulations of the State of Georgia, Rules of Georgia Department of Agriculture, Food Division Regulations, Subject 40-7-7.

2-14-60. Definitions.

As used in this article, the term:

(1) "Grower" means any producer of pecans who does not engage in the business of a processor, as defined in paragraph (2) of this Code section, and who does not sell any pecans at wholesale other than those grown by him.

(2) "Processor" means any person, firm, partnership, or corporation engaged in the business of cracking, shelling, and grading pecan meats for sale or of cleaning, grading, storing, bagging, or selling in-shell pecans, but this term does not include persons engaged solely in retail sales to the consumer.

(3) "Wholesaler" means any person, firm, partnership, or corporation, other than a grower as defined in paragraph (1) of this Code section, who sells pecans to others for the purpose of resale. This term does not apply to anyone who sells pecans only direct to the consumer, unless he is also a processor, as defined in paragraph (2) of this Code section.

History. — Ga. L. 1974, p. 539, § 1.

RESEARCH REFERENCES

ALR. — Validity of discrimination in license statute or ordinance in favor of farmers selling their own products and against other persons dealing in farm products, 123 A.L.R. 1051.

2-14-61. Licenses required of pecan processors and wholesalers.

(a) Within this state, no person, firm, partnership, or corporation shall engage in the processing of pecans other than those grown by him

or it or in selling pecans other than those grown by him or it at wholesale without first obtaining a license to do so from the Department of Agriculture.

(b) Applications for licenses shall be on a form prescribed by the Commissioner.

(c) Duly issued licenses shall be on a form prescribed by the Commissioner. They shall remain in force unless revoked but shall not be transferable.

History. — Ga. L. 1974, p. 539, § 2.

2-14-62. Standards and grades; labels; improper grading or labeling as cause for license revocation.

The Commissioner shall prescribe standards and grades for pecans fit for human consumption. All pecans sold by processors or wholesalers must conform to the prescribed standards and grades and must be labeled accordingly. Improper grading or labeling shall be cause for revocation of the processor's or wholesaler's license.

History. — Ga. L. 1974, p. 539, § 3.

RESEARCH REFERENCES

ALR. — Constitutionality of statutes requiring notice by label or otherwise of the fact that product is imported, or as to place of production, 124 A.L.R. 572.

2-14-63. Disposition of pecans unfit for human consumption; violation of Code section grounds for license revocation.

Pecans failing to meet the standards prescribed for pecans fit for human consumption shall be destroyed, crushed, or rendered unfit for sale for human consumption by the processors or wholesalers of such pecans. Violation of this Code section shall be sufficient cause for revocation of the processor's or wholesaler's license.

History. — Ga. L. 1974, p. 539, § 4.
Cross references. — Authority of Commissioner to impose penalty in lieu of other action, § 2-2-10.

2-14-64. Rules and regulations.

The Commissioner is authorized to adopt and promulgate rules and regulations to implement this article and to accomplish its purposes. After they are legally adopted and promulgated, such rules and regulations shall have the force and effect of law.

History. — Ga. L. 1974, p. 539, § 6.

2-14-65. Injunctions.

In addition to the remedies provided in this article and notwithstanding the existence of an adequate remedy at law, the Commissioner is authorized to apply to the superior courts for an injunction. Such courts shall have jurisdiction and for good cause shown shall grant a temporary or permanent injunction or an ex parte or restraining order, restraining or enjoining a person, firm, partnership, or corporation from violating and continuing to violate this article or any rules and regulations promulgated under this article. Such injunction shall be issued without bond. An injunction may be granted notwithstanding the fact that the violation constitutes a criminal act and notwithstanding the pendency of any criminal prosecution for the same violation.

History. — Ga. L. 1974, p. 539, § 7.

2-14-66. Penalty for violations of article or rules and regulations.

Violation of any provision of this article or of the rules and regulations promulgated under this article shall constitute a misdemeanor.

History. — Ga. L. 1974, p. 539, § 5.

ARTICLE 5

TIMBER PRODUCTS

Cross references. — Preservation of forest resources and other plant life generally, T. 12, C. 6. Provision that planting and growing of trees and fruits and products thereof shall be considered an agricultural pursuit, § 44-14-100. Provisions in state construction contracts pertaining to exclusive use of Georgia forest products, § 50-5-63.

RESEARCH REFERENCES

C.J.S. — 54 C.J.S., Logs and logging, § 1 et seq.

PART 1

GENERAL PROVISIONS

2-14-80. Standard for computing board feet of lumber.

(a) The legal standard for calculating the number of board feet in a log or in any number of logs in this state shall be the Scribner Decimal C log rule or scale.

(b) Any sale or contract in which settlement is based on the number of board feet in a log or any number of logs, whether such sale or contract is verbal or written, and in which the method of computing the number of board feet is not stated shall be construed as being based entirely on Scribner's Decimal C log rule or scale. This Code section shall not affect any contract or sale entered into prior to March 13, 1957.

(c) Nothing in this Code section shall be construed as preventing any person from using, in lieu of the legal log rule articulated in subsection (a) of this Code section, the actual measurement of lumber after it has been sawed as the basis for settlement in any sale or contract involving the necessity for determining the number of board feet. However, if the lumber is to be measured after sawing, it must be so stated in the sale or contract.

(d) In scaling or measuring the diameter and length of logs, any log as long as 18 feet and not as long as 34 feet shall be measured as two logs and any log 34 feet or more in length shall be measured as three or more logs. Such a division in length shall be done so as to figure logs as of nearly equal lengths as possible and at the same time so as to use even feet in lengths, unless otherwise provided by contract.

(e) All fractions of inches in diameter shall be figured as to the nearest whole inch, but when several logs have fractions of one-half inch in the measurement of diameters, these fractions shall be distributed as near evenly as possible by adding and subtracting such fractions to and from the diameters in order to figure such diameters in whole inches, unless otherwise provided by contract.

History. — Ga. L. 1957, p. 588, §§ 1-3.
Cross references. — Refundable income tax credits for timber producers incurring losses from Hurricane Michael, § 48-7-40.36.

2-14-80.1. Form of price quotation where weight is used to determine board feet, cords, or units of pulpwood or timber.

(a) Any person using weight as a basis to determine board feet, cords, or units of pulpwood or timber who buys or offers to buy any pulpwood or timber within this state shall provide the seller or prospective seller of such pulpwood or timber with a quotation of the price of such pulpwood or timber calculated in dollars per 1000 pounds. This Code section shall not prohibit or restrict the use of any acceptable method to calculate the weight or quantity of pulpwood or timber. This Code section shall not be construed as requiring the purchase or use of scales for the purpose of measuring wood, nor shall it be construed as altering the common trade definition of a cord as being equivalent to 128 cubic feet.

(b) Any person who violates any provision of this Code section shall be guilty of a misdemeanor.

History. — Ga. L. 1981, p. 935, § 1.

RESEARCH REFERENCES

Am. Jur. 2d. — 52 Am. Jur. 2d, Logs and Timber, § 7.

C.J.S. — 54 C.J.S., Logs and Logging, §§ 5, 6.

Part 2

Treated Timber Products

2-14-100 through 2-14-113.

Reserved. Repealed by Ga. L. 2012, p. 1098, § 1/SB 357, effective July 1, 2012.

Editor's notes. — This part was based on Ga. L. 1973, p. 1418, §§ 1-14; Ga. L. 1982, p. 3, § 2; Ga. L. 2010, p. 9, § 1-13/HB 1055.

Part 3

Dimension Lumber

Administrative rules and regulations. — Grading standards, Official Compilation of the Rules and Regulations of the State of Georgia, Rules of Georgia Department of Agriculture, Treated Timber and Treated Timber Products, Subject 40-22-9.

2-14-120. "Dimension lumber" defined; adoption of standards for grading of dimension lumber.

(a) As used in this part, the term "dimension lumber" means lumber that is at least two inches (nominal) thick and up to but not including five inches (nominal) thick and two inches or more in width.

(b) The Commissioner shall require with respect to the grading of dimension lumber that standards shall be in conformity with those which are currently adopted by the American Lumber Standards Committee under the auspices of the United States Department of Commerce.

History. — Code 1981, § 2-14-120, enacted by Ga. L. 1990, p. 338, § 1.

2-14-121. Graded dimension lumber to be stamped by licensed agency.

On and after July 1, 1990, it shall be unlawful for any person, firm, or corporation to offer for sale in this state any dimension lumber stamped according to grade unless it has been stamped by a grading agency licensed by the American Lumber Standards Committee under the auspices of the United States Department of Commerce.

History. — Code 1981, § 2-14-121, enacted by Ga. L. 1990, p. 338, § 1.

2-14-122. Enforcement by Commissioner; stop sale, stop use, and removal orders; seizure of lumber.

(a) In order to carry out this part, the Commissioner or his designated agent may enter into or upon any place during reasonable business hours where dimension lumber is being sold or offered for sale to determine if this part is being complied with.

(b) The Commissioner may issue and enforce written or printed stop sale, stop use, or removal orders to the owners or custodians of any dimension lumber, ordering them to hold the same at a designated place, when the Commissioner finds such dimension lumber being offered for sale in violation of this part, until the law has been complied with and such dimension lumber has been released, in writing, by the Commissioner or the violations have been otherwise legally disposed of by written authority. The Commissioner shall release the dimension lumber when the requirements of this part have been complied with.

(c) Any dimension lumber not in compliance with this part shall be subject to seizure on the complaint of the Commissioner to the superior court of the county in which the dimension lumber is found. If the court finds the dimension lumber to be in violation of this part and orders its condemnation, the dimension lumber shall be disposed of in any manner consistent with its quality, the interests of the parties, and the laws of this state, provided that in no instance shall the disposition of the dimension lumber be ordered by the court without first giving the claimant an opportunity to apply to the court for release of the dimension lumber in such manner as to bring it into compliance with this part.

History. — Code 1981, § 2-14-122, enacted by Ga. L. 1990, p. 338, § 1.

2-14-123. Violations.

Any person violating any provisions of this part shall be guilty of a misdemeanor.

History. — Code 1981, § 2-14-123, enacted by Ga. L. 1990, p. 338, § 1.

ARTICLE 6

VIDALIA ONIONS

Administrative rules and regulations. — Additional regulations applicable to Vidalia onions, Official Compilation of the Rules and Regulations of the State of Georgia, Rules of Georgia Department of Agriculture, Food Division Regulations, Subject 40-7-8.

RESEARCH REFERENCES

Am. Jur. 2d. — 35 Am. Jur. 2d, Food, §§ 23, 24, 25.
C.J.S. — 36A C.J.S., Food, § 12(8).

2-14-130. Short title.

This article shall be known and may be cited as the "Vidalia Onion Act of 1986."

History. — Code 1981, § 2-14-130, enacted by Ga. L. 1986, p. 3, § 1.

2-14-131. Definitions.

As used in this article, the term:

(1) "Person" means an individual, partnership, corporation, association, or any other legal entity.

(2) "Shipping date" means the first day on which Vidalia onions may be shipped for sale.

(3) "Vidalia onion" means all onions of the Vidalia onion variety grown in the Vidalia onion production area.

(4) "Vidalia Onion Advisory Panel" means the advisory panel established pursuant to Code Section 2-14-138.

(5) "Vidalia onion production area" means a production area which encompasses only the State of Georgia or such lesser area as may be provided for pursuant to subsection (a) of Code Section 2-14-133.

(6) "Vidalia onion variety" means varieties of Allium Cepa of the hybrid yellow granex, granex parentage, or other similar varieties.

The Commissioner may limit the usage of certain varieties or authorize the inclusion of new varieties based upon recommendations of the director of the Experiment Stations of the College of Agricultural and Environmental Sciences of the University of Georgia.

History. — Code 1981, § 2-14-131, enacted by Ga. L. 1986, p. 3, § 1; Ga. L. 1995, p. 710, § 1; Ga. L. 1996, p. 6, § 2; Ga. L. 2003, p. 461, § 1.

2-14-132. Use of term "Vidalia."

Only onions which are of the Vidalia onion variety and which are grown within the Vidalia onion production area may be identified, classified, packaged, labeled, or otherwise designated for sale inside or outside this state as Vidalia onions. The term "Vidalia" may be used in connection with the labeling, packaging, classifying, or identifying of onions for sale inside or outside this state only if the onions are of the Vidalia onion variety and are grown in the Vidalia onion production area.

History. — Code 1981, § 2-14-132, enacted by Ga. L. 1986, p. 3, § 1.

Cross references. — Deceptive and unfair trade practices generally, § 10-1-370 et seq. Adulteration and misbranding of food, § 26-2-20 et seq.

2-14-132.1. Vidalia onion trademark; royalties; license fees.

The Commissioner of Agriculture is authorized to take all actions necessary and appropriate to create, register, license, promote, and protect a trademark for use on or in connection with the sale or promotion of Vidalia onions and products containing Vidalia onions. The Commissioner is authorized to impose and collect a royalty or license fee for the use of such trademark on products containing Vidalia onions or the packaging containing such onion products. Funds derived from such royalties and license fees shall be retained by the Commissioner and shall be used to promote Vidalia onions and to pay costs associated with monitoring the use of such trademark, prohibiting the unlawful or unauthorized use of the trademark, and enforcing rights in the trademark.

History. — Code 1981, § 2-14-132.1, enacted by Ga. L. 2000, p. 1301, § 1; Ga. L. 2012, p. 731, § 1/HB 832.

Law reviews. — For note on the 2000 enactment of this Code section, see 17 Ga. St. U. L. Rev. 1 (2000).

JUDICIAL DECISIONS

Mandamus to require enforcement not appropriate. — Growers were not entitled to mandamus relief to force the Georgia Department of Agriculture and Georgia Commissioner of Agriculture to enforce regulations allegedly prohibiting certain labels that were being used; mandamus could not be used to direct the way in which the Commissioner exercised the Commissioner's discretion under

O.C.G.A. § 2-14-132.1 to protect trademark use or the Commissioner's discretion under O.C.G.A. § 2-14-135(a), (b) to civilly enforce regulations promulgated under O.C.G.A. § 2-14-133(a) to promulgate regulations regarding labeling and marketing practices. Bland Farms, LLC v. Ga. Dep't of Agric., 281 Ga. 192, 637 S.E.2d 37 (2006).

2-14-133. Rules and regulations; enforcement of article.

(a) The Commissioner is authorized to prescribe rules or regulations which may include, but not necessarily be limited to, quality standards, grades, packing, handling, labeling, and marketing practices for the marketing of onions in this state, including the requirements that all Vidalia onions be initially packed only in the Vidalia onion production area and that no Vidalia onion may be shipped from the Vidalia onion production area in bulk except as may be authorized by rule, and such other regulations as are necessary to administer properly this article. The Commissioner may also prescribe rules or regulations establishing a registration, inspection, and verification program for the production and marketing of Vidalia onions in this state and, after hearing and public comment, further limiting the Vidalia onion production area as defined in paragraph (5) of Code Section 2-14-131. Pursuant to such rules, regulations, and conditions as may be prescribed by the Commissioner, the Commissioner is authorized to grant variances in the production area requirements of this article to any producer who has produced in Georgia, marketed, and labeled onions of the Vidalia onion variety as Vidalia onions prior to January 31, 1986. Such rules or regulations may include within the definition of Vidalia onion variety as defined in paragraph (6) of Code Section 2-14-131 other hybrids or varieties of onions which may be developed and which have characteristics similar to the Vidalia onion variety. All onions sold must conform to the prescribed standards and grades and must be labeled accordingly.

(b) The Commissioner and his agents and employees are authorized to enter any premises or other property where onions are produced, stored, sold, offered for sale, packaged for sale, transported, or delivered to inspect such onions for the purpose of enforcing the provisions of this article and the rules and regulations promulgated under this article.

History. — Code 1981, § 2-14-133, enacted by Ga. L. 1986, p. 3, § 1; Ga. L. 1995, p. 710, § 2; Ga. L. 2003, p. 461, § 2.

Code Commission notes. — Pursuant to Code Section 28-9-5, in 1986, "January 31, 1986" was substituted for "the effective date of this article" in the third sentence of subsection (a).

JUDICIAL DECISIONS

Authority to regulate packing and shipping. — While the shipping date statute provides that Vidalia onions may be shipped prior to the announced shipping date with a U.S. No.1 grade certificate, the freedom to do so can be further

limited by the authority of the Georgia Commissioner of Agriculture to regulate packing. Black v. Bland Farms, LLC, 332 Ga. App. 653, 774 S.E.2d 722 (2015), cert. denied, No. S15C1669, 2015 Ga. LEXIS 713 (Ga. 2015).

Trial court erred in declaring a new Vidalia onion packing regulation invalid because, pursuant to the Vidalia Onion Act, O.C.G.A. § 2-14-130 et seq., the packing date rule was within the Georgia Commissioner of Agriculture's authority and was not inconsistent with the shipping date statute as all authority to regulate packing and shipping rested with the Commissioner; and because some evidence was presented to support a finding that the packing date rule was reasonable in light of the testimony and letters received by the Commissioner concerning the declining quality of the Vidalia onion and the threat to the industry. Black v. Bland Farms, LLC, 332 Ga. App. 653, 774 S.E.2d 722 (2015), cert. denied, No. S15C1669, 2015 Ga. LEXIS 713 (Ga. 2015).

Mandamus to require enforcement not appropriate. — Growers were not entitled to mandamus relief to force the Georgia Department of Agriculture and Georgia Commissioner of Agriculture to enforce regulations allegedly prohibiting certain labels that were being used; mandamus could not be used to direct the way in which the Commissioner exercised the Commissioner's discretion under O.C.G.A. § 2-14-132.1 to protect trademark use or the Commissioner's discretion under O.C.G.A. § 2-14-135(a), (b) to civilly enforce regulations promulgated under O.C.G.A. § 2-14-133(a) to promulgate regulations regarding labeling and marketing practices. Bland Farms, LLC v. Ga. Dep't of Agric., 281 Ga. 192, 637 S.E.2d 37 (2006).

2-14-134. Violations; criminal penalties.

(a) It shall be unlawful for any person to sell or offer for sale either inside or outside this state any onions as Vidalia onions unless such onions are of the Vidalia onion variety and were grown in the Vidalia onion production area.

(b) It shall be unlawful for any person to package, label, identify, or classify any onions for sale inside or outside this state as Vidalia onions or to use the term "Vidalia" in connection with the labeling, packaging, classifying, or identifying of onions for sale inside or outside this state unless such onions are of the Vidalia onion variety and were grown in the Vidalia onion production area.

(c) Any person who violates subsection (a) or (b) of this Code section shall be guilty of a felony and, upon conviction thereof, shall be punished by a fine of not less than $1,000.00 nor more than $5,000.00 or by imprisonment for not less than one nor more than three years, or both.

(d) It shall be unlawful for any person to sell onions in a manner which does not comply with the rules or regulations established by the Commissioner under authority of Code Section 2-14-133.

History. — Code 1981, § 2-14-134, enacted by Ga. L. 1986, p. 3, § 1.

Cross references. — Deceptive and unfair trade practices generally, § 10-1-370 et seq. Adulteration and misbranding of food, § 26-2-20 et seq.

2-14-135. Civil penalties; injunctions.

(a) Any person who violates any provision of this article or who violates any rule or regulation issued by the Commissioner pursuant to this article shall be liable for a civil penalty in an amount not to exceed $5,000.00 for each and every violation thereof, the amount of such penalty to be fixed by the Commissioner after notice and hearing as provided in Chapter 13 of Title 50, the "Georgia Administrative Procedure Act," for contested cases. Each day of violation shall constitute a separate violation for purposes of this subsection but in no event shall the penalty exceed $20,000.00. Any moneys recovered pursuant to this Code section shall be deposited in the state treasury.

(b) Whenever in the judgment of the Commissioner any person has engaged in or is about to engage in any act or practice which constitutes or will constitute any violation of this article, the Commissioner may make application to the superior court of the county where such person resides or, if a nonresident of this state, to the superior court of the county where such person is engaged in or is about to engage in such act or practice, for an order enjoining and restraining such act or practice. If it appears to the court, upon any application for a temporary restraining order or upon any application for an interlocutory or permanent injunction, after evidence is received, that any person has engaged in or is about to engage in any act or practice which constitutes or will constitute any violation of this article or any rule or regulation duly issued by the Commissioner under this article, then the court shall enjoin the defendant from commiting further violations. It shall not be necessary in such event to allege or prove lack of an adequate remedy at law.

(c) In any court action brought by the Commissioner to enforce any of the provisions of this article or any rule or regulation issued by the Commissioner, the judgment, if in favor of the Commissioner, shall provide that defendant pay to the Commissioner all costs and expenses incurred by the Commissioner in the prosecution of such action.

(d) The Commissioner may file in the superior court of the county wherein the person under order resides, or, if the person is a corporation, in the county wherein the corporation maintains its principal place of business, or in the county wherein the violation occurred or in which jurisdiction is appropriate, a certified copy of a final administrative order of the Commissioner unappealed from or a final administrative order of the Commissioner affirmed upon appeal, whereupon the court shall render judgment in accordance therewith and notify the parties. Such judgment shall have the same effect, and all proceedings in relation thereto shall thereafter be the same, as though the judgment had been rendered in an action duly heard and determined by such court.

History. — Code 1981, § 2-14-135, enacted by Ga. L. 1986, p. 3, § 1.

JUDICIAL DECISIONS

Mandamus to require enforcement not appropriate. — Growers were not entitled to mandamus relief to force the Georgia Department of Agriculture and Georgia Commissioner of Agriculture to enforce regulations allegedly prohibiting certain labels that were being used; mandamus could not be used to direct the way in which the Commissioner exercised the Commissioner's discretion under O.C.G.A. § 2-14-132.1 to protect trademark use or the Commissioner's discretion under O.C.G.A. § 2-14-135(a), (b) to civilly enforce regulations promulgated under O.C.G.A. § 2-14-133(a) to promulgate regulations regarding labeling and marketing practices. Bland Farms, LLC v. Ga. Dep't of Agric., 281 Ga. 192, 637 S.E.2d 37 (2006).

2-14-136. Marketing season shipping date.

The Commissioner may determine and announce a shipping date each year for the Vidalia onion marketing season in this state upon the recommendation of the Vidalia Onion Advisory Panel. Vidalia onions may be shipped prior to such date with a mandatory U.S. No. 1 grade certificate. The Vidalia Onion Advisory Panel shall survey the conditions of the Vidalia onion crop and recommend a shipping date for the marketing season to the Commissioner.

History. — Code 1981, § 2-14-136, enacted by Ga. L. 1995, p. 710, § 3; Ga. L. 2003, p. 461, § 3.

JUDICIAL DECISIONS

Authority to regulate packing and shipping. — Trial court erred in declaring a new Vidalia onion packing regulation invalid because, pursuant to the Vidalia Onion Act, O.C.G.A. § 2-14-130 et seq., the packing date rule was within the Georgia Commissioner of Agriculture's authority and was not inconsistent with the shipping date statute as all authority to regulate packing and shipping rested with the Commissioner; and because some evidence was presented to support a finding that the packing date rule was reasonable in light of the testimony and letters received by the Commissioner concerning the declining quality of the Vidalia onion and the threat to the industry. Black v. Bland Farms, LLC, 332 Ga. App. 653, 774 S.E.2d 722 (2015), cert. denied, No. S15C1669, 2015 Ga. LEXIS 713 (Ga. 2015).

Trial court did not err in concluding that the plaintiff had standing to bring the declaratory judgment action as the plaintiff made a sufficient showing that the facts were complete and that its interest was not merely academic, hypothetical, or colorable, but actual because, as a Vidalia onion grower, the plaintiff was an interested party claiming a right to ship onions pursuant to the shipping statute — a right the plaintiff claimed was impeded by a newly enacted regulation; and because, if the plaintiff failed to comply with the new regulation, the Georgia Commissioner of Agriculture had that statutory authority to impose civil and criminal penalties. Black v. Bland Farms, LLC, 332 Ga. App. 653, 774 S.E.2d 722 (2015), cert. denied, No. S15C1669, 2015 Ga. LEXIS 713 (Ga. 2015).

While the shipping date statute pro-

vides that Vidalia onions may be shipped prior to the announced shipping date with a U.S. No. 1 grade certificate, the freedom to do so can be further limited by the authority of the Georgia Commissioner of Agriculture to regulate packing. Black v. Bland Farms, LLC, 332 Ga. App. 653, 774 S.E.2d 722 (2015), cert. denied, No. S15C1669, 2015 Ga. LEXIS 713 (Ga. 2015).

2-14-137. Standards for grades.

The standards for grades adopted by the U.S. Department of Agriculture, U.S. Standards for Grades of Bermuda-Granex-Grano Type Onions, effective January 1, 1960, as amended March 18, 1962, and February 20, 1985 (7 C.F.R. 51.3195-51.3209), December 31, 1981, and U.S. Standards for Grades of Common Green Onions (7 C.F.R. 51.1055-51.1071) December 31, 1981, are adopted and shall be the standards for grades in this state, except that the Commissioner may establish tolerances or allowable percentages of U.S. Standards each season upon the recommendation of the Vidalia Onion Advisory Panel.

History. — Code 1981, § 2-14-137, enacted by Ga. L. 1995, p. 710, § 4; Ga. L. 2003, p. 461, § 4; Ga. L. 2005, p. 60, § 2/HB 95; Ga. L. 2006, p. 72, § 2/SB 465.

2-14-138. Advisory panel created.

The Commissioner shall appoint a Vidalia Onion Advisory Panel, to consist of individuals involved in growing, packing, or growing and packing Vidalia onions; at least one county cooperative extension agent from the Vidalia onion production area; and any other person or persons selected by the Commissioner, for the purpose of rendering advice upon his or her request regarding the exercise of his or her authority pursuant to Code Sections 2-14-136 and 2-14-137. Members of the advisory panel shall receive no compensation for their service as such members.

History. — Code 1981, § 2-14-138, enacted by Ga. L. 2003, p. 461, § 5.

ARTICLE 7

PICK-YOUR-OWN FARM OPERATIONS

Law reviews. — For note on the 2001 enactment of this article, see 18 Ga. St. U. L. Rev. 1 (2001).

RESEARCH REFERENCES

ALR. — Excessiveness or adequacy of damages awarded for personal injuries resulting in death of persons engaged in farming, ranching, or agricultural labor, 46 A.L.R.3d 733.

2-14-150. Legislative declarations; intent.

The General Assembly recognizes that persons who patronize farms specializing in pick-your-own agricultural products may incur injuries as a result of the risks involved in such activity. The General Assembly also finds that the state and its citizens derive numerous economic and personal benefits from such activity. The General Assembly finds, determines, and declares that this article is necessary for the immediate preservation of the public peace, health, and safety. It is, therefore, the intent of the General Assembly to encourage the direct sale of agricultural products from farmers to the general public by limiting the civil liability of farmers involved in such activity.

History. — Code 1981, § 2-14-150, enacted by Ga. L. 2001, p. 1249, § 1.

2-14-151. Definitions.

As used in this article, the term:

(1) "Agricultural products" means Christmas trees, fruits, vegetables, pecans, nuts, horticultural products, and other such fresh farm products that are made available to the general public through pick-your-own farm operations.

(2) "Participant" means any person who enters the farm location, singly or with a group, for the purpose of harvesting fresh farm products from pick-your-own farm operations.

History. — Code 1981, § 2-14-151, enacted by Ga. L. 2001, p. 1249, § 1.

2-14-152. Liability of farm owner or operator.

(a) Except as provided in subsection (b) of this Code section, the owner or operator of any farm specializing in pick-your-own agricultural products shall not be liable for an injury to or the death of a participant resulting from the inherent risks of harvesting agricultural products, and, except as provided in subsection (b) of this Code section, no participant or participant's representative shall make any claim against, maintain an action against, or recover from an owner or operator, or any other person or entity for injury, loss, damage, or death

of the participant resulting from any of the inherent risks of harvesting agricultural products.

(b) Nothing in subsection (a) of this Code section shall prevent or limit the liability of an owner or operator or any other person or entity if the owner or operator:

(1) Owns, leases, rents, or otherwise is in lawful possession and control of the land upon which the participant sustained injuries because of a dangerous latent condition which was known or should have been known to the owner or operator;

(2) Commits an act or omission that constitutes willful or wanton disregard for the safety of the participant, and that act or omission caused the injury; or

(3) Intentionally injures the participant.

(c) Nothing in subsection (a) of this Code section shall prevent or limit the liability of an owner or operator under liability provisions as set forth in the product liability laws.

History. — Code 1981, § 2-14-152, enacted by Ga. L. 2001, p. 1249, § 1.

2-14-153. Warning notices required; effect of failure to comply with notice requirements.

(a) Every owner and operator of a pick-your-own farm operation shall post and maintain white signs which contain the warning notice specified in subsection (b) of this Code section. Such signs shall be placed in a clearly visible location near the entrance of the farm. The warning notice specified in subsection (b) of this Code section shall appear on the sign in black letters, with each letter to be a minimum of one inch in height. Every written contract entered into by an owner or operator shall contain in clearly readable print the warning notice specified in subsection (b) of this Code section.

(b) The signs and contracts described in subsection (a) of this Code section shall contain the following warning notice:

"Under Georgia law, an owner or operator of a pick-your-own farm location is not liable for an injury to or the death of a participant from the inherent risks of harvesting agricultural products, pursuant to Article 7 of Chapter 14 of Title 2 of the Official Code of Georgia Annotated."

(c) Failure to comply with the requirements concerning warning signs and notices provided in this Code section shall not prevent an owner or operator from invoking the privileges of immunity provided by this article.

History. — Code 1981, § 2-14-153, enacted by Ga. L. 2001, p. 1249, § 1.

CHAPTER 15

PACIFIC WHITE SHRIMP AQUACULTURE DEVELOPMENT

Sec.
2-15-1 through 2-15-14 [Repealed].

2-15-1 through 2-15-14.

Reserved. Repealed by Ga. L. 2019, p. 919, § 1-1/HB 553, effective July 1, 2019.

Editor's notes. — This chapter consisted of Code Sections 2-15-1 through 2-15-14, relating to pacific white shrimp aquaculture development, and was based on Code 1981, §§ 2-15-1 through 2-15-14, enacted by Ga. L. 2004, p. 948, § 2-1; Ga. L. 2010, p. 838, § 10/SB 388.

This chapter never became effective as there was no specific appropriation of funds for purposes of this chapter as expressed in a line item of an appropriations Act enacted by the General Assembly at any session of the General Assembly from 2004 through 2018.

Ga. L. 2019, p. 1056, § 54(e)/SB 52, part of an Act to revise, modernize, and correct the Code, effective May 12, 2019, not codified by the General Assembly, provides: "In the event of an irreconcilable conflict between a provision in Sections 1 through 53 of this Act and a provision of another Act enacted at the 2019 regular session of the General Assembly, the provision of such other Act shall control over the conflicting provision in Sections 1 through 53 of this Act to the extent of the conflict." Accordingly, the amendment to Code Section 2-15-1 by Ga. L. 2019, p. 1056, § 2(1)/SB 52, was not given effect.

CHAPTER 16

ACTION FOR DISPARAGEMENT OF PERISHABLE FOOD PRODUCTS OR COMMODITIES

Sec.		Sec.	
2-16-1.	Legislative findings, determinations, and declaration.		ment of perishable food products or commodities.
2-16-2.	Definitions.	2-16-4.	Limitations of actions.
2-16-3.	Cause of action for disparage-		

JUDICIAL DECISIONS

Cited in Action for a Clean Env't v. State, 217 Ga. App. 384, 457 S.E.2d 273 (1995).

2-16-1. Legislative findings, determinations, and declaration.

The General Assembly finds, determines, and declares that the production of agricultural and aquacultural food products and commodities constitutes an important and significant portion of the state economy and that it is imperative to protect the vitality of the agricultural and aquacultural economy for the citizens of this state by providing a cause of action for producers, marketers, or sellers to recover damages for the disparagement of any perishable product or commodity.

History. — Code 1981, § 2-16-1, enacted by Ga. L. 1993, p. 1795, § 1.

Law reviews. — For note, "Must Peaches Be Preserved at All Costs? Questioning the Constitutional Validity of Georgia's Perishable Product Disparagement Law," see 12 Ga. St. U. L. Rev. 1223.

2-16-2. Definitions.

As used in this chapter, the term:

(1) "Disparagement" means the willful or malicious dissemination to the public in any manner of false information that a perishable food product or commodity is not safe for human consumption. The information shall be deemed to be false if it is not based upon reasonable and reliable scientific inquiry, facts, or data.

(2) "Perishable food product or commodity" means any agricultural or aquacultural food product which is sold or distributed in a form that will perish or decay beyond marketability within a period of time.

(3) "Producers, processors, marketers, and sellers" shall include the entire chain from grower to consumer.

History. — Code 1981, § 2-16-2, enacted by Ga. L. 1993, p. 1795, § 1.

2-16-3. Cause of action for disparagement of perishable food products or commodities.

Any person who produces, markets, or sells a perishable food product or commodity and suffers damage as a result of another person's disparagement of such perishable food products or commodities has a cause of action for damages and for any other relief a court of competent jurisdiction deems appropriate, including, but not limited to, compensatory and punitive damages.

History. — Code 1981, § 2-16-3, enacted by Ga. L. 1993, p. 1795, § 1.

Code Commission notes. — Pursuant to Code Section 28-9-5, in 1993, the designation "(a)" was deleted from the beginning.

2-16-4. Limitations of actions.

Any civil action for damages for disparagement of perishable agricultural or aquacultural food products or commodities shall be commenced within two years after the cause of action accrues.

History. — Code 1981, § 2-16-4, enacted by Ga. L. 1993, p. 1795, § 1.

CHAPTER 17

GEORGIA STATE NUTRITION ASSISTANCE PROGRAM (SNAP)

Sec.		Sec.	
2-17-1.	Short title.	2-17-4.	Annual review and audit.
2-17-2.	Definitions.	2-17-5.	Annual report.
2-17-3.	Grants to regional food banks; administration; powers and duties of Department of Agriculture.	2-17-6.	Violations; penalty.

2-17-1. Short title.

This chapter shall be known and may be cited as the "Georgia State Nutrition Assistance Program (SNAP)."

History. — Code 1981, § 2-17-1, enacted by Ga. L. 1998, p. 1129, § 1.

2-17-2. Definitions.

As used in this chapter, the term:

(1) "Department" means the Georgia Department of Agriculture.

(2) "Emergency food provider" means a nonprofit, charitable organization that offers groceries or meals to people who are in need of food assistance and who reside in this state.

(3) "Program" means the Georgia State Nutrition Assistance Program (SNAP) created by this chapter.

(4) "Program participant" means an individual or household which is in need of short-term food assistance to supplement the diet in order to prevent hunger or malnutrition, or both.

(5) "Regional food bank" means an established nonprofit charitable organization which is qualified as exempt from taxation under the provisions of Section 501(c)(3) of the Internal Revenue Code of 1986 and which, as part of an existing food bank network, maintains a food distribution operation providing food to nonprofit food pantries and feeding centers that offer groceries or meals to people in need of food assistance.

(6) "State nutrition information organization" means an established nonprofit charitable organization which is qualified as exempt from taxation under the provisions of Section 501(c)(3) of the Internal Revenue Code of 1986 and which, as part of its mission, fosters and promotes general health through nutrition education of the public.

History. — Code 1981, § 2-17-2, enacted by Ga. L. 1998, p. 1129, § 1.

U.S. Code. — Section 501(c)(3) of the Internal Revenue Code referred to in this Code section, is codified as 26 U.S.C. § 501(c)(3).

2-17-3. Grants to regional food banks; administration; powers and duties of Department of Agriculture.

(a) The Georgia State Nutrition Assistance Program (SNAP) is established to provide grants to regional food banks within this state for the purchase, transportation, storage, and distribution of food to emergency food providers and program participants. Such grants shall be made from funds available to the department for such purpose. Grants made pursuant to the program shall be used only for the purchase of food or agricultural commodities from Georgia based purveyors or producers for repacking or processing, or both, of food for distribution to emergency food providers and program participants.

(b) The program shall be administered by the department and all administrative costs shall be reimbursed to the department from the funds described in subsection (a) of this Code section.

(c) All food purchases made through the use of program funds shall be made in accordance with the following standards:

(1) All food shall be procured from Georgia based sources;

(2) Food shall be purchased at wholesale, competitive bid prices or better; and

(3) Food purchased with funds through the program shall not duplicate food available through the federal commodities program of the United States Department of Agriculture.

(d) Not more than 7 percent of the grant funds made available through the program shall be used by any regional food bank for the payment of administrative and incidental costs.

(e) The department shall contract with regional food banks for the operation of the program. The department, in conjunction with regional food banks, is authorized to take appropriate actions, including the entry of subcontracts, to ensure uniform access to the program by needy residents of this state. The department may allow a state nutrition information organization to provide free nutrition education as part of the program to residents of this state.

(f) The department shall, by rule or regulation, establish and enforce procedures and guidelines for the determination of eligibility for participation in the program. Such rules, regulations, and procedures shall not limit or affect the established guidelines used by emergency food providers for any of their programs for which no funds are provided

through the program established pursuant to this chapter. No person who is eligible for food funded by the program shall be charged for food or encouraged to contribute money in order to receive food under the program.

History. — Code 1981, § 2-17-3, enacted by Ga. L. 1998, p. 1129, § 1.

2-17-4. Annual review and audit.

The program established pursuant to this chapter and any funds granted pursuant to this chapter or expenditures made with such funds are subject to review and audit by the department and the state auditor to determine proper operation of the program and compliance with statutes, regulations, and policies. Contractors, subcontractors, and others receiving funds or commodities under this chapter shall be subject to audit and review by the state auditor at reasonable times.

History. — Code 1981, § 2-17-4, enacted by Ga. L. 1998, p. 1129, § 1.

2-17-5. Annual report.

Within 90 days of the conclusion of the state's fiscal year, any entity with which the department has contracted for the operation of the program shall submit to the department an annual report which shall account fully for and shall specify the expenditure of funds made pursuant to the program, the dollar value of Georgia products distributed, the number of people and households served in each county, and the type and weight of food purchased. Within 180 days of the end of the state's fiscal year, the Commissioner shall submit an annual report to the Governor, the President of the Senate, and the Speaker of the House of Representatives. Such report shall include, but not be limited to, relevant information concerning the operation of the program for the preceding fiscal year, the quantity and dollar value of Georgia products distributed, the number of people and households served in each county, and the type and weight of food purchased.

History. — Code 1981, § 2-17-5, enacted by Ga. L. 1998, p. 1129, § 1.

2-17-6. Violations; penalty.

It shall be unlawful for any person providing voluntary services to the department or to any regional food bank or emergency food provider which receives funds or food through the program or for any official or employee of the department to receive food for personal use through the program or to provide services for profit pursuant to the program

created by this chapter. Any person violating this Code section shall be guilty of a misdemeanor.

History. — Code 1981, § 2-17-6, enacted by Ga. L. 1998, p. 1129, § 1.

CHAPTER 18

GEORGIA TOBACCO COMMUNITY DEVELOPMENT BOARD

Sec.
2-18-1 through 2-18-6 [Repealed].

Code Commission notes. — Pursuant to Code Section 28-9-5, in 2000, the chapter enacted by Ga. L. 1999, p. 1062, § 1 was redesignated as Chapter 19 and the chapter enacted by Ga. L. 1999, p. 1249, § 1 was redesignated as Chapter 20.

2-18-1 through 2-18-6.

Reserved. Repealed by Ga. L. 2019, p. 919, § 2-1/HB 553, effective July 1, 2019.

Editor's notes. — This chapter consisted of Code Sections 2-18-1 through 2-18-6, relating to the Georgia Tobacco Community Development Board, and was based on Code 1981, §§ 2-18-1 through 2-18-6, enacted by Ga. L. 1999, p. 721, § 1; Ga. L. 2001, p. 310, § 1.

Ga. L. 2019, p. 919, § 2-2/HB 553, not codified by the General Assembly, provides that: "Any assets of the Georgia Tobacco Community Development Board existing as of June 30, 2019, shall devolve by operation of law and without further action to the State of Georgia on July 1, 2019. Any liabilities and obligations of the Georgia Tobacco Community Development Board existing as of June 30, 2019, shall be transferred to and assumed by the State of Georgia, by such instruments as may be required to maintain the same."

CHAPTER 19

GEORGIA COTTON PRODUCERS INDEMNITY FUND

Sec.
2-19-1. Enactment of chapter; purpose.
2-19-2. Definitions.
2-19-3. Powers and duties of the Commissioner.
2-19-4. Claims by eligible cotton producers; filing; contents.
2-19-5. Georgia Cotton Producers Indemnity Fund of 1999 created.
2-19-5.1. "Cotton ginner" defined; payment of excess funds in indemnity fund; filing claims.
2-19-6. Stipulations on acceptance of indemnity payments; recovery of payments by the Commissioner.
2-19-7. Violations of chapter.
2-19-8. Appropriation of funds by the General Assembly.

Code Commission notes. — Pursuant to Code Section 28-9-5, in 2000, the chapter enacted by Ga. L. 1999, p. 1062, § 1 was redesignated as Chapter 19 and the chapter enacted by Ga. L. 1999, p. 1249, § 1 was redesignated as Chapter 20.

2-19-1. Enactment of chapter; purpose.

This chapter is enacted pursuant to the authority granted to the General Assembly by Article III, Section VI, Paragraph II(a)(3) of the Constitution of the State of Georgia and section 1121 of the federal Omnibus Consolidated and Emergency Supplemental Appropriations Act for Fiscal Year 1999, Public Law 105-277, as amended, and is for the purpose of creating an indemnity fund and making expenditures from such fund to indemnify cotton producers in this state for losses incurred in 1998 or 1999 from the loss of certain properly stored, harvested cotton.

History. — Code 1981, § 2-19-1, enacted by Ga. L. 1999, p. 1062, § 1; Ga. L. 2001, p. 956, § 1.

Editor's notes. — Ga. L. 2001, p. 956, § 5, not codified by the General Assembly, provides that: "if any part of this Act is declared unconstitutional, it would have enacted any remaining parts of the Act which preserve its essential intent."

2-19-2. Definitions.

As used in this chapter, the term:

(1) "Commissioner" means the Commissioner of Agriculture of this state.

(2) "Department" means the Department of Agriculture of this state.

(3) "Eligible cotton producer" means a person, partnership, corporation, or other entity that grew cotton in this state and that incurred

a loss in 1998 or 1999 of such properly stored, harvested cotton as the result of the bankruptcy of one or more warehousemen, brokers, or other parties in possession of such cotton or warehouse receipts evidencing title to such cotton; an improper conversion or transfer of such cotton; the issuance of one or more bad checks in payment for such cotton; or other hazards or events as determined by the Commissioner.

(4) "Federal act" means section 1121 of the federal Omnibus Consolidated and Emergency Supplemental Appropriations Act for Fiscal Year 1999, Public Law 105-277.

(5) "Secretary of agriculture" means the secretary of agriculture of the United States.

History. — Code 1981, § 2-19-2, enacted by Ga. L. 1999, p. 1062, § 1.

2-19-3. Powers and duties of the Commissioner.

(a) The Commissioner shall have the following powers and duties:

(1) To promulgate suitable rules and regulations to carry out the provisions and purposes of this chapter;

(2) To request from the Attorney General and any court, agency, or department such assistance and data as will enable the Commissioner to determine the losses of cotton producers for which indemnity payments are available pursuant to this chapter and whether, and the extent to which, a claimant qualifies for such compensation. Any person, corporation, partnership, court, agency, or department is authorized to provide the Commissioner with the information requested upon receipt of a request from the Commissioner. Any provision of law providing for confidentiality of records does not apply to a request of the Commissioner pursuant to this Code section; provided, however, that the Commissioner shall preserve the confidentiality of any such records received;

(3) To investigate each individual claim, utilizing, to the extent necessary, electronic warehouse receipt records, financial and banking records, market price records, and other records and documentation necessary to verify the claim;

(4) To reinvestigate or reopen denied claims for awards filed with the Commissioner pursuant to this chapter as the Commissioner deems necessary;

(5) To apply for funds from, and to submit all necessary forms and reports to, any federal agency participating in a cooperative program to compensate cotton producers who are eligible for indemnity

payments pursuant to this chapter and to receive and administer federal funds for the purposes of this chapter;

(6) To make indemnity payments to eligible cotton producers in the manner authorized by this chapter. Indemnity payments shall be made directly to eligible cotton producers;

(7) To carry out programs designed to inform affected cotton producers of the purposes and requirements of this chapter and the indemnity program created pursuant to this chapter; and

(8) To make a report to the secretary of agriculture, Congress, the Governor, and the General Assembly on or before October 1, 1999, and a report upon concluding the affairs of the Georgia Cotton Producers Indemnity Fund of 1999 describing the state's efforts to use the indemnity fund to provide compensation to injured cotton producers.

(b) The Commissioner and the department shall assist applicants with their claims for indemnity payments through educational programs and administrative assistance.

(c) Neither rule making nor any proceeding or hearing under the program authorized by this chapter shall be subject in any way to Chapter 13 of Title 50, the "Georgia Administrative Procedure Act."

History. — Code 1981, § 2-19-3, enacted by Ga. L. 1999, p. 1062, § 1.

2-19-4. Claims by eligible cotton producers; filing; contents.

(a) A claim may be filed by an eligible cotton producer, as defined in Code Section 2-19-2. In any case in which the person entitled to make a claim is mentally incompetent or is deceased, the claim may be filed on his or her behalf by his or her guardian, executor, or such other individual as is authorized to administer his or her estate.

(b) A claim must be filed by the claimant not later than July 1, 1999; provided, however, that, upon good cause shown, the Commissioner may extend the time for filing for a period not exceeding two months after such date. Claims shall be filed in the office of the Commissioner in person or by mail. The department shall provide forms for use in filing claims.

(c) The claim shall be verified and shall contain the following:

(1) The name, address, and telephone number of the claimant;

(2) A description of the amount, nature, and circumstances of the loss;

(3) A statement of the extent to which the cotton producer has been or may reasonably be expected to be indemnified or reimbursed for these losses from any other source, including the proceeds of any distribution by a trustee in bankruptcy;

(4) An authorization permitting the Commissioner to verify the contents of the application; and

(5) Such other information as the Commissioner may require.

History. — Code 1981, § 2-19-4, enacted by Ga. L. 1999, p. 1062, § 1.

Code Commission notes. — Pursuant to Code Section 28-9-5, in 1999, Ga. L. 1999, p. 1062, § 1 enacted Chapter 18 of Title 2, which was redesignated as Chapter 19 of Title 2. Therefore, the reference in subsection (a) to Code Section 2-18-2 was changed to Code Section 2-19-2 to reflect the renumbering.

2-19-5. Georgia Cotton Producers Indemnity Fund of 1999 created.

(a) There is created a fund to be known as the Georgia Cotton Producers Indemnity Fund of 1999. The Commissioner shall be the custodian of the fund, shall administer the fund, and may invest the resources of the fund in the same manner and fashion that an insurer authorized to issue contracts of life insurance is authorized to invest its resources.

(b) The fund shall consist of $5 million of federal moneys received pursuant to section 1121 of the federal Omnibus Consolidated and Emergency Supplemental Appropriations Act for Fiscal Year 1999, Public Law 105-277; all moneys appropriated by the General Assembly as required by section 1121 of the federal Omnibus Consolidated and Emergency Supplemental Appropriations Act for Fiscal Year 1999, Public Law 105-277, for the purpose of compensating claimants under this chapter; any other moneys made available to the fund; and any interest or earnings on such moneys accruing to the fund.

(c) All funds appropriated to or otherwise paid into the fund shall be presumptively concluded to have been committed to the purpose for which they have been appropriated or paid and shall not lapse.

(d) The Commissioner is authorized, subject to the limitations contained in this chapter, to disburse the appropriate indemnity payments to the persons eligible for such payments under this chapter from the Georgia Cotton Producers Indemnity Fund of 1999.

(e) Following the receipt of all claims, the investigation of each claim, as necessary, and the making of a determination that an award should or should not be paid for each claim filed, the Commissioner is authorized to draw warrants upon the Georgia Cotton Producers Indemnity Fund of 1999 to pay the indemnity amounts granted to

eligible recipients from such fund. If the total amount of all claims approved for payment exceeds the total amount available in the fund for such payments, a pro rata payment shall be made to each approved claimant in the proportion that such claimant's approved claim amount bears to the total of all approved claims.

(f) If more than $5 million has been paid to cotton producers prior to January 1, 2000, any excess funds in the Georgia Cotton Producers Indemnity Fund of 1999 shall be expended as provided in Code Section 2-19-5.1.

History. — Code 1981, § 2-19-5, enacted by Ga. L. 1999, p. 1062, § 1; Ga. L. 2000, p. 1510, § 4; Ga. L. 2001, p. 956, § 2.

Editor's notes. — Ga. L. 2001, p. 956, § 5, not codified by the General Assembly, provides that: "if any part of this Act is declared unconstitutional, it would have enacted any remaining parts of the Act which preserve its essential intent."

2-19-5.1. "Cotton ginner" defined; payment of excess funds in indemnity fund; filing claims.

(a) As used in this Code section, the term:

(1) "Contingent claim" means a claim filed because a trustee in bankruptcy had asserted, on or before March 1, 2001, a preference claim against the claimant to recover payments without which the claimant would have suffered a loss compensable under this chapter. "Contingent claim" also means a claim that would have been contingent, if it had been filed by a producer on or before May 1, 2000, or by a ginner on or before July 1, 2000.

(2) "Cotton ginner" means any person, firm, partnership, limited liability company, or corporation which operated a cotton gin in this state on May 1, 2000, and which incurred a loss as described in this Code section on or before May 1, 2000.

(b) If Congress so requires before January 1, 2002, notwithstanding any other provision of this chapter, after all valid and properly filed noncontingent claims of cotton producers filed on or before May 1, 2000, have been paid and after all valid and properly filed contingent claims of cotton producers filed on or before August 1, 2001, have been paid, any moneys remaining in the Georgia Cotton Producers Indemnity Fund of 1999, shall be paid to cotton ginners who:

(1) Incurred a loss as the result of the business failure of any cotton buyer doing business in this state or the failure or refusal of any such cotton buyer to pay the contracted price which had been agreed upon by the ginner and the buyer for cotton grown in this state on or after January 1, 1997, and which had been purchased or contracted by the ginner from cotton producers in this state;

(2) Paid cotton producers the amount which the cotton ginner had agreed to pay for such cotton received from such cotton producers in this state;

(3) Notified the Commissioner on or before May 1, 2000, either orally or in writing, of a loss sustained by such cotton ginner as a result of the business failure of any cotton buyer doing business in this state or the failure or refusal of such cotton buyer to pay the contracted price which had been agreed upon by the ginner and the buyer for cotton grown in this state on or after January 1, 1997, and which had been purchased or contracted by the ginner from cotton producers in this state; and

(4) Filed any noncontingent claim for indemnification from the Georgia Cotton Producers Indemnity Fund of 1999 with the Commissioner, in writing and accompanied by sufficient proof of such losses, on or before July 1, 2000, or filed any contingent claim on or before August 1, 2001.

(c) Claims shall be filed by cotton ginners, shall contain the same information, and shall be verified in the same manner as provided in Code Section 2-19-4 for claims by cotton producers. The Commissioner shall have the same powers and duties to investigate, process, and pay claims of cotton ginners as provided in Code Section 2-19-3 for claims of cotton producers. Claims and the acceptance of payments on such claims shall be subject to Code Sections 2-19-6 and 2-19-7. Properly filed, verified, and proven claims by cotton ginners shall be paid by the Commissioner from the fund on or before December 31, 2001, or as soon as administratively practical thereafter. The payment of such claims shall not affect any payments which have previously been made to cotton producers from the fund. If insufficient moneys remain in the fund to pay the total amount of all claims filed by cotton ginners, claims shall be paid on a proportional basis, based on the ratio of each cotton ginner's properly filed and proven claim to the total of all cotton ginners' claims properly filed and proven. Any moneys remaining in the Georgia Cotton Producers Indemnity Fund of 1999 on January 1, 2002, after the payment of claims shall be paid into the general fund of the state treasury.

(d) Also notwithstanding any other provision of this chapter, including subsection (c) of this Code section, any moneys remaining in the Georgia Cotton Producers Indemnity Fund of 1999 after all valid and properly filed noncontingent claims of cotton producers have been paid, shall also be paid to eligible cotton producers who filed contingent but otherwise valid claims on or before August 1, 2001.

(e) For a contingent claim to be paid, the claimant must tender proof acceptable to the Commissioner no later than November 30, 2001, that

the contingency has occurred and the claimant has suffered the loss which would have been eligible but for the alleged preference payments. A contingent claim may be paid from the fund only to the extent of the actual recovery by the trustee. The Commissioner shall consider the reasonableness of any settlement or any apparent failure to litigate in good faith with the trustee. The Commissioner may cast upon contingent claimants the burden of proving the reasonableness of any settlement or apparent failure to litigate in good faith.

History. — Code 1981, § 2-19-5.1, enacted by Ga. L. 2000, p. 1510, § 5; Ga. L. 2001, p. 956, § 3; Ga. L. 2005, p. 60, § 2/HB 95.

Code Commission notes. — Pursuant to Code Section 28-9-5, in 2000, "such" was deleted following "such" in paragraph (b)(1).

Editor's notes. — Ga. L. 2001, p. 956, § 5, not codified by the General Assembly, provides that: "if any part of this Act is declared unconstitutional, it would have enacted any remaining parts of the Act which preserve its essential intent."

2-19-6. Stipulations on acceptance of indemnity payments; recovery of payments by the Commissioner.

(a) Acceptance of an indemnity payment made pursuant to this chapter shall subrogate the state, to the extent of such indemnity payment, to any right or right of action accruing to the claimant to recover payments on account of losses resulting from the loss of the cotton or proceeds from the sale of the cotton with respect to which the indemnity payment is made. Acceptance of an indemnity payment made pursuant to this chapter shall constitute an agreement on the part of the recipient to repay to the Commissioner for deposit into the general fund of the state treasury any and all amounts, except those amounts in excess of any indemnity payment, recovered by the claimant in any bankruptcy proceeding, other civil action, or in any other way arising from the loss of cotton or the loss of proceeds from the sale of cotton for which an indemnity payment has been made pursuant to this chapter. The requirements of this Code section shall be included in and made a condition of any claim filed pursuant to this chapter.

(b) Alternatively, if Congress so requires,

(1) Acceptance of an indemnity payment made pursuant to this chapter shall constitute an agreement on the part of the recipient to repay to the Commissioner for deposit into the Georgia Cotton Producers Indemnity Fund of 1999, any and all amounts, except those amounts in excess of any indemnity payment, recovered by the claimant in any bankruptcy proceeding, other civil action, or in any other way arising from the loss of cotton or the loss of proceeds from the sale of cotton for which an indemnity payment has been made pursuant to this chapter. The requirements of this Code section shall be deemed a condition of any claim filed pursuant to this chapter.

(2) The proceeds of any bond collected by the commissioner for the benefit of claimants, who have been paid by the Indemnity Fund, to that extent will be paid into the fund.

History. — Code 1981, § 2-19-6, enacted by Ga. L. 1999, p. 1062, § 1; Ga. L. 2001, p. 956, § 4.

Editor's notes. — Ga. L. 2001, p. 956, § 5, not codified by the General Assembly, provides that: "if any part of this Act is declared unconstitutional, it would have enacted any remaining parts of the Act which preserve its essential intent."

2-19-7. Violations of chapter.

Any person who asserts a false claim under the provisions of this chapter shall be guilty of a violation of Code Section 16-10-20 and, upon conviction, shall be punished as provided in such Code section. Upon conviction thereof, such person shall further forfeit any benefit received pursuant to this chapter and shall reimburse and repay the state for payments received or paid on his or her behalf pursuant to any of the provisions of this chapter.

History. — Code 1981, § 2-19-7, enacted by Ga. L. 1999, p. 1062, § 1.

2-19-8. Appropriation of funds by the General Assembly.

No indemnity payments shall be paid pursuant to this chapter unless the General Assembly appropriates not less than $5 million of state funds to the Georgia Cotton Producers Indemnity Fund of 1999, and such appropriated state funds become available to the fund on or before July 1, 1999, for the purpose of making indemnity payments. This chapter shall be repealed on July 1, 1999, if the General Assembly has not appropriated $5 million or more of state funds on or before such date to match the $5 million in federal funds made available for the purpose of making indemnity payments pursuant to the federal act. If this chapter is repealed pursuant to the provisions of this Code section, all moneys received from the United States pursuant to the federal act shall be repaid to the secretary of agriculture as provided in the federal act. If this chapter is repealed as provided in this Code section, the Commissioner and the department shall be authorized to assist the secretary of agriculture in determining eligibility of Georgia cotton producers for indemnity payments by the secretary.

History. — Code 1981, § 2-19-8, enacted by Ga. L. 1999, p. 1062, § 1.

Editor's notes. — Ga. L. 1999, p. 1062, § 1 was funded in 1999.

CHAPTER 20

SOUTHERN DAIRY COMPACT

Sec.
2-20-1 through 2-20-5 [Repealed].

Cross references. — Department of Agriculture, T. 2, C. 2. Milk and milk products, T. 26, C. 2, A. 7.

Code Commission notes. — Pursuant to Code Section 28-9-5, in 2000, the chapter enacted by Ga. L. 1999, p. 1062, § 1 was redesignated as Chapter 19 and the chapter enacted by Ga. L. 1999, p. 1249, § 1 was redesignated as Chapter 20.

2-20-1 through 2-20-5.

Reserved. Repealed by Ga. L. 2019, p. 919, § 3-1/HB 553, effective July 1, 2019.

Editor's notes. — This chapter consisted of Code Sections 2-20-1 through 2-20-5, relating to the Southern Dairy Compact, and was based on Ga. L. 1999, p. 1249, § 1.

CHAPTER 21

ORGANIC CERTIFICATION AND LABELING

Sec.		Sec.	
2-21-1.	Short title.	2-21-5.	Inspection and testing.
2-21-2.	Definitions.	2-21-6.	Rules and regulations.
2-21-3.	Certification requirements.	2-21-7.	Right of appeal.
2-21-4.	Packaging and labeling; registration required.	2-21-8.	Penalty.

2-21-1. Short title.

This chapter shall be known and may be cited as the "Georgia Organic Certification and Labeling Act."

History. — Code 1981, § 2-21-1, enacted by Ga. L. 2000, p. 1648, § 1.

RESEARCH REFERENCES

ALR. — Liability of food manufacturer for "all-natural" statements in product labeling or promotion, 16 A.L.R.7th 2.

2-21-2. Definitions.

As used in this chapter, the term:

(1) "Certification" means the verification of authentic organic practices in the production or processing of organic food or feed and is an annual process by which the producer or processor of fresh, wholesale, or retail organic food or feed receives written certification from the department or a department approved certifying entity that, through the on-site inspection of the production, storage, processing, transportation, distribution, and required audit trail practices used by an organic producer or processor, consumers are assured that organic food or feed is produced and processed in compliance with Code Section 2-21-3. For purposes of complying with Code Section 2-21-3, certification does not require membership in nor imply a contractual agreement to produce or process organic food or feed for a certifying organic organization, business, firm, or individual. However, certification or the use of organic labeling shall require the maintenance of records and documentation verifying full compliance with the organic standards. All records shall be made available to the department or an approved certifying entity upon request.

(2) "Certifying entity" means any organization, business, firm, or individual that:

(A) Has standards for certification of organic food or feed production or processing which meet or exceed standards set by the department and which are approved in writing by the Commissioner or his or her designee; and

(B) Meets such education, experience, financial, and ethical standards as are set by rules promulgated by the Commissioner and meets the requirements of Chapter 5 of this title.

(3) "Commissioner" means the Commissioner of Agriculture of this state.

(4) "Department" means the Georgia Department of Agriculture.

(5) "Feed" means any article or substance normally intended to be consumed by animals for physical subsistence and health.

(6) "Food" means any article or substance normally intended to be consumed by humans for physical subsistence and health.

(7) "Organic" means an agriculture management system that enhances biodiversity, biological cycles, and soil biological activity to produce agricultural commodities and foster human and environmental health.

History. — Code 1981, § 2-21-2, enacted by Ga. L. 2000, p. 1648, § 1.

2-21-3. Certification requirements.

(a) Upon testing, any agricultural ingredient, article, commodity, or product which is identified, labeled, advertised, packaged, or promoted as organic shall contain no more than 5 percent of a level established as toxic by the United States Food and Drug Administration, the United States Environmental Protection Agency, the Environmental Protection Division of the Department of Natural Resources, or the United States Department of Agriculture.

(b) Producers, brokers, distributors, and processors of an organic food or feed product which is identified, advertised, promoted, labeled, or packaged as organic shall keep accurate records of all purchasing, shipping, and storage practices which transpired while any organic commodity or product was in the possession of a producer, broker, distributor, or processor. Accurate records shall include the location at which such organic commodity or product originated.

(c) On or after July 1, 2000, any qualifying organic production, distribution, or processing practices shall be deemed eligible for certification upon approval by the department. The department shall review any organic production, distribution, or processing practice which began prior to July 1, 2000, and may approve certification if such

practice meets the requirements as set forth in this chapter and the standards adopted by the department.

History. — Code 1981, § 2-21-3, enacted by Ga. L. 2000, p. 1648, § 1; Ga. L. 2001, p. 4, § 2.

Code Commission notes. — Pursuant to Code Section 28-9-5, in 2000, in subsection (c), "July 1, 2000" was substituted for "the effective date of this chapter" at the beginning, and in the second sentence "July 1, 2000," was substituted for "the effective date of this chapter".

2-21-4. Packaging and labeling; registration required.

(a) No person may use the words "certified organic by" in the identification, advertising, promotion, packaging, or labeling of a food or feed ingredient, article, commodity, or product unless that ingredient, article, commodity, or product complies with the requirements of Code Section 2-21-3 and unless the producer, distributor, or processor has a certification in good standing from the department.

(b) No person who produces, processes, distributes, or handles an advertised, promoted, identified, tagged, stamped, packaged, or labeled organic food or feed ingredient, article, commodity, or product may substitute or commingle any ingredient, article, commodity, or product which does not comply with Code Section 2-21-3.

(c) Any fresh, wholesale or retail organic food or feed ingredient, article, commodity, or product shall be tagged, stamped, labeled, crated, bagged, packaged, or be in any other standardized form which complies with state and federal regulations pertaining to inspection, identity, contents, weight, measure, and grade.

(d) Any food or feed ingredient, article, commodity, or product labeled as organic must be certified by the department or a department approved certifying entity as meeting the requirements of this chapter prior to being sold in the State of Georgia after July 1, 2000.

(e) On and after January 1, 2003, no organization, business, firm, or individual shall act as a certifying entity in this state unless such organization, business, firm, or individual has first registered with the department. The Commissioner shall establish by regulation registration standards for producers, processors, distributors, handlers, and certifying entities not inconsistent with this chapter. Registration shall be made upon forms prescribed and furnished by the department. Registrations shall expire on the last day of December of the year for which they are issued. The Commissioner shall establish by rule a registration fee for certifying entities in an amount of not less than $75.00 nor more than $1,000.00 per annum and may establish classes of certifying entities with different registration fees for each class. Any fees collected pursuant to this Code section shall be retained pursuant to the provisions of Code Section 45-12-92.1.

History. — Code 1981, § 2-21-4, enacted by Ga. L. 2000, p. 1648, § 1; Ga. L. 2002, p. 1295, § 1; Ga. L. 2010, p. 9, § 1-14/HB 1055; Ga. L. 2017, p. 618, § 1/SB 69.

The 2017 amendment, effective July 1, 2017, deleted the former first sentence of subsection (e), which read: "On and after January 1, 2003, no person shall produce, process, distribute, or handle in this state any advertised, promoted, identified, tagged, stamped, packaged, or labeled organic food or feed ingredient, article, commodity, or product unless such person has first registered with the department; provided, however, that retail food sales establishments licensed under Article 2 of this chapter that do not process or repackage certified organic commodities shall be exempt from registration provisions set forth in this chapter."

2-21-5. Inspection and testing.

(a) The department or a department approved certifying entity may inspect at any reasonable time any area where food or feed identified, labeled, advertised, packaged, or promoted as organic food or feed is produced, processed, stored, distributed, transported, or sold.

(b) The department or a department approved certifying entity may require a laboratory analysis for the purpose of substantiating the standard of identity of any organic ingredient, article, commodity, or product.

History. — Code 1981, § 2-21-5, enacted by Ga. L. 2000, p. 1648, § 1.

2-21-6. Rules and regulations.

(a) The Commissioner shall promulgate rules and regulations fixing and establishing reasonable definitions and standards for organic food and feed commodities or products being produced or sold within the State of Georgia.

(b) The Commissioner may adopt, by reference, pursuant to Chapter 13 of Title 50, known as the "Georgia Administrative Procedure Act," regulations for production, handling, and marketing of organically produced agricultural products as set forth by the United States Department of Agriculture.

(c) The Commissioner is authorized by rule or regulation to adopt fees which may be charged, collected, and retained by certifying entities as compensation for the services of such certifying entities under the provisions of this chapter.

(d) The Commissioner is authorized to adopt reasonable rules and regulations necessary to carry out this chapter, to provide for the approval of certifying entities, and to provide for the certification of organic food and feed.

History. — Code 1981, § 2-21-6, enacted by Ga. L. 2000, p. 1648, § 1.

2-21-7. Right of appeal.

Any person, producer, broker, distributor, or processor of an organic food or feed product which is adversely affected by any action of an approved certifying entity shall have the right to appeal to the Commissioner. Such appeal and any further proceedings shall be subject to Chapter 13 of Title 50, known as the "Georgia Administrative Procedure Act."

History. — Code 1981, § 2-21-7, enacted by Ga. L. 2000, p. 1648, § 1.

2-21-8. Penalty.

Any person who violates any provision of this chapter shall be guilty of a misdemeanor.

History. — Code 1981, § 2-21-8, enacted by Ga. L. 2000, p. 1648, § 1.

OPINIONS OF THE ATTORNEY GENERAL

Fingerprinting of offenders not required. — A violation of O.C.G.A. § 2-21-8 is not an offense designated as one that requires fingerprinting. 2000 Op. Att'y Gen. No. 2000-11.

CHAPTER 22

POULTRY CONTRACT GROWERS OR PRODUCERS

Sec.
2-22-1. Definitions.
2-22-2. Voidability of contracts by contract growers or producers; right and notice of cancellation.
2-22-3. Provision of statistical information and data to determine compensation.
2-22-4. Weighing and measuring of poultry.
2-22-5. Application of Fair Business Practices Act.

Cross references. — Live poultry dealers, brokers, and market operators, § 4-4-80 et seq.

2-22-1. Definitions.

As used in this chapter, the term:

(1) "Contract grower or contract producer" means a producer of poultry who holds a legal interest in a contract operation and who produces poultry under a production contract at that contract operation.

(2) "Integrator or processor" means a person who owns poultry that is produced by a contract grower or contract producer or who is engaged in the business of manufacturing goods from poultry, including by slaughtering or processing poultry.

(3) "Production contract" means an agreement executed by an integrator or processor that provides for the production of poultry or the provision of management services relating to the production of poultry by a contract grower or contract producer in this state.

History. — Code 1981, § 2-22-1, enacted by Ga. L. 2004, p. 688, § 1.

2-22-2. Voidability of contracts by contract growers or producers; right and notice of cancellation.

(a) Any production contract entered into, extended, renewed, or amended on or after July 1, 2004, shall be voidable by the contract grower or contract producer if:

(1) The contract grower or contract producer has not been afforded the opportunity to have the proposed production contract reviewed outside the business premises of the integrator or processor or its agents by an attorney or adviser of the contract grower's or contract

producer's choosing for at least three business days prior to execution; provided, however, that this paragraph shall not apply to the mere extension or renewal of an existing contract with no change in material terms from the existing contract other than the period covered thereby;

(2) The contract does not quote the provisions of subsection (b) of this Code section; or

(3) The contract is not signed by all parties before chicks are placed with the contract grower or contract producer.

(b)(1) Unless waived in writing by the contract grower or contract producer at the time of signing a production contract, the contract grower or contract producer shall have a right to cancel a production contract until 12:00 Midnight of the third business day after the day on which he or she signs the contract or until chicks have been placed with the contract grower or contract producer, whichever occurs first.

(2) Notice of cancellation under this subsection shall be given in writing to the integrator or processor at the place of business as set forth in the production contract by certified mail or statutory overnight delivery, return receipt requested, which shall be posted before termination of the right to cancel under paragraph (1) of this subsection. Notice of such written cancellation need not include any particular words or phrases to be effective so long as it indicates the intention of the contract grower or contract producer not to be bound by the production contract.

History. — Code 1981, § 2-22-2, enacted by Ga. L. 2004, p. 688, § 1.
Code Commission notes. — Pursuant to Code Section 28-9-5, in 2004, "July 1, 2004," was substituted for "the effective date of this chapter" in subsection (a).

2-22-3. Provision of statistical information and data to determine compensation.

Any integrator or processor shall provide to any contract grower or contract producer upon request thereby any statistical information and data used to determine compensation paid to such contract grower or contract producer under a production contract, other than a trade secret as defined by Code Section 10-1-761.

History. — Code 1981, § 2-22-3, enacted by Ga. L. 2004, p. 688, § 1.

2-22-4. Weighing and measuring of poultry.

Any contract grower or contract producer or the designee thereof shall have the right to be present at the weighing of poultry produced

by such grower or producer, be present at the weighing of feed delivered by the integrator or processor, and observe the weights and measures used to determine compensation due such grower or producer under a production contract.

History. — Code 1981, § 2-22-4, enacted by Ga. L. 2004, p. 688, § 1.

2-22-5. Application of Fair Business Practices Act.

(a) Violations of the provisions of Code Section 2-22-3 or 2-22-4 shall be subject to the same civil remedies and in the same manner as provided by Part 2 of Article 15 of Chapter 1 of Title 10, the "Fair Business Practices Act of 1975," for persons whose business or property has been injured or damaged as a result of an unfair or deceptive act or practice in violation of subsection (a) of Code Section 10-1-393.

(b) The provisions of Code Section 2-22-3 or 2-22-4 may be enforced by the Commissioner in the same manner as provided by Part 2 of Article 15 of Chapter 1 of Title 10, the "Fair Business Practices Act of 1975," for enforcement of the provisions of said part by the Attorney General against a person reasonably appearing to have engaged in an unfair or deceptive act or practice in violation of subsection (a) of Code Section 10-1-393, and the superior courts may grant injunctive relief and impose the same civil penalties for violations of injunctions as provided in said part.

History. — Code 1981, § 2-22-5, enacted by Ga. L. 2004, p. 688, § 1; Ga. L. 2015, p. 1088, § 12/SB 148.

Code Commission notes. — Pursuant to Code Section 28-9-5, in 2004, "an" was inserted preceding "unfair" in subsection (b).

CHAPTER 23

HEMP FARMING

Sec.		Sec.	
2-23-1.	Short title.	2-23-7.	Business agreements; transportation; reimbursement for crop destruction.
2-23-2.	Intent.	2-23-8.	Random testing of hemp.
2-23-3.	Definitions.	2-23-9.	Contracting for testing, certification, regulatory, and grading functions.
2-23-4.	Required licenses; research by colleges and universities; processing of other products.	2-23-10.	Enforcement; corrective action plan; revocation of licenses; reporting of licensees and permittees to Attorney General.
2-23-5.	Procedure for licensing; fees; qualified agricultural producer; requirements; limitations on licenses.	2-23-11.	Plan for regulation; approval.
2-23-6.	Procedure for permitting; limitations on permits and interests.	2-23-12.	Rules and regulations.

Effective date. — This chapter became effective May 10, 2019.

2-23-1. Short title.

This chapter shall be known and may be cited as the "Georgia Hemp Farming Act."

History. — Code 1981, § 2-23-1, enacted by Ga. L. 2019, p. 1030, § 1/HB 213.

2-23-2. Intent.

The intent of this chapter is to:

(1) Promote exploration of the cultivation and processing of hemp and the potential to open up new commercial markets for farmers and businesses through the sale of hemp products;

(2) Explore expansion of the state's hemp industry and allow farmers and businesses to begin to cultivate, handle, and process hemp and sell hemp products for commercial purposes;

(3) Encourage and empower research into growing hemp and creating hemp products at universities and in the private sector;

(4) Ultimately move the state and its citizens to the forefront of the hemp industry;

(5) Balance the desire to explore the cultivation and processing of hemp with public health, safety, and welfare regarding the potential for unwanted and unlawful uses of chemical elements of hemp; and

(6) Enable the department, licensees, and universities to promote the cultivation and processing of hemp and the commercial sale of hemp products.

History. — Code 1981, § 2-23-2, enacted by Ga. L. 2019, p. 1030, § 1/HB 213.

2-23-3. Definitions.

As used in this chapter, the term:

(1) "Commercial sale" means the sale of products in the stream of commerce at retail, at wholesale, and online.

(2) "Cultivate" means to plant, water, grow, and harvest a plant or crop.

(3) "Federally defined THC level for hemp" means a delta-9-THC concentration of not more than 0.3 percent on a dry weight basis, or the THC concentration for hemp defined in 7 U.S.C. Section 5940, whichever is greater.

(4) "Handle" means to possess or store hemp plants for any period of time on premises owned, operated, or controlled by a person licensed to cultivate or process hemp, or to possess or store hemp plants in a vehicle for any period of time other than during the actual transport of such plants from the premises of a person licensed to cultivate or process hemp to the premises of another licensed person; provided, however, that such term shall not include possessing or storing finished hemp products.

(5) "Hemp" means the Cannabis sativa L. plant and any part of such plant, including the seeds thereof and all derivatives, extracts, cannabinoids, isomers, acids, salts, and salts of isomers, whether growing or not, with the federally defined THC level for hemp or a lower level.

(6) "Hemp products" means all products with the federally defined THC level for hemp derived from, or made by, processing hemp plants or plant parts that are prepared in a form available for legal commercial sale, but not including food products infused with THC unless approved by the United States Food and Drug Administration.

(7) "Licensee" means an individual or business entity possessing a hemp grower license issued by the department under the authority of this chapter to handle and cultivate hemp in the State of Georgia.

(8) "Permittee" means an individual or business entity possessing a hemp processor permit issued by the department under the authority of this chapter to handle and process hemp in the State of Georgia.

(9) "Process" or "processing" means converting an agricultural commodity into a legally marketable form.

(10) "Research" or "researching" means experimental field, greenhouse, or laboratory activity for the ultimate purpose of developing new hemp varieties and products, improving existing hemp products, developing new uses for existing hemp products, or developing or improving methods for producing hemp products.

(11) "THC" means tetrahydrocannabinol, tetrahydrocannabinolic acid, or a combination of tetrahydrocannabinol and tetrahydrocannabinolic acid.

History. — Code 1981, § 2-23-3, enacted by Ga. L. 2019, p. 1030, § 1/HB 213.

2-23-4. Required licenses; research by colleges and universities; processing of other products.

(a) Except as otherwise provided in subsection (b) of this Code section, it shall be unlawful for:

(1) Any person to cultivate, handle, or process hemp in this state unless such person holds a hemp grower license or a hemp processor permit issued by the department pursuant to this chapter or is employed by a licensee or permittee;

(2) A permittee to accept hemp for processing from any person other than a licensee, except as otherwise provided in paragraph (4) of this subsection;

(3) A licensee to provide or sell hemp to any person other than a permittee;

(4) A permittee to accept for processing any hemp grown outside of the State of Georgia, unless such hemp is grown in a state with a plan to regulate hemp production that is approved by the Secretary of Agriculture of the United States or otherwise in accordance with regulations promulgated by the United States Department of Agriculture;

(5) A permittee to process hemp pursuant to a hemp processor permit outside of the State of Georgia, unless such processing occurs in a state with a plan to regulate hemp production that is approved by the Secretary of Agriculture of the United States or otherwise in accordance with regulations promulgated by the United States Department of Agriculture;

(6) Any licensee or permittee to otherwise fail to comply with the requirements of this chapter; or

(7) Offer for sale at retail the unprocessed flower or leaves of the hemp plant.

(b) Colleges and universities of the University System of Georgia are hereby authorized pursuant to 7 U.S.C. Section 5940 on and after May 10, 2019, this chapter becoming effective to conduct research under an agricultural pilot program or other agricultural or academic research, including research on the cultivation and uses of hemp grown within the State of Georgia, breeding and developing new hemp varieties, seed development, consumer uses, and marketing.

(c) It shall be lawful for a permittee to process products other than hemp products at a facility when such products are lawfully processed in the state and stored separately from hemp products.

History. — Code 1981, § 2-23-4, enacted by Ga. L. 2019, p. 1030, § 1/HB 213.

Code Commission notes. — Pursuant to Code Section 28-9-5, in 2019, "on and after May 10, 2019" was substituted for "immediately upon" in subsection (b).

U.S. Code. — Section 5940 of Title 7 of the U.S.C., referred to in this Code section, concerns the legitimacy of industrial hemp research.

2-23-5. Procedure for licensing; fees; qualified agricultural producer; requirements; limitations on licenses.

(a)(1) Except as otherwise provided in this chapter, application for, consideration and issuance of, and revocation of hemp grower licenses issued by the department pursuant to this Code section shall be accomplished in accordance with Chapter 5 of this title, and such licenses shall otherwise be governed by such chapter. No such license shall be valid unless the licensee has and maintains in effect an agreement with a permittee pursuant to Code Section 2-23-7.

(2) Hemp grower licenses shall be issued for one calendar year at an annual license fee of $50.00 per acre cultivated up to a maximum license fee of $5,000.00.

(b) Any person applying for a hemp grower license shall be a qualified agricultural producer, as defined in Code Section 48-8-3.3, and shall provide with such application to the department:

(1) A legal description and global positioning coordinates sufficient for locating fields and greenhouses to be used to cultivate and harvest hemp;

(2) Unless the licensee is also a permittee, the name of the permittee with whom the applicant has entered into or intends to enter into an agreement pursuant to Code Section 2-23-7 and the affidavit required by Code Section 2-23-6;

(3) Written consent, allowing representatives of the department, the Georgia Bureau of Investigation, and other affected state and

local law enforcement agencies to enter all premises where hemp is being cultivated, harvested, or handled for the purpose of conducting physical inspections and ensuring compliance with the requirements of this chapter; and

(4) A criminal background check conducted by local law enforcement. No license shall be issued to any applicant who has been convicted of a misdemeanor involving sale of or trafficking in a controlled substance or a felony or materially falsifies any information contained in a license application.

(c)(1) No person shall be issued more than one hemp grower license, nor shall any person be permitted to have a beneficial interest in more than one hemp grower license issued under this chapter, regardless of the degree of such interest.

(2) Nothing contained in this subsection shall prohibit the reissuance of a valid hemp grower license if the license has been held by marriage prior to the creation of any of the relationships defined in paragraph (3) of this subsection.

(3) For purposes of this subsection:

(A) The term "person" shall include all members of a licensee's family and all corporations, limited partnerships, limited liability companies, and other business entities in which a licensee holds more than a 50 percent ownership interest; the term "family" shall include any person related to the holder of the hemp grower license within the first degree of consanguinity and affinity as computed according to the canon law and who is claimed as a dependent by the licensee for income tax purposes; and

(B) The beneficiaries of a trust shall be considered to have a beneficial interest in any business forming a part of the trust estate.

History. — Code 1981, § 2-23-5, enacted by Ga. L. 2019, p. 1030, § 1/HB 213.

2-23-6. Procedure for permitting; limitations on permits and interests.

(a) Except as otherwise provided in this chapter, consideration, issuance, and revocation of hemp processor permits issued by the department pursuant to this Code section shall be accomplished in accordance with Chapter 5 of this title, and such permits shall otherwise be governed by such chapter. No such permit shall be valid unless the permittee has and maintains in effect an agreement with a licensee pursuant to Code Section 2-23-7.

(b) Any person applying for a hemp processor permit pursuant to this Code section shall provide to the department:

(1) A legal description and global positioning coordinates sufficient for locating facilities for processing hemp;

(2) Affidavits of such applicant and every licensee with whom such applicant has entered into a written agreement pursuant to Code Section 2-23-7 in which both parties swear that they have entered into or intend to enter into such an agreement. Such affidavits shall be in a form to be provided by the department;

(3) Written consent allowing representatives of the department, the Georgia Bureau of Investigation, and other affected state and local law enforcement agencies to enter all premises where hemp is being processed or handled for the purpose of conducting physical inspections and ensuring compliance with the requirements of this chapter;

(4) A surety bond in the amount of $100,000.00 issued by a surety company authorized by law to do business in this state pursuant to a current certificate of authority to transact surety business by the Commissioner of Insurance. If any party is aggrieved or adversely affected by the permittee's failure to comply with the requirements of this chapter, the Commissioner may commence and maintain an action against the principal and surety on the bond; and

(5) A criminal background check conducted by local law enforcement. No permit shall be issued to any applicant who has been convicted of a misdemeanor involving sale of or trafficking in a controlled substance or a felony or who materially falsifies any information contained in a permit application.

(c) The department shall annually accept applications for hemp processor permits to be issued by the department.

(d) Hemp processor permits shall be issued for one calendar year at an annual permit fee of $25,000.00, provided that after the first calendar year, a permittee shall be entitled to automatic permit renewals annually for a permit fee of $10,000.00 per year, so long as no administrative action has been taken by the department regarding such permittee under this chapter.

(e) Issuance of any hemp processor permit shall be conditioned upon the permittee's compliance with Code Section 2-23-7 prior to initiating hemp processing activities.

(f) A permittee may also apply for and be issued no more than one hemp grower license.

(g)(1) No person shall be issued more than one hemp processor permit, nor shall any person be permitted to have a beneficial interest

in more than one hemp processor permit issued under this chapter, regardless of the degree of such interest.

(2) Nothing contained in this subsection shall prohibit the reissuance of a valid hemp processor permit if the permit has been held by marriage prior to the creation of any of the relationships defined in paragraph (3) of this subsection.

(3) For purposes of this subsection:

(A) The term "person" shall include all members of a licensee's family and all corporations, limited partnerships, limited liability companies, and other business entities in which a licensee holds more than a 50 percent ownership interest; the term "family" shall include any person related to the holder of the hemp processor permit within the first degree of consanguinity and affinity as computed according to the canon law and who is claimed as a dependent by the licensee for income tax purposes; and

(B) The beneficiaries of a trust shall be considered to have a beneficial interest in any business forming a part of the trust estate.

History. — Code 1981, § 2-23-6, enacted by Ga. L. 2019, p. 1030, § 1/HB 213.

2-23-7. Business agreements; transportation; reimbursement for crop destruction.

(a) Every permittee shall at all times have in place written agreements with each licensee governing their business relationship. Each permittee shall provide a copy of each such agreement, and any amendments thereto, to the department within ten days of execution of each such agreement or amendment thereto.

(b) Transportation of hemp from each licensee's facilities to the permittee's facilities shall be conducted in conformance with minimum standards to be promulgated by the department.

(c) Until December 31, 2022, when a licensee destroys a crop pursuant to Code Section 2-23-8, the permittee with whom the licensee has entered into an agreement pursuant to this Code section shall reimburse the licensee for half of the amount of the combined value of the seed, fertilizer, labor costs, and any other reasonable and customary input expenses incurred with such destroyed crop.

History. — Code 1981, § 2-23-7, enacted by Ga. L. 2019, p. 1030, § 1/HB 213.

2-23-8. Random testing of hemp.

(a)(1) The department shall have the right, either through its own personnel or through an independent contractor as provided for in Code Section 2-23-9, to randomly test hemp at the fields and greenhouses of all licensees. Such testing, and the harvesting of the hemp tested, shall be conducted in compliance with regulations promulgated by the department.

(2) In the event that a test sample reveals a delta-9-THC concentration of more than 0.330 percent on a dry weight basis, the licensee's entire crop with the same global positioning coordinates shall be destroyed in compliance with regulations promulgated by the department.

(3) In the event that a test sample reveals a delta-9-THC concentration of more than 0.3 percent but not more than 0.330 percent on a dry weight basis, the licensee's crop shall be retested and if upon such retesting, the delta-9-THC concentration exceeds 0.3 percent, the entire crop with the same global positioning coordinates shall be destroyed in compliance with regulations promulgated by the department.

(b)(1) The department shall have the right, either through its own personnel or through an independent contractor as provided for in Code Section 2-23-9, to randomly test hemp products at the facilities of all permittees. Such testing shall be conducted in compliance with regulations promulgated by the department.

(2) In the event that a test sample reveals a delta-9-THC concentration of more than 0.3 percent, all related hemp products shall be destroyed by the permittee under the supervision of local law enforcement.

History. — Code 1981, § 2-23-8, enacted by Ga. L. 2019, p. 1030, § 1/HB 213.

2-23-9. Contracting for testing, certification, regulatory, and grading functions.

The department shall be authorized to enter into a contract or contracts with one or more entities to conduct the testing provided for in Code Section 2-23-8 as well as to include the certification, regulatory, and grading functions pursuant to this chapter and regulations promulgated by the department.

History. — Code 1981, § 2-23-9, enacted by Ga. L. 2019, p. 1030, § 1/HB 213.

2-23-10. Enforcement; corrective action plan; revocation of licenses; reporting of licensees and permittees to Attorney General.

(a) A violation of this chapter or the rules and regulations promulgated by the department pursuant to this chapter shall be subject to enforcement solely in accordance with this Code section.

(b)(1) A licensee or permittee under this chapter shall be required to conduct a corrective action plan if the Commissioner determines that the licensee or permittee has negligently violated this chapter or has violated rules and regulations promulgated by the department pursuant to this chapter by:

(A) Failing to provide a legal description and global positioning coordinates sufficient for locating fields and greenhouses the licensee uses to cultivate and harvest hemp or facilities at which the permittee processes hemp;

(B) Failing to properly obtain a license or permit from the department;

(C) Producing Cannabis sativa L. with more than the federally defined THC level for hemp; or

(D) Otherwise negligently violating this chapter.

(2) A corrective action plan required by this Code section shall include:

(A) A reasonable date by which the licensee or permittee shall correct the negligent violation; and

(B) A requirement that the licensee or permittee shall periodically report to the Commissioner on the compliance status of the licensee or permittee with the corrective action plan for a period of not less than two calendar years after the violation.

(c) Except as provided in subsection (d) of this Code section, a licensee or permittee that negligently violates this chapter or rules and regulations promulgated by the department pursuant to this chapter shall not as a result be subject to any criminal or civil enforcement action by any government agency other than the enforcement action authorized under subsection (b) of this Code section.

(d) A licensee or permittee that negligently violates the corrective action plan under subsection (b) of this Code section three times in a five-year period shall have its license or permit issued pursuant to this chapter immediately revoked and shall be ineligible to reapply for a license or permit for a period of five years after the date of the third violation.

(e) If the Commissioner determines that a licensee or permittee has violated state law with a culpable mental state greater than negligence, the Commissioner shall immediately report the licensee or permittee to the United States Attorney General and the state Attorney General, and subsection (a) of this Code section shall not apply to the violation.

(f) Laws enacting criminal offenses, including laws provided for in Title 16, not in conflict with this chapter shall continue to be enforceable and of full force and effect.

History. — Code 1981, § 2-23-10, enacted by Ga. L. 2019, p. 1030, § 1/HB 213.
Code Commission notes. — Pursuant to Code Section 28-9-5, in 2019, "Commissioner" was substituted for "commissioner" in paragraph (b)(1), in subparagraph (b)(2)(B), and twice in subsection (e).

2-23-11. Plan for regulation; approval.

(a) Within 60 days of May 10, 2019, the Commissioner, in consultation with the Governor and Attorney General, shall submit to the secretary of agriculture of the United States a plan under which the department intends to regulate hemp production and which shall include:

(1) A practice to maintain relevant information regarding land on which hemp is produced in this state, including a legal description of the land, for a period of not less than three calendar years;

(2) A procedure to test delta-9-THC concentration levels, by using post-decarboxylation or other similarly reliable methods, for hemp produced in this state;

(3) A procedure to effectively dispose of products that are produced in violation of this chapter; and

(4) A procedure to comply with the enforcement procedures outlined in Code Section 2-23-10.

(b) If the secretary of agriculture of the United States disapproves the plan, the Commissioner, in consultation with the Governor and Attorney General, shall submit to the secretary of agriculture of the United States an amended plan.

History. — Code 1981, § 2-23-11, enacted by Ga. L. 2019, p. 1030, § 1/HB 213.
Code Commission notes. — Pursuant to Code Section 28-9-5, in 2019, "May 10, 2019" was substituted for "the effective date of this chapter" in the first sentence of subsection (a) and "Commissioner" was substituted for "commissioner" in subsections (a) and (b).

2-23-12. Rules and regulations.

The department, in consultation with the Georgia Bureau of Investigation, shall promulgate rules and regulations as necessary to implement the provisions of this chapter. Such rules and regulations shall include the plan provided for in Code Section 2-23-11 upon the approval of such plan by the secretary of agriculture of the United States.

History. — Code 1981, § 2-23-12, enacted by Ga. L. 2019, p. 1030, § 1/HB 213.

TITLE 3

ALCOHOLIC BEVERAGES

Chap.

1. General Provisions, 3-1-1 through 3-1-5.
2. State Administration and Enforcement, 3-2-1 through 3-2-36.
3. Regulation of Alcoholic Beverages Generally, 3-3-1 through 3-3-46.
4. Distilled Spirits, 3-4-1 through 3-4-180.
5. Malt Beverages, 3-5-1 through 3-5-90.
6. Wine, 3-6-1 through 3-6-71.
7. Sale of Distilled Spirits by Private Clubs, 3-7-1 through 3-7-61.
8. Sale of Alcoholic Beverages at Publicly Owned Facilities, 3-8-1 through 3-8-6.
9. Sale of Alcoholic Beverages by Passenger Carriers, Nonprofit Organizations, and Hotels and Motels, 3-9-1 through 3-9-13.
10. Sale or Possession of Distilled Spirits in Dry Counties and Municipalities, 3-10-1 through 3-10-15.
11. Sales Off Premises for Catered Functions, 3-11-1 through 3-11-5.
12. Residential Community Development Districts, 3-12-1 through 3-12-3.
13. Sale of Alcoholic Beverages by Regional Economic Assistance Project, 3-13-1 through 3-13-4.
14. Special Event Use Permits, 3-14-1.

Editor's notes. — In light of the similarity of the statutory provisions, annotations decided under former Ga. L. 1937-38, Ex. Sess. p. 103 are included in the annotations for this title.

Cross references. — Hospitalization, treatment, and care of alcoholics, T. 37, C. 7. Criminal penalty for suspension of driver's license for driving under influence of alcohol, §§ 40-5-54, 40-6-391.

Law reviews. — For note discussing the twenty-first amendment's limitation on state's power to regulate alcoholic beverages, in light of United States v. State

Tax Comm'n, 412 U.S. 363, 93 S. Ct. 2183, 37 L. Ed. 2d 1 (1973), see 10 Ga. St. B. J. 336 (1973).

JUDICIAL DECISIONS

Ga. L. 1937-38, Ex. Sess. p. 103 was both a law with a local option feature and a general law relating to both dry and wet counties. Bienert v. State, 82 Ga. App. 179, 60 S.E.2d 575 (1950) (decided under former Ga. L. 1937-38, Ex. Sess. p. 103).

Regulations pertaining to sale of alcohol are entitled to special deference when challenged in court. The broad sweep of the Twenty-First Amendment has been recognized as conferring something more than normal state authority over public health, welfare, and morals. Trustees of Mtg. Trust of Am. v. Holland, 554 F.2d 237 (5th Cir. 1977) (decided under former Ga. L. 1937-38, Ex. Sess. p. 103).

RESEARCH REFERENCES

ALR. — Federal constitutional or legislative provisions as to intoxication liquors as affecting state legislation, 10 A.L.R. 1587; 11 A.L.R. 1320; 26 A.L.R. 661; 70 A.L.R. 132.

Power of legislature in aid of enforcement of prohibition against manufacture and sale of intoxicating liquor to prohibit manufacture, sale, or possession of nonintoxicating liquor, 88 A.L.R. 1094.

Entrapment to commit offense against laws regulating sales of liquor, 55 A.L.R.2d 1322.

Right to recover under civil damage or dramshop act for death of intoxicated person, 64 A.L.R.2d 705.

What constitutes injury to means of support within civil damage or dramshop act, 4 A.L.R.3d 1332.

Liability, under dramshop acts, of one who sells or furnishes liquor otherwise than in operation of regularly established liquor business, 8 A.L.R.3d 1412.

Security interests in liquor licenses, 56 A.L.R.4th 1131.

Zoning regulation of intoxicating liquor as pre-empted by state law, 65 A.L.R.4th 555.

CHAPTER 1

GENERAL PROVISIONS

Sec.
3-1-1. Short title.
3-1-2. Definitions.
3-1-3. Use of existing forms and filings relating to licenses or taxes.
3-1-4. Penalty for violations of provisions of title.
3-1-5. Posting of warning by retailer that consumption of alcohol during pregnancy is dangerous.

3-1-1. Short title.

This title shall be known and may be cited as the "Georgia Alcoholic Beverage Code."

History. — Code 1933, § 5A-101, enacted by Ga. L. 1980, p. 1573, § 1.

RESEARCH REFERENCES

Am. Jur. Pleading and Practice Forms. — 14C Am. Jur. Pleading and Practice Forms, Intoxicating Liquors, § 1 et seq.

ALR. — Interplay between Twenty-First Amendment and Commerce Clause concerning state regulation of intoxicating liquors, 116 A.L.R.5th 149.

3-1-2. Definitions.

As used in this title, the term:

(1) "Alcohol" means ethyl alcohol, hydrated oxide of ethyl, or spirits of wine, from whatever source or by whatever process produced.

(2) "Alcoholic beverage" means and includes all alcohol, distilled spirits, beer, malt beverage, wine, or fortified wine.

(2.1) "Bar" means any premises at which a retailer licensed pursuant to this title to sell alcoholic beverages derives 75 percent or more total annual gross revenue from the sale of alcoholic beverages for consumption on the premises.

(3) "Brewpub" means any eating establishment in which malt beverages are manufactured, subject to the barrel production limitation prescribed in Code Section 3-5-36. As used in this paragraph, the term "eating establishment" means an establishment which is licensed to sell distilled spirits, malt beverages, or wines and which derives at least 50 percent of its total annual gross food and beverage sales from the sale of prepared meals or food; provided, however, that

when determining the total annual gross food and beverage sales, barrels of malt beverages sold to licensed wholesale dealers, as authorized pursuant to subparagraph (D) of paragraph (2) of Code Section 3-5-36, or to the public for consumption off the premises, as authorized pursuant to subparagraph (D) of paragraph (2) and paragraph (4) of Code Section 3-5-36, shall not be used.

(4) "Broker" means any person who purchases or obtains an alcoholic beverage from an importer, distillery, brewery, or winery and sells the alcoholic beverage to another broker, importer, or wholesaler without having custody of the alcoholic beverage or maintaining a stock of the alcoholic beverage.

(5) "Commissioner" means the state revenue commissioner.

(6) "County or municipality" means those political subdivisions of this state as defined by law and includes any form of political subdivision consolidating a county with one or more municipalities.

(7) "Department" means the Department of Revenue.

(8) "Distilled spirits" means any alcoholic beverage obtained by distillation or containing more than 24 percent alcohol by volume.

(9) "Fortified wine" means any alcoholic beverage containing not more than 24 percent alcohol by volume made from fruits, berries, or grapes either by natural fermentation or by natural fermentation with brandy added. The term includes, but is not limited to, brandy.

(10) "Gallon" or "wine gallon" means a United States gallon of liquid measure equivalent to the volume of 231 cubic inches or the nearest equivalent metric measurement.

(10.1) "Hard cider" means an alcoholic beverage obtained by the fermentation of the juice of apples, containing not more than 6 percent alcohol by volume, including, but not limited to, flavored or carbonated cider. For purposes of this title, hard cider shall be deemed a malt beverage. The term does not include "sweet cider."

(11) "Importer" means any person who imports an alcoholic beverage into this state from a foreign country and sells the alcoholic beverage to another importer, broker, or wholesaler and who maintains a stock of the alcoholic beverage.

(12) "Individual" means a natural person.

(13) "Malt beverage" means any alcoholic beverage obtained by the fermentation of any infusion or decoction of barley, malt, hops, or any other similar product, or any combination of such products in water, containing not more than 14 percent alcohol by volume and including ale, porter, brown, stout, lager beer, small beer, and strong beer. The term does not include sake, known as Japanese rice wine.

(14) "Manufacturer" means any maker, producer, or bottler of an alcoholic beverage. The term also means:

(A) In the case of distilled spirits, any person engaged in distilling, rectifying, or blending any distilled spirits; provided, however, that a vintner that blends wine with distilled spirits to produce a fortified wine shall not be considered a manufacturer of distilled spirits;

(B) In the case of malt beverages, any brewer; and

(C) In the case of wine, any vintner.

(15) "Military reservation" means a duly commissioned post, camp, base, or station of a branch of the armed forces of the United States located on territory within this state which has been ceded to the United States.

(16) "Package" means a bottle, can, keg, barrel, or other original consumer container.

(17) "Person" means any individual, firm, partnership, cooperative, nonprofit membership corporation, joint venture, association, company, corporation, agency, syndicate, estate, trust, business trust, receiver, fiduciary, or other group or combination acting as a unit, body politic, or political subdivision, whether public, private, or quasi-public.

(18) "Retail consumption dealer" means any person who sells distilled spirits for consumption on the premises at retail only to consumers and not for resale.

(19) "Retailer" or "retail dealer" means, except as to distilled spirits, any person who sells alcoholic beverages, either in unbroken packages or for consumption on the premises, at retail only to consumers and not for resale. With respect to distilled spirits, the term shall have the same meaning as the term "retail package liquor store."

(19.1) "Retail package liquor store" means a retail business establishment owned by an individual, partnership, corporation, association, or other business entity:

(A) Primarily engaged in the retail sale of distilled spirits, malt beverages, and wine in unbroken packages, not for consumption on the premises, except as authorized under this chapter; and

(B) Which derives from such retail sale of alcoholic beverages in unbroken packages at least 75 percent of its total annual gross sales from the sale of a combination of distilled spirits, malt beverages, and wine.

(20) "Shipper" means any person who ships an alcoholic beverage from outside this state.

(21) "Standard case" means six containers of 1.75 liters, 12 containers of 750 milliliters, 12 containers of one liter, 24 containers of 500 milliliters, 24 containers of 375 milliliters, 48 containers of 200 milliliters, or 120 containers of 50 milliliters.

(22) "Taxpayer" means any person made liable by law to file a return or to pay tax.

(23) "Wholesaler" or "wholesale dealer" means any person who sells alcoholic beverages to other wholesale dealers, to retail dealers, or to retail consumption dealers.

(24) "Wine" means any alcoholic beverage containing not more than 24 percent alcohol by volume made from fruits, berries, or grapes either by natural fermentation or by natural fermentation with brandy added. The term includes, but is not limited to, all sparkling wines, champagnes, combinations of such beverages, vermouths, special natural wines, rectified wines, and like products. The term does not include cooking wine mixed with salt or other ingredients so as to render it unfit for human consumption as a beverage. A liquid shall first be deemed to be a wine at that point in the manufacturing process when it conforms to the definition of wine contained in this Code section.

History. — Code 1933, § 5A-102, enacted by Ga. L. 1980, p. 1573, § 1; Ga. L. 1981, p. 1269, §§ 2-4; Ga. L. 1994, p. 553, § 1; Ga. L. 1995, p. 734, § 1; Ga. L. 1998, p. 1581, § 1; Ga. L. 2004, p. 584, § 1; Ga. L. 2006, p. 206, § 1/HB 1248; Ga. L. 2012, p. 680, § 1/HB 472; Ga. L. 2013, p. 767, § 2/HB 124; Ga. L. 2014, p. 366, § 1/SB 286; Ga. L. 2015, p. 317, § 1/SB 63; Ga. L. 2015, p. 578, § 1/HB 152; Ga. L. 2018, p. 1112, § 3/SB 365.

Editor's notes. — In light of the similarity of the statutory provisions, annotations decided under former Ga. L. 1937, Ex. Sess., p. 103 are included in the annotations for this Code section.

In light of the statutory provisions, opinions decided under former Ga. L. 1937-38, Ex. Sess. p. 103 are included in the annotations for this Code section.

The 2018 amendment, effective May 8, 2018, part of an Act to revise, modernize, and correct the Code, revised punctuation in the first sentence of paragraph (10.1).

Cross references. — General powers and duties of commissioner, § 48-2-7.

Code Commission notes. — Pursuant to Code Section 28-9-5, in 1995, paragraphs (22) and (23) were redesignated as paragraphs (23) and (22), respectively.

Pursuant to Code Section 28-9-5, in 1998, a minor punctuation change was made at the end of paragraph (10.1).

JUDICIAL DECISIONS

Fact that whiskey is mixed with other ingredients in a glass and thus served to consumer does not change its character from whiskey to something else so as to render sale and consumption thereof not subject to regulation. Raines v. State, 96 Ga. App. 727, 101 S.E.2d 589 (1957) (decided under former Ga. L.

1937-38, Ex. Sess., p. 103).

Cited in Kariuki v. DeKalb County, 253 Ga. 713, 324 S.E.2d 450 (1985).

OPINIONS OF THE ATTORNEY GENERAL

Under Ga. L. 1937-38, Ex. Sess., p. 103, it is unlawful to permit sale of spirituous liquors and whiskeys (distilled spirits), as defined in Ga. L. 1937-38, Ex. Sess., p. 103, in unbroken packages or by the drink to be consumed on the premises. 1954-56 Op. Att'y Gen. p. 460 (rendered under former Ga. L. 1937-38, Ex. Sess. p. 103)

Ga. L. 1937, Ex. Sess., p. 103 (see now O.C.G.A. § 3-1-2) provides that the word "person" includes corporations and this would include a municipal corporation. 1960-61 Op. Att'y Gen. p. 288 (rendered under former Ga. L. 1937-38, Ex. Sess. p. 103).

Home brew is a malt beverage and its manufacture is subject to the malt beverage statutes, notwithstanding that the alcoholic content exceeds 6 percent by volume. 1962 Op. Att'y Gen. p. 297 (rendered under former Ga. L. 1937-38, Ex. Sess. p. 103).

RESEARCH REFERENCES

Am. Jur. 2d. — 29A Am. Jur. 2d, Evidence, § 106. 45 Am. Jur. 2d, Intoxicating Liquors, §§ 3 et seq., 26 et seq.

C.J.S. — 48 C.J.S., Intoxicating Liquors, § 1 et seq.

ALR. — Test of intoxicating character of liquor, 4 A.L.R. 1137; 11 A.L.R. 1233; 19 A.L.R. 512; 36 A.L.R. 725; 91 A.L.R. 513.

Judicial notice of intoxicating quality, and the like, of a liquor or particular liquid, from its name, 49 A.L.R.2d 764.

What constitutes "intoxicating liquor" within civil damage act, 52 A.L.R.2d 890.

3-1-3. Use of existing forms and filings relating to licenses or taxes.

Every form of license or tax document or other license or tax related filing lawfully in use immediately prior to July 1, 1981, may continue to be so used or be effective until the commissioner, in accordance with this title, otherwise prescribes.

History. — Code 1933, § 5A-104, enacted by Ga. L. 1980, p. 1573, § 1; Ga. L. 2006, p. 206, § 2/HB 1248.

RESEARCH REFERENCES

C.J.S. — 48 C.J.S., Intoxicating Liquors, §§ 176 et seq., 239 et seq.

3-1-4. Penalty for violations of provisions of title.

(a) It is unlawful for any person knowingly and intentionally to violate any criminal prohibition contained in this title.

(b) Except as otherwise provided in this title, any person who violates any criminal prohibition contained in this title shall be guilty of a misdemeanor.

History. — Code 1933, § 5A-9904, enacted by Ga. L. 1980, p. 1573, § 1.

RESEARCH REFERENCES

ALR. — Homicide: criminal liability for death resulting from unlawfully furnishing intoxicating liquor or drugs to another, 32 A.L.R.3d 589.

3-1-5. Posting of warning by retailer that consumption of alcohol during pregnancy is dangerous.

(a) All retail consumption dealers and retail dealers in this state who sell at retail any alcoholic beverages for consumption on the premises shall post, in a conspicuous place, a sign which clearly reads: "Warning: Drinking alcoholic beverages during pregnancy can cause birth defects."

(b) The department shall make such warning signs available to such retailers of alcoholic beverages and shall promulgate rules and regulations with respect to the form and the posting of said signs. A fee may be charged by the department to cover printing, postage, and handling expenses.

(c) Any person who fails or refuses to post the sign as required in this Code section shall be guilty of a misdemeanor and, upon conviction thereof, shall be fined in an amount not to exceed $100.00 for each violation.

History. — Code 1981, § 3-1-5, enacted by Ga. L. 1986, p. 618, § 1.

CHAPTER 2

STATE ADMINISTRATION AND ENFORCEMENT

Article 1

Administration

Sec.
3-2-1. Powers and duties of commissioner generally; delegation of administrative duties.
3-2-2. Promulgation of rules and regulations generally; forms.
3-2-3. Powers and duties of commissioner as to denial, suspension, or cancellation of licenses or permits generally; promulgation of rules and regulations as to conversion of standards of measurement and labeling of distilled spirits.
3-2-3.1. Power of commissioner to permit importation of alcohol into counties and municipalities; taxation of such alcohol.
3-2-4. Sale, distribution, or other dealing in alcoholic beverages by employees, agents, or officers of department prohibited; exemption.
3-2-5. Collection of taxes under title; issuance of licenses.
3-2-6. Establishment and operation of reporting system for collection of taxes on malt beverages, distilled spirits, and wines; applicability to reporting system of provisions of law relating to revenue stamps.
3-2-7. Expiration and renewal of licenses generally; continuation of operations by licensee pending final approval or disapproval of application for renewal; penalty for late application for renewal; temporary permits.
3-2-8. Availability of records for public inspection; collection of fee for special requests for preparation of information.
3-2-9. Requirements as to reports to be made to commissioner.
3-2-10. Disposition of taxes, penalties, interest, and fees.
3-2-11. Penalties for failure to file reports or returns or to pay tax or fee; procedure for assessment of taxes due, penalties, and interest.
3-2-12. Waiver of penalties by commissioner.
3-2-13. Issuance of refunds or credits for taxes paid.
3-2-14. Limitations on credit; application; action for recovery of credit; setoff of unpaid taxes against credit.
3-2-15. Promulgation of rules and regulations governing advertising of distilled spirits.

Article 2

Enforcement

3-2-30. Powers and duties of special agents and enforcement officers of department generally; bond requirement; retention of weapon and badge upon retirement or disability.
3-2-31. Assistance to other authorities by special agents and enforcement officers of department.
3-2-32. Inspection of premises by commissioner and agents generally; access to books, records, and supplies.
3-2-33. Sale, possession, concealment, storage, or conveyance of untaxed alcoholic beverages; declaration of untaxed or otherwise unlawful alcoholic beverages as contraband; seizure and disposition of contraband alcoholic beverages.
3-2-34. Disposition of contraband alcoholic beverages; seizure; destruction; sale; retention of small quantity for evidence.
3-2-35. Seizure of contraband by commissioner and agents; proceedings upon seizure; hearing on entitlement to seized items; ap-

Sec.
peals; disposition of items upon which taxes have been paid.
3-2-36. Arrest and prosecution of violators of title.

ARTICLE 1

ADMINISTRATION

3-2-1. Powers and duties of commissioner generally; delegation of administrative duties.

The commissioner shall administer and enforce this title. The commissioner may designate employees of the department for the purpose of administering this title and may delegate to employees of the department any of the duties required of him pursuant to this title.

History. — Code 1933, § 5A-301, enacted by Ga. L. 1980, p. 1573, § 1.

RESEARCH REFERENCES

Am. Jur. 2d. — 45 Am. Jur. 2d, Intoxicating Liquors, §§ 15 et seq., 26 et seq., 90 et seq., 226 et seq., 231 et seq., 261 et seq.

ALR. — Interplay between Twenty-First Amendment and Commerce Clause concerning state regulation of intoxicating liquors, 116 A.L.R.5th 149.

3-2-2. Promulgation of rules and regulations generally; forms.

(a) The commissioner may make and publish in print or electronically reasonable rules and regulations not inconsistent with this title or other laws or the Constitution of this state or of the United States for the enforcement of this title and the collection of revenues under this title.

(b) The commissioner shall prescribe the forms which he deems necessary in order to administer and enforce this title.

(c) The authority granted to the commissioner pursuant to this Code section shall be exercised at all times in conformity with Chapter 13 of Title 50, the "Georgia Administrative Procedure Act."

(d) This Code section shall apply with respect to all rules and regulations promulgated by the commissioner pursuant to this title.

History. — Code 1933, § 5A-302, enacted by Ga. L. 1980, p. 1573, § 1; Ga. L. 2010, p. 838, § 10/SB 388.

Editor's notes. — In light of the similarity of the statutory provisions, annotations decided under from Ga. L. 1937-38, Ex. Sess., p. 103 are included in the annotations for this Code section.

Law reviews. — For article suggesting the inclusion of alcoholic beverage regula-

tion under the Georgia Administrative Procedure Act, in order to satisfy due process and equal protection requirements, see 1 Ga. St. B. J. 269 (1965).

JUDICIAL DECISIONS

Constitutionality. — The Twenty-First Amendment removes spirituous liquors and alcohol from the protection of the commerce clause to the extent necessary to allow states to adopt and enforce appropriate laws and regulations dealing with the subject, and thus to burden interstate commerce to this extent. Even in absence of any protection under the Twenty-First Amendment, the sovereign states in the exercise of their reserve police power may, without offending the commerce clause, adopt and enforce necessary laws and regulations to effectuate their own protection against illegal traffic and trade in liquors. Atkins v. Manning, 206 Ga. 219, 56 S.E.2d 260 (1949) (decided under former Ga. L. 1937-38, Ex. Sess., p. 103).

Jurisdiction to determine constitutionality of rules. — Rules of the commissioner promulgated under authority of subsection (h) of Code 1933, § 58-1022 (see now O.C.G.A. § 3-2-2), to control distilled spirits and alcohol are not laws of this state within the meaning of Ga. Const. 1976, Art. V, Sec. III, Para. IV (see now Ga. Const. 1983, Art. V, Sec. III, Para. II), so as to give the Supreme Court jurisdiction to determine their constitutionality. Brosnan v. Undercofler, 220 Ga. 239, 138 S.E.2d 314 (1964) (decided under former Ga. L. 1937-38, Ex. Sess., p. 103).

Ga. L. 1937-38, Ex. Sess., p. 103 makes the commissioner the administrator of the law and empowers the commissioner to promulgate rules to effectuate its administration and enforcement. Atkins v. Manning, 206 Ga. 219, 56 S.E.2d 260 (1949) (decided under former Ga. L. 1937-38, Ex. Sess., p. 103).

Rules within legislative authorization. — Rules relating to transportation of distilled spirits and alcohol, and requiring that shipment thereof from another state through any part of this state to destination in another state must be by common carrier only, accompanied by invoice or bill of lading showing that shipment is made by shipper duly licensed and authorized, and that shipment is made to one licensed and authorized to receive such shipment, and further providing that any violation is misdemeanor, in view of the provisions of law and its expressed purpose to control all traffic or trade in liquor therein defined, come clearly within permissible legislative authorization. Atkins v. Manning, 206 Ga. 219, 56 S.E.2d 260 (1949) (decided under former Ga. L. 1937-38, Ex. Sess., p. 103).

Regulations to be in accord with law. — There can be no rules and regulations made by commissioner, a violation of which would result in seizure, condemnation, and sale of vehicle being used by owner thereof in alleged violation of such rules, where these rules and regulations, made by commissioner, are not in harmony or in accord with the law. State v. Schafer, 82 Ga. App. 753, 62 S.E.2d 446 (1950) (decided under former Ga. L. 1937-38, Ex. Sess., p. 103).

Law permitted the state revenue department to promulgate reasonable rules and regulations not inconsistent with the title under which the law fell or other laws, and the regulations challenged by the two associations were not invalid on the ground that the regulations were unauthorized since the regulations governing distribution of malt beverages in Georgia that were challenged were all authorized generally by O.C.G.A. § 3-2-2(a). Ga. Oilmen's Ass'n v. Ga. Dep't of Revenue, 261 Ga. App. 393, 582 S.E.2d 549 (2003).

Violation of administrative rule of commissioner may result in suspension or cancellation of license of offending party or parties, but such rules do not make illegal an act or contract not also prohibited by statute. Gaddy v. Silverman, 86 Ga. App. 239, 71 S.E.2d 277 (1952) (decided under former Ga. L. 1937-38, Ex. Sess., p. 103).

RESEARCH REFERENCES

Am. Jur. 2d. — 3 Am. Jur. 2d, Advertising, §§ 8, 15 et seq. 45 Am. Jur. 2d, Intoxicating Liquors, §§ 15 et seq. 26 et seq., 196 et seq.

3-2-3. Powers and duties of commissioner as to denial, suspension, or cancellation of licenses or permits generally; promulgation of rules and regulations as to conversion of standards of measurement and labeling of distilled spirits.

In addition to his or her other duties and responsibilities to administer this title, the commissioner may:

(1) Deny, suspend, or cancel any license or permit required under this title if:

(A) The license application is not filed in good faith or is filed by some person as a subterfuge for any other person;

(B) Any applicant for a license or permit or any licensee or permit holder under this title willfully fails to comply with any provisions of this title or with rules and regulations adopted by the commissioner; or

(C) Any person to whom a license or permit has been issued is no longer engaged in the dealing of alcoholic beverages or no longer qualifies as a licensee or permit holder under this title.

Before any denial, suspension, or cancellation of a license or permit granted pursuant to this title, the applicant, licensee, or permit holder shall be afforded a hearing in the manner and subject to the conditions and procedures established by this chapter and the commissioner. The commissioner shall notify an applicant, licensee, or permit holder in writing of the denial, suspension, or cancellation by registered or certified mail or statutory overnight delivery to the last known address of the applicant, licensee, or permit holder appearing in the commissioner's files or by personal service upon the applicant, licensee, or permit holder by an authorized agent of the commissioner. Upon cancellation of a license or permit for cause under this paragraph, there shall be no renewal or reissuance of the canceled license or permit for a period of two years from the date of cancellation;

(2) In the event that the license of any person is canceled by the commissioner under the authority of this title, hold the bonds of the person for a period of three years against any liabilities accruing as a result of the business of the person whose license is canceled. In no event shall the surrender of any bond release any liability;

(3) Enter into agreements with appropriate authorities of other states who enforce the alcoholic beverage laws thereof, to exchange information relative to the manufacture, receipt, sale, use, or transportation of alcoholic beverages;

(4) Promulgate rules and regulations which he or she deems necessary for the conversion from the metric system of measurement to the equivalent English measurement in United States gallons and subdivisions of gallons and shall compute all tax rates at the equivalent English measurement; and

(5) Promulgate rules and regulations, not inconsistent with federal laws or regulations, requiring informative labeling of all distilled spirits offered for sale in this state.

History. — Code 1933, § 5A-303, enacted by Ga. L. 1980, p. 1573, § 1; Ga. L. 1981, p. 1269, § 5; Ga. L. 1982, p. 1463, §§ 1, 8; Ga. L. 1984, p. 22, § 3; Ga. L. 2000, p. 1589, § 3; Ga. L. 2015, p. 317, § 2/SB 63.

Editor's notes. — Ga. L. 2000, p. 1589, § 16, not codified by the General Assembly, provides that the amendment to this Code section is applicable with respect to notices delivered on or after July 1, 2000.

In light of the similarity of the statutory provisions, annotations decided under former Ga. L. 1937-38, Ex. Sess., p. 103 are included in the annotations for this Code section.

Law reviews. — For comment, "Retail Liquor Licenses and Due Process: The Creation of Property Through Regulation," see 32 Emory L.J. 1199 (1983).

JUDICIAL DECISIONS

Municipal ordinance which provides for automatic loss of a liquor license upon cessation of business is not inconsistent with this title because it permits cancellation without notice and hearing, allegedly required by paragraph (1) of O.C.G.A. § 3-2-3, because no hearing is required where revocation of license is expressly required by ordinance. City Council v. Crump, 251 Ga. 594, 308 S.E.2d 180 (1983) (decided prior to 1982 amendment).

Constitutionality of revocation procedures. — Liquor license revocation procedures which provide for a hearing, preceded by advance notice setting forth charge forming basis for revocation, are sufficient to comport adequately with due process mandates. Page v. Jackson, 398 F. Supp. 263 (N.D. Ga. 1975) (decided under former Ga. L. 1937-38, Ex. Sess., p. 103).

Due process required for revocation of license. — Liquor license holder has sufficient property interest in holding license to date of its automatic termination that revocation of license must be accompanied by rudimentary due process protections. Liquor licenses may not be revoked during the period of their effectiveness without such protections. Page v. Jackson, 398 F. Supp. 263 (N.D. Ga. 1975) (decided under former Ga. L. 1937-38, Ex. Sess., p. 103).

The primary right to revoke a license lies with the commissioner, and this right may be used only for cause and after hearing. Crummey v. State, 83 Ga. App. 459, 64 S.E.2d 380 (1951) (decided under former Ga. L. 1937-38, Ex. Sess., p. 103).

Limitation on regulation by authorizing statutes. — Even though the commissioner is given authority to make reasonable rules and regulations for the enforcement and administration of former Code 1933, Ch. 58-10 (see now O.C.G.A. § 3-2-3), the commissioner could not, by regulation, make penal and punish therefor as a misdemeanor something which is not made penal under the law itself, but

could only enforce regulation by suspension or cancellation of license of offending party or parties. Columbus Wine Co. v. Sheffield, 83 Ga. App. 593, 64 S.E.2d 356 (1951) (decided under former Ga. L. 1937-38, Ex. Sess., p. 103).

Denial and cancellation of liquor licenses are actions of public official subject to court review. — In the absence of some remedial review prescribed by law, equity is available to review alleged abuses of discretion by administrative licensing authority. Blackmon v. Alexander, 233 Ga. 832, 213 S.E.2d 842 (1975) (decided under former Ga. L. 1937-38, Ex. Sess., p. 103).

RESEARCH REFERENCES

Am. Jur. 2d. — 3 Am. Jur. 2d, Advertising, §§ 8, 15 et seq. 45 Am. Jur. 2d, Intoxicating Liquors, §§ 15 et seq. 26 et seq., 196 et seq.

Am. Jur. Pleading and Practice Forms. — 14C Am. Jur. Pleading and Practice Forms, Intoxicating Liquors, §§ 15 et seq., 44 et seq., 74 et seq.

C.J.S. — 48 C.J.S., Intoxicating Liquors, §§ 45 et seq., 138 et seq., 190 et seq., 436 et seq.

ALR. — Power to limit the number of intoxicating liquor licenses, 124 A.L.R. 825; 163 A.L.R. 581.

Revocation of liquor license of one person as ground for refusal of license to another, 153 A.L.R. 836.

Right to hearing before revocation or suspension of liquor license, 35 A.L.R.2d 1067.

Right to withdraw application to procure or to transfer liquor license, 73 A.L.R.2d 1223.

Revocation or suspension of liquor license because of drinking or drunkenness on part of licensee or business associates, 36 A.L.R.3d 1301.

Sale or use of narcotics or dangerous drugs on licensed premises as ground for revocation or suspension of liquor license, 51 A.L.R.3d 1130.

3-2-3.1. Power of commissioner to permit importation of alcohol into counties and municipalities; taxation of such alcohol.

The commissioner, in accordance with such rules and regulations as he shall adopt, in his discretion may permit importation of distilled spirits and alcohol into any county or municipality where the manufacture and sale of the spirits or alcohol has been legalized. These rules and regulations shall provide for the collection of all taxes due on the distilled spirits or alcohol.

History. — Code 1933, § 5A-303.1, enacted by Ga. L. 1981, p. 1269, § 6.

RESEARCH REFERENCES

Am. Jur. 2d. — 45 Am. Jur. 2d, Intoxicating Liquors, §§ 26 et seq., 168 et seq.

C.J.S. — 48 C.J.S., Intoxicating Liquors, §§ 45 et seq., 138 et seq., 425 et seq.

3-2-4. Sale, distribution, or other dealing in alcoholic beverages by employees, agents, or officers of department prohibited; exemption.

(a) No employee, agent, or officer of the department, directly or indirectly, shall have any interest whatsoever in manufacturing, selling, transporting, distributing, storing, or otherwise dealing in alcoholic beverages, except in the performance of his official duties.

(b) The commissioner may provide by rule for the exemption of employees of the department from the provisions of this Code section so as to permit employment within the alcoholic beverage trade when such employment would pose no conflict of interest or interference with the performance by the employee of his duties as an employee of the department. This subsection shall not apply with respect to employees having responsibility for enforcement of this title.

History. — Code 1933, § 5A-304, enacted by Ga. L. 1980, p. 1573, § 1.

3-2-5. Collection of taxes under title; issuance of licenses.

Except as otherwise specifically provided for in this title, the taxes provided for in this title shall be collected by the commissioner. Upon payment of the appropriate taxes and fees and compliance with all other requirements of this title, the commissioner shall issue appropriate licenses as provided for in this title.

History. — Code 1933, § 5A-305, enacted by Ga. L. 1980, p. 1573, § 1.

RESEARCH REFERENCES

Am. Jur. 2d. — 45 Am. Jur. 2d, Intoxicating Liquors, §§ 1 et seq., 15 et seq., 90 et seq., 168 et seq.

Am. Jur. Pleading and Practice Forms. — 14C Am. Jur. Pleading and Practice Forms, Intoxicating Liquors, § 15 et seq.

C.J.S. — 48 C.J.S., Intoxicating Liquors, §§ 138 et seq., 400 et seq.

3-2-6. Establishment and operation of reporting system for collection of taxes on malt beverages, distilled spirits, and wines; applicability to reporting system of provisions of law relating to revenue stamps.

(a) With respect to malt beverages and wine, the commissioner shall provide, and with respect to distilled spirits, the commissioner may provide, by regulation, that the taxes on malt beverages, wine, and distilled spirits shall be collected by a reporting system.

(b) Pursuant to the establishment of a reporting system authorized by subsection (a) of this Code section, the commissioner may promulgate rules and regulations which shall include, but shall not be limited to, provisions for:

(1) Records to be made and kept;

(2) Penalties to be assessed for failure to comply with the reporting system;

(3) Bonds or other security to be posted with the commissioner; and

(4) Other matters relative to the administration and enforcement of collecting the tax under the reporting system.

(c) In the event the commissioner prescribes a reporting system for collection of taxes imposed on distilled spirits by this title, all of the laws applicable to revenue stamps shall apply to the reporting system insofar as they can be made applicable.

(d) There is established a reporting system for the collection of state excise taxes imposed by this title on all taxable wine. The reporting system shall be conducted as follows:

(1) Every licensed wholesale dealer, importer, and broker located within this state shall file a monthly report with the commissioner, on forms prescribed by the commissioner, setting forth his taxable wine sales for the month and shall remit with the report the appropriate excise taxes on the wine. The reports and remittances shall be filed with the commissioner not later than the fifteenth day of the month next following the month of sale; and

(2) Every licensed manufacturer, winery, producer, shipper, importer, and broker shipping wines or causing wines to be shipped into the state shall file a monthly report with the commissioner, on forms prescribed by the commissioner, which shall set forth the total quantity of wines shipped into the state during the month and which shall have attached to it legible copies of all invoices covering the shipments. The monthly reports shall be filed with the commissioner not later than the fifteenth day of the month next following the month of shipment.

History. — Code 1933, § 5A-306, enacted by Ga. L. 1980, p. 1573, § 1; Ga. L. 1981, p. 1269, §§ 7, 8.

Cross references. — Procedures relating to excise taxation of cigars and cigarettes, T. 48, C. 11.

RESEARCH REFERENCES

C.J.S. — 48 C.J.S., Intoxicating Liquors, §§ 138 et seq., 400 et seq.

3-2-7. Expiration and renewal of licenses generally; continuation of operations by licensee pending final approval or disapproval of application for renewal; penalty for late application for renewal; temporary permits.

(a)(1) Except as otherwise specifically provided in paragraph (2) of this subsection or elsewhere in this title, all licenses issued pursuant to this title shall expire on December 31 of each year and application for renewal shall be made annually on or before November 1.

(2) On and after July 1, 2013, licenses for retailers and retail dealers shall be issued for a 12 month period to be determined by the commissioner and provided by regulation. Applications for renewal of licenses for retailers and retail dealers shall be made not less than 60 nor more than 90 days prior to expiration.

(b) Any licensee making proper application, with all supporting documents, for a license to operate during the following year and having filed the application prior to the renewal date specified in subsection (a) of this Code section shall be permitted to continue to operate pending final approval or disapproval of the licensee's application for the following year if final approval or disapproval is not granted prior to the day in which the license is set to expire. The effective date and the expiration date of the license shall be clearly marked on the license.

(c) Any person holding any license issued pursuant to this title who fails to file a proper application for a similar license for the following year, with the proper fee accompanying the application, on or before the renewal date specified in subsection (a) of this Code section and who files an application after such date shall be required to pay, in addition to the license taxes imposed by this title, an additional amount equal to one-half the amount required for the license for which application is made.

(d) Persons making initial applications for licenses issued pursuant to this title, after properly filing all required documents, including a valid local license, may be authorized by the commissioner to operate pursuant to a temporary permit which shall be issued under such regulations and in such form as the commissioner may deem appropriate. No right or property shall vest in any applicant by virtue of the issuance of such permit. The commissioner may impose a prelicense investigative fee upon persons making initial application for licenses issued pursuant to this title, which fee shall not exceed $100.00. No such fee shall be refundable.

History. — Code 1933, § 5A-307, enacted by Ga. L. 1980, p. 1573, § 1; Ga. L. 1981, p. 1269, § 9; Ga. L. 2012, p. 827, § 1/HB 1066.

RESEARCH REFERENCES

Am. Jur. 2d. — 45 Am. Jur. 2d, Intoxicating Liquors, §§ 90 et seq., 140 et seq., 149 et seq.

C.J.S. — 48 C.J.S., Intoxicating Liquors, §§ 228 et seq., 239 et seq.

ALR. — Civil liability of one who takes out license for sale of intoxicating liquor for benefit of another, 2 A.L.R. 1516.

Power to limit the number of intoxicating liquor licenses, 163 A.L.R. 581.

Grant or renewal of liquor license as affected by fact that applicant held such license in the past, 2 A.L.R.2d 1239.

Transfer of retail liquor license or permit from one location to another, 98 A.L.R.2d 1123.

3-2-8. Availability of records for public inspection; collection of fee for special requests for preparation of information.

The commissioner shall make available for inspection by the public at reasonable times all records relating to alcoholic beverage brands, shipments, and sales by manufacturers, shippers, or wholesalers. The commissioner may charge a fee for special requests for prepared information, which fee shall be based upon the cost of preparation of the information.

History. — Code 1933, § 5A-308, enacted by Ga. L. 1980, p. 1573, § 1; Ga. L. 1981, p. 1269, § 10.

3-2-9. Requirements as to reports to be made to commissioner.

Any report made to the commissioner as prescribed in this title shall be made under oath and under such regulations as the commissioner shall prescribe.

History. — Code 1933, § 5A-309, enacted by Ga. L. 1980, p. 1573, § 1.

3-2-10. Disposition of taxes, penalties, interest, and fees.

All taxes, penalties, interest, and fees collected by the commissioner pursuant to this title shall be remitted to the Office of the State Treasurer to the credit of the general fund of this state.

History. — Code 1933, § 5A-310, enacted by Ga. L. 1980, p. 1573, § 1; Ga. L. 1993, p. 1402, § 18; Ga. L. 2010, p. 863, § 2/SB 296.

3-2-11. Penalties for failure to file reports or returns or to pay tax or fee; procedure for assessment of taxes due, penalties, and interest.

Except as otherwise provided in this title:

(1) When any person required to file a report as provided by this title fails to file the report within the time prescribed, he shall be assessed a penalty of $50.00 for each failure to file.

(2) In the event the commissioner determines, upon inspection of the invoices, books, and records of a licensed wholesale dealer or importer or from any other information obtained by him or his authorized agents, that the licensed wholesale dealer or importer has not paid the proper tax or the proper amount of taxes, the wholesale dealer or importer shall be assessed for the taxes due. After assessment, the person assessed shall be provided with notice and an opportunity for a hearing as provided for contested cases by Chapter 13 of Title 50, the "Georgia Administrative Procedure Act."

(3) When any person fails to pay any tax or license fee due as provided by this title, the person shall be assessed a penalty the same as that provided for in Code Section 48-2-44.

(4) When any person fails to file a return, files a false or fraudulent return, or when a tax deficiency or any part of a tax deficiency is due to a fraudulent intent to evade any tax imposed or authorized by this title, the person shall be assessed a specific penalty of 50 percent of the tax due.

(5) When any person fails to pay the tax or any part of the tax due as provided by this title, the person shall pay interest on the unpaid tax at the rate of 1 percent per month from the time the tax became due until paid or at the rate specified in Code Section 48-2-40, whichever is greater. Interest shall be computed on a monthly basis for any portion of a month during which payment is delinquent.

(6) All penalties and interest imposed by this title shall be payable to and collected by the commissioner in the same manner as if they were a part of the taxes imposed by this title.

History. — Code 1933, § 5A-311, enacted by Ga. L. 1980, p. 1573, § 1.

RESEARCH REFERENCES

Am. Jur. 2d. — 45 Am. Jur. 2d, Intoxicating Liquors, §§ 168 et seq., 335 et seq.

C.J.S. — 48 C.J.S., Intoxicating Liquors, § 544 et seq.

ALR. — Excise tax on foreign corporation engaged exclusively in interstate commerce measured by net income from business within the taxing state, 44 A.L.R. 1228.

3-2-12. Waiver of penalties by commissioner.

The commissioner may waive, in whole or in part, the collection of any amount due the state as a penalty under this title whenever, or to

the extent that, he reasonably determines that the default giving rise to the penalty was due to reasonable cause and not due to gross or willful neglect or disregard of the law or of regulations or instructions pertaining to the law.

History. — Code 1933, § 5A-312, enacted by Ga. L. 1980, p. 1573, § 1.

3-2-13. Issuance of refunds or credits for taxes paid.

(a) The commissioner may issue credits for taxes paid by or due from a wholesaler when it is shown to the commissioner's satisfaction that any of the following events has occurred:

(1) Alcoholic beverages have been received by the wholesaler through an error in shipment and the alcoholic beverages are returned to the shipper prior to any sale by the wholesaler in this state;

(2) Alcoholic beverages ordered by the wholesaler have been destroyed in transit prior to entry into the wholesaler's warehouse or storage area;

(3) Alcoholic beverages which are unfit for consumption upon receipt have been received by the wholesaler and the alcoholic beverages are returned to the shipper or destroyed prior to any sale by the wholesaler in this state;

(4) Alcoholic beverages have been destroyed while in the possession of a wholesaler within the state by an act of God, such as fire, flood, lightning, wind, or other natural calamity;

(5) Wines have been sold by the wholesaler for delivery and consumption outside the state, provided the sale and delivery shall in all respects comply with the requirements of Code Section 3-6-26.1; or

(6) Taxes were paid under a statute expressly held to be unconstitutional by a court of last resort and the payments were made under protest and the ground of the protest was the same as the basis for the ruling of unconstitutionality by the court of last resort.

(b) No person shall receive a credit for taxes paid in any case where an amount equal to the amount of taxes paid has been charged to or paid by any purchaser of the person seeking a refund or credit. When an applicant is issued a credit for taxes paid, in every case where an amount equal to the amount of taxes paid has been charged to or paid by any purchaser of the applicant, the applicant shall refund or credit to the purchaser or customer an amount equal to the credit allowed by the commissioner.

(c) In the event that the commissioner issues a credit under this Code section to a person who has or will have insufficient tax liabilities

to the State of Georgia against which to offset the credit, the commissioner shall issue a refund to such person for the unusable portion of the credit.

History. — Code 1933, § 5A-313, enacted by Ga. L. 1980, p. 1573, § 1; Ga. L. 1981, p. 1269, § 11; Ga. L. 1992, p. 1458, § 1; Ga. L. 1993, p. 83, § 1; Ga. L. 2006, p. 206, § 3/HB 1248.

RESEARCH REFERENCES

C.J.S. — 48 C.J.S., Intoxicating Liquors, § 419 et seq.

3-2-14. Limitations on credit; application; action for recovery of credit; setoff of unpaid taxes against credit.

(a) No credit for taxes paid on alcoholic beverages in payment of taxes on alcoholic beverages shall be allowed unless an application for credit is filed with the commissioner within 90 days from the date payment is received by the commissioner. If, in the opinion of the commissioner, an application for credit of taxes paid pursuant to this title contains a false statement, the application shall be denied. When an applicant is indebted to the state or an applicant is in violation of this title, the commissioner shall decline to approve the credit until the applicant has complied with the laws of this state. In no event shall interest be allowed on any refund or credit for taxes paid on alcoholic beverages. Nothing contained in this Code section shall be construed so as to allow for a credit or refund of any license fee lawfully due or paid under this title.

(b) Each application for credit shall be filed in writing in the form and containing such information as the commissioner may reasonably require. The commissioner or his delegate shall consider information contained in the application, together with such other information as may be available, and shall approve or disapprove the application and notify the applicant of his action. Any applicant whose claim is denied by the commissioner or his delegate or whose claim is not decided by the commissioner or his delegate within one year from the date of filing the claim shall have the right to bring an action for a credit in the Superior Court of Fulton County. No action or proceeding for the recovery of a credit shall be commenced before the expiration of one year from the date of filing the application unless the commissioner or his delegate renders a decision on the application within that time, nor shall any action or proceeding be commenced after the occurrence of the earlier of (1) the expiration of one year from the date the claim is denied, or (2) the expiration of two years from the date the application was filed. The time for filing an action for the recovery of a credit may be extended for such period as may be agreed upon in writing between the applicant

and the commissioner during the period authorized for bringing an action or any extension thereof. In the event any application is approved and the taxpayer has not paid other state taxes which have become due, the commissioner may set off the unpaid taxes against the credit. When the setoff authorized in this Code section is exercised, the credit shall be deemed granted and the amount of the setoff shall be considered for all purposes as a payment toward the particular tax debt which is being set off. Any excess credit properly allowable under this article which remains after the setoff has been applied may be credited to the taxpayer.

History. — Code 1933, § 5A-314, enacted by Ga. L. 1980, p. 1573, § 1; Ga. L. 1992, p. 1458, § 2; Ga. L. 2006, p. 206, § 4/HB 1248.

Code Commission notes. — Pursuant to Code Section 28-9-5, in 1992, "article" was substituted for "Article" in the last sentence of subsection (b).

3-2-15. Promulgation of rules and regulations governing advertising of distilled spirits.

The commissioner shall issue rules and regulations governing all advertising of distilled spirits within this state.

History. — Ga. L. 1937-38, Ex. Sess., p. 103, § 8; Code 1933, § 5A-315, enacted by Ga. L. 1980, p. 1573, § 1.

RESEARCH REFERENCES

Am. Jur. 2d. — 3 Am. Jur. 2d, Advertising, § 15 et seq. 45 Am. Jur. 2d, Intoxicating Liquors, §§ 15 et seq. 26 et seq., 196 et seq.

ALR. — Validity, construction, and effect of statutes, ordinances, or regulations prohibiting or regulating advertising of intoxicating liquors, 20 A.L.R.4th 600.

ARTICLE 2

ENFORCEMENT

Cross references. — Powers and duties of agents of Georgia Bureau of Investigation relating to enforcement of laws pertaining to manufacture and transportation of liquor, wine, beer, and other alcoholic beverages, § 35-3-8. Enforcement of revenue laws generally, § 48-2-80 et seq.

RESEARCH REFERENCES

ALR. — Constitutional guaranties against unreasonable searches and seizures as applied to search for or seizure of intoxicating liquor, 3 A.L.R. 1514; 13 A.L.R. 1316; 27 A.L.R. 709; 39 A.L.R. 811; 74 A.L.R. 1418.

Criminal responsibility of husband for violation of liquor law by wife, 19 A.L.R. 136; 27 A.L.R. 312.

Effect of interference by law with liquor business on lease of property for that purpose, 22 A.L.R. 821.

3-2-30. Powers and duties of special agents and enforcement officers of department generally; bond requirement; retention of weapon and badge upon retirement or disability.

(a) Persons appointed by the commissioner as special agents or enforcement officers of the department, in the enforcement of this title and other laws of this state with respect to the manufacture, transportation, distribution, sale, storage, or possession of alcoholic beverages, shall have the authority throughout the state to:

(1) Obtain and execute warrants for arrest of persons charged with violations of such laws;

(2) Obtain and execute search warrants in the enforcement of such laws;

(3) Arrest without warrant any person violating such laws in the officer's presence or within his immediate knowledge when there is likely to be a failure of enforcement of such laws for want of a judicial officer to issue a warrant;

(4) Make investigations in the enforcement of such laws and, in connection with the investigations, to go upon any property outside of buildings, posted or otherwise, in the performance of official duties;

(5) Seize and take possession of all property which is declared contraband under such laws; and

(6) Carry firearms while performing their duties.

(b) Each special agent or enforcement officer shall file with the commissioner a public official's bond in the amount of $1,000.00, the cost of which shall be paid by the department.

(c) Nothing in this title shall be construed so as to relieve any special agent or enforcement officer, after making an arrest, from the duties imposed generally to obtain a warrant promptly and, without undue delay, to return arrested persons before a person authorized to examine, commit, or receive bail, as required by general law.

(d) After an agent or enforcement officer has accumulated 25 years of service with the department, upon leaving the department under honorable conditions, such agent or enforcement officer shall be entitled as part of such officer's compensation to retain his or her weapon and badge pursuant to regulations promulgated by the commissioner.

(e) As used in this subsection, the term "disability" means a disability that prevents an individual from working as a law enforcement officer. When a special agent or an enforcement officer leaves the department as a result of a disability arising in the line of duty, such

special agent or an enforcement officer shall be entitled as part of such officer's compensation to retain his or her weapon and badge in accordance with regulations promulgated by the commissioner.

History. — Ga. L. 1963, p. 135, §§ 1, 2; Code 1933, § 5A-350, enacted by Ga. L. 1980, p. 1573, § 1; Ga. L. 1981, p. 1269, § 12; Ga. L. 1996, p. 1074, § 1; Ga. L. 2004, p. 1058, § 1; Ga. L. 2005, p. 60, § 3/HB 95.

RESEARCH REFERENCES

Am. Jur. 2d. — 5 Am. Jur. 2d, Arrest, §§ 40 et seq., 53 et seq., 64 et seq., 67 et seq. 14 Am. Jur. 2d, Carriers, § 513. 45 Am. Jur. 2d, Intoxicating Liquors, §§ 15 et seq., 26 et seq., 261 et seq., 374 et seq. 68 Am. Jur. 2d, Searches and Seizures, §§ 37 et seq., 143 et seq.

ALR. — Criminal responsibility of purchaser of intoxicating liquor under National Prohibition Act, 68 A.L.R. 895.

Validity of particular statutory provisions or other regulations as to inspection, entry, or search of places licensed for sale of intoxicating liquors, 116 A.L.R. 1098.

3-2-31. Assistance to other authorities by special agents and enforcement officers of department.

(a) Upon a request by the governing authority of any municipality or county, the sheriff or chief of a county police force, the judge of the superior court of any county, or the Governor, the commissioner, in unusual circumstances, may and, in the case of an order from the Governor, shall direct special agents and enforcement officers of the department to render assistance in:

(1) Any criminal case;

(2) The prevention of violations of law; or

(3) Detecting and apprehending those violating any criminal laws of this state, any other state, or the United States.

(b) This Code section shall not apply solely to agents who enforce this title but shall apply to all agents of the department with law enforcement powers.

History. — Ga. L. 1978, p. 1490, § 1; Code 1933, § 5A-351, enacted by Ga. L. 1980, p. 1573, § 1.

JUDICIAL DECISIONS

Constitutionality of searches. — There was no constitutional offense in a state revenue agent and local law enforcement officers coordinating and consolidating their efforts to enforce O.C.G.A. § 3-2-31 which authorizes such cooperation to conduct an administrative search for violations of the Georgia Alcoholic Beverage Code in conjunction with executing arrest warrants for previously observed violations of these laws. Crosby v. Paulk, 187 F.3d 1339 (11th Cir. 1999).

3-2-32. Inspection of premises by commissioner and agents generally; access to books, records, and supplies.

The commissioner and his agents may enter upon the licensed premises of any person engaged in the manufacture, transportation, distribution, sale, storage, or possession of alcoholic beverages at any time for the purpose of inspecting the premises and enforcing this title and shall have access during the inspection to all books, records, and supplies relating to the manufacture, transportation, distribution, sale, storage, or possession of alcoholic beverages.

History. — Ga. L. 1937-38, Ex. Sess., p. 103, § 8; Code 1933, § 58-817, enacted by Ga. L. 1977, p. 1316, § 1; Code 1933, § 5A-352, enacted by Ga. L. 1980, p. 1573, § 1.

JUDICIAL DECISIONS

Cited in Crosby v. Paulk, 187 F.3d 1339 (11th Cir. 1999).

RESEARCH REFERENCES

Am. Jur. 2d. — 3 Am. Jur. 2d, Advertising, §§ 8, 15 et seq. 45 Am. Jur. 2d, Intoxicating Liquors, §§ 15 et seq., 26 et seq., 261 et seq., 377 et seq.

C.J.S. — 48 C.J.S., Intoxicating Liquors, §§ 45 et seq., 63 et seq., 77 et seq., 436 et seq.

3-2-33. Sale, possession, concealment, storage, or conveyance of untaxed alcoholic beverages; declaration of untaxed or otherwise unlawful alcoholic beverages as contraband; seizure and disposition of contraband alcoholic beverages.

(a) Except as otherwise specifically provided for by law, it is unlawful for any person to sell, possess, conceal, store, or convey any alcoholic beverage on which any tax or license fee imposed by this title has not been paid.

(b) Any peace officer or authorized agent of the commissioner shall declare as contraband any alcoholic beverage:

(1) Not reported for collection of taxes under a reporting system established by the commissioner;

(2) Found in any county, municipality, or unincorporated area of any county where the sale of alcoholic beverages is not lawful when the alcoholic beverage is intended for use or sale contrary to law; or

(3) Sold, conveyed, or possessed, concealed, stored, or held for sale by any person who has not first obtained all licenses required by this title.

(c) Except as otherwise provided in this title, all contraband alcoholic beverages seized shall be immediately delivered to the commissioner or to persons designated by him to receive the contraband alcoholic beverages.

History. — Code 1933, § 5A-354, enacted by Ga. L. 1980, p. 1573, § 1; Ga. L. 1981, p. 1269, § 14; Ga. L. 1985, p. 1118, § 1; Ga. L. 2006, p. 206, § 5/HB 1248.

Editor's notes. — In light of the similarity of the statutory provisions, annotations decided under former Ga. L. 1937-38, Ex. Sess., p. 103 are included in the annotations for this Code section.

Cross references. — Possession, sale, or purchase of unstamped distilled spirits, § 3-3-29. Seizure and disposition as contraband of cigars and cigarettes on which taxes not paid or on which stamps do not appear, § 48-11-9.

JUDICIAL DECISIONS

Ga. L. 1937-38, Ex. Sess., p. 103 is not violative of the due process clause of the Fourteenth Amendment for vagueness. Akins v. State, 224 Ga. 650, 164 S.E.2d 125 (1968) (decided under former Ga. L. 1937-38, Ex. Sess., p. 103).

Former Code 1933, §§ 58-122 (see now O.C.G.A. § 3-10-10) and Ga. L. 1937-38, Ex. Sess., p. 103 were not unconstitutional for lack of due process in failing to provide for notice and hearing prior to seizure or prior to disposition of liquor declared to be contraband and forfeited to the state. Blackmon v. Brotherhood Protective Order of Elks, Toccoa Lodge No. 1820, 232 Ga. 671, 208 S.E.2d 483 (1974) (decided under former Ga. L. 1937-38, Ex. Sess., p. 103).

Legislative intent. — The legislative intent was that liquors would be handled only in the manner provided by statute, that is, through licensed dealers, and that any handling other than in such manner would be contrary to statute. Martin v. Cook, 72 Ga. App. 741, 34 S.E.2d 733 (1945) (decided under former Ga. L. 1937-38, Ex. Sess., p. 103).

Burden of proof on plaintiff. — In a possessory-warrant proceeding, the burden of proof is on the plaintiff to establish that the plaintiff was in peaceable and legally acquired possession of whiskey in question when it was seized by the commissioner; where under the facts and reasonable inferences to be drawn therefrom, a finding is demanded that the plaintiff illegally acquired the whiskey involved, the commissioner is authorized under the law to seize the whiskey as contraband. Cook v. Hyatt, 72 Ga. App. 744, 34 S.E.2d 922 (1945) (decided under former Ga. L. 1937-38, Ex. Sess., p. 103).

OPINIONS OF THE ATTORNEY GENERAL

Analysis

Unlawful Acts
Lawful Acts

Unlawful Acts

Illegal to possess untaxed alcoholic beverages. — It is illegal to possess in a wet county any quantity of distilled spirits on which no Georgia alcohol taxes and no alcohol taxes of another state have been paid, including among other things, all distilled spirits illegally manufactured in Georgia. 1984 Op. Att'y Gen. No. U84-16.

Illegal to possess liquor for sale without license. — It is illegal to possess Georgia-tax-paid distilled spirits in a wet county for the purpose of sale when the possessor/seller does not hold a valid license authorizing such sale. 1984 Op. Att'y Gen. No. U84-16.

Liquors lawfully kept may be at-

tached like other property but sale is subject to regulations and supervision of commissioner. 1962 Op. Att'y Gen. p. 296. (rendered under former Ga. L. 1937-38, Ex. Sess., p. 103).

Contraband liquor must be turned over to commissioner, whether tax-paid or non-tax-paid. 1962 Op. Att'y Gen. p. 297 (rendered under former Ga. L. 1937-38, Ex. Sess., p. 103).

Lawful Acts

There is no quantity limitation for possessing Georgia-tax-paid distilled spirits in a wet county for personal use, which in this context means for the possessor's own personal consumption, including free gifts to the possessor's family or friends. 1984 Op. Att'y Gen. No. U84-16.

Possession of out-of-state purchased liquor permitted. — The Code allows possession of up to one-half gallon of distilled spirits purchased by the possessor outside of this state in accordance with the laws of the place where purchased and brought into this state by the purchaser. 1984 Op. Att'y Gen. No. U84-16.

The vehicle used to transport tax-paid liquor is not subject to seizure. 1969 Op. Att'y Gen. No. 69-16 (rendered under former Ga. L. 1937-38, Ex. Sess., p. 103).

RESEARCH REFERENCES

Am. Jur. 2d. — 45 Am. Jur. 2d, Intoxicating Liquors, §§ 192 et seq., 249 et seq., 261 et seq., 335 et seq., 393 et seq.

C.J.S. — 48 C.J.S., Intoxicating Liquors, § 454 et seq. 48A C.J.S., Intoxicating Liquors, §§ 692 et seq., 750 et seq., 777 et seq.

ALR. — Constitutional guaranties against unreasonable searches and seizures as applied to a search for or seizure of intoxicating liquor, 13 A.L.R. 1316; 27 A.L.R. 709; 39 A.L.R. 811; 74 A.L.R. 1418.

Right of state to interfere with shipment of liquor through its territory, 27 A.L.R. 108.

Constitutionality of statute making unlawful possession of intoxicating liquor legally obtained or providing for its confiscation, 37 A.L.R. 1386.

Constitutionality of statute providing for confiscation or destruction, without notice, of intoxicating liquors, and vehicles or other property used in connection with same, 45 A.L.R. 93.

Rights and protection of innocent persons where property in which they are interested is seized because of its illegal use in connection with intoxicating liquor, 124 A.L.R. 288.

Lawfulness of seizure of property used in violation of law as prerequisite to forfeiture action or proceeding, 8 A.L.R.3d 473.

Contributory negligence allegedly contributing to cause of injury as defense in Civil Damage Act proceeding, 64 A.L.R.3d 849.

Proof of causation of intoxication as a prerequisite to recovery under Civil Damage Act, 64 A.L.R.3d 882.

Civil Damage Act: Liability of one who furnishes liquor to another for consumption by third parties, for injury caused by consumer, 64 A.L.R.3d 922.

3-2-34. Disposition of contraband alcoholic beverages; seizure; destruction; sale; retention of small quantity for evidence.

(a) All alcoholic beverages upon which no taxes have been paid to this state or any other state and which are not specifically exempt from the taxes imposed by law shall be destroyed by the peace officer or agent of the commissioner seizing the beverages, except that a small quantity of the illicit alcoholic beverage may be retained for purposes of evidence

in the proper court; and then the illicit alcoholic beverage shall be destroyed immediately.

(b) All contraband alcoholic beverages upon which the taxes have been paid either to this state or to any other state shall be either destroyed or sold at public sale as provided by law.

History. — Code 1933, § 5A-355, enacted by Ga. L. 1980, p. 1573, § 1; Ga. L. 1981, p. 1269, § 15.

Cross references. — Seizure and disposition as contraband of cigars and cigarettes on which taxes not paid or on which stamps do not appear, § 48-11-9.

JUDICIAL DECISIONS

Unauthorized use of confiscated beverages. — Where a city was the owner of confiscated alcoholic beverages and no prior consent had been given to police officers to use the beverages as refreshments at a meeting, the officers who had so used the beverages were guilty of theft. Whitley v. State, 176 Ga. App. 364, 336 S.E.2d 301 (1985).

RESEARCH REFERENCES

Am. Jur. 2d. — 45 Am. Jur. 2d, Intoxicating Liquors, § 374 et seq.

C.J.S. — 48 C.J.S., Intoxicating Liquors, §§ 90, 392 et seq., 425 et seq. 48A C.J.S., Intoxicating Liquors, §§ 692 et seq., 750 et seq., 777 et seq.

3-2-35. Seizure of contraband by commissioner and agents; proceedings upon seizure; hearing on entitlement to seized items; appeals; disposition of items upon which taxes have been paid.

(a) The commissioner and his agents shall seize and take possession of any contraband found in the possession of any person in violation of this title.

(b) Upon seizure, the commissioner or his agent shall give a receipt to the person from whom the contraband property was seized, if known, identifying the property seized and indicating from whom seized and the place of seizure.

(c) A copy of the receipt shall be:

(1) Filed in the office of the commissioner and shall be a public record open to public inspection; and

(2) Posted at the courthouse of the county in which the contraband was seized.

(d) Any person desiring to make claim to the contraband property shall file a claim with the commissioner at his office in Atlanta within ten days from the day of seizure. The commissioner, within 30 days of receipt of any such claim, shall afford the claimant a hearing in which

to show his entitlement to the seized items. The burden of proof at such hearing shall be upon the claimant to establish his claim to the items seized and to show compliance with or justification for noncompliance with this Code section. The commissioner shall enter a written order granting or denying the claim within 30 days from the date of the hearing.

(e) An appeal from the commissioner's order may be taken to the Superior Court of Fulton County by filing with the commissioner, within 15 days from the date of the decision, a notice of appeal to the Superior Court of Fulton County. The appeal shall be based upon the record made before the commissioner; and the commissioner, upon the filing of a notice of appeal, shall transmit the record and appropriate documents to the superior court within 30 days from the date of the filing of notice of appeal. The superior court shall review the record for errors of law, violation of constitutional or statutory provisions, violation of the statutory authority of the agency, lawfulness of the procedure, lack of any evidence to support the decision, and arbitrariness and abuse of discretion. However, the court shall not substitute its judgment for that of the hearing officer as to the weight of evidence on questions of fact.

(f) All alcoholic beverages upon which the taxes have been paid to either this state or any other state shall be disposed of as follows:

(1) In the case of malt beverage, the seized goods shall be destroyed by the commissioner or his authorized agent;

(2) In the case of wine, the seized goods shall be sold by the commissioner at public sale, except that, where seized wine is determined by the commissioner to be unfit for human consumption, it shall be destroyed;

(3) In the case of distilled spirits, the seized goods shall be sold by the commissioner at public sale, except that, where seized distilled spirits are determined by the commissioner to be unfit for human consumption, the distilled spirits shall be destroyed.

(g) This Code section shall not apply to unlawfully manufactured alcoholic beverages.

History. — Code 1933, § 5A-356, enacted by Ga. L. 1980, p. 1573, § 1; Ga. L. 1981, p. 1269, § 16; Ga. L. 1982, p. 3, § 3.

Editor's notes. — In light of the similarity of the statutory provisions, annotations decided under former Ga. L. 1937-38, Ex. Sess., p. 103 are included in the annotations for this Code section.

Cross references. — Seizure and disposition as contraband of cigars and cigarettes on which taxes not paid or on which stamps do not appear, § 48-11-9.

JUDICIAL DECISIONS

Ga. L. 1937-38, Ex. Sess., p. 103 (see now subsection (d)) is construed to allow claims by a party to the proceedings, as well as by third parties, since a contrary construction would have the effect of denying remedy to such party, thereby rendering the subsection unconstitutional. Allen v. Giddens, 118 Ga. App. 755, 165 S.E.2d 606 (1968) (decided under former Ga. L. 1937-38, Ex. Sess., p. 103).

Procedure for contesting seizure. — The sole statutory provision for contesting seizure of contraband beer under Ga. L. 1937-38, Ex. Sess., p. 103 (see now subsection (a) of O.C.G.A. § 3-2-35), is filing of claim pursuant to Ga. L. 1937-38, Ex. Sess., p. 103 (subsection (d) of § 3-3-25), which is to be tried in superior court as other claims. Allen v. Giddens, 118 Ga. App. 755, 165 S.E.2d 606 (1968) (decided under former Ga. L. 1937-38, Ex. Sess., p. 103).

Procedural irregularities not cause for suppression of evidence. — When executing officers gave to the defendant an inventory of items seized, their failure to deliver a similar inventory to the magistrate issuing the warrant as required by Ga. L. 1966, p. 567 (see now O.C.G.A. § 17-5-2), and a return thereof on a warrant as required by Ga. L. 1966, p. 567 (see now O.C.G.A. § 17-5-29), and a delivery to the sheriff of items seized and a report to the commissioner as required by Ga. L. 1937-38, Ex. Sess., p. 103 (O.C.G.A. § 3-2-35), was not cause for suppression of the evidence. Holloway v. State, 134 Ga. App. 498, 215 S.E.2d 262 (1975) (decided under former Ga. L. 1937-38, Ex. Sess., p. 103).

Delaying the sending of receipt. — Since there is no time requirement under Ga. L. 1937-38, Ex. Sess., p. 103 (see now subsection (b) of O.C.G.A. § 3-2-35), there is no harmful error in delaying the sending of the receipt for a reasonable period of time, until after the prosecution of the case has run its course, though the better practice would be to send it immediately. Cowart v. State, 134 Ga. App. 757, 216 S.E.2d 350 (1975) (decided under former Ga. L. 1937-38, Ex. Sess., p. 103).

OPINIONS OF THE ATTORNEY GENERAL

Requisite evidence for seizure of beer. — Beer should not be seized unless there is some evidence that the person is selling it, is offering it for sale, or is holding it for purpose of sale. 1960-61 Op. Att'y Gen. p. 285 (rendered under former Ga. L. 1937-38, Ex. Sess., p. 103)

RESEARCH REFERENCES

Am. Jur. 2d. — 14 Am. Jur. 2d, Carriers, § 513. 45 Am. Jur. 2d, Intoxicating Liquors, §§ 374 et seq., 393 et seq. 68 Am. Jur. 2d, Searches and Seizures, § 143 et seq.

C.J.S. — 48 C.J.S., Intoxicating Liquors, §§ 90, 392 et seq., 425 et seq. 48A C.J.S., Intoxicating Liquors, §§ 692 et seq., 750 et seq., 777 et seq.

ALR. — Constitutionality of statute providing for confiscation or destruction, without notice, of intoxicating liquors, and vehicles or other property used in connection with same, 45 A.L.R. 93.

Rights and protection of innocent persons where property in which they are interested is seized because of its illegal use in connection with intoxicating liquor, 124 A.L.R. 288.

Lawfulness of seizure of property used in violation of law as prerequisite to forfeiture action or proceeding, 8 A.L.R.3d 473.

What constitutes plain, speedy, and efficient state remedy under Tax Injunction Act (28 USCS § 1341), prohibiting federal district courts from interfering with assessment, levy, or collection of state business taxes, 31 A.L.R. Fed. 2d 237.

3-2-36. Arrest and prosecution of violators of title.

The commissioner or his agents shall secure warrants or other criminal process against any person who violates any provision of this title in counties and municipalities where the sale of alcoholic beverages is not authorized and in counties and municipalities where the sale of alcoholic beverages is authorized but where the alcoholic beverages are being sold contrary to law. The commissioner or his agents shall prosecute such offenders.

History. — Ga. L. 1937-38, Ex. Sess., p. 103, § 17; Ga. L. 1972, p. 207, § 8; Code 1933, § 5A-353, enacted by Ga. L. 1980, p. 1573, § 1; Ga. L. 1981, p. 1269, § 13.

RESEARCH REFERENCES

Am. Jur. 2d. — 45 Am. Jur. 2d, Intoxicating Liquors, §§ 261 et seq., 374 et seq.

Am. Jur. Pleading and Practice Forms. — 14C Am. Jur. Pleading and Practice Forms, Intoxicating Liquors, § 74 et seq.

C.J.S. — 48 C.J.S., Intoxicating Liquors, § 454 et seq., 557 et seq.

ALR. — Right to arrest without a warrant for unlawful possession or transportation of intoxicating liquor, 44 A.L.R. 132.

CHAPTER 3

REGULATION OF ALCOHOLIC BEVERAGES GENERALLY

Article 1

General Provisions

Sec.

3-3-1. Declaration of business of manufacturing, selling, and other dealings in alcoholic beverages as privilege subject to regulatory requirements.

3-3-2. Powers of local governing authorities as to granting, refusal, suspension, or revocation of licenses generally; due process guidelines; fingerprints.

3-3-2.1. Notice to revenue department by county or municipality of violations concerning sale of alcoholic beverages to underage persons.

3-3-2.2. Maximum fine for violations of local alcoholic beverages licensing ordinances.

3-3-3. Licenses required to distribute, sell, or otherwise deal in alcoholic beverages; display of licenses.

3-3-4. Exemptions from license fees or taxes.

3-3-5. Sale of alcoholic beverages not complying with federal requirements as to quality or purity or standards adopted by commissioner.

3-3-6. Maintenance of records as to manufacture, purchase, or sale of alcoholic beverages by manufacturers, importers, or dealers; disposal of records.

3-3-7. Local authorization and regulation of sales of alcoholic beverages on Sunday.

3-3-8. Possession and transportation of lawfully purchased alcoholic beverages upon which taxes have not been paid in this state.

3-3-9. Penalty for violations of prohibitions in chapter.

Article 2

Prohibited Acts

Sec.

3-3-20. Sale of alcoholic beverages on Sundays, election days, and Christmas Day.

3-3-21. Sales of alcoholic beverages near churches, school buildings, or other sites.

3-3-21.1. Possession of alcoholic beverages on the grounds of a public school.

3-3-22. Sale or furnishing of alcoholic beverages to intoxicated persons.

3-3-23. Furnishing to, purchase of, or possession by persons under 21 years of age of alcoholic beverages; identification; serving, or handling by persons under 21 years of age in the course of employment; seller's receipt of false identification; immunity for seeking medical assistance for alcohol related overdose.

3-3-23.1. Procedure and penalties upon violation of Code Section 3-3-23.

3-3-24. Dispensing, serving, selling, or taking orders for alcoholic beverages by persons under 18 years of age.

3-3-24.1. "Bouncer" defined; admission of under 21 year olds into bar.

3-3-24.2. Posting of laws regarding sale of alcoholic beverages to underage persons.

3-3-25. Sale of or furnishing alcoholic beverages to prisoners or inmates of places of confinement; introduction or possession of alcoholic beverages at Georgia War Veterans Home.

3-3-26. Allowing or permitting of breaking of packages or drinking of contents thereof on premises.

3-3-27. Unlawful manufacture, trans-

Sec.
portation, receipt, possession, sale, or distribution of alcoholic beverages; failure to file proper reports or bonds or pay fees; declaration of apparatus used in unlawful manufacture of alcoholic beverages as contraband; penalties.
3-3-27.1. Report to the commissioner of alcoholic beverages transported into this state.
3-3-28. Reuse, counterfeiting, or forging of tax stamps [Repealed].
3-3-29. Possession, sale, or purchase of distilled spirits for which taxes not paid.
3-3-30. Storage and distribution of alcoholic beverages by corporations granted the privilege of establishing, operating, and maintaining foreign trade zones.
3-3-31. Legislative findings.
3-3-32. Shipment of alcoholic beverages into state by nonresident, without license, who is in business of selling alcoholic beverages in another state.
3-3-33. Vaporized form of alcoholic beverages and alcohol vaporizing devices prohibited.
3-3-34. "Powdered alcohol" defined; prohibition; exception; penalty.

Article 3

Prohibited Conduct on Licensed Premises

3-3-40 through 3-3-46 [Repealed].

RESEARCH REFERENCES

ALR. — Provision as to sale of liquor to women as affecting validity of regulatory statute, 9 A.L.R.2d 541.

Construction of statute or ordinance making it an offense to possess or have alcoholic beverages in opened package in motor vehicle, 35 A.L.R.3d 1418.

Propriety of requirement, as condition of probation, that defendant refrain from use of intoxicants, 19 A.L.R.4th 1251.

Validity and construction of statute or ordinance making it offense to have possession of open or unsealed alcoholic beverage in public place, 39 A.L.R.4th 668.

Liquor license as subject to execution or attachment, 40 A.L.R.4th 927.

ARTICLE 1

GENERAL PROVISIONS

Administrative rules and regulations. — General provisions, Official Compilation of the Rules and Regulations of the State of Georgia, Rules of Georgia Department of Revenue, Alcohol and Tobacco Tax Unit, Subject 560-2-2.

3-3-1. Declaration of business of manufacturing, selling, and other dealings in alcoholic beverages as privilege subject to regulatory requirements.

The businesses of manufacturing, distributing, selling, handling, and otherwise dealing in or possessing alcoholic beverages are declared to be privileges in this state and not rights; however, such privileges shall not be exercised except in accordance with the licensing, regulatory, and revenue requirements of this title.

History. — Code 1933, § 5A-501, enacted by Ga. L. 1980, p. 1573, § 1; Ga. L. 1985, p. 1118, § 2.

Law reviews. — For article on local government law and liquor licensing, see 15 Ga. L. Rev. 1039 (1981). For article, "Lawyers Who Represent Local Governments," see 23 Ga. St. B. J. 58 (1987).

For comment on Hornsby v. Allen, 326 F.2d 605 (5th Cir. 1964), overturning the mere privilege doctrine by applying due process requirement to liquor licensing, see 19 Mercer L. Rev. 250 (1968).

JUDICIAL DECISIONS

Editor's notes. — In light of the similarity of the statutory provisions, annotations decided under former Ga. L. 1937-38, Ex. Sess., p. 103 are included in the annotations for this Code section.

Liquor licenses may not be revoked during period of their effectiveness without some rudimentary due process protections. — A liquor license holder has a sufficient property interest in holding license to date of its automatic termination that revocation of that license must be accompanied by rudimentary due process protections. Liquor license revocation procedures which provide for a hearing, preceded by advance notice setting forth charge forming basis for revocation, are sufficient to comport adequately with due process mandates. Page v. Jackson, 398 F. Supp. 263 (N.D. Ga. 1975) (decided under former Ga. L. 1937-38, Ex. Sess., p. 103).

Ga. L. 1937-38, Ex. Sess. p. 103 does not confer a right upon anyone; it is expressly limited to the granting or refusal of a mere privilege. Hudon v. North Atlanta, 108 Ga. App. 370, 133 S.E.2d 58 (1963) (decided under former Ga. L. 1937-38, Ex. Sess., p. 103).

Ga. L. 1937-38, Ex. Sess. p. 103 applies to issuance and transfer of licenses granting to persons the privilege of engaging in sale of such commodities. Allen v. Carter, 226 Ga. 727, 177 S.E.2d 245 (1970) (decided under former Ga. L. 1937-38, Ex. Sess., p. 103).

A license to sell spirituous liquors is neither a contract nor a property right in licensee, but a mere permit to do what would otherwise be an offense against the general law. Smith v. Nix, 206 Ga. 403, 57 S.E.2d 275 (1950) (decided under former Ga. L. 1937-38, Ex. Sess., p. 103).

The authority to regulate traffic in liquor in state is solely within police power of state, and privilege of possessing and selling liquor in state can be obtained only by strict compliance with state's laws regulating traffic and sale of liquors. Akins v. State, 224 Ga. 650, 164 S.E.2d 125 (1968) (decided under former Ga. L. 1937-38, Ex. Sess., p. 103).

Since no one has inherent right to engage in intoxicating liquor business, licensing regulation is not proper subject for enforcement by writ of mandamus. Lindsey v. Hill, 221 Ga. 518, 145 S.E.2d 556 (1965) (decided under former Ga. L. 1937-38, Ex. Sess., p. 103).

Stock agreement not illegal. — Ga. Comp. R. & Regs. r. 560-2-2-.38 is not shown to be derived from any statute, constitutional provision, or judicial decision apart from the Georgia Department of Revenue's mandate under the Georgia Alcoholic Beverage Code (Act), O.C.G.A. § 3-1-1, to make rules and regulations for the enforcement of the Act and the collection of revenues under the Act; although the parties intended to circumvent Ga. Comp. R. & Regs. r. 560-2-2-.38 by issuing corporate stock to an employee's wife, the stock agreement was not illegal or immoral; thus, a trial court erred in voiding the stock interest of the employee's wife, and summary judgment in favor of the corporation in the wife's action for an accounting, dissolution, and other relief was reversed. Edwards v. Grapefields, Inc., 267 Ga. App. 399, 599 S.E.2d 489 (2004).

Cited in Reeves v. Bridges, 248 Ga. 600, 284 S.E.2d 416 (1981).

RESEARCH REFERENCES

Am. Jur. 2d. — 16A Am. Jur. 2d, Constitutional Law, §§ 285, 286, 287. 45 Am. Jur. 2d, Intoxicating Liquors, §§ 1, 2, 3 et seq., 15 et seq., 26 et seq., 90 et seq.

C.J.S. — 48 C.J.S., Intoxicating Liquors, §§ 45 et seq., 63 et seq., 77 et seq., 138 et seq., 158 et seq., 425 et seq., 436 et seq.

ALR. — What constitutes manufacturing and who is a manufacturer under tax laws, 17 A.L.R.3d 7.

3-3-2. Powers of local governing authorities as to granting, refusal, suspension, or revocation of licenses generally; due process guidelines; fingerprints.

(a) Except as otherwise provided for in this title, the manufacturing, distributing, and selling by wholesale or retail of alcoholic beverages shall not be conducted in any county or incorporated municipality of this state without a permit or license from the governing authority of the county or municipality. Each such local governing authority is given discretionary powers within the guidelines of due process set forth in this Code section as to the granting or refusal, suspension, or revocation of the permits or licenses; provided, however, that residency by an applicant within the city or county issuing the permit or license shall not be a requirement by the respective local governing authority if the applicant designates a resident of the city or county who shall be responsible for any matter relating to the license.

(b) The granting or refusal and the suspension or revocation of the permits or licenses shall be in accordance with the following guidelines of due process:

(1) The governing authority shall set forth ascertainable standards in the local licensing ordinance upon which all decisions pertaining to these permits or licenses shall be based;

(2) All decisions approving, denying, suspending, or revoking the permits or licenses shall be in writing, with the reasons therefor stated, and shall be mailed or delivered to the applicant; and

(3) Upon timely application, any applicant aggrieved by the decision of the governing authority regarding a permit or license shall be afforded a hearing with an opportunity to present evidence and cross-examine opposing witnesses.

(c) As a prerequisite to the issuance of any such initial permit or license only, the applicant shall furnish a complete set of fingerprints to be forwarded to the Georgia Bureau of Investigation, which shall search the files of the Georgia Crime Information Center for any instance of criminal activity during the two years immediately preceding the date of the application. The Georgia Bureau of Investigation shall also submit the fingerprints to the Federal Bureau of Investigation under

the rules established by the United States Department of Justice for processing and identification of records. The federal record, if any, shall be obtained and returned to the governing authority submitting the fingerprints.

History. — Ga. L. 1935, p. 73, § 15A; Ga. L. 1973, p. 12, § 1; Ga. L. 1973, p. 14, § 1; Code 1933, § 5A-502, enacted by Ga. L. 1980, p. 1573, § 1; Ga. L. 1981, p. 1269, § 17; Ga. L. 1998, p. 1300, § 1; Ga. L. 2006, p. 206, § 6/HB 1248.

Cross references. — Regulation of business of operating road houses, public dance halls, and other establishments by local governments, § 43-21-50 et seq.

Administrative rules and regulations. — Rules regulating the Georgia Bureau of Investigation, Official Compilation of the Rules and Regulations of the State of Georgia, Rules of Georgia Bureau of Investigation, Chapter 92-1.

Law reviews. — For annual survey of administrative law, see 38 Mercer L. Rev. 17 (1986).

For comment on Hornsby v. Allen, 326 F.2d 605 (5th Cir. 1964), see 1 Ga. St. B. J. 550 (1965). For comment, "Retail Liquor Licenses and Due Process: The Creation of Property Through Regulation," see 32 Emory L.J. 1199 (1983).

JUDICIAL DECISIONS

Editor's notes. — In light of the similarity of the statutory provisions, annotations decided under Ga. L. 1935, p. 73 and Ga. L. 1937-38, Ex. Sess., p. 103 are included in the annotations for this Code section.

County code requiring liquor permits constitutional. — Section of DeKalb County Code requiring all employees of an establishment holding a license for consumption of beer or wine, except busboys, cooks, and dishwashers, to have permits was not unconstitutional and did not exceed the county's powers of home rule. Kariuki v. DeKalb County, 253 Ga. 713, 324 S.E.2d 450 (1985), overruled on other grounds, Russell v. City of E. Point, 261 Ga. 213, 403 S.E.2d 50 (1991), cert. denied, 502 U.S. 971, 112 S. Ct. 448, 116 L. Ed. 2d 466 (1991).

Alcohol licensing ordinance constitutional. — County licensing ordinance provided an applicant with adequate notice of the criteria applied in consideration of an application for an alcohol license, and the commission exercised the commission's discretion within the plain, ascertainable standards thereof. Myon Tul Chu v. Augusta-Richmond County, 269 Ga. 822, 504 S.E.2d 693 (1998).

That part of the Jasper, Ga., Alcoholic Beverages Ordinance that authorized license revocation for any legal violation that the City Council determined to have occurred violated due process principles and could not stand; there were no such limits on the council's discretionary revocation authority and no "ascertainable standards" to guide or limit the grounds for the Council's decision. Folsom v. City of Jasper, 279 Ga. 260, 612 S.E.2d 287 (2005).

Section does not create property interest. — This section does not create the concrete expectation necessary for the creation of a constitutionally protectible property interest because it merely requires the promulgation of standards for the issuance of a malt-beverage license, but does not itself outline standards which, if met, would lead to the issuance of a malt-beverage license. Scoggins v. Moore, 579 F. Supp. 1320 (N.D. Ga.) aff'd 747 F.2d 1466 (11th Cir. 1984) see also. Top Shelf, Inc. v. Mayor & Aldermen, 840 F. Supp. 903 (S.D. Ga. 1993).

O.C.G.A. § 3-3-2 does not in itself create a protectable property interest but, once the governing authority promulgates an ordinance which outlines the standards for issuance of a malt-beverage license, applicants possess a protectable property interest. McCollum v. City of Powder Springs, 720 F. Supp. 985 (N.D. Ga. 1989).

Denial of due process in issuance of licenses. — The failure of the county

commission to issue standards as to the issuance of licenses for the sale of malt beverages, coupled with the lack of response to an application to sell malt beverages, while at the same time tacitly issuing licenses to some citizens, constituted a denial of due process and of equal protection under the law. Johnson v. Brown, 584 F. Supp. 510 (M.D. Ga. 1984).

Denial of equal protection in issuance of licenses. — It was a denial of equal protection for the sheriff and county commissioners to refuse to grant a beer and wine license to a qualified applicant while at the same time conspiring to ignore illegal beer sales by other establishments in the county. Parham v. Hix, 608 F. Supp. 546 (M.D. Ga. 1985).

Refusal to issue any licenses not subject to procedural guidelines. — Because state law does not grant an applicant a property interest in the opportunity to acquire a liquor license, a county commissioner's failure to establish standards for the granting of a license does not violate the applicant's due process rights. Further, when the commissioner refuses to grant any licenses whatsoever, Georgia law does not require the commissioner to follow the procedural safeguards outlined in O.C.G.A. § 3-3-2 when the commissioner denies a license request. Cheek v. Gooch, 779 F.2d 1507 (11th Cir. 1986).

Express authorization for ordinance. — Subsection (a) of O.C.G.A. § 3-3-2 constitutes an express authorization by general law for Effingham County to exercise by local ordinance the police power of revoking licenses for the sale of beer and wine, so long as the ordinance meets the requirement of Ga. Const. 1983, Art. III, Sec. VI, Para. IV(a), that it not conflict with general law. Grovenstein v. Effingham County, 262 Ga. 45, 414 S.E.2d 207 (1992).

Effect of county referendum on municipality. — A municipality which has not conducted a local referendum, but is located within a county which has held a referendum, is not empowered by the result of the county referendum to allow sales of liquor by the drink. Price v. City of Snellville, 253 Ga. 166, 317 S.E.2d 834 (1984).

County ordinance using voting districts and property lines to determine the number and location of licensed stores was reasonably related to the county's goal of regulating the retail sale of beer and wine and did not violate due process. Bradshaw v. Dayton, 270 Ga. 884, 514 S.E.2d 831 (1999).

Decision to revoke a license may precede a hearing. City Council v. Crump, 251 Ga. 594, 308 S.E.2d 180 (1983).

Sale of malt beverages is privilege, and denial of license does not deprive accused of anything to which the accused has absolute right. Collier v. State, 54 Ga. App. 346, 187 S.E. 843 (1936); Ebling v. City of Rome, 54 Ga. App. 608, 188 S.E. 727 (1936); Acree v. Ragsdale, 60 Ga. App. 717, 4 S.E.2d 708 (1939); Lamb v. Fedderwitz, 68 Ga. App. 233, 22 S.E.2d 657 (1942), aff'd, 195 Ga. 691, 25 S.E.2d 414 (1943); Hudon v. North Atlanta, 108 Ga. App. 370, 133 S.E.2d 58 (1963).

Since no right, but mere privilege, is involved, one denied license is not in position to assert denial of a right guaranteed by state or federal constitutions. Kicklighter v. City of Jesup, 219 Ga. 744, 135 S.E.2d 890 (1964).

Due process requirement. — Determination of whether liquor license should be granted is function of aldermanic board (governing authority) acting under Ga. L. 1937-38, Ex. Sess., p. 103 (see now O.C.G.A. § 3-3-2), and this determination must accord with constitutional standards of due process and equal protection. Hornsby v. Allen, 326 F.2d 605 (5th Cir. 1964).

Denial of license when standards met. — If governing authority of city or county decides to permit sale of malt beverages or beer, it shall adopt an ordinance setting forth prescribed standards for issuance of licenses. When an applicant for a license meets these standards, refusal by governing authority to issue license constitutes denial of equal protection, entitling applicant to writ of mandamus. Tipton v. City of Dudley, 242 Ga. 807, 251 S.E.2d 545 (1979).

For right to sell malt beverages, petitioner must obtain license from governing authority of one's county. Tate v. Seymour, 181 Ga. 801, 184 S.E. 598 (1936).

This section requires local license as condition precedent to issuance of license by state. Crews v. Undercofler, 371 F.2d 534 (5th Cir. 1967).

Under Georgia law, obtaining a municipal license is a prerequisite to obtaining a state liquor license. Page v. Jackson, 398 F. Supp. 263 (N.D. Ga. 1975).

Discretion of authorities in granting license. — This section empowers county authorities to grant licenses, but the power to act is left to the discretion of the local authority, and if the commissioner refuses to grant the license, mandamus will not control the commissioner's discretion; however, where the refusal is arbitrary and contrary to law, mandamus is a remedy. Harbin v. Holcomb, 181 Ga. 800, 184 S.E. 603 (1936).

Mandamus is an available remedy where refusal to authorize sale of malt beverages is arbitrary and illegal. Tate v. Seymour, 181 Ga. 801, 184 S.E. 598 (1936).

No malt beverage business shall be conducted in any incorporated municipality of this state without a license from governing authority of municipality, and governing authority is given discretionary powers as to granting or refusal of licenses. Hudon v. North Atlanta, 108 Ga. App. 370, 133 S.E.2d 58 (1963).

Right to sell malt beverages or beer is subject to determination of governing authorities of city or county; they have the right to prohibit its sale and deny all applicants a license. Tipton v. City of Dudley, 242 Ga. 807, 251 S.E.2d 545 (1979).

Nature of license and power of revocation. — A license to sell beer in this state is neither a contract nor a right of property within legal and constitutional meaning of those terms. It is no more than temporary permit to do that which would otherwise be unlawful, and forms part of internal police system of this state. Hence, authority which granted license retains power to revoke it for due cause. Ebling v. City of Rome, 54 Ga. 608, 188 S.E. 727 (1936).

County without authority to require county license. — Glynn County has no authority to require county license for sale of alcoholic beverages on Jekyll Island, since island is owned by state and is governed by Jekyll Island State Park Authority. Glynn County v. Davis, 228 Ga. 588, 186 S.E.2d 872 (1972).

State statutes preempted city's ordinance. — Conviction and fine against a convenience store operator for violating a city ordinance that prohibited certain retailers of packaged alcoholic beverages from allowing coin operated amusement machines (COAMs) on the same premises was reversed because the state's COAM Laws, O.C.G.A. §§ 16-12-35 and 50-27-70 et seq., preempted the city's ordinance at least insofar as the ordinance applied to COAMs as defined by the state statutes. Gebrekidan v. City of Clarkston, 298 Ga. 651, 784 S.E.2d 373 (2016).

Cited in Lanierland Distribs., Inc. v. Strickland, 544 F. Supp. 747 (N.D. Ga. 1982); Bryant v. Mayor, 252 Ga. 76, 311 S.E.2d 174 (1984); Thomas v. Madison County Bd. of Comm'rs, 261 Ga. 265, 404 S.E.2d 271 (1991).

OPINIONS OF THE ATTORNEY GENERAL

Editor's notes. — In light of the similarity of the statutory provisions, opinions under Ga. L. 1935, p. 73 and Ga. L. 1937-38, Ex. Sess., p. 103, are included in the annotations for this Code section. (Decided under former Ga. L. 1935, p. 73 and Ga. L. 1937-38, Ex. Sess., p. 103).

Authority of town to act on applications for sale of alcoholic beverages. — The Town of Vidette, to the extent that it is a currently authorized municipal corporation, has exclusive jurisdiction to consider applications for licenses to sell alcoholic beverages within its corporate boundaries; however, this should not be construed as implying that the Town of Vidette may actually issue licenses without first following the procedure outlined in the Georgia laws relating to the sale of alcoholic beverages. 1985 Op. Att'y Gen. No. U85-10. (Decided under former Ga. L. 1935, p. 73 and Ga. L. 1937-38, Ex. Sess., p. 103).

Extent of county license require-

ments. — Local governments are not empowered to require licensing of wholesalers of alcoholic beverages that take orders for sales and make deliveries of alcoholic beverages within those local governments, but do not have locations or offices within the boundaries of those local governments. 2017 Op. Att'y Gen. No. U17-2. (Decided under former Ga. L. 1935, p. 73 and Ga. L. 1937-38, Ex. Sess., p. 103).

There is no provision for an election to prohibit sale of malt beverages; discretion as to granting or refusal of licenses is vested in county and municipal authorities. 1945-47 Op. Att'y Gen. p. 394. (Decided under former Ga. L. 1935, p. 73 and Ga. L. 1937-38, Ex. Sess., p. 103).

Referendum regarding sale of no effect. — Referendum held to determine whether governing authority of county should grant licenses for sale of malt beverages would have no legal effect upon governing authority. 1967 Op. Att'y Gen. No. 67-67. (Decided under former Ga. L. 1935, p. 73 and Ga. L. 1937-38, Ex. Sess., p. 103).

Applicant for liquor store license is required to obtain only one local license from municipality if within corporate limits and from county if outside any municipality; the applicant would not need to obtain both. 1971 Op. Att'y Gen. No. U71-31. (Decided under former Ga. L. 1935, p. 73 and Ga. L. 1937-38, Ex. Sess., p. 103).

The governing authority of a city has discretionary power to grant or refuse a license to sell malt beverages. 1971 Op. Att'y Gen. No. U71-26. (Decided under former Ga. L. 1935, p. 73 and Ga. L. 1937-38, Ex. Sess., p. 103).

A municipality in the granting of licenses to sell malt beverages may adopt rules and regulations under which malt beverages shall be sold. 1960-61 Op. Att'y Gen. p. 287. (Decided under former Ga. L. 1935, p. 73 and Ga. L. 1937-38, Ex. Sess., p. 103).

A municipality may permit the sale of beer in drug stores where minors visit. 1960-61 Op. Att'y Gen. p. 286. (Decided under former Ga. L. 1935, p. 73 and Ga. L. 1937-38, Ex. Sess., p. 103).

A municipality could refuse to license the sale of malt beverages in places of business selling other merchandise. 1960-61 Op. Att'y Gen. p. 287. (Decided under former Ga. L. 1935, p. 73 and Ga. L. 1937-38, Ex. Sess., p. 103).

A municipality may require a vendor of beer to partition off the section of the establishment where the beer is sold. 1960-61 Op. Att'y Gen. p. 287. (Decided under former Ga. L. 1935, p. 73 and Ga. L. 1937-38, Ex. Sess., p. 103).

It would be illegal for a county to own and operate liquor stores. 1967 Op. Att'y Gen. No. 67-123. (Decided under former Ga. L. 1935, p. 73 and Ga. L. 1937-38, Ex. Sess., p. 103).

RESEARCH REFERENCES

Am. Jur. 2d. — 45 Am. Jur. 2d, Intoxicating Liquors, §§ 90 et seq., 120 et seq.

C.J.S. — 48 C.J.S., Intoxicating Liquors, §§ 45 et seq., 63 et seq., 77 et seq., 138 et seq., 158 et seq., 425 et seq.

ALR. — Civil liability of one who takes out license for sale of intoxicating liquor for benefit of another, 2 A.L.R. 1516.

Power or discretion of local authorities under statute requiring their approval of application for liquor license before issuance of license by state board, or providing for issuance of a local license to one holding license from state board, 132 A.L.R. 1235.

Power to limit the number of intoxicating liquor licenses, 163 A.L.R. 581.

Change in law pending application for permit or license, 169 A.L.R. 584.

Grant or renewal of liquor license as affected by fact that applicant held such license in the past, 2 A.L.R.2d 1239.

Effect of state regulation of liquor sales on municipal power to impose occupation license or tax for revenue, 6 A.L.R.2d 737.

Sale of liquor to homosexuals or permitting their congregation at licensed premises as ground for suspension or revocation of liquor license, 27 A.L.R.3d 1254.

Validity of statute, ordinance, or regulation requiring fingerprints of those engaging in specified occupation, 41 A.L.R.3d 732.

Interplay between Twenty-First

Amendment and Commerce Clause concerning state regulation of intoxicating liquors, 116 A.L.R.5th 149.

3-3-2.1. Notice to revenue department by county or municipality of violations concerning sale of alcoholic beverages to underage persons.

(a) As used in this Code section, the term:

(1) "Disciplinary action" means any citation or arrest arising out of the violation of any law, rule, regulation, resolution, or ordinance of a governmental entity relating to the manufacture, distribution, sale, or possession of alcoholic beverages against a licensee, an employee of a licensee, or any person holding a financial interest in the license of the licensee on the premises or place of business of any licensee.

(2) "Governmental entity" means the United States government, any state government, any local government, and any department, agency, or instrumentality thereof.

(3) "Licensee" means any person issued a license pursuant to this title by a governmental entity to operate a bar.

(b)(1) Within 45 days of any disciplinary action, the licensee shall notify the department of the details of such disciplinary action, including the date such action was taken, the nature of such action, and any other information required by the department, using a format to be determined by the department.

(2) The commissioner may impose a fine not to exceed $750.00 for each violation of paragraph (1) of this subsection. A second or subsequent violation of paragraph (1) of this subsection which occurs within three years from the date of the first violation may constitute grounds for the suspension, revocation, or cancellation of such person's license.

(c) Every county or municipality which issues licenses to a licensee authorizing the manufacture, distribution, or sale of alcoholic beverages shall by resolution or ordinance adopt a policy and implement a process by which any disciplinary action against a licensee shall be reported to the department within 45 days of any officer, department, agency, or instrumentality of such county or municipality taking such disciplinary action.

(d) The commissioner shall determine and make available the format for the reporting of disciplinary actions and shall promulgate rules and regulations as to the implementation and use of such reporting method.

History. — Code 1981, § 3-3-2.1, enacted by Ga. L. 1985, p. 1398, § 1; Ga. L. 2015, p. 578, § 2/HB 152; Ga. L. 2016, p. 864, § 3/HB 737.

3-3-2.2. Maximum fine for violations of local alcoholic beverages licensing ordinances.

Notwithstanding the limitations imposed by subparagraph (a)(2)(C) of Code Section 36-35-6 or any other provision of general law, in the case of a county or municipality which issues more than 300 licenses for consumption of alcoholic beverages on the premises, the maximum fine for violations of local alcoholic beverages licensing ordinances referenced in Code Section 3-3-2 pertaining to licenses issued to sell alcoholic beverages by the drink for consumption on the premises shall be $2,500.00. Nothing in this Code section shall prohibit the governing authority of a county or municipality from imposing a penalty that is otherwise allowed by law, unless such law is a local law in conflict with this Code section.

History. — Code 1981, § 3-3-2.2, enacted by Ga. L. 2006, p. 874, § 1/HB 1501.

3-3-3. Licenses required to distribute, sell, or otherwise deal in alcoholic beverages; display of licenses.

(a) No person shall manufacture, distribute, sell, handle, or possess for sale, or otherwise deal in, alcoholic beverages without first obtaining all applicable licenses required by this title.

(b) Each person holding a license issued pursuant to this title shall display the license prominently at all times on the premises for which the license is issued.

History. — Code 1933, § 5A-503, enacted by Ga. L. 1980, p. 1573, § 1; Ga. L. 1985, p. 1118, § 3.

RESEARCH REFERENCES

Am. Jur. Pleading and Practice Forms. — 14C Am. Jur. Pleading and Practice Forms, Intoxicating Liquors, § 15 et seq.

C.J.S. — 48 C.J.S., Intoxicating Liquors, §§ 45 et seq., 63 et seq., 77 et seq., 138 et seq., 158 et seq., 425 et seq.

3-3-4. Exemptions from license fees or taxes.

There shall be no exception from the license fees or taxes provided by this title in favor of any person unless specifically provided for by law.

History. — Code 1933, § 5A-504, enacted by Ga. L. 1980, p. 1573, § 1.

JUDICIAL DECISIONS

Editor's notes. — In light of the similarity of the statutory provisions, annotations decided under former Ga. L. 1937-38, Ex. Sess., p. 103 are included in the annotations for this Code section.

Under the statutes, a person, firm, or corporation in this state cannot lawfully engage in liquor business by proxy or under the name of another, but any and all persons, firms, or corporations who desire to engage therein must first obtain a license so to do in their own name. Smith v. Nix, 206 Ga. 403, 57 S.E.2d 275 (1950) (decided under former Ga. L. 1937-38, Ex. Sess., p. 103).

OPINIONS OF THE ATTORNEY GENERAL

Any differences in retail liquor license rates imposed by municipality must be based on reasonable classification. 1954-56 Op. Att'y Gen. p. 493. (rendered under former Ga. L. 1937-38, Ex. Sess., p. 103).

County commissioners may not issue license free of charge to retailers to sell intoxicating liquor but may issue free license for sale of beer and wine. 1954-56 Op. Att'y Gen. p. 458. (rendered under former Ga. L. 1937-38, Ex. Sess., p. 103).

Tax may be assessed and collected on untaxed liquor which state can prove person has previously sold. 1945-47 Op. Att'y Gen. p. 377. (rendered under former Ga. L. 1937-38, Ex. Sess., p. 103).

Person in possession of untaxed liquor in wet county is not relieved of state tax thereon by its seizure as contraband and by criminal prosecution. 1945-47 Op. Att'y Gen. p. 377. (rendered under former Ga. L. 1937-38, Ex. Sess., p. 103).

RESEARCH REFERENCES

Am. Jur. 2d. — 45 Am. Jur. 2d, Intoxicating Liquors, § 168 et seq. 67B Am. Jur. 2d, Sales and Use Taxes, § 83. 71 Am. Jur. 2d, State and Local Taxation, § 234 et seq.

3-3-5. Sale of alcoholic beverages not complying with federal requirements as to quality or purity or standards adopted by commissioner.

No alcoholic beverages shall be sold by any licensee under this title if the alcoholic beverages do not fully meet all federal requirements as to quality or purity, as represented by the label, or do not meet such standards as may be adopted by the commissioner.

History. — Ga. L. 1937-38, Ex. Sess., p. 103, § 26; Code 1933, § 5A-505, enacted by Ga. L. 1980, p. 1573, § 1.

RESEARCH REFERENCES

Am. Jur. 2d. — 45 Am. Jur. 2d, Intoxicating Liquors, §§ 26 et seq., 192 et seq.
C.J.S. — 48 C.J.S., Intoxicating Liquors, § 449.
ALR. — Federal constitutional or legislative provisions as to intoxicating liquors as affecting state legislation, 10 A.L.R. 1587; 11 A.L.R. 1320; 26 A.L.R. 661; 70 A.L.R. 132.

3-3-6. Maintenance of records as to manufacture, purchase, or sale of alcoholic beverages by manufacturers, importers, or dealers; disposal of records.

(a) Each manufacturer, importer, wholesale dealer, retail dealer, and retail consumption dealer shall keep and preserve, as prescribed by the commissioner, records of all alcoholic beverages manufactured, purchased, or sold by him. The records shall be kept for a period of three years from the date of manufacture, purchase, or sale and shall at all times be open to inspection by the commissioner or any authorized agent or employee of the commissioner.

(b) The commissioner may authorize by rule the disposal of records maintained pursuant to subsection (a) of this Code section, prior to the expiration of the specified three-year period, when he is satisfied as to their contents or otherwise determines that the maintenance of the records is no longer necessary.

History. — Ga. L. 1935, p. 73, § 6; Code 1933, § 58-822, enacted by Ga. L. 1977, p. 1316, § 1; Code 1933, § 5A-506, enacted by Ga. L. 1980, p. 1573, § 1; Ga. L. 1981, p. 1269, § 18.

RESEARCH REFERENCES

Am. Jur. 2d. — 45 Am. Jur. 2d, Intoxicating Liquors, § 192 et seq.
C.J.S. — 48 C.J.S., Intoxicating Liquors, §§ 138 et seq., 425 et seq.

3-3-7. Local authorization and regulation of sales of alcoholic beverages on Sunday.

(a) In all consolidated governments of this state within the limits of which the sale of alcoholic beverages is lawfully authorized, such sales for consumption on the premises shall be authorized, at the discretion of the governing body of the consolidated government, at any time from 11:55 P.M. on Saturdays and the two hours immediately following such time.

(b) In each county having a population of 800,000 or more according to the United States decennial census of 2000 or any future such census in which the sale of alcoholic beverages is lawful:

(1) The county governing authority may authorize the sale of alcoholic beverages for consumption on the premises at any time from

11:55 P.M. on Saturdays and the three hours immediately following such time; and

(2) Alcoholic beverages may be sold on Sundays between the hours of 12:30 P.M. and 12:00 Midnight in public stadiums, coliseums, and auditoriums with a seating capacity in excess of 3,500 persons and in eating establishments. As used in this paragraph, the term "eating establishment" means an establishment which is licensed to sell distilled spirits, malt beverages, or wines and which derives at least 50 percent of its total annual gross food and beverage sales from the sale of prepared meals or food.

(c) In all municipalities having a population of 300,000 or more according to the United States decennial census of 1970 or any future such census in which the sale of alcoholic beverages is lawful:

(1) The municipal governing authority may authorize the sale of alcoholic beverages for consumption on the premises at any time from 11:55 P.M. on Saturdays and the three hours immediately following such time; and

(2) Alcoholic beverages may be sold on Sundays between the hours of 12:30 P.M. and 12:00 Midnight in public stadiums, coliseums, and auditoriums with a seating capacity in excess of 3,500 persons; in eating establishments; and in locally designated special entertainment districts. As used in this paragraph, the term "eating establishment" means an establishment which is licensed to sell distilled spirits, malt beverages, or wines and which derives at least 50 percent of its total annual gross food and beverage sales from the sale of prepared meals or food. As used in this paragraph, the term "special entertainment districts" means contiguous properties upon which is located a festival marketplace and entertainment project which is financed in whole or in part by public funds and which contains a minimum of 200,000 square feet of gross leasable space for retail sales and entertainment purposes and which is located in the central business district of any such municipality if more than 50 percent of such contiguous properties are owned or controlled by a governmental entity.

(d) In each county having a population of not less than 153,000 nor more than 165,000 according to the United States decennial census of 1980 or any future such census in which the sale of alcoholic beverages is lawful and in all municipalities within such counties in which the sale of alcoholic beverages is lawful, the governing authority of the county or municipality, as appropriate, may authorize the sale of alcoholic beverages for consumption on the premises:

(1) At any time from 11:55 P.M. on Saturdays and the two hours immediately following such time; and

(2) In eating establishments which are located in the unincorporated area of the county, in the case of the county, or which are located in the corporate limits of the municipality, in the case of a municipality, on Sundays from 12:30 P.M. until 12:00 Midnight. As used in this paragraph, the term "eating establishment" means an establishment which is licensed to sell distilled spirits, malt beverages, or wines for consumption on the premises and which derives at least 50 percent of its total annual gross food and beverage sales from the sale of prepared meals or food.

(e)(1) In each county having a population of not less than 100,000 nor more than 150,000 according to the United States decennial census of 1970 or any future such census in which the sale of alcoholic beverages is lawful and in all municipalities in such counties in which the sale of alcoholic beverages is lawful, the governing authority of the county or municipality, as appropriate, may authorize the sale of alcoholic beverages for consumption on the premises in bona fide full-service restaurants at any time from 11:55 P.M. on Saturdays until 2:00 A.M. on Sundays; provided, however, that this subsection shall not apply to any geographic area of any municipal corporation which is located outside of the limits of any county in which the sale of alcoholic beverages is not lawful.

(2) As used in this subsection, the term "bona fide full-service restaurant" means an established place of business:

(A) Which is licensed to sell alcoholic beverages, distilled spirits, malt beverages, or wines for consumption on the premises;

(B) Where meals with substantial entrees selected by the patron from a full menu are served;

(C) Which has adequate facilities and sufficient employees for cooking or preparing and serving such meals for consumption at tables in dining rooms on the premises; and

(D) Which derives at least 50 percent of its gross income from the sale of such meals prepared, served, and consumed on the premises.

(3) The governing authority of such a county or municipality, by ordinance, may authorize any other establishment otherwise licensed to sell alcoholic beverages, distilled spirits, malt beverages, or wines for consumption on the premises to engage in such sales at any time from 11:55 P.M. on Saturdays until 2:00 A.M. on Sundays; provided, however, that the proviso in paragraph (1) of this subsection shall also be applicable to sales in establishments pursuant to this paragraph.

(4) The governing authority of such a county or municipality may provide for special licenses for and charge a license fee to establish-

ments which engage in sales of such beverages at any time from 11:55 P.M. on Saturdays until 2:00 A.M. on Sundays. The license fee shall be set by the governing body.

(f) In each county having a population of 58,000 or more according to the United States decennial census of 1990, or any future such census in which the sale of alcoholic beverages is lawful, alcoholic beverages may be sold for consumption on the premises on each day of the week, including Sundays between the hours of 12:30 P.M. and 12:00 Midnight, on the premises of motor sport road race track facilities with a permanent seating capacity in excess of 10,000 persons. As used in this subsection, the term "premises" means restaurants, grandstands, and other event viewing areas owned, leased, or controlled by the establishment which is licensed to sell distilled spirits, malt beverages, or wines for consumption on the premises.

(g) Reserved.

(h)(1) In all counties having a population of not less than 62,450 and not more than 64,000 according to the United States decennial census of 1990 or any future such census in which the sale of alcoholic beverages is lawful, and in all municipalities within such counties in which the sale of alcoholic beverages is lawful, the governing authority of the county or municipality, as appropriate, may authorize the sale of alcoholic beverages for consumption on the premises if Sunday sales are approved in a referendum as provided in this subsection.

(2) Eating establishments located in the unincorporated area of the county, in the case of the county, or eating establishments located in the corporate limits of the municipality, in the case of a municipality, shall be authorized to sell alcoholic beverages for consumption on the premises on Sundays between the hours of 12:30 P.M. and 12:00 Midnight. As used in this paragraph, the term "eating establishment" means an establishment which is licensed to sell distilled spirits, malt beverages, or wines and which derives at least 50 percent of its total annual gross food and beverage sales from the sale of prepared meals or food.

(3) Any governing authority desiring to permit and regulate Sunday sales shall so provide by proper resolution or ordinance.

(4) Not less than ten nor more than 20 days after the date of approval of such resolution or ordinance, it shall be the duty of the election superintendent of the county to issue the call for an election for the purpose of submitting the question of Sunday sales to the electors of the county for approval or rejection. The superintendent shall set the date of the election for a day not less than 30 nor more than 45 days after the date of the issuance of the call. The superintendent shall cause the date and purpose of the election to be

published in the official organ of the county once a week for two weeks immediately preceding the date thereof. The ballot shall have written or printed thereon the words:

"[ ] YES Shall the governing authority of (name of county) be authorized to permit and
[ ] NO regulate Sunday sales of distilled spirits or alcoholic beverages for beverage purposes by the drink?"

(5) All persons desiring to vote for approval of Sunday sales shall vote "Yes," and those persons desiring to vote for rejection of Sunday sales shall vote "No." If more than one-half of the votes cast on the question are for approval of Sunday sales, the governing authority in such counties and the governing authority of all municipalities within such counties may by appropriate resolution or ordinance permit and regulate Sunday sales by licensees.

(6) The expense of the election shall be borne by the county in which the election is held. It shall be the duty of the superintendent to hold and conduct the election. It shall be his further duty to certify the result thereof to the Secretary of State.

(i)(1) In each county having a population of more than 100,000 in any metropolitan statistical area having a population of not less than 250,000 nor more than 1,000,000 according to the United States decennial census of 1980 or any future such census in which the sale of alcoholic beverages is lawful in such a county and in all municipalities within such counties in which the sale of alcoholic beverages is lawful, the governing authority of the county or municipality, as appropriate, may authorize the sale of alcoholic beverages for consumption on the premises if Sunday sales are approved by referendum as provided in paragraph (2) of this subsection:

(A) At any time from 11:55 P.M. on Saturdays until 2:55 A.M. on Sundays; and

(B) In eating establishments which are located in the unincorporated area of the county, in the case of the county, or which are located in the corporate limits of the municipality, in the case of a municipality, on Sundays between the hours of 12:30 P.M. and 12:00 Midnight. As used in this subparagraph, the term "eating establishment" means an establishment which is licensed to sell distilled spirits, malt beverages, or wines and which derives at least 50 percent of its total annual gross food and beverage sales from the sale of prepared meals or food.

(2) Any governing authority desiring to permit and regulate Sunday sales pursuant to paragraph (1) of this subsection shall so provide

by proper resolution or ordinance. Not less than ten nor more than 60 days after the date of approval of such resolution or ordinance, it shall be the duty of the election superintendent of the county or municipality to issue the call for an election for the purpose of submitting the question of Sunday sales to the electors of the county or municipality for approval or rejection. The superintendent shall set the date of the election for a day not less than 30 nor more than 60 days after the date of the issuance of the call. The superintendent shall cause the date and purpose of the election to be published in the official organ of the county once a week for two weeks immediately preceding the date thereof. The ballot shall have written or printed thereon the words:

"[ ] YES Shall the governing authority of (name of municipality or county) be authorized
[ ] NO to permit and regulate Sunday sales of distilled spirits or alcoholic beverages for beverage purposes by the drink?"

All persons desiring to vote for approval of Sunday sales shall vote "Yes," and those persons desiring to vote for rejection of Sunday sales shall vote "No." If more than one-half of the votes cast on the question are for approval of Sunday sales, the governing authority may by appropriate resolution or ordinance permit and regulate Sunday sales by licensees. The expense of the election shall be borne by the county or municipality in which the election is held. It shall be the duty of the superintendent to hold and conduct the election. It shall be his further duty to certify the result thereof to the Secretary of State.

(j)(1) Notwithstanding any other provisions of law, on and after May 8, 2018, in all counties or municipalities in which the sale of alcoholic beverages is lawful for consumption on the premises, the governing authority of the county or municipality may, by resolution or ordinance conditioned on approval in a referendum, authorize the sale of alcoholic beverages for consumption on the premises on Sundays from 11:00 A.M. until 12:00 Midnight in any licensed establishment which derives at least 50 percent of its total annual gross sales from the sale of prepared meals or food in all of the combined retail outlets of the individual establishment where food is served and in any licensed establishment which derives at least 50 percent of its total annual gross income from the rental of rooms for overnight lodging.

(2) Any governing authority desiring to permit and regulate Sunday sales pursuant to this subsection, but only after a referendum election, shall so provide by proper resolution or ordinance conditioned on a referendum. Not less than ten nor more than 60 days after

the date of approval of such resolution or ordinance, it shall be the duty of the election superintendent of the county or municipality to issue the call for an election for the purpose of submitting the question of Sunday sales to the electors of the county or municipality for approval or rejection. The superintendent shall set the date of the election for a day not less than 30 nor more than 60 days after the date of the issuance of the call. The superintendent shall cause the date and purpose of the election to be published in the official organ of the county once a week for two weeks immediately preceding the date thereof. The ballot shall have written or printed thereon the words:

"[ ] YES Shall the governing authority of (name of municipality or county) be authorized
[ ] NO to permit and regulate Sunday sales of distilled spirits or alcoholic beverages for beverage purposes by the drink?"

All persons desiring to vote for approval of Sunday sales shall vote "Yes," and those persons desiring to vote for rejection of Sunday sales shall vote "No." If more than one-half of the votes cast on the question are for approval of Sunday sales, the governing authority may by appropriate resolution or ordinance permit and regulate Sunday sales by licensees. Otherwise, such Sunday sales shall not be permitted. The expense of the election shall be borne by the county or municipality in which the election is held. It shall be the duty of the superintendent to hold and conduct the election. It shall be his or her further duty to certify the result thereof to the Secretary of State.

(3) Notwithstanding this subsection or any other provision of law, all county or municipal resolutions or ordinances enacted prior to April 6, 1984, pursuant to the authorizations granted by subsections (a) through (i) of this Code section are declared to be valid and shall remain in full force and effect unless affirmatively repealed by the governing authority of the county or municipality.

(j.1)(1) Notwithstanding any other provisions of law, all counties or municipalities in which the governing authority prior to May 8, 2018, has been authorized pursuant to a referendum to permit the sale of alcoholic beverages for consumption on the premises on Sundays from 12:30 P.M. until 12:00 Midnight in any licensed establishment which derives at least 50 percent of its total annual gross sales from the sale of prepared meals or food in all of the combined retail outlets of the individual establishment where food is served and in any licensed establishment which derives at least 50 percent of its total annual gross income from the rental of rooms for overnight lodging may, by resolution or ordinance conditioned on approval in a refer-

endum, authorize the sale of alcoholic beverages for consumption on the premises of any such establishments on Sundays for an additional hour and a half during the time period of 11:00 A.M. until 12:30 P.M.

(2) Any governing authority desiring to permit and regulate Sunday sales pursuant to this subsection shall so provide by proper resolution or ordinance conditioned on approval in a referendum election. Not less than ten nor more than 60 days after the date of approval of such resolution or ordinance, it shall be the duty of the election superintendent of the county or municipality to issue the call for an election for the purpose of submitting the question of Sunday sales to the electors of the county or municipality for approval or rejection. The superintendent shall set the date of the election for a day not less than 30 nor more than 60 days after the date of the issuance of the call. The superintendent shall cause the date and purpose of the election to be published in the official organ of the county once a week for two weeks immediately preceding the date thereof. The ballot shall have written or printed thereon the words:

"[ ] YES Shall the governing authority of (name of municipality or county) be authorized

[ ] NO to permit and regulate Sunday sales of distilled spirits or alcoholic beverages for beverage purposes by the drink from 11:00 A.M. to 12:30 P.M.?"

All persons desiring to vote for approval of such Sunday sales shall vote "Yes," and those persons desiring to vote for rejection of such Sunday sales shall vote "No." If more than one-half of the votes cast on the question are for approval of such Sunday sales, the governing authority may by appropriate resolution or ordinance permit and regulate such Sunday sales by licensees. Otherwise, such Sunday sales shall not be permitted. The expense of the election shall be borne by the county or municipality in which the election is held. It shall be the duty of the superintendent to hold and conduct the election. It shall be his or her further duty to certify the result thereof to the Secretary of State.

(3) Notwithstanding this subsection or any other provision of law, all county or municipal resolutions or ordinances enacted prior to April 6, 1984, pursuant to the authorizations granted by subsections (a) through (i) of this Code section are declared to be valid and shall remain in full force and effect unless affirmatively repealed by the governing authority of the county or municipality.

(k)(1) Notwithstanding other laws, in any county in which one-half of the net revenues collected from the legalizing, controlling, licensing,

and taxing of the wholesale and retail sale of alcoholic beverages is paid over to the boards of education in such county, a municipality having an independent school system shall be authorized through its governing authority, either by proper resolution or ordinance approved by a majority of that governing authority or by proper resolution or ordinance so approved and by its terms having its effectiveness being contingent upon referendum approval pursuant to paragraph (2) of this subsection, to allow:

(A) The sale of alcoholic beverages for consumption on the premises at any time from 11:55 P.M. on Saturdays and three hours immediately following such time; and

(B) The sale and service by the drink of alcoholic beverages on Sundays from 12:30 P.M. until 12:00 Midnight in any licensed establishment which derives at least 50 percent of its total annual gross food and beverage sales from the sale of prepared meals or food in all of the combined retail outlets of the individual establishment where food is served and in any licensed establishment which derives at least 50 percent of its total annual gross income from the rental of rooms for overnight lodging.

(2) If a resolution or ordinance is approved pursuant to paragraph (1) of this subsection and by its terms has its effectiveness contingent upon referendum approval pursuant to this paragraph, not less than ten nor more than 60 days after the date of approval of such resolution or ordinance it shall be the duty of the election superintendent of the municipality, whose governing authority approved that resolution or ordinance, to issue the call for an election for the purpose of submitting the question of Sunday sales to the electors of that municipality for approval or rejection. The superintendent shall set the date of the election for a day not less than 30 nor more than 60 days after the date of the issuance of the call. The superintendent shall cause the date and purpose of the election to be published in the official organ of the county in which that municipality is located once a week for two weeks immediately preceding the date thereof. The ballot shall have written or printed thereon the words:

"[ ] YES Shall Sunday sales of alcoholic beverages by the drink be authorized in
[ ] NO (name of municipality)?"

All persons desiring to vote for approval of Sunday sales shall vote "Yes," and those persons desiring to vote for rejection of Sunday sales shall vote "No." If more than one-half of the votes cast on the question are for approval of Sunday sales, the resolution or ordinance approving such Sunday sales shall become effective upon the date so specified in that resolution or ordinance. The expense of the election

shall be borne by the municipality in which the election is held. It shall be the duty of the superintendent to hold and conduct the election. It shall be his further duty to certify the result thereof to the Secretary of State.

(l) In all counties having a population of 160,000 or more according to the United States decennial census of 1980 or any future such census in which the sale of alcoholic beverages is lawful and in all municipalities within such counties in which the sale of alcoholic beverages is lawful, the governing authority of the county or municipality, as appropriate, may authorize the sale of alcoholic beverages for consumption on the premises:

(1) At any time from 11:55 P.M. on Saturdays until 2:55 A.M. on Sundays;

(2) In eating establishments which are located in the unincorporated area of the county, in the case of the county, or which are located in the corporate limits of the municipality, in the case of a municipality, on Sundays between the hours of 12:30 P.M. and 12:00 Midnight. As used in this paragraph, the term "eating establishment" means an establishment which is licensed to sell distilled spirits, malt beverages, or wines and which derives at least 50 percent of its total annual gross food and beverage sales from the sale of prepared meals or food; and

(3) In inns which are located in the unincorporated area of the county, in the case of the county, or which are located in the corporate limits of the municipality, in the case of a municipality, on Sundays between the hours of 12:30 P.M. and 12:00 Midnight. As used in this paragraph, the term "inn" means an establishment which is licensed to sell distilled spirits, malt beverages, or wines and which derives at least 50 percent of its total annual gross income from the rental of rooms for overnight lodging.

The provisions of this subsection are in addition to or cumulative of and not in lieu of any other provisions of this title granting certain authority to a county or municipality relative to the sale of alcoholic beverages for consumption on the premises.

(m) In all municipalities or counties or in any portion of any municipality or county in which the sale of alcoholic beverages is lawful, the governing authority of the municipality or county may authorize the sale of alcoholic beverages for consumption on the premises at any time from 11:55 P.M. on Saturdays until 2:55 A.M. on Sundays by the adoption of an ordinance or resolution. The provisions of this subsection are in addition to or cumulative of and not in lieu of any other provisions of this title granting certain authority to a county or municipality relative to the sale of alcoholic beverages for consumption

on the premises. Said authorization may be revoked by such governmental authority in the same manner.

(n) A municipality in which the sale of alcoholic beverages on Sunday is authorized by any other provision of law may by the adoption of an ordinance authorize the sale of alcoholic beverages in public stadiums, coliseums and auditoriums owned or controlled by it or by a public authority and having seating capacity in excess of 2,500 people on Sunday between the hours of 12:30 P.M. and midnight.

(o)(1) As used in this subsection, the term "bowling center" means an establishment which is licensed to sell distilled spirits, malt beverages, or wines and which derives at least 50 percent of its total annual gross revenues either from the rental of bowling lanes and bowling equipment or from the combination of the rental of bowling lanes and bowling equipment and the sale of prepared meals and other food products.

(2) The governing authority of any municipality or county in any portion of which the sale of alcoholic beverages is authorized may by ordinance authorize the sale of alcoholic beverages for consumption on the premises in any bowling center located within the jurisdiction of such governing authority between the hours of 12:30 P.M. and 12:00 Midnight on Sundays.

(p)(1) Notwithstanding other laws, in each county or municipality in which package sales of malt beverages and wine by retailers are lawful, but package sales of distilled spirits by retailers are not lawful, the governing authority of the county or municipality, as appropriate, may authorize package sales by retailers of malt beverages and wine on Sundays between the hours of 12:30 P.M. and 11:30 P.M., if such Sunday sales of both malt beverages and wine are approved by referendum as provided in paragraph (2) of this subsection.

(2) Any governing authority desiring to permit and regulate package sales by retailers of both malt beverages and wine on Sundays between the hours of 12:30 P.M. and 11:30 P.M., pursuant to paragraph (1) of this subsection, shall so provide by proper resolution or ordinance specifying the hours during such period when such package sales may occur. Upon receipt of the resolution or ordinance, the election superintendent shall issue the call for an election for the purpose of submitting the question of Sunday package sales by retailers of both malt beverages and wine to the electors of that county or municipality for approval or rejection. The election superintendent shall issue the call and shall conduct the election on a date and in the manner authorized under Code Section 21-2-540. The election superintendent shall cause the date and purpose of the

election to be published once a week for four weeks immediately preceding the date of the election in the official organ of the county. The ballot shall have written or printed thereon the words:

"( ) YES Shall the governing authority of (name of county or municipality) be authorized to permit and regulate package sales by
( ) NO retailers of both malt beverages and wine on Sundays between the hours of 12:30 P.M. and 11:30 P.M.?"

All persons desiring to vote for approval of package sales by retailers of malt beverages and wine on Sundays between the hours of 12:30 P.M. and 11:30 P.M. shall vote "Yes," and all persons desiring to vote for rejection of package sales by retailers of malt beverages and wine on Sundays between the hours of 12:30 P.M. and 11:30 P.M. shall vote "No." If more than one-half of the votes cast on the question are for approval of Sunday package sales by retailers of malt beverages and wine on Sundays between the hours of 12:30 P.M. and 11:30 P.M., the resolution or ordinance approving such Sunday package sales by retailers of malt beverages and wine shall become effective upon the date so specified in that resolution or ordinance. The expense of the election shall be borne by the county or municipality in which the election is held. The election superintendent shall canvass the returns, declare the result of the election, and certify the result to the Secretary of State.

(3) Whenever package sales of malt beverages and wine on Sundays between the hours of 12:30 P.M. and 11:30 P.M. are authorized by a county or municipality pursuant to this subsection, Sunday package sales by retailers of malt beverages and wine may be made only by licensed retailers that are licensed to sell by the package.

(4) The provisions of this subsection are in addition to or cumulative of and not in lieu of any other provisions of this title relative to the sale of malt beverages and wine by retailers.

(q)(1) Notwithstanding other laws, in each county or municipality in which package sales of malt beverages, wine, and distilled spirits by retailers are all lawful, the governing authority of the county or municipality, as appropriate, may authorize package sales by retailers of malt beverages, wine, and distilled spirits on Sundays between the hours of 12:30 P.M. and 11:30 P.M., if such Sunday sales of malt beverages, wine, and distilled spirits are approved by referendum as provided in paragraph (2) of this subsection. If the governing authority seeks authorization for Sunday sales of alcoholic beverages pursuant to this subsection, the governing authority shall seek authorization of package sales by retailers of all alcoholic beverages,

including malt beverages, wine, and distilled spirits, and not of only one type of alcoholic beverage.

(2) Any governing authority desiring to permit and regulate package sales by retailers of malt beverages, wine, and distilled spirits on Sundays between the hours of 12:30 P.M. and 11:30 P.M., pursuant to paragraph (1) of this subsection, shall so provide by proper resolution or ordinance specifying the hours during such period when such package sales may occur. Upon receipt of the resolution or ordinance, the election superintendent shall issue the call for an election for the purpose of submitting the question of Sunday package sales by retailers of malt beverages, wine, and distilled spirits to the electors of that county or municipality for approval or rejection. The election superintendent shall issue the call and shall conduct the election on a date and in the manner authorized under Code Section 21-2-540. The election superintendent shall cause the date and purpose of the election to be published once a week for four weeks immediately preceding the date of the election in the official organ of the county. The ballot shall have written or printed thereon the words:

"( ) YES Shall the governing authority of (name of county or municipality) be authorized to permit and regulate package sales by
( ) NO retailers of malt beverages, wine, and distilled spirits on Sundays between the hours of 12:30 P.M. and 11:30 P.M.?"

All persons desiring to vote for approval of package sales by retailers of malt beverages, wine, and distilled spirits on Sundays between the hours of 12:30 P.M. and 11:30 P.M. shall vote "Yes," and all persons desiring to vote for rejection of package sales by retailers of malt beverages, wine, and distilled spirits on Sundays between the hours of 12:30 P.M. and 11:30 P.M. shall vote "No." If more than one-half of the votes cast on the question are for approval of Sunday package sales by retailers of malt beverages, wine, and distilled spirits on Sundays between the hours of 12:30 P.M. and 11:30 P.M., the resolution or ordinance approving such Sunday package sales by retailers of malt beverages, wine, and distilled spirits shall become effective upon the date so specified in that resolution or ordinance. If more than one-half of the votes cast on the question are for disapproval of Sunday package sales by retailers of malt beverages, wine, and distilled spirits on Sundays between the hours of 12:30 P.M. and 11:30 P.M., such rejection shall not nullify the prior election results for approval of Sunday package sales by retailers of malt beverages and wine on Sundays between the hours of 12:30 P.M. and 11:30 P.M. pursuant to subsection (p) of this Code section. The expense of the

election shall be borne by the county or municipality in which the election is held. The election superintendent shall canvass the returns, declare the result of the election, and certify the result to the Secretary of State.

(3) Whenever package sales of malt beverages, wine, and distilled spirits on Sundays between the hours of 12:30 P.M. and 11:30 P.M. are authorized by a county or municipality pursuant to this subsection, Sunday package sales by retailers of malt beverages, wine, and distilled spirits may be made only by licensed retailers that are licensed to sell by the package.

(4) The provisions of this subsection are in addition to or cumulative of and not in lieu of any other provisions of this title relative to the sale of alcoholic beverages by retailers.

(r) Notwithstanding any other provisions of law, in all counties or municipalities in which the sale of alcoholic beverages is lawful for consumption on the premises, the governing authority of the county or municipality, as appropriate, may by adoption of a resolution or ordinance authorize the sale of alcoholic beverages for consumption on the premises from 12:30 P.M. until 12:00 Midnight on one Sunday during each calendar year that shall be designated in such resolution or ordinance. Any sales for consumption on the premises made pursuant to this subsection shall be subject to such terms and conditions as may be required by the governing authority of the county or municipality.

History. — Code 1933, § 5A-507, enacted by Ga. L. 1980, p. 1573, § 1; Ga. L. 1981, p. 540, §§ 1, 2; Ga. L. 1982, p. 521, §§ 1, 2; Ga. L. 1982, p. 1463, §§ 2, 9; Ga. L. 1982, p. 1768, § 2; Ga. L. 1982, p. 1855, §§ 1, 3; Ga. L. 1983, p. 3, § 4; Ga. L. 1983, p. 806, § 5; Ga. L. 1984, p. 22, § 3; Ga. L. 1984, p. 1683, § 1; Ga. L. 1984, p. 1685, § 1; Ga. L. 1984, p. 1691, § 1; Ga. L. 1985, p. 149, § 3; Ga. L. 1985, p. 1000, § 1; Ga. L. 1987, p. 381, § 1; Ga. L. 1988, p. 232, § 1; Ga. L. 1989, p. 1487, §§ 1, 2; Ga. L. 1990, p. 8, § 3; Ga. L. 1992, p. 1214, § 1; Ga. L. 1992, p. 2929, § 1; Ga. L. 1994, p. 237, § 2; Ga. L. 1994, p. 395, § 1; Ga. L. 1996, p. 830, § 1; Ga. L. 1998, p. 839, § 1; Ga. L. 1999, p. 1225, § 1; Ga. L. 2002, p. 1473, § 1; Ga. L. 2011, p. 49, § 1/SB 10; Ga. L. 2013, p. 767, § 1/HB 124; Ga. L. 2014, p. 13, § 1/SB 318; Ga. L. 2015, p. 20, § 1/SB 103; Ga. L. 2018, p. 896, § 1/SB 17.

The 2018 amendment, effective May 8, 2018, in paragraph (j)(1), inserted "on and after the effective date of this Act," near the beginning and substituted "11:00 A.M." for "12:30 P.M." in the middle; inserted "or her" in the last sentence of the ending undesignated paragraph in paragraph (j)(2); and added subsection (j.1).

Code Commission notes. — Pursuant to Code Section 28-9-5, in 1999, capitalization was revised in paragraph (o)(2).

Pursuant to Code Section 28-9-5, in 2018, "May 8, 2018" was substituted for "the effective date of this Act" near the beginning of paragraphs (j)(1) and (j.1)(1).

Editor's notes. — Ga. L. 1982, p. 1768, § 3 added a new "subsection (i)" relating to weekend sales of alcoholic beverages for on-premises consumption in counties in the 295,000 to 300,000, inclusive, population range. Section 4 of Ga. L. 1982, p. 1768, not codified by the General Assembly, provided that this provision of § 3 would become effective only for those counties in which an election was called prior to November 1, 1983, and at which election more than one-half of the votes cast approved the provisions of Ga. L.

1982, p. 1768, § 3. Such an election was held, and such approval was given, in Cobb County on November 2, 1982. Ga. L. 1983, p. 3, § 4, part of an Act to correct errors and omissions in the Code, redesignated the "subsection (i)" enacted by Ga. L. 1982, p. 1768, § 3 as current "subsection (j)." The "subsection (i)" appearing is that enacted by Ga. L. 1982, p. 1855, § 3, as amended by Ga. L. 1983, p. 3, § 4.

Ga. L. 1982, p. 1855, § 6, not codified by the General Assembly, provided: "Notwithstanding any other provision of law to the contrary, the United States decennial census of 1980 shall become effective for purposes of this Act on the effective date of this Act." The effective date of the Ga. L. 1982, p. 1855 amendment to this Code section was November 1, 1982.

Law reviews. — For article, "Lawyers Who Represent Local Governments," see 23 Ga. St. B. J. 58 (1987). For annual survey of local government law, see 56 Mercer L. Rev. 351 (2004). For article on the 2011 amendment of this Code section, see 28 Ga. St. U. L. Rev. 255 (2011). For article, "Regulation of Alcoholic Beverages Generally," see 28 Ga. St. U. L. Rev. 255 (2011). For article on the 2018 amendment of this Code section, see 35 Ga. St. U. L. Rev. 1 (2018). For annual survey on local government law, see 70 Mercer L. Rev. 177 (2018).

JUDICIAL DECISIONS

Constitutionality. — There was a rational basis for the statutory scheme which prohibited bars from selling alcohol on Sundays, but allowed eating establishments to sell alcohol on Sundays even if they did not serve food on Sundays; O.C.G.A. §§ 3-3-7 and 3-3-20(a) did not violate equal protection and were upheld. State v. Heretic, Inc., 277 Ga. 275, 588 S.E.2d 224 (2003).

RESEARCH REFERENCES

Am. Jur. 2d. — 45 Am. Jur. 2d, Intoxicating Liquors, §§ 214, 228, 231, 238. 73 Am. Jur. 2d, Sundays and Holidays, §§ 3 et seq., 25 et seq., 47 et seq.

C.J.S. — 48 C.J.S., Intoxicating Liquors, §§ 83, 84, 85, 86, 425 et seq., 451, 499.

ALR. — Power of municipal corporation to legislate as to Sunday observance, 37 A.L.R. 575.

Power to extend Sunday observance laws beyond Sunday hours, 50 A.L.R. 628.

What is a "meal" within contemplation of constitutional or statutory provisions relating to intoxicating liquors, 93 A.L.R. 962.

Validity, construction, and application of statute or ordinance requiring closing, during certain hours, of places where intoxicating liquor is sold, as affected by fact that such places are also used for other business, 139 A.L.R. 756.

Sale of liquor to homosexuals or permitting their congregation at licensed premises as ground for suspension or revocation of liquor license, 27 A.L.R.3d 1254.

Validity of municipal regulation more restrictive than state regulation as to time for selling or serving intoxicating liquor, 51 A.L.R.3d 1061.

Validity of statutory classifications based on population — intoxicating liquor statutes, 100 A.L.R.3d 850.

3-3-8. Possession and transportation of lawfully purchased alcoholic beverages upon which taxes have not been paid in this state.

(a)(1) An individual may possess and transport in this state the following quantities of alcoholic beverages upon which the taxes imposed by this title have not been paid:

(A) In the case of distilled spirits, not in excess of one-half gallon;

(B) In the case of malt beverages, not in excess of 576 ounces or two standard cases of 12 ounce cans or the equivalent thereof or one 7.75 gallon keg or barrel; and

(C) In the case of wine, not in excess of one-half gallon, except where the wine possessed was purchased and shipped pursuant to Code Section 3-6-32 and where the possessor has in his or her possession documentation evidencing that the wine was so purchased and shipped.

(2) Upon paying the excise taxes imposed by this title, an individual may possess and transport in this state the following quantities of alcoholic beverages purchased outside this state for personal or household use:

(A) In the case of distilled spirits, not in excess of one gallon;

(B) In the case of malt beverages, not in excess of two standard cases or the equivalent thereof; and

(C) In the case of wine, not in excess of two standard cases or the equivalent thereof.

(3) Whenever alcoholic beverages upon which the taxes imposed by this title have not been paid are being transported in a motor vehicle or other conveyance capable of transporting people, each individual in such motor vehicle or other conveyance, who is authorized to possess alcoholic beverages shall be entitled to the exemptions set forth in paragraph (1) of this subsection, and there shall be no presumption that all alcoholic beverages in the motor vehicle are possessed by the owner or operator of the motor vehicle. Where alcoholic beverages are possessed in excess of the exemptions set forth in paragraph (1) of this subsection, the possessor must have in his or her possession documentation evidencing that the excise taxes imposed by this title have been paid to the commissioner.

(b) This Code section shall apply only with respect to alcoholic beverages purchased by the possessor outside of this state in accordance with the laws of the place where purchased and brought into this state by the purchaser. The burden of proof that the beverages were purchased outside this state and in accordance with the laws of the place where purchased shall in all cases be upon the possessor of the beverages.

History. — Code 1933, § 5A-517, enacted by Ga. L. 1980, p. 1573, § 1; Ga. L. 1984, p. 790, § 1; Ga. L. 2000, p. 1401, § 1.

Law reviews. — For note on 2000 amendment of this Code section, see 17 Ga. St. U. L. Rev. 7 (2000).

OPINIONS OF THE ATTORNEY GENERAL

The Code allows possession of up to one-half gallon of distilled spirits purchased by the possessor outside of this state in accordance with the laws of the place where purchased and brought into this state by the purchaser. 1984 Op. Att'y Gen. No. U84-16.

Possession of untaxed liquor illegal. — It is illegal to possess in a wet county any quantity of distilled spirits on which no Georgia alcohol taxes and no alcohol taxes of another state have been paid, including among other things, all distilled spirits illegally manufactured in Georgia. 1984 Op. Att'y Gen. No. U84-16.

RESEARCH REFERENCES

ALR. — Possessing liquor and transporting liquor as a single offense or as separate offenses, 74 A.L.R. 411.

3-3-9. Penalty for violations of prohibitions in chapter.

(a) It is unlawful for any person knowingly and intentionally to violate any prohibition contained in this chapter.

(b) Except as otherwise provided in this chapter, any person who violates any prohibition contained in this chapter shall be guilty of a misdemeanor.

History. — Code 1933, § 5A-9901, enacted by Ga. L. 1980, p. 1573, § 1.

JUDICIAL DECISIONS

Not criminal act to violate Department of Revenue regulation. — O.C.G.A. §§ 3-3-9 and 3-3-27(c)(2) provide that it is a misdemeanor to violate a prohibition or provision of the Georgia Alcoholic Beverage Code, but these provisions do not make it a criminal act to violate a Georgia Department of Revenue regulation; although the parties intended to circumvent Ga. Comp. R. & Regs. r. 560-2-2-.38 by issuing corporate stock to an employee's wife, the stock agreement was not illegal or immoral; thus, a trial court erred in voiding the stock interest of the employee's wife, and summary judgment in favor of the corporation in the wife's action for an accounting, dissolution, and other relief was reversed. Edwards v. Grapefields, Inc., 267 Ga. App. 399, 599 S.E.2d 489 (2004).

ARTICLE 2

PROHIBITED ACTS

Cross references. — Hunting while under influence of intoxicating wines, beers, or liquor, § 27-3-7. Driving under the influence of alcohol or drugs, § 40-5-67 et seq. Regulation of operation and patronage of billiard rooms where alcoholic beverages are sold, § 43-8-1 et seq. Civil liability of persons selling adulterated alcoholic beverages, § 51-1-24.

RESEARCH REFERENCES

ALR. — Test of intoxicating character of liquor, 4 A.L.R. 1137; 11 A.L.R. 1233; 19 A.L.R. 512; 36 A.L.R. 725; 91 A.L.R. 513.

Criminal responsibility of husband for violation of liquor law by wife, 19 A.L.R. 136; 27 A.L.R. 312.

Criminal responsibility of one who acts as sentinel during violation of intoxicating liquor law, 64 A.L.R. 427.

What constitutes injury to means of support within civil damage or dramshop act, 4 A.L.R.3d 1332.

Third person's participating in or encouraging drinking as barring him from recovering under civil damage or similar acts, 26 A.L.R.3d 1112.

Sale of liquor to homosexuals or permitting their congregation at licensed premises as ground for suspension or revocation of liquor license, 27 A.L.R.3d 1254.

Homicide: criminal liability for death resulting from unlawfully furnishing intoxicating liquor or drugs to another, 32 A.L.R.3d 589.

Contributory negligence allegedly contributing to cause of injury as defense in Civil Damage Act proceeding, 64 A.L.R.3d 849.

Proof of causation of intoxication as a prerequisite to recovery under Civil Damage Act, 64 A.L.R.3d 882.

Civil Damage Act: liability of one who furnishes liquor to another for consumption by third parties, for injury caused by consumer, 64 A.L.R.3d 922.

Common-law right of action for damage sustained by plaintiff in consequence of sale or gift of intoxicating liquor or habit-forming drug to another, 97 A.L.R.3d 528.

Social host's liability for injuries incurred by third parties as a result of intoxicated guest's negligence, 62 A.L.R.4th 16.

Social host's liability for death or injuries incurred by person to whom alcohol was served, 54 A.L.R.5th 313.

3-3-20. Sale of alcoholic beverages on Sundays, election days, and Christmas Day.

(a) Except as provided in subsection (d) of this Code section or except as specifically authorized by law, no person knowingly and intentionally shall sell or offer to sell alcoholic beverages on Sunday.

(b)(1) As used in this subsection, the term "day" means that period of time beginning with the opening of the polls and ending with the closing of the polls.

(2)(A) Except as provided in subparagraph (B) of this paragraph and paragraph (3) of this subsection, in any county or municipality in which the sale of alcoholic beverages is authorized, the sale of alcoholic beverages in compliance with such authorization shall be authorized and legal on any election day.

(B) The local governing authority of any county in which the sale of alcoholic beverages is authorized and the local governing authority of any municipality in which the sale of alcoholic beverages is authorized may, by ordinance, prohibit the sale of alcoholic beverages on any election days. In any case where the governing authority of a county or municipality has passed an ordinance prohibiting the sale of alcoholic beverages on any election days as authorized by this subparagraph, such prohibition shall apply only

within the territorial boundaries for which the election is held but such territorial boundaries shall not include any property owned or operated by a county, municipality, or other political subdivision of this state for airport purposes if no person resides on such publicly owned or operated property.

(3)(A) Notwithstanding any other provisions of this subsection, it shall be unlawful for any person to sell alcoholic beverages within 250 feet of any polling place or of the outer edge of any building within which such polling place is established on primary or election days.

(B) Any person violating the provisions of this paragraph shall be guilty of a misdemeanor.

(c) The governing authority of any county or municipality may, by ordinance or resolution, prohibit the sale of alcoholic beverages on Christmas Day.

(d)(1) In all municipalities within any county having a population of 400,000 or more according to the United States decennial census of 1990 or any future such census in which the sale of alcoholic beverages is lawful, alcoholic beverages may be sold on Sundays between the hours of 12:30 P.M. and 12:00 Midnight at festivals. As used in this paragraph, the term "festival" means a specific outdoor public celebration or gathering for which a license or permit has been issued by the appropriate governing authority which involves the use either of public parks or public streets and which includes entertainment, dancing, music, dramatic productions, art exhibition, parades, or the sale of merchandise, food or alcohol, or any combination of the foregoing; and which of necessity requires for its successful execution the provision and coordination of municipal services to a degree significantly over and above that which the city routinely provides under ordinary everyday circumstances. The definition of "festival," as used in this paragraph, does not include events which are solely parades, foot races, or political demonstrations unless such parade, foot race, or political demonstration is proposed as an integral part of a larger "festival," as defined in this paragraph.

(2) Notwithstanding the provisions of this subsection, all persons and entities selling alcoholic beverages pursuant to this subsection shall fully comply with all other applicable state and local license and permit requirements.

History. — Ga. L. 1937, p. 148, §§ 6, 7; Ga. L. 1937-38, Ex. Sess., p. 103, § 14; Ga. L. 1971, p. 864, § 1; Ga. L. 1972, p. 721, § 1; Ga. L. 1977, p. 1236, § 1; Code 1933, § 58-813, enacted by Ga. L. 1977, p. 1316, § 1; Code 1933, § 5A-507, enacted by Ga. L. 1980, p. 1573, § 1; Ga. L. 1981, p. 460, § 1; Ga. L. 1981, p. 1269, § 19; Ga. L. 1982, p. 890, § 1; Ga. L. 1984, p. 1688, § 1; Ga. L. 1985, p. 1508, § 1; Ga. L. 1986, p. 10, § 3; Ga. L. 1992, p. 1694, § 1; Ga. L. 2000, p. 1405, § 1.

Law reviews. — For article, "Lawyers Who Represent Local Governments," see 23 Ga. St. B. J. 58 (1987). For annual survey of local government law, see 56 Mercer L. Rev. 351 (2004). For article, "Regulation of Alcoholic Beverages Generally," see 28 Ga. St. U. L. Rev. 255 (2011). For article on alcoholic beverages, see 35 Ga. St. U. L. Rev. 1 (2018).

For note on 2000 amendment of this Code section, see 17 Ga. St. U. L. Rev. 4 (2000).

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Private clubs are covered by the prohibition against Sunday liquor sales, and a city could not by ordinance authorize sales which were expressly prohibited by state law. Cheshire Bridge Enters., Inc. v. State, 221 Ga. App. 426, 472 S.E.2d 6 (1996).

This section is not unconstitutional as a violation of the establishment clause. Neither on its face nor in its effect nor by its history does this legislation coercively aid a particular religion. Mere fact that police regulation parallels some religious commandment does not make it invalid as a religious enactment. Epstein v. Maddox, 277 F. Supp. 613 (N.D. Ga. 1967), aff'd, 401 F.2d 777 (5th Cir. 1968) (decided under Ga. L. 1937-38, Ex. Sess., p. 103).

Constitutionality. — There was a rational basis for the statutory scheme which prohibited bars from selling alcohol on Sundays, but allowed eating establishments to sell alcohol on Sundays even if they did not serve food on Sundays; O.C.G.A. §§ 3-3-7 and 3-3-20(a) did not violate equal protection and were upheld. State v. Heretic, Inc., 277 Ga. 275, 588 S.E.2d 224 (2003).

Section applicable to sale of liquor by drink. — Prohibition against sale of liquor on Sunday contained in predecessor to this section applied to sale of liquor by the drink for consumption on the premises. Hawes v. Dinkler, 224 Ga. 785, 164 S.E.2d 799 (1968) (decided under Ga. L. 1937-38, Ex. Sess., p. 103).

Cause of action against public nuisance. — Where petitioner sought to show existence of a public nuisance and amended petition by adding that the place was also one where beer was being sold on Sunday in violation of this section, effect of amendment was to amplify or give an additional reason why the place had become such a nuisance, and sale of beer on Sunday in violation of this section merely added to general character of the place as a public nuisance and did not undertake to add new cause of action. Davis v. State ex rel. Lanham, 199 Ga. 839, 35 S.E.2d 458 (1945) (decided under Ga. L. 1937, p. 148).

OPINIONS OF THE ATTORNEY GENERAL

Editor's notes. — In light of the similarity of the statutory provisions, annotations rendered under Ga. L. 1964, Ex. Sess. p. 26, § 1, making it a misdemeanor to sell alcoholic beverages on primary or election days, are included in the annotations for this Code section.

The term "territorial boundaries for which the election is held" as used in subparagraph (b)(2)(A) of O.C.G.A. § 3-3-20 means the territorial boundaries of the entire political subdivision which is conducting the election. 1984 Op. Att'y Gen. No. U84-51.

Sale in municipalities on election days for county-wide elections. — A municipality may, pursuant to O.C.G.A. § 3-3-20, permit sales of alcoholic beverages on election days for county-wide elections notwithstanding a county ordinance which expressly prohibits sales of alcoholic beverages on election days. 1985 Op. Att'y Gen. No. U85-47.

Sunday closing of restaurant selling beer and wine. — A restaurant which holds a license to sell beer and wine and does sell beer and wine during the weekdays would not be required to close on Sunday. 1957 Op. Att'y Gen. p. 175. (rendered under former Georgia Laws).

Malt beverage regulations may not be modified so as to permit the sale of

malt beverages after the hours of the election or changed to limit the prohibition to state-wide elections, such as a general election or a state-wide primary. 1965-66 Op. Att'y Gen. No. 66-13. (Decided under Ga. L. 1964, Ex. Sess. p. 26, § 1).

"Election day" encompasses time period of from midnight until midnight. — The term "election day," as formerly used in the Constitution, encompasses a period of time from midnight preceding the opening of the polls until midnight succeeding the closing of the polls. 1965-66 Op. Att'y Gen. No. 66-13. (Decided under Ga. L. 1964, Ex. Sess. p. 26, § 1).

Section applies to school or hospital bond elections. 1965-66 Op. Att'y Gen. No. 65-17. (Decided under Ga. L. 1964, Ex. Sess. p. 26, § 1).

RESEARCH REFERENCES

Am. Jur. 2d. — 45 Am. Jur. 2d, Intoxicating Liquors, §§ 214, 228, 231, 238. 73 Am. Jur. 2d, Sundays and Holidays, §§ 3 et seq., 25 et seq., 47 et seq.

C.J.S. — 48 C.J.S., Intoxicating Liquors, §§ 83, 84, 85, 86, 425 et seq., 451, 499.

ALR. — Power of municipal corporation to legislate as to Sunday observance, 37 A.L.R. 575.

Power to extend Sunday observance laws beyond Sunday hours, 50 A.L.R. 628.

Contributory negligence allegedly contributing to cause of injury as defense in Civil Damage Act proceeding, 64 A.L.R.3d 849.

Proof of causation of intoxication as a prerequisite to recovery under Civil Damage Act, 64 A.L.R.3d 882.

Civil Damage Act: liability of one who furnishes liquor to another for consumption by third parties, for injury caused by consumer, 64 A.L.R.3d 922.

What constitutes "sale" of liquor in violation of statute or ordinance, 89 A.L.R.3d 551.

What constitutes such discriminatory prosecution or enforcement of laws as to provide valid defense in state criminal proceedings, 95 A.L.R.3d 280.

Validity, construction, and effect of "Sunday closing" or "blue" laws — modern status, 10 A.L.R.4th 246.

Validity, under federal and state establishment of religion provisions, of prohibition of sale of intoxicating liquors on specific religious holidays, 27 A.L.R.4th 1155.

3-3-21. Sales of alcoholic beverages near churches, school buildings, or other sites.

(a)(1) No person knowingly and intentionally may sell or offer to sell:

(A) Any distilled spirits in or within 100 yards of any church building or within 200 yards of any school building, educational building, school grounds, or college campus;

(B) Any wine or malt beverages within 100 yards of any school building, school grounds, or college campus. This subparagraph shall not apply at any location for which a license has been issued prior to July 1, 1981, nor to the renewal of such license. Nor shall this subparagraph apply at any location for which a new license is applied for if the sale of wine and beer was lawful at such location at any time during the 12 months immediately preceding such application. Nothing in this subparagraph shall prohibit a grocery store licensed for the retail sale of only wine and malt beverages for consumption off the premises from selling wine or malt beverages

within 100 yards of any school building, school grounds, or college campus, where so permitted by resolution or ordinance of the county or municipality. As used in this subparagraph, the term "grocery store" means a retail establishment which has a total retail floor space of at least 10,000 square feet of which at least 85 percent is reserved for the sale of food and other nonalcoholic items, conducts all of its sales inside the building containing its retail floor space, and meets such other criteria as may be required by the local governing authority of the county or municipality; or

(C) Any distilled spirits, wine, or malt beverages within 100 yards of an alcoholic treatment center owned and operated by this state or any county or municipal government therein. This paragraph shall not apply to any business having a license in effect on July 1, 1981.

(2) As used in this subsection, the term "school building" or "educational building" shall apply only to state, county, city, or church school buildings and to such buildings at such other schools in which are taught subjects commonly taught in the common schools and colleges of this state and which are public schools or private schools as defined in subsection (b) of Code Section 20-2-690.

(b) Nothing contained in this Code section shall prohibit the licensing of the sale or distribution of alcoholic beverages by:

(1) Hotels of 50 rooms or more which have been in continuous operation for a period of at least five years preceding July 1, 1981;

(2) Bona fide private clubs, owning their own homes, subject to licensing under Chapter 7 of this title; and

(3) Licensees for the retail sale of alcoholic beverages for consumption on the premises only who shall be subject to regulation as to distances from churches, schools, and colleges by counties and municipalities.

(c) For purposes of this Code section, distances shall be measured by the most direct route of travel on the ground.

(d) Reserved.

(e)(1) As used in this subsection, the term "housing authority property" means any property containing 300 housing units or fewer owned or operated by a housing authority created by Article 1 of Chapter 3 of Title 8, the "Housing Authorities Law."

(2) No person knowingly and intentionally may sell any alcoholic beverages for consumption on the premises within 100 yards of any housing authority property. This subsection shall not apply at any location for which a license has been issued prior to July 1, 2000, nor

to the renewal of such license. Nor shall this subsection apply at any location for which a new license is applied for if the sale of alcoholic beverages for consumption on the premises was lawful at such location at any time during the 12 months immediately preceding such application.

History. — Laws 1808, Cobb's 1851 Digest, p. 851; Code 1863, § 4448; Code 1868, § 4490; Code 1873, § 4575; Code 1882, § 4575; Ga. L. 1890-91, p. 132, § 1; Penal Code 1895, § 434; Penal Code 1910, § 435; Code 1933, § 58-601; Ga. L. 1935, p. 73, § 15B; Ga. L. 1937, p. 148, § 2; Ga. L. 1937-38, Ex. Sess., p. 103, § 9; Ga. L. 1945, p. 447, §§ 1, 2; Ga. L. 1973, p. 610, § 1; Code 1933, § 5A-508, enacted by Ga. L. 1980, p. 1573, § 1; Ga. L. 1981, p. 1265, § 1; Ga. L. 1981, p. 1269, § 20; Ga. L. 1998, p. 1300, § 2; Ga. L. 1999, p. 81, § 3; Ga. L. 2000, p. 1653, § 1; Ga. L. 2013, p. 897, § 2/HB 517; Ga. L. 2015, p. 81, § 1/HB 85; Ga. L. 2017, p. 759, § 1/HB 510.

The 2017 amendment, effective July 1, 2017, substituted "Reserved." for the former provisions of subsection (d), which read: "(d)(1) In counties having a population of not less than 175,000 nor more than 195,000, according to the United States decennial census of 1970 or any future such census, the distances provided in subparagraph (a)(1)(A) of this Code section for separation of businesses licensed under this title from churches and schools shall be measured as follows:

"(A) From the property line of the tract on which is located the business regulated under this title;

"(B) To the property line of the tract on which is located the church, school ground, or college campus; and

"(C) Along a straight line which describes the shortest distance between the two property lines.

"(2) No license in effect on April 13, 1979, shall be revoked before its date of expiration by reason of the method of measurement set out in this subsection if the license was granted in reliance on another method of measurement. No application for a license or for a renewal shall be denied by reason of the method of measurement set out in this subsection if the application is for premises for which a license was granted prior to April 13, 1979, in reliance on another method of measurement.".

Editor's notes. — Ga. L. 2013, p. 897, § 1/HB 517, not codified by the General Assembly, provides that: "The General Assembly finds that there are neighborhoods and downtown areas in this state near college campuses that are underserved by grocery stores, making it difficult for residents who live in such neighborhoods and downtown areas to access daily essentials and adequate food supplies and nutrition, especially those residents who do not own automobiles. The General Assembly further finds that owners of grocery stores may be reluctant to locate such stores in areas in which it is not possible to sell packages of wine and malt beverages when such sales are permitted elsewhere in the county or municipality. The General Assembly further finds that allowing a local governing authority of a county or municipality to have local control of the distance requirements for the package sales of wine and malt beverages near college campuses will permit such local governments to determine how to best serve the public health, safety, and welfare of its citizens."

Law reviews. — For article, "Lawyers Who Represent Local Governments," see 23 Ga. St. B. J. 58 (1987).

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Church kindergarten is a "school" within the meaning of O.C.G.A. § 3-3-21. Risser v. City of Thomasville, 248 Ga. 866, 286 S.E.2d 727 (1982).

Constitutionality. — The predecessor to this section was not unconstitutional and void on the grounds that it was too uncertain, vague, and indefinite to be ca-

pable of penal enforcement. McCaffrey v. State, 183 Ga. 827, 189 S.E. 825 (1937).

Legislative intent. — The objective when the legislature provided that liquor stores should not be located within 200 (now 100 for wine or beer) yards of a school ground was that there should be no traffic in liquor within specified distance so that teachers and pupils should not be subjected to evil influences connected with liquor traffic. Certainly the legislature did not intend to include in the prohibition all premises on which school children might happen to congregate. Haley v. Bailey, 199 Ga. 486, 34 S.E.2d 685 (1945).

The General Assembly intended to establish an area between schools and businesses which sell beer and wine. A reasonable interpretation of legislative intent necessarily requires that the 100-yard barrier of this section apply to schools rather than school buildings. The restriction of sale of beer near schools has no relationship to the building but to the occupants. Since students may receive instructions and congregate on school premises, it is legislative intent that beer and wine not be sold within 100 yards of instructional premises. Davidson v. Lovett, 242 Ga. 375, 249 S.E.2d 61 (1978).

Power of local authorities to establish greater distance restrictions. — This section establishes only a minimum distance for retail sale of wine and beer from a school or schoolhouse, and local governing authority can establish, pursuant to its police power authority, a distance restriction that is greater than 300 feet. Powell v. Board of Comm'rs of Rds. & Revenues, 234 Ga. 183, 214 S.E.2d 905 (1975).

USO Center not schoolground. — A tract of land, on which prior to 1940 a city operated thereon a school, which was destroyed by a cyclone in 1940, which property thereafter was leased by, and in possession of, the United States government as a USO Center, was not a schoolground under this section. Haley v. Bailey, 199 Ga. 486, 34 S.E.2d 685 (1945).

Cited in Cheshire Bridge Enters., Inc. v. State, 221 Ga. App. 426, 472 S.E.2d 6 (1996).

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This section covers not only any church or school but also the campus or grounds surrounding the church or school which constitutes a part of the church or school properties. 1954-56 Op. Att'y Gen. p. 461.

The distance of 100 (now 200) yards between liquor stores and churches is to be measured as a straight line from one point to the other and not as a line running along the nearest sidewalk route. 1968 Op. Att'y Gen. No. 68-164.

Distance from church buildings. — The distance provisions of O.C.G.A. § 3-3-21(a)(1)(A) with regard to the location of church buildings require that the building containing the premises licensed for the sale of distilled spirits must be located no less than 100 yards from any church building. 2002 Op. Att'y Gen. No. U2002-5.

RESEARCH REFERENCES

Am. Jur. 2d. — 45 Am. Jur. 2d, Intoxicating Liquors, §§ 110, 111, 112.

C.J.S. — 48 C.J.S., Intoxicating Liquors, §§ 83, 84, 85, 86, 152, 425 et seq., 451, 495 et seq.

ALR. — Reasonableness of statutory or local regulations prohibiting sale or license for sale of intoxicating liquors within prescribed distance from church, school, or other institution, 119 A.L.R. 643.

"School," "schoolhouse," or the like within statute prohibiting liquor sales within specified distance thereof, 49 A.L.R.2d 1103.

"Church" or the like, within statute prohibiting liquor sales within specified distance thereof, 59 A.L.R.2d 1439.

Measurement of distances for purposes of enactment prohibiting sale, or license for sale, of intoxicating liquor within given distance from church, university, school, or other institution or property as base, 4 A.L.R.3d 1250.

Criminal liability of member or agent of private club or association, or of owner or lessor of its premises, for violation of state or local liquor or gambling laws thereon, 98 A.L.R.3d 694.

Validity of statutory classifications based on population—intoxicating liquor statutes, 100 A.L.R.3d 850.

3-3-21.1. Possession of alcoholic beverages on the grounds of a public school.

(a) Except as provided in subsection (b) of this Code section, no person shall possess any alcoholic beverages upon the grounds or within any structure of a public elementary school; public high school; or public trade, vocational, or industrial school.

(b) Subsection (a) of this Code section shall not apply to any situation where alcoholic beverages are used by a teacher for educational purposes nor to any situation where alcoholic beverages are used in a religious ceremony or observance.

History. — Code 1933, § 5A-508.1, enacted by Ga. L. 1981, p. 625, § 1.

RESEARCH REFERENCES

Am. Jur. 2d. — 45 Am. Jur. 2d, Intoxicating Liquors, §§ 49, 112.

C.J.S. — 48 C.J.S., Intoxicating Liquors, §§ 488 et seq., 505 et seq.

3-3-22. Sale or furnishing of alcoholic beverages to intoxicated persons.

No alcoholic beverage shall be sold, bartered, exchanged, given, provided, or furnished to any person who is in a state of noticeable intoxication.

History. — Ga. L. 1937-38, Ex. Sess., p. 103, § 15; Ga. L. 1953, Nov.-Dec. Sess., p. 283, § 1; Ga. L. 1980, p. 1206, §§ 2, 5; Code 1933, § 5A-509, enacted by Ga. L. 1980, p. 1573, § 1; Ga. L. 1981, p. 1269, § 21.

Cross references. — Liability for acts of intoxicated persons, § 51-1-40.

Law reviews. — For note discussing tavern keeper liability in Georgia for injury caused by a person to whom an intoxicant was sold, see 9 Ga. L. Rev. 239 (1974).

JUDICIAL DECISIONS

Editor's notes. — In light of the similarity of the statutory provisions, annotations decided prior to the 1988 enactment of O.C.G.A. § 51-1-40, concerning liability for acts of intoxicated persons and under former Code 1993 § 58-612 are included in the annotations for this Code section.

Purpose. — The legislature's intent in

enacting O.C.G.A. § 3-3-22 was to provide Georgia citizens with a modicum of protection from the varied reasonably foreseeable and life-threatening risks involved in continuing to serve alcoholic beverages to noticeably intoxicated persons. Whelchel v. Laing Properties, Inc., 190 Ga. App. 182, 378 S.E.2d 478 (1989).

O.C.G.A. § 3-3-22 does not impose tort liability on dispensers of alcoholic beverages. Nunn v. Comidas Exquisitos, Inc., 166 Ga. App. 796, 305 S.E.2d 487 (1983).

Law applies to social hosts. — The law regarding purveyors of alcoholic beverages applies to social hosts' furnishing alcohol to their adult guests. Pirkle v. Hawley, 199 Ga. App. 371, 405 S.E.2d 71, cert. denied, 199 Ga. App. 906, 405 S.E.2d 71 (1991).

A social host may be liable to third persons for furnishing alcohol to a guest, and the social host must take some action to prevent the guest from driving once he or she is discovered to be intoxicated. Pirkle v. Hawley, 199 Ga. App. 371, 405 S.E.2d 71, cert. denied, 199 Ga. App. 906, 405 S.E.2d 71 (1991).

Analogous application to health care providers. — Duty imposed on alcohol providers to protect third parties by not serving intoxicated patrons could not likewise be imposed on doctors treating patients; thus, the doctor did not owe a duty to decedent based on the doctor's provision of a medical certificate to the truck driver that the truck driver was physically fit to drive a commercial vehicle, in a case where the truck driver died of preexisting coronary disease three months after receiving the certificate while driving a truck and the truck then struck decedent's vehicle and killed the decedent. The doctor did not have any legal authority to restrain the truck driver for the benefit of the public, and, thus, owed no duty to the decedent to not have provided the certificate to the truck driver. Houston v. Bedgood, 263 Ga. App. 139, 588 S.E.2d 437 (2003).

Person furnishing alcohol to intoxicated minor liable to person injured. — A person who encourages a noticeably intoxicated person under the legal drinking age to become further intoxicated and who furnishes to such intoxicated person more alcohol, knowing that such person will soon be driving a vehicle, is liable in tort to a person injured by the negligence of such intoxicated driver. Sutter v. Hutchings, 254 Ga. 194, 327 S.E.2d 716 (1985).

Actual knowledge required to support jury finding of proximate cause. — A showing of actual knowledge that the recipient of alcohol would be driving is required in order to support a jury finding of proximate cause. Actual knowledge may be established either by direct or circumstantial evidence. Whelchel v. Laing Properties, Inc., 190 Ga. App. 182, 378 S.E.2d 478 (1989).

Knowledge of minor's degree of intoxication. — Evidence was insufficient to show that any breach of duty by a bowling alley relating to alcohol was the proximate cause of the death of a passenger in a car driven by a minor who had been served beer at the bowling alley, where there was no evidence that any employee had knowledge that the minor was intoxicated or would be driving an automobile. Kalpa v. Perczak, 658 F. Supp. 235 (N.D. Ga. 1987).

Liability for injuries to third parties. — One who provides alcoholic beverages to a noticeably intoxicated person, knowing that the person will soon be driving a vehicle, may be liable for a third party's injuries caused by the negligence of the intoxicated driver. This cause of action is not limited to social host situations involving minors. Tibbs v. Studebaker's of Savannah, Inc., 184 Ga. App. 642, 362 S.E.2d 377, cert. denied, 184 Ga. App. 911, 362 S.E.2d 377 (1987).

Jury question. — Whether bowling alley, which served beer to patrons, was guilty of negligence in failing to keep its premises safe for business invitees was a question for the jury and could not be properly resolved by way of summary judgment. Bishop v. Fair Lanes Ga. Bowling, Inc., 803 F.2d 1548 (11th Cir. 1986).

Whether a person was "noticeably intoxicated" was a jury question under the facts. Studebaker's of Savannah, Inc. v. Tibbs, 195 Ga. App. 142, 392 S.E.2d 908 (1990).

Instruction to jury. — In a negligence action, the trial court did not err in charg-

ing the jury that one who provides alcoholic beverages to a noticeably intoxicated person, knowing that that person will soon be driving a vehicle, may be liable for a third person's injuries caused by the negligence of the intoxicated driver, if the alcohol was a proximate cause of the injuries. Studebaker's of Savannah, Inc. v. Tibbs, 195 Ga. App. 142, 392 S.E.2d 908 (1990).

No recovery by consumer causing injuries. — A consumer of alcohol cannot recover damages from the provider of the alcohol for injuries caused by the consumer to a third person. Sutter v. Hutchings, 254 Ga. 194, 327 S.E.2d 716 (1985).

Office Christmas parties. — The acts of employer hosting an office "Christmas party" including contracting with alcohol purveyor to obtain and pay for its services in actually furnishing and giving alcoholic beverages to party guests fell at least within the act of providing alcohol as contemplated by O.C.G.A. § 3-3-22. Whelchel v. Laing Properties, Inc., 190 Ga. App. 182, 378 S.E.2d 478 (1989).

This section is a criminal law and must be strictly construed. Henry Grady Hotel Co. v. Sturgis, 70 Ga. App. 379, 28 S.E.2d 329 (1943) (decided under former Ga. L. 1937-38, Ex. Sess., p. 103).

Supplying money to intoxicated person. — This section was not enacted for purpose of protecting injured person from one who furnished money to an intoxicated person for purpose of buying whiskey. Therefore, it is not actionable negligence for one to supply money to a person noticeably intoxicated for purpose of purchasing and drinking whiskey. Henry Grady Hotel Co. v. Sturgis, 70 Ga. App. 379, 28 S.E.2d 329 (1943) (decided under former Ga. L. 1937-38, Ex. Sess., p. 103).

This section does not penalize purchase or reception of beverage by intoxicated person, so a person who furnished money for purpose of purchase would not be guilty as an accessory before the fact because the person would not have procured, counseled, or commanded another to commit a crime. Henry Grady Hotel Co. v. Sturgis, 70 Ga. App. 379, 28 S.E.2d 329 (1943) (decided under former Ga. L. 1937-38, Ex. Sess., p. 103).

This section is not a law regulating businesses which sell alcoholic beverages, and city officials may not rely upon it as a basis for revoking city-issued business liquor licenses. Atlanta Attractions, Inc. v. Massell, 332 F. Supp. 914 (N.D. Ga. 1971), aff'd, 463 F.2d 449 (5th Cir. 1972) (decided under former Ga. L. 1937-38, Ex. Sess., p. 103).

This section does not create a civil cause of action. Keaton v. Kroger Co., 143 Ga. App. 23, 237 S.E.2d 443 (1977) (decided under former Ga. L. 1937-38, Ex. Sess., p. 103).

O.C.G.A. § 3-3-22 did not create a cause of action in favor of an injured adult against the seller of alcoholic beverages when injuries arose from the injured person's intoxication caused by imbibing those alcoholic beverages and when the person was noticeably intoxicated at the time the beverages were purchased. Riverside Enters., Inc. v. Rahn, 171 Ga. App. 674, 320 S.E.2d 595 (1984) (decided under former Ga. L. 1937-38, Ex. Sess., p. 103).

Widow without recovery under Dram Shop Act. — Widow's wrongful death action against a bar that served alcohol to her husband for 8 hours, and who then died in a one-vehicle crash, was barred by the Dram Shop Act, O.C.G.A. § 51-1-40, which barred claims by consumers of alcohol; § 51-1-40 did not violate the separation of powers clause, Ga. Const. 1983, Art. I, Sec. II, Para. III, because the legislature had the authority to enact legislation codifying the common law. Dion v. Y.S.G. Enters., 296 Ga. 185, 766 S.E.2d 48 (2014).

Cited in Flores v. Exprezit! Stores 98-Georgia, LLC, 289 Ga. 466, 713 S.E.2d 368 (2011).

RESEARCH REFERENCES

Am. Jur. 2d. — 45 Am. Jur. 2d, Intoxicating Liquors, §§ 218, 219, 249, 335 et seq., 393 et seq., 448 et seq.

C.J.S. — 48 C.J.S., Intoxicating Liquors, § 484 et seq.

ALR. — Criminal responsibility of one

authorized generally to sell intoxicating liquors for particular illegal sale thereof by employee or agent, 139 A.L.R. 306.

Entrapment to commit offense against laws regulating sales of liquor, 55 A.L.R.2d 1322.

Liability of liquor furnisher under civil damage or dramshop act for injury or death of intoxicated person from wrongful act of a third person, 65 A.L.R.2d 923.

Settlement with or release of person directly liable for injury or death as releasing liability under Civil Damage Act, 78 A.L.R.2d 998.

Liability, under dramshop acts, of one who sells or furnishes liquor otherwise than in operation of regularly established liquor business, 8 A.L.R.3d 1412.

Coverage of policy insuring against liability under dramshop acts, 14 A.L.R.3d 858.

Contributory negligence allegedly contributing to cause of injury as defense in Civil Damage Act proceeding, 64 A.L.R.3d 849.

Proof of causation of intoxication as a prerequisite to recovery under Civil Damage Act, 64 A.L.R.3d 882.

Liability of one who furnishes liquor to another for consumption by third parties, for injury caused by consumer, 64 A.L.R.3d 922.

What constitutes "sale" of liquor in violation of statute or ordinance, 89 A.L.R.3d 551.

Liability of state or municipality in tort for damages arising out of sale of intoxicating liquor by state or municipally operated liquor store or establishment, 95 A.L.R.3d 1243.

Common-law right of action for damage sustained by plaintiff in consequence of sale or gift of intoxicating liquor or habit-forming drug to another, 97 A.L.R.3d 528; 62 A.L.R.4th 16.

Liability of persons furnishing intoxicating liquor for injury to or death of consumer, outside coverage of civil damage acts, 98 A.L.R.3d 1230.

Intoxicating liquors: employer's liability for furnishing or permitting liquor on social occasion, 51 A.L.R.4th 1048.

Social host's liability for injuries incurred by third parties as a result of intoxicated guest's negligence, 62 A.L.R.4th 16.

Tort liability of college or university for injury suffered by student as a result of own or fellow student's intoxication, 62 A.L.R.4th 81.

Passenger's liability to vehicular accident victim for harm caused by intoxicated motor vehicle driver, 64 A.L.R.4th 272.

Validity, construction, and effect of statute limiting amount recoverable in dram shop action, 78 A.L.R.4th 542.

Social host's liability for death or injuries incurred by person to whom alcohol was served, 54 A.L.R.5th 313.

3-3-23. Furnishing to, purchase of, or possession by persons under 21 years of age of alcoholic beverages; identification; serving, or handling by persons under 21 years of age in the course of employment; seller's receipt of false identification; immunity for seeking medical assistance for alcohol related overdose.

(a) Except as otherwise authorized by law:

(1) No person knowingly, directly or through another person, shall furnish, cause to be furnished, or permit any person in such person's employ to furnish any alcoholic beverage to any person under 21 years of age;

(2) No person under 21 years of age shall purchase, attempt to purchase, or knowingly possess any alcoholic beverage;

(3) No person under 21 years of age shall misrepresent such person's age in any manner whatever for the purpose of obtaining illegally any alcoholic beverage;

(4) No person knowingly or intentionally shall act as an agent to purchase or acquire any alcoholic beverage for or on behalf of a person under 21 years of age; or

(5) No person under 21 years of age shall misrepresent his or her identity or use any false identification for the purpose of purchasing or obtaining any alcoholic beverage.

(b) The prohibitions contained in paragraphs (1), (2), and (4) of subsection (a) of this Code section shall not apply with respect to the sale, purchase, or possession of alcoholic beverages for consumption:

(1) For medical purposes pursuant to a prescription of a physician duly authorized to practice medicine in this state; or

(2) At a religious ceremony.

(c) The prohibitions contained in paragraphs (1), (2), and (4) of subsection (a) of this Code section shall not apply with respect to the possession of alcoholic beverages for consumption by a person under 21 years of age when the parent or guardian of the person under 21 years of age gives the alcoholic beverage to the person and when possession is in the home of the parent or guardian and such parent or guardian is present.

(d) The prohibition contained in paragraph (1) of subsection (a) of this Code section shall not apply with respect to sale of alcoholic beverages by a person when such person has been furnished with proper identification showing that the person to whom the alcoholic beverage is sold is 21 years of age or older. For purposes of this subsection, the term "proper identification" means any document issued by a governmental agency containing a description of the person, such person's photograph, or both, and giving such person's date of birth and includes, without being limited to, a passport, military identification card, driver's license, or an identification card authorized under Code Sections 40-5-100 through 40-5-104. "Proper identification" shall not include a birth certificate and shall not include any traffic citation and complaint form.

(e) If such conduct is not otherwise prohibited pursuant to Code Section 3-3-24, nothing contained in this Code section shall be construed to prohibit any person under 21 years of age from:

(1) Dispensing, serving, selling, or handling alcoholic beverages as a part of employment in any licensed establishment;

(2) Being employed in any establishment in which alcoholic beverages are distilled or manufactured; or

(3) Taking orders for and having possession of alcoholic beverages as a part of employment in a licensed establishment.

(f) Testimony by any person under 21 years of age, when given in an administrative or judicial proceeding against another person for violation of any provision of this Code section, shall not be used in any administrative or judicial proceedings brought against such testifying person under 21 years of age.

(g) Nothing in this Code section shall be construed to modify, amend, or supersede Chapter 11 of Title 15.

(h) In any case where a reasonable or prudent person could reasonably be in doubt as to whether or not the person to whom an alcoholic beverage is to be sold or otherwise furnished is actually 21 years of age or older, it shall be the duty of the person selling or otherwise furnishing such alcoholic beverage to request to see and to be furnished with proper identification as provided for in subsection (d) of this Code section in order to verify the age of such person; and the failure to make such request and verification in any case where the person to whom the alcoholic beverage is sold or otherwise furnished is less than 21 years of age may be considered by the trier of fact in determining whether the person selling or otherwise furnishing such alcoholic beverage did so knowingly.

(i) Any retailer or retail consumption dealer, or any person acting on behalf of such retailer or retail consumption dealer, who upon requesting proper identification from a person attempting to purchase alcoholic beverages from such retailer or retail consumption dealer pursuant to subsection (h) of this Code section is tendered a driver's license which indicates that such driver's license is falsified, is not the driver's license of the person presenting it, or that such person is under the age of 21 years, the person to whom said license is tendered shall be authorized to either write down the name, address, and license number or to seize and retain such driver's license and in either event shall immediately thereafter summon a law enforcement officer who shall be authorized to seize the license either at the scene or at such time as the license can be located. The procedures and rules connected with the retention of such license by the officer shall be the same as those provided for the acceptance of a driver's license as bail on arrest for traffic offenses pursuant to Code Section 17-6-11.

(j)(1) As used in this subsection, the term:

(A) "Alcohol related overdose" means an acute condition, including, but not limited to, extreme physical illness, decreased level of consciousness, respiratory depression, coma, mania, or death, resulting from the consumption or use of alcohol or that a layperson would reasonably believe to be resulting from the consumption or use of alcohol for which medical assistance is required.

(B) "Medical assistance" means aid provided to a person believed to be experiencing an alcohol related overdose by a health care professional licensed, registered, or certified under the laws of this state who, acting within his or her lawful scope of practice, may provide diagnosis, treatment, or emergency services relative to such overdose.

(C) "Seeks medical assistance" means accesses or assists in accessing the 9-1-1 system or otherwise contacts or assists in contacting law enforcement or a poison control center or provides care to a person experiencing or believed to be experiencing an alcohol related overdose while awaiting the arrival of medical assistance to aid such person.

(2) Any person who in good faith seeks medical assistance for someone who is experiencing an alcohol related overdose shall not be arrested, charged, or prosecuted for a violation of paragraphs (2) through (5) of subsection (a) of this Code section if the evidence for the arrest, charge, or prosecution of such violation resulted from seeking such medical assistance. Any person who is experiencing an alcohol related overdose and, in good faith, seeks medical assistance for himself or herself or is the subject of such a request shall not be arrested, charged, or prosecuted for a violation of paragraphs (2) through (5) of subsection (a) of this Code section if the evidence for the arrest, charge, or prosecution of such violation resulted from seeking such medical assistance. Any such person shall also not be subject to:

(A) Penalties for a violation of a permanent or temporary protective order or restraining order; or

(B) Sanctions for a violation of a condition of pretrial release, condition of probation, or condition of parole based on a violation of paragraphs (2) through (5) of subsection (a) of this Code section.

(3) Nothing in this subsection shall be construed to limit the admissibility of any evidence in connection with the investigation or prosecution of a crime with regard to a defendant who does not qualify for the protections of paragraph (2) of this subsection or with regard to other crimes committed by a person who otherwise qualifies for protection pursuant to paragraph (2) of this subsection. Nothing in this subsection shall be construed to limit any seizure of evidence or contraband otherwise permitted by law. Nothing herein shall be construed to limit or abridge the authority of a law enforcement officer to detain or take into custody a person in the course of an investigation or to effectuate an arrest for any offense except as provided in paragraph (2) of this subsection.

History. — Code 1933, § 5A-510, enacted by Ga. L. 1981, p. 1269, § 22; Ga. L. 1985, p. 753, §§ 1, 3; Ga. L. 1985, p. 782, §§ 1, 2; Ga. L. 1986, p. 789, §§ 1, 2; Ga. L.

1988, p. 1372, § 1; Ga. L. 1989, p. 1227, § 1; Ga. L. 1997, p. 1085, § 1; Ga. L. 2014, p. 683, § 2A-1/HB 965.

Cross references. — Designation of child who possesses alcoholic beverages as a "child in need of services," § 15-11-2(11). Contributing to delinquency of minor, § 16-12-1. Authority of State Board of Education regarding instructional programs and materials pertaining to effects of alcohol, § 20-2-13. Age of majority, § 39-1-1. Motor carriers prohibited from transporting passengers under age 21 drinking alcohol, § 40-1-108. Parents' right to action against persons selling or furnishing alcoholic beverages to underage child, § 51-1-18. Liability for acts of intoxicated persons, § 51-1-40.

Law reviews. — For article recommending more consistency in age requirements of laws pertaining to welfare of minors, see 6 Ga. St. B. J. 189 (1969).

JUDICIAL DECISIONS

Analysis

General Consideration
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General Consideration

Editor's notes. — In light of the similarity of the statutory provisions, annotations decided prior to the 1988 enactment of O.C.G.A. § 51-1-40, concerning liability for acts of intoxicated persons and under former Code 1993 §§ 58-612 and Ga. L. 1937-38, Ex. Sess., p. 103.

Determining whether buyer is minor. — O.C.G.A. § 3-3-23 does not state that it is the duty of the person furnishing or selling liquor to make a determination as to whether or not the person to whom an alcoholic beverage is sold is a minor. Monteford v. State, 162 Ga. App. 491, 292 S.E.2d 93 (1982).

Person furnishing alcohol to intoxicated minor liable to person injured. — A person who encourages a noticeably intoxicated person under the legal drinking age to become further intoxicated and who furnishes to such intoxicated person more alcohol, knowing that such person will soon be driving a vehicle, is liable in tort to a person injured by the negligence of such intoxicated driver. Sutter v. Hutchings, 254 Ga. 194, 327 S.E.2d 716 (1985).

O.C.G.A. § 51-1-6 does not establish a cause of action based on the violation of O.C.G.A. § 3-3-23. Lumpkin v. Mellow Mushroom, 256 Ga. App. 83, 567 S.E.2d 728 (2002).

No recovery by consumer causing injuries. — A consumer of alcohol cannot recover damages from the provider of the alcohol for injuries caused by the consumer to a third person. Sutter v. Hutchings, 254 Ga. 194, 327 S.E.2d 716 (1985).

This section does not create a civil cause of action. Keaton v. Kroger Co., 143 Ga. App. 23, 237 S.E.2d 443 (1977) (decided under former Code 1993 § 58-612 and Ga. L. 1937-38, Ex. Sess., p. 103).

Knowledge of minor's degree of intoxication. — Evidence was insufficient to show that any breach of duty by a bowling alley relating to alcohol was the proximate cause of the death of a passenger in a car driven by a minor who had been served beer at the bowling alley, where there was no evidence that any employee had knowledge that the minor was intoxicated or would be driving an automobile. Kalpa v. Perczak, 658 F. Supp. 235 (N.D. Ga. 1987).

"Force and arms" was not an element of the offenses of statutory rape, O.C.G.A. § 16-6-3, child molestation, O.C.G.A. § 16-6-4, or furnishing alcohol to a minor, O.C.G.A. § 3-3-23, and since an indictment was couched in the words of the statutes and correctly informed the defendant of the offenses charged, the indictment's allegation of use of force was mere surplusage and was properly disregarded. Colon v. State, 275 Ga. App. 73, 619 S.E.2d 773 (2005).

Liability for subsequent death of under aged drinker. — In a negligence

action, a drinking establishment breached its duty, under O.C.G.A. § 3-3-23(a)(1), to abstain from serving alcohol to an under aged drinker who later died from injuries sustained from falling from a jeep. Lumpkin v. Mellow Mushroom, 256 Ga. App. 83, 567 S.E.2d 728 (2002).

Offenses of furnishing alcohol to minors and maintaining a disorderly house did not merge, because each of the offenses had elements not required by the other and each prohibited a distinct type of criminal conduct. Tate v. State, 198 Ga. App. 276, 401 S.E.2d 549 (1991).

"Giving" defined. — O.C.G.A. § 3-3-23 (c)'s requirement to "give" appears to be satisfied if the parents constructively "give" the alcoholic beverage, by authorizing a person under 21 to consume alcohol in their home. Krebsbach v. State, 209 Ga. App. 474, 433 S.E.2d 649 (1993).

Possession by minor as delinquent or unruly offense. — Possession of alcohol by a minor may be either a delinquent or an unruly offense, and, since it may be a delinquent act, violating a court-ordered probation imposed for such an offense may likewise be a delinquent act. In re C.P., 217 Ga. App. 505, 458 S.E.2d 166 (1995).

County ordinance not preempted. — The effect of the Effingham County ordinance is to prohibit sales to minors under more specific circumstances than does O.C.G.A. § 3-3-23's general prohibition against furnishing alcoholic beverages to minors. In so doing, the Effingham County ordinance only augments and strengthens § 3-3-23, and does not conflict with that section in any manner. Accordingly, the Effingham County ordinance is not preempted by § 3-3-23, and hence is not invalid pursuant to Ga. Const. 1983, Art. III, Sec. VI, Para. IV(a). Grovenstein v. Effingham County, 262 Ga. 45, 414 S.E.2d 207 (1992).

City ordinance was unconstitutional as conflicting with statute. — Trial court erred by rejecting entertainers' challenge under the uniformity clause, Ga. Const. 1983, Art. III, Sec.VI, Para. IV(a), to a city's ordinance prohibiting persons aged 18 to 21 from entering adult entertainment establishments where alcohol was served because the ordinance conflicted with O.C.G.A. §§ 3-3-23 and 3-3-24(a), allowing persons over 18 to work in such establishments. Willis v. City of Atlanta, 285 Ga. 775, 684 S.E.2d 271 (2009).

Administration of alco-sensor test not improper. — Defendant's claim that the administration of an alco-sensor test was improper because a positive alco-sensor of a minor established guilt of the crime of minor in possession of alcohol by consumption under O.C.G.A. § 3-3-23 was incorrect; O.C.G.A. § 3-3-23(a) explicitly provided that underage alcohol consumption was not a crime if the consumption was otherwise authorized by law. Brown v. State, 299 Ga. App. 402, 683 S.E.2d 614 (2009).

Evidence sufficient to support conviction of "underage consumption of alcohol." — See Lee v. State, 201 Ga. App. 827, 412 S.E.2d 563 (1991); Gilbert v. State, 262 Ga. 840, 426 S.E.2d 155 (1993); Lee v. State, 224 Ga. App. 542, 481 S.E.2d 264 (1997); Baggs v. State, 265 Ga. App. 282, 593 S.E.2d 734 (2004).

Defendant's conviction for underage drinking of an alcoholic beverage was upheld on appeal since the police officer smelled alcohol on the defendant's breath in the county wherein the defendant was arrested, which was enough to establish venue, pursuant to O.C.G.A. § 17-2-2(h), and because the defendant never produced evidence that a parent or guardian gave the defendant the beer that the defendant admitted to drinking and that the possession of the beer was in the home and presence of a parent or guardian, the defendant failed to establish the affirmative defense under O.C.G.A. § 3-3-23(a)(2). Burchett v. State, 283 Ga. App. 271, 641 S.E.2d 262 (2007).

No requirement to prove alcohol level. — Crimes of possession of alcoholic beverage by underage person and furnishing alcohol to minor do not require state to prove certain alcohol level in defendants. State v. Ealum, 283 Ga. App. 799, 643 S.E.2d 262 (2007).

Evidence was sufficient to support defendant's conviction for furnishing alcohol to a minor. The victim testified that defendant gave the victim, a minor, alcohol to

General Consideration (Cont'd)

drink in defendant's home, and the victim's parent testified that when the victim returned home, the victim's eyes were bloodshot and the parent could smell the alcohol on the victim's breath. Dockery v. State, 309 Ga. App. 584, 711 S.E.2d 100 (2011).

Exclusion in comprehensive business liability insurance policy applying to sale of intoxicating beverages to a minor or to an intoxicated person excluded coverage for claims based on violations of statute on sales of alcohol to minors and dram shop law and was not void as against public policy. Hartford Ins. Co. v. Franklin, 206 Ga. App. 193, 424 S.E.2d 803 (1992).

Charge erroneously dismissed. — The trial court erroneously dismissed an accusation charging the defendant with possession of alcohol by an underage person in violation of O.C.G.A. § 3-3-23(a)(2) based solely on the defendant's completion of an alcohol education course, without providing notice to the state or the defendant, and without conducting a sentencing hearing, as such impermissibly interfered with the state's right to prosecute and no defect on the face of the accusation existed; moreover, the trial court erred in withdrawing the defendant's no contest plea absent a formal defense motion seeking the plea. State v. Carr, 287 Ga. App. 691, 652 S.E.2d 597 (2007).

Evidence sufficient to support conviction of "underage possession of alcohol". — See Hadaway v. State, 190 Ga. App. 5, 378 S.E.2d 127 (1989); Dickerson v. State, 193 Ga. App. 605, 388 S.E.2d 736 (1989), overruled on other grounds by Zilke v. State, 2016 Ga. LEXIS 422 (Ga. 2016).

Jury Instructions

Refusal of instruction on requirement to prove defendant's knowledge. — When defendant was prosecuted under O.C.G.A. § 3-3-23(a)(1) for serving alcohol to a minor, it was not error for a trial court to refuse to give defendant's proffered instructions on the requirement to prove defendant's knowledge of the age of the person to whom alcohol was served or on mistake of fact because the jury was instructed, inter alia, on the requirement that defendant knowingly served alcohol to a minor, and, pursuant to § 3-3-23(h), that, when a reasonable person could reasonably be in doubt as to whether a person to whom alcohol was served was 21 years old or older, it was a defendant's duty to request identification and that defendant's failure to do so could be considered in determining if defendant knowingly furnished alcohol to a minor. Butler v. State, 298 Ga. App. 129, 679 S.E.2d 361 (2009).

Reversal of conviction for failure to give requested instruction. — Defendant's conviction for serving alcohol to a minor, under O.C.G.A. § 3-3-23(a)(1), was reversed because: (1) the state relied on circumstantial evidence to show that defendant knowingly served alcohol to a minor; and (2) the trial court erroneously refused defendant's request for an instruction on circumstantial evidence under O.C.G.A. § 24-4-6. Butler v. State, 298 Ga. App. 129, 679 S.E.2d 361 (2009).

Cited in Bishop v. Fair Lanes Bowling, Inc., 623 F. Supp. 1195 (N.D. Ga. 1985); Spivey v. Sellers, 185 Ga. App. 241, 363 S.E.2d 856 (1987); Darracott v. State, 191 Ga. App. 675, 382 S.E.2d 664 (1989); Riley v. H & H Operations, Inc., 263 Ga. 652, 436 S.E.2d 659 (1993); In re B.J.G., 234 Ga. App. 285, 506 S.E.2d 449 (1998); Beaman v. City of Peachtree City, 256 Ga. App. 62, 567 S.E.2d 715 (2002); David v. State, 261 Ga. App. 468, 583 S.E.2d 135 (2003); Penny v. McBride, 282 Ga. App. 590, 639 S.E.2d 561 (2006); Beckom v. State, 286 Ga. App. 38, 648 S.E.2d 656 (2007).

Constitutionality

This section is not void for vagueness, as its clear intent is to preclude an individual from furnishing alcoholic beverages to a person less than 19 years of age unless that person is an active member of the military or meets the remaining exceptions to O.C.G.A. § 3-3-23. Kelley v. State, 252 Ga. 208, 312 S.E.2d 328 (1984).

Preferential treatment of military personnel not unconstitutional. — O.C.G.A. § 3-3-23 (purchase of alcoholic beverages) does not violate the equal

treatment clause of the Fourteenth Amendment because it treats 18 year old members of the armed forces differently from all other 18 year olds. Kelley v. State, 252 Ga. 208, 312 S.E.2d 328 (1984).

Distinctions do not violate equal protection. — O.C.G.A. § 3-3-23 is constitutional and does not violate equal protection since the General Assembly made rational distinctions with respect to the possession of alcohol and recognized that young people were more accountable under certain supervised settings or conditions. Hanson v. State, 275 Ga. 470, 569 S.E.2d 513 (2002).

OPINIONS OF THE ATTORNEY GENERAL

Editor's notes. — In light of the similarity of the statutory provisions, opinions rendered under former Code 1933, § 58-612 and Ga. L. 1937-38, Ex. Sess., p. 103 are included in the annotations for this Code section.

The sale of alcoholic beverages to minors is prohibited in this state. 1965-66 Op. Att'y Gen. No. 65-75 (rendered under former Code 1993 §§ 58-612 and Ga. L. 1937-38, Ex. Sess., p. 103).

RESEARCH REFERENCES

Am. Jur. 2d. — 45 Am. Jur. 2d, Intoxicating Liquors, §§ 52, 157, 220 et seq., 243, 324.

C.J.S. — 48 C.J.S., Intoxicating Liquors, §§ 488 et seq., 511.

ALR. — Criminal responsibility of one authorized generally to sell intoxicating liquors for particular illegal sale thereof by employee or agent, 139 A.L.R. 306.

Entrapment to commit offense against laws regulating sales of liquor, 55 A.L.R.2d 1322.

Liability, under dramshop acts, of one who sells or furnishes liquor otherwise than in operation of regularly established liquor business, 8 A.L.R.3d 1412.

Criminal offense of selling liquor to a minor or permitting him to stay on licensed premises as affected by ignorance or mistake regarding his age, 12 A.L.R.3d 991.

Serving liquor to minor in home as unlawful sale or gift, 14 A.L.R.3d 1186.

What constitutes violation of enactment prohibiting sale of intoxicating liquor to minor, 89 A.L.R.3d 1256.

Liability of state or municipality in tort for damages arising out of sale of intoxicating liquor by state or municipally operated liquor store or establishment, 95 A.L.R.3d 1243.

Common-law right of action for damage sustained by plaintiff in consequence of sale or gift of intoxicating liquor or habit-forming drug to another, 97 A.L.R.3d 528; 62 A.L.R.4th 16.

Intoxicating liquors: employer's liability for furnishing or permitting liquor on social occasion, 51 A.L.R.4th 1048.

Social host's liability for injuries incurred by third parties as a result of intoxicated guest's negligence, 62 A.L.R.4th 16.

Social host's liability for death or injuries incurred by person to whom alcohol was served, 54 A.L.R.5th 313.

3-3-23.1. Procedure and penalties upon violation of Code Section 3-3-23.

(a) It is unlawful for any person knowingly to violate any prohibition contained in Code Section 3-3-23, relating to furnishing alcoholic beverages to, and purchasing, attempting to purchase, and possession of alcoholic beverages by, a person under 21 years of age.

(b)(1) Any person convicted of violating any prohibition contained in subsection (a) of Code Section 3-3-23 shall, upon the first conviction,

be guilty of a misdemeanor, except that any person convicted of violating paragraph (2) of subsection (a) of Code Section 3-3-23 shall, upon the first conviction, be guilty of a misdemeanor and shall be punished by not more than six months' imprisonment or a fine of not more than $300.00, or both and except that any person convicted of violating paragraph (4) of subsection (a) of Code Section 3-3-23 shall, upon the first conviction, be guilty of a misdemeanor of a high and aggravated nature.

(2) Any person convicted of violating any prohibition contained in subsection (a) of Code Section 3-3-23 shall, upon the second or subsequent conviction, be guilty of a misdemeanor of a high and aggravated nature, except that any person convicted of violating paragraph (2) of subsection (a) of Code Section 3-3-23 shall, upon the second or subsequent conviction, be guilty of a misdemeanor.

(c) Whenever any person who has not been previously convicted of any offense under this Code section or under any other law of the United States or this or any other state relating to alcoholic beverages pleads guilty to or is found guilty of a violation of paragraph (2) or (3) of subsection (a) of Code Section 3-3-23, the court, without entering a judgment of guilt and with the consent of such person, may defer further proceedings and place such person on probation upon such reasonable terms and conditions as the court may require. The terms of probation shall preferably be such as require the person to undergo a comprehensive rehabilitation program (including, if necessary, medical treatment), not to exceed three years, designed to acquaint such person with the ill effects of alcohol abuse and with knowledge of the gains and benefits which can be achieved by being a good member of society. Upon violation of a term or condition of probation, the court may enter an adjudication of guilt and proceed accordingly. Upon fulfillment of the terms and conditions of probation, the court shall discharge such person and dismiss the proceedings against him or her. Discharge and dismissal under this subsection shall be without court adjudication of guilt and shall not be deemed a conviction for purposes of this subsection or for purposes of disqualifications or disabilities imposed by law upon conviction of a crime. Discharge and dismissal under this subsection may occur only once with respect to any person.

(d)(1) Except as provided for in paragraph (2) of this subsection, a law enforcement officer shall arrest by issuance of a citation, pursuant to Code Section 17-4-23, any person accused of violating paragraph (2), (3), or (5) of subsection (a) of Code Section 3-3-23. The citation shall enumerate the specific charges against the person and either the date upon which the person is to appear and answer the charges or a notation that the person will be later notified of the date upon which the person is to appear and answer the charges. If the

person charged shall fail to appear as required, the judge having jurisdiction of the offense may issue a warrant or other order directing the apprehension of such person and commanding that such person be brought before the court to answer the charges contained within the citation and the charge of his or her failure to appear as required. Nothing in this paragraph shall be construed to invalidate an otherwise valid arrest by citation, summons, or accusation of a person who is intoxicated and who has committed an offense under the laws of this state other than that provided for in Code Section 3-3-23. Nothing in this paragraph shall be construed to restrict the discretion of the prosecuting attorney to use a uniform traffic citation as the formal charging document.

(2) If the arresting officer provided for in paragraph (1) of this subsection has probable cause to believe that a person accused of violating paragraph (2), (3), or (5) of subsection (a) of Code Section 3-3-23 is intoxicated to the extent that he or she poses a danger to himself or herself or to the person or property of another, the arresting officer may effect a custodial arrest of such person in addition to the issuance of a citation, summons, or accusation. The citation, summons, or accusation shall enumerate the specific charges against the person and either the date upon which the person is to appear and answer the charges or a notation that the person will be later notified of the date upon which the person is to appear and answer the charges. In all such cases provided for under this subsection, the provisions of Code Section 17-6-1 shall apply. Nothing in this paragraph shall be construed to invalidate an otherwise valid arrest by citation, summons, or accusation of a person who is intoxicated and who has committed an offense under the laws of this state other than that provided for in Code Section 3-3-23.

(e) A law enforcement officer arresting a person by the issuance of a citation under paragraph (1) of subsection (d) of this Code section may require any such person having a driver's license or instruction permit to deposit such license or permit with the arresting officer in order to ensure the appearance of such person to answer the charges against him or her. The procedures and rules connected with the acceptance of such license or permit and subsequent disposition of the case shall be the same as provided for the acceptance of a driver's license as bail on arrest for traffic offenses pursuant to Code Section 17-6-11.

(f) In addition to any other punishment or sentence, the court may order all persons convicted under subsection (b) of this Code section or sentenced under subsection (c) of this Code section to complete a DUI Alcohol or Drug Use Risk Reduction Program certified by the Department of Driver Services within 120 days of such conviction or sentence. Failure to complete such program within 120 days shall be contempt of

court and shall be punished by a fine of not more than $300.00 or 20 days' imprisonment, or both. If the conviction or sentence results from a charge of unlawful possession of alcoholic beverages while operating a motor vehicle, the court shall report such conviction or sentence to the Department of Driver Services within ten days after conviction or sentencing.

History. — Ga. L. 1981, p. 862, § 3; Code 1933, § 5A-9901.1, enacted by Ga. L. 1981, p. 1269, § 64; Ga. L. 1982, p. 3, § 3; Ga. L. 1985, p. 753, §§ 2, 4; Ga. L. 1985, p. 782, § 3; Ga. L. 1992, p. 2746, § 1; Ga. L. 1997, p. 1085, § 2; Ga. L. 1998, p. 1106, § 1; Ga. L. 2002, p. 415, § 3; Ga. L. 2005, p. 334, § 2-1/HB 501; Ga. L. 2006, p. 206, § 7/HB 1248; Ga. L. 2014, p. 710, § 1-1/SB 298; Ga. L. 2015, p. 60, § 1-1/SB 100; Ga. L. 2015, p. 1212, § 1/SB 160.

Cross references. — Alcohol and drug education programs for persons whose drivers' licenses have been revoked, § 40-5-80 et seq. Probation generally, T. 42, C. 8.

Editor's notes. — Ga. L. 2015, p. 60, § 6-1/SB 100, not codified by the General Assembly, provides, in part, that this Act shall apply to offenses which occur on or after July 1, 2015.

Law reviews. — For article recommending more consistency in age requirements of laws pertaining to welfare to minors, see 6 Ga. St. B. J. 189 (1969).

RESEARCH REFERENCES

Am. Jur. 2d. — 45 Am. Jur. 2d, Intoxicating Liquors, §§ 249 et seq., 261 et seq., 335 et seq., 374 et seq.

C.J.S. — 48 C.J.S., Intoxicating Liquors, §§ 488 et seq., 511, 544 et seq.

3-3-24. Dispensing, serving, selling, or taking orders for alcoholic beverages by persons under 18 years of age.

(a) No person shall allow or require a person in his employment under 18 years of age to dispense, serve, sell, or take orders for any alcoholic beverages.

(b) This Code section shall not prohibit persons under 18 years of age who are employed in supermarkets, convenience stores, breweries, or drugstores from selling or handling alcoholic beverages which are sold for consumption off the premises.

History. — Ga. L. 1958, p. 640, §§ 1, 2; Ga. L. 1974, p. 460, § 1; Ga. L. 1976, p. 409, § 1; Code 1933, § 5A-510, enacted by Ga. L. 1980, p. 1573, § 1; Code 1933, § 5A-511, as redesignated by Ga. L. 1981, p. 1269, § 22.

Cross references. — Designation of person under age 17 who possesses alcoholic beverages as a "child in need of services," § 15-11-2(11). Contributing to delinquency of minor, § 16-12-1. Authority of State Board of Education regarding instructional programs and materials pertaining to effects of alcohol, § 20-2-13. Age of majority, § 39-1-1. Parents' right of action against persons selling or furnishing alcoholic beverages to underage child, § 51-1-18.

Law reviews. — For article recommending more consistency in age requirements of laws pertaining to welfare of minors, see 6 Ga. St. B. J. 189 (1969).

JUDICIAL DECISIONS

City ordinance was unconstitutional as conflicting with statute. — Trial court erred by rejecting entertainers' challenge under the uniformity clause, Ga. Const. 1983, Art. III, Sec.VI, Para. IV(a), to a city's ordinance prohibiting persons aged 18 to 21 from entering adult entertainment establishments where alcohol was served because the ordinance conflicted with O.C.G.A. §§ 3-3-23 and 3-3-24(a), allowing persons over 18 to work in such establishments. Willis v. City of Atlanta, 285 Ga. 775, 684 S.E.2d 271 (2009).

RESEARCH REFERENCES

Am. Jur. 2d. — 45 Am. Jur. 2d, Intoxicating Liquors, §§ 52, 157, 220 et seq., 243, 324.

C.J.S. — 48 C.J.S., Intoxicating Liquors, §§ 488 et seq, 511.

ALR. — Liability of state or municipality in tort for damages arising out of sale of intoxicating liquor by state or municipally operated liquor store or establishment, 95 A.L.R.3d 1243.

3-3-24.1. "Bouncer" defined; admission of under 21 year olds into bar.

(a) As used in this Code section, the term "bouncer" means an individual primarily performing duties related to verifying age for admittance, security, maintaining order, or safety, or a combination thereof.

(b) No person shall allow or require an individual under the age of 21 to serve as a bouncer on a premises or in an establishment where alcoholic beverages are dispensed, served, or sold pursuant to a license issued under this title.

(c) No individual under the age of 21 shall enter or be allowed to enter a bar unless he or she is accompanied by his or her parent, guardian, or spouse who is 21 years of age or older. This subsection shall not apply to an individual while he or she is attending a live musical concert or live presentation of the performing arts for which he or she has paid an admission charge.

History. — Code 1981, § 3-3-24.1, enacted by Ga. L. 2015, p. 578, § 3/HB 152.

Editor's notes. — This Code section formerly pertained to definitions and penalties. The former Code section was based on Code 1933, § 5A-519, enacted by Ga. L. 1981, p. 1269, § 25; Ga. L. 1982, p. 3, § 3; Ga. L. 1994, p. 237, § 2, and was repealed by Ga. L. 2014, p. 187, § 1/HB 737, effective July 1, 2014.

3-3-24.2. Posting of laws regarding sale of alcoholic beverages to underage persons.

(a) Each retail business establishment in this state which is licensed to sell alcoholic beverages of any kind shall post in a conspicuous place or places a notice which shall contain the provisions of the laws of this

state which deal with the unlawful sale of such items to underage persons and the penalties for violating such laws.

(b) The department shall prepare, print, and distribute the notices required by subsection (a) of this Code section. The notices shall contain those provisions of the law of this state which the department determines will best inform the citizens of this state of the relevant provisions of the law regarding sale of alcoholic beverages to underage persons.

(c) The commissioner may take punitive action against violators, up to and including revocation of the state retail dealer's license of any retail business establishment which fails to comply with this Code section. The undertaking of any punitive action allowed under this Code section shall not prohibit criminal prosecution for sale to underage persons.

History. — Code 1933, § 5A-520, enacted by Ga. L. 1981, p. 1269, § 26.

RESEARCH REFERENCES

Am. Jur. 2d. — 45 Am. Jur. 2d, Intoxicating Liquors, §§ 52, 157, 220 et seq., 243, 324.

C.J.S. — 48 C.J.S., Intoxicating Liquors, § 488 et seq.

3-3-25. Sale of or furnishing alcoholic beverages to prisoners or inmates of places of confinement; introduction or possession of alcoholic beverages at Georgia War Veterans Home.

(a) No person knowingly and intentionally shall:

(1) Offer for sale, sell, barter, exchange, give, provide, or furnish alcoholic beverages to any person confined in any jail, penal institution, correctional facility, or other lawful place of confinement; or

(2) Introduce or possess any alcoholic beverages in the buildings of the Georgia War Veterans Home operated for the use and care of disabled war veterans.

(b) Nothing contained in this Code section shall prevent or prohibit:

(1) The administration of alcohol by the staff of the institutions provided for in subsection (a) of this Code section to any prisoner, patient, or lawful inmate in strict compliance with the prescription of a licensed physician; or

(2) The staff members of the Georgia War Veterans Home who maintain their domicile on the grounds of such institution from possessing alcoholic beverages for their own consumption or for that

of their families or persons invited to their homes, except patients or lawful inmates of such institution.

(c) No person shall knowingly allow any other person to violate this Code section.

History. — Ga. L. 1874, p. 92, § 1; Ga. L. 1875, p. 328, § 1; Code 1882, § 1374a; Penal Code 1895, § 437; Penal Code 1910, § 437; Code 1933, § 58-607; Ga. L. 1977, p. 183, § 1; Ga. L. 1977, p. 1247, § 1; Code 1933, § 5A-512, enacted by Ga. L. 1980, p. 1573, § 1; Ga. L. 2015, p. 81, § 2/HB 85.

Cross references. — Restriction on sale of spirituous beverages at or near armories, camps, and other facilities of the organized militia or other place where the force is performing military duty, § 38-2-306. Furnishing of alcoholic beverages to inmates of correctional institutions, § 42-5-18.

JUDICIAL DECISIONS

Sale to persons confined to county correctional institute. — Evidence was wholly insufficient to support the appellant's conviction for selling alcoholic beverages to persons confined to county correctional institute. Baumgartner v. State, 201 Ga. App. 877, 412 S.E.2d 874 (1991).

RESEARCH REFERENCES

ALR. — Nature and elements of offense of conveying contraband to state prisoner, 64 A.L.R.4th 902.

Validity, construction, and application of state statute criminalizing possession of contraband by individual in penal or correctional institution, 45 A.L.R.5th 767.

3-3-26. Allowing or permitting of breaking of packages or drinking of contents thereof on premises.

No retail dealer shall knowingly and intentionally allow or permit the breaking of any package or packages containing alcoholic beverages on the premises where sold or allow or permit the drinking of the contents of such package or packages on the premises where sold. This Code section shall not apply with respect to sales pursuant to a license for consumption on the premises.

History. — Ga. L. 1937-38, Ex. Sess., p. 103, § 9; Code 1933, § 5A-513, enacted by Ga. L. 1980, p. 1573, § 1.

OPINIONS OF THE ATTORNEY GENERAL

Editor's notes. — In light of the similarity of the statutory provisions, decisions rendered under former Code 1933, § 58-1027 are included in the annotations for this Code section.

Under former Code 1933, § 58-1027, it was unlawful to permit sale of spirituous liquors and whiskeys, as defined in former Code 1933, § 58-1011, in unbroken packages or by the drink

to be consumed on premises. 1954-56 Op. Att'y Gen. p. 460 (rendered under former Code 1993 § 58-1027).

3-3-27. Unlawful manufacture, transportation, receipt, possession, sale, or distribution of alcoholic beverages; failure to file proper reports or bonds or pay fees; declaration of apparatus used in unlawful manufacture of alcoholic beverages as contraband; penalties.

(a) No person knowingly and intentionally shall:

(1) Distill, manufacture, or make any distilled spirits, except as permitted by this title;

(2) Manufacture, make, brew, or ferment any malt beverages or wine, except as permitted by this title;

(3) Transport, ship, receive, possess, sell, offer to sell, distribute, or in any manner use any alcoholic beverages or alcohol, except as permitted by this title;

(4) Fail to file any report required by this title;

(5) File any report required by this title that is either intentionally false or fraudulent, or both;

(6) Fail to pay any tax or license fee imposed or authorized by this title unless specifically exempted from such payment;

(7) Fail to have a sufficient bond filed with the commissioner as required by this title; or

(8) Evade or violate, or conspire to evade or violate, any provision of this title.

(b) Any apparatus, article, or other tangible personal property used in the unlawful distillation, manufacture, or making of any alcoholic beverages is declared contraband and shall be destroyed by the officers or agents seizing the property or otherwise disposed of as the commissioner directs.

(c) Any person who violates the provisions of:

(1) Paragraph (1) of subsection (a) of this Code section shall be guilty of a felony and, upon conviction thereof, shall be punished by imprisonment for not less than one year nor more than five years;

(2) Paragraphs (2) through (8) of subsection (a) of this Code section shall be guilty of a misdemeanor.

History. — Code 1933, §§ 5A-514, 5A-9902, enacted by Ga. L. 1980, p. 1573, § 1; Ga. L. 1981, p. 1269, § 65.

Cross references. — Applicability of weapons-forfeiture laws to motor vehicles used in commission of crime, § 17-5-51.

JUDICIAL DECISIONS

Editor's notes. — In light of the similarity of the statutory provisions, annotations decided under former Code 1933, § 58-206, Ga. L. 1935, p. 73, and Ga. L. 1937-38, Ex. Sess., p. 103 are included in the annotations for this Code section.

Evidence sufficient to support conviction of manufacture of nontax-paid distilled spirits. — See Hall v. State, 189 Ga. App. 824, 377 S.E.2d 907 (1989).

Ga. L. 1935, p. 73 clearly provides that it is a misdemeanor to sell malt beverages without having secured a license to do so. Hudon v. North Atlanta, 108 Ga. App. 370, 133 S.E.2d 58 (1963) (decided under Ga. L. 1935, p. 73).

Operation of distillery in dry county a felony. — Person found operating distillery making alcoholic liquors in dry county is guilty of unlawful manufacture of such liquor which is a felony. Shuman v. State, 82 Ga. App. 130, 60 S.E.2d 521 (1950) (decided under Ga. L. 1937-38, Ex. Sess., p. 103).

Not criminal act to violate Department of Revenue regulation. — O.C.G.A. §§ 3-3-9 and 3-3-27(c)(2) provide that it is a misdemeanor to violate a prohibition or provision of the Georgia Alcoholic Beverage Code, but these provisions do not make it a criminal act to violate a Georgia Department of Revenue regulation; although the parties intended to circumvent Ga. Comp. R. & Regs. r. 560-2-2-.38 by issuing corporate stock to an employee's wife, the stock agreement was not illegal or immoral; thus, a trial court erred in voiding the stock interest of the employee's wife, and summary judgment in favor of the corporation in the wife's action for an accounting, dissolution, and other relief was reversed. Edwards v. Grapefields, Inc., 267 Ga. App. 399, 599 S.E.2d 489 (2004).

Irrelevant allegation in indictment mere surplusage. — Where indictment sufficiently charged manufacture of liquor in dry county, allegation that this was done without having first obtained a manufacturer's license as required by law would be treated as mere surplusage. Tanner v. State, 90 Ga. App. 789, 84 S.E.2d 600 (1954) (decided under Ga. L. 1937-38, Ex. Sess., p. 103).

Burden of proof. — It need only be proven that the defendant is guilty of manufacturing one particular brand of liquor, but the state must prove that beyond a reasonable doubt. Hobbs v. State, 98 Ga. App. 816, 107 S.E.2d 253 (1959) (decided under former Code 1933, § 58-206).

Presence at still sufficient to support conviction for manufacturing. — One who is present at a distillery when liquor is being manufactured and personally assists in any way in the manufacture is guilty of manufacturing liquor, and it is immaterial whether or not one owns the distillery, and whether or not one is hired to work there. Tanner v. State, 90 Ga. App. 789, 84 S.E.2d 600 (1954) (decided under Ga. L. 1937-38, Ex. Sess., p. 103).

Presence of person at distillery where intoxicating liquor is being made, and the person's flight on seeing an officer approaching, may, when not satisfactorily explained, authorize the jury to find the person guilty of making such liquor. Smith v. State, 46 Ga. App. 351, 167 S.E. 714 (1933) (decided under former Code 1933, § 58-206).

Presence at still sufficient to support conviction for possession. — Since the presence of the defendant at a place where a still was in operation and the defendant's flight from it would have been sufficient to have convicted the defendant of manufacturing whiskey and since the same rule as to sufficiency must apply where one is charged with possession of whiskey stored at such a distillery, the evidence was sufficient to authorize the jury to find the defendant guilty. Johnson v. State, 79 Ga. App. 210, 53 S.E.2d 498 (1949) (decided under former Code 1933, § 58-206).

Mere presence at still not unlawful. — While it is not unlawful for one to be present at a liquor still while it is in operation, where the jury finds that the defendant was not only at the still, but assisted in its operation in some manner, the defendant's conviction would be authorized. Brown v. State, 87 Ga. App. 244, 73 S.E.2d 502 (1952) (decided under Ga. L. 1937-38, Ex. Sess., p. 103).

One's presence at a still is not alone sufficient to sustain a conviction of manufacturing intoxicating liquor. In addition there must be shown some act or acts essential to illegal manufacture of the liquor. Harris v. State, 119 Ga. App. 684, 168 S.E.2d 337 (1969) (decided under Ga. L. 1937-38, Ex. Sess., p. 103).

Evidence sufficient to support conviction for making whiskey. — Testimony of two witnesses for the state that the defendant admitted to them that the defendant had been helping to make whiskey at the time and place in question, together with undisputed evidence that the defendant was present at the time of the raid at a still then in operation and where whiskey was being made, was sufficient to support the conviction for manufacturing whiskey. Lastinger v. State, 84 Ga. App. 760, 67 S.E.2d 411 (1951) (decided under former Code 1933, § 58-206).

While there was no evidence that whiskey had been distilled, since raid apparently occurred at a time when operation was just beginning and whiskey had not yet had time to run off, evidence was nevertheless sufficient to support verdict of illegal manufacture of alcohol. Bryant v. State, 88 Ga. App. 208, 76 S.E.2d 446 (1953) (decided under former Code 1933, § 58-206).

Evidence that two men, one of whom was the defendant, were found at a still pumping up the tank, that they ran when the officers approached and the defendant was apprehended, and that the still was in operation at the time and over 20 gallons of liquor had already been run is sufficient to sustain a conviction of manufacturing intoxicating liquor. Peebles v. State, 96 Ga. App. 836, 101 S.E.2d 726 (1958) (decided under former Code 1933, § 58-206).

Evidence of making beer sufficient to support conviction. — The act of making intoxicating beer, through fermentation of syrup, cornmeal, and water mixed for that purpose, is of itself an offense as complete and distinct as the further act of distilling from such beer a quantity of alcohol, whiskey, or rum, and failure of evidence to show distillation of any quantity of whiskey does not, therefore, leave conviction of accused without any evidence to show that the accused was guilty of making such beer. Bryant v. State, 88 Ga. App. 208, 76 S.E.2d 446 (1953) (decided under former Code 1933, § 58-206).

Indictment broader than actual offense. — Where evidence was sufficient to authorize the jury to find that the defendant was manufacturing alcoholic beer, an offense under this section, indictment for unlawfully manufacturing alcoholic liquors, spirituous liquors, whiskey, and rum was broad enough in its terms to include that offense, and the verdict finding the defendant guilty and recommending that the defendant be punished as for a misdemeanor was supported by evidence. Cook v. State, 88 Ga. App. 330, 76 S.E.2d 629 (1953) (decided under former Code 1933, § 58-206).

Purchase of vast quantity of sugar admissible in evidence. — The purchase by the defendant a short time prior to the defendant's apprehension of almost 25,000 pounds of sugar in less than two months, being a quantity vastly in excess of the requirements of an average person, but a quantity which suited capacity of a still, was a circumstance, together with others, tending to identify the defendant with illegal manufacture of alcohol and was for that reason admissible in evidence. Bryant v. State, 88 Ga. App. 208, 76 S.E.2d 446 (1953) (decided under former Code 1933, § 58-206).

Evidence of county's wet or dry status unnecessary. — Conviction under former Code 1933, § 58-206 was not without evidence to support it merely because there was no probative evidence that the manufacture and sale of intoxicating beverages had not been legalized in the county of the still's situs under former Code 1933, Ch. 58-10 (see now O.C.G.A. § 3-4-1 et seq.). Peebles v. State, 96 Ga. App. 836, 101 S.E.2d 726 (1958) (decided under former Code 1933, § 58-206).

Jury entitled to disbelieve defendant's contention. — Where the defendant admitted that the defendant manufactured the beer which the sheriff found within curtilage of the defendant's dwelling house and sought to excuse the defendant on the ground that the defendant made it for hog feed, it was within the province of the jury to disbelieve this contention of the defendant. Jackson v. State, 78 Ga. App. 36, 50 S.E.2d 165 (1948) (decided under former Code 1933, § 58-206).

The reasonableness or unreasonableness of an explanation given by the defendant for the defendant's presence at a still was for the jury. Brown v. State, 87 Ga. App. 244, 73 S.E.2d 502 (1952) (decided under former Code 1933, § 58-206).

OPINIONS OF THE ATTORNEY GENERAL

There is no quantity limitation for possessing Georgia-tax-paid distilled spirits in a wet county for personal use, which in this context means for the possessor's own personal consumption, including free gifts to the possessor's family or friends. 1984 Op. Att'y Gen. No. U84-16.

Permissible quantity of out-of-state purchased liquor. — The Code allows possession of up to one-half gallon of distilled spirits purchased by the possessor outside of this state in accordance with the laws of the place where purchased and brought into this state by the purchaser. 1984 Op. Att'y Gen. No. U84-16.

Illegal to possess untaxed liquor. — It is illegal to possess in a wet county any quantity of distilled spirits on which no Georgia alcohol taxes and no alcohol taxes of another state have been paid, including among other things, all distilled spirits illegally manufactured in Georgia. 1984 Op. Att'y Gen. No. U84-16.

Illegal to possess liquor for sale without license. — It is illegal to possess Georgia-tax-paid distilled spirits in a wet county for the purpose of sale when the possessor/seller does not hold a valid license authorizing such sale. 1984 Op. Att'y Gen. No. U84-16.

RESEARCH REFERENCES

Am. Jur. 2d. — 45 Am. Jur. 2d, Intoxicating Liquors, §§ 30 et seq., 192 et seq., 249 et seq., 261 et seq., 335 et seq., 374 et seq.

C.J.S. — 48 C.J.S., Intoxicating Liquors, § 454 et seq. 48A C.J.S., Intoxicating Liquors, §§ 750 et seq., 777 et seq.

ALR. — What amounts to attempt to manufacture intoxicating liquor within criminal law, 22 A.L.R. 225.

Right of state to interfere with shipment of liquor through its territory, 27 A.L.R. 108.

Possessing liquor and transporting liquor as a single offense or as separate offenses, 74 A.L.R. 411.

Constitutionality of statutes or ordinances prohibiting or regulating the sale of articles that may be used in production of alcohol or intoxicating liquor, 84 A.L.R. 714.

Contributory negligence allegedly contributing to cause of injury as defense in Civil Damage Act proceeding, 64 A.L.R.3d 849.

Proof of causation of intoxication as a prerequisite to recovery under Civil Damage Act, 64 A.L.R.3d 882.

Liability of one who furnishes liquor to another for consumption by third parties, for injury caused by consumer, 64 A.L.R.3d 922.

What constitutes such discriminatory prosecution or enforcement of laws as to provide valid defense in state criminal proceedings, 95 A.L.R.3d 280.

3-3-27.1. Report to the commissioner of alcoholic beverages transported into this state.

Except with respect to alcoholic beverages lawfully possessed pursuant to Code Section 3-3-8, no person, common carrier, or contract carrier shall transport any alcoholic beverage into this state unless such transportation is immediately reported to the commissioner. Each such report shall show the consignor and consignee, the quantity delivered, and such other information as required by the commissioner.

History. — Code 1933, § 5A-514.1, enacted by Ga. L. 1981, p. 1269, § 23.

RESEARCH REFERENCES

Am. Jur. 2d. — 45 Am. Jur. 2d, Intoxicating Liquors, § 30 et seq.

C.J.S. — 48 C.J.S., Intoxicating Liquors, § 425 et seq.

3-3-28. Reuse, counterfeiting, or forging of tax stamps.

Reserved. Repealed by Ga. L. 2005, p. 528, § 1/HB 558, effective July 1, 2005.

Editor's notes. — This Code section was based on Ga. L. 1937-38, Ex. Sess., p. 103, § 11; Code 1933, § 5A-515, enacted by Ga. L. 1980, p. 1573, § 1.

3-3-29. Possession, sale, or purchase of distilled spirits for which taxes not paid.

Except as otherwise expressly provided for by law, no person knowingly and intentionally shall possess, sell, or purchase any distilled spirits upon which the taxes imposed by this title have not been paid.

History. — Ga. L. 1937-38, Ex. Sess., p. 103, § 11; Code 1933, § 5A-516, enacted by Ga. L. 1980, p. 1573, § 1; Ga. L. 1993, p. 464, § 1.

Cross references. — Seizure and disposition as contraband of alcoholic beverages on which taxes or license fees not paid, § 3-2-33 et seq.

JUDICIAL DECISIONS

Elements of offense. — In order to convict a person of unlawful possession of liquor, it must be shown that the accused knowingly had, possessed, or controlled intoxicating liquor, and the accused must have done something the accused ought not to have done or omitted to do something the accused ought to have done with reference to the whiskey, and while it is not necessary in order to constitute offense of unlawful possession that the accused should have legal control or that it should have been the accused's property, it is essential that the accused should have power to control it, and if whiskey was placed in the accused's place of business and the accused knew it, the accused acquiesces in the possession and is criminally liable therefore. Kelly v. State, 91 Ga. App. 421, 85 S.E.2d 794 (1955) (decided under former Ga. L. 1937-38, Ex. Sess., p. 103).

To violate this section, one must have in one's possession whiskey on which the tax has not been paid. Pierce v. State, 200 Ga. 384, 37 S.E.2d 201, answer conformed to, 73 Ga. App. 627, 37 S.E.2d 431 (1946) (decided under former Ga. L. 1937-38, Ex. Sess., p. 103).

It is an offense for one to possess whiskey in a container which does not have affixed thereon the necessary tax stamp. Pierce v. State, 73 Ga. App. 627, 37 S.E.2d 431 (1946) (decided under former Ga. L. 1937-38, Ex. Sess., p. 103).

No offense charged where indictment failed to allege whiskey bore no tax stamps. — Where a person is indicted merely for possession of whiskey at place of business for purpose of sale in wet county, the indictment charges no offense, unless it further charges that the whiskey possessed did not bear required stamps. Womack v. State, 60 Ga. App. 761, 5 S.E.2d 96 (1939) (decided under former Ga. L. 1937-38, Ex. Sess., p. 103).

Burden of proof on state. — Where the accusation charges the defendant with the offense of possessing non-tax-paid whiskey in dry county, which is a specific crime, the burden is on the state to show that the whiskey found in possession of the defendant is not tax-paid. Ivey v. State, 84 Ga. App. 72, 65 S.E.2d 282 (1951) (decided under former Ga. L. 1937-38, Ex. Sess., p. 103).

Upon trial of one charged with possession of non-tax-paid whiskey, the burden is upon the state to establish that the whiskey found in the possession of the defendant is not tax-paid. Wilson v. State, 93 Ga. App. 43, 90 S.E.2d 605 (1955) (decided under former Ga. L. 1937-38, Ex. Sess., p. 103).

Admissibility of prior accusation and guilty plea to similar offense. — Mere introduction of accusation with pleas of guilty thereon, embracing same crime for which defendant is on trial, without proof of details as to manner in which previous acts were committed, does not constitute similarity of transactions so connected as to reveal knowledge, plan, or system, and therefore the court erred in admitting, over objections, prior accusation and plea of guilty of defendant, charged with possession of non-tax-paid whiskey, to a previous charge of same offense. Chambers v. State, 76 Ga. App. 269, 45 S.E.2d 724 (1947) (decided under former Ga. L. 1937-38, Ex. Sess., p. 103).

Admissibility of evidence as to smell of liquid. — Where, upon approach of arresting officers, an attempt is made to dispose of liquid identified by witnesses by sense of smell as being whiskey or whiskey poured into water, this is a circumstance which may be considered in prosecution for possession of non-tax-paid whiskey. Corbin v. State, 84 Ga. App. 763, 67 S.E.2d 478 (1951) (decided under former Ga. L. 1937-38, Ex. Sess., p. 103).

Evidence of defendant's possession a rebuttable presumption. — Although proof that illegal liquor was found in the home of the accused, the accused being the head of the household, raises a rebuttable presumption of the accused's possession thereof, proof of which is sufficient to make out a prima facie case, where the premises are occupied by the defendant with others not members of the accused's immediate family, the presumption does not obtain. Brown v. State, 99 Ga. App. 713, 109 S.E.2d 813 (1959) (decided under former Ga. L. 1937-38, Ex. Sess., p. 103).

Evidence that non-tax-paid whiskey was found on premises in possession and control of defendant raises a rebuttable presumption that possession thereof is that of defendant. West v. State, 103 Ga. App. 71, 118 S.E.2d 491 (1961) (decided under former Ga. L. 1937-38, Ex. Sess., p. 103).

Evidence sufficient for conviction for possession. — Where officers, while in search of a whiskey still which had been reported to them, heard nearby noises of bottles being shoved around and clinking together, and where they immediately investigated and found the defendant and the defendant's brother together examining a strainer, and further found over 70 pints of bottled whiskey not having required state revenue stamps, such evidence was sufficient to show control and possession in the defendant and the defendant's brother and to support a verdict of guilty against the defendant. Ridley v. State, 66 Ga. App. 658, 19 S.E.2d 51 (1942) (decided under former Ga. L. 1937-38, Ex. Sess., p. 103).

Jury was authorized to conclude from evidence that defendant was a confederate with the defendant's brother and another individual in illegal possession of non-tax-paid liquor, that a conspiracy existed between the three to violate the liquor law, and that while another individual was driving and owned the car, the 45 gallons of whiskey in the back of the car were in the joint and exclusive possession of the three. Lee v. State, 72 Ga. App. 643, 34 S.E.2d 645 (1945) (decided under former Ga. L. 1937-38, Ex. Sess., p. 103).

Where it appears that defendant is in sole control of premises and public does not have access thereto, where the only tracks from cache of liquor lead to defendant's home and fresh tracks show recent travel from house to liquor, and where there are no other residents in vicinity and cache is not near any road, trail, alley, or path used by others than the defendant and the defendant's household, the evidence, though circumstantial, is sufficient to negate every other reasonable hypothesis save that of guilt of accused. Corbin v. State, 84 Ga. App. 763, 67 S.E.2d 478 (1951) (decided under former Ga. L. 1937-38, Ex. Sess., p. 103).

Testimony of state's witness that the witness found non-tax-paid whiskey in a half-gallon jar on top of some clothes in closet of room occupied by defendant, together with glass of whiskey in kitchen in cabinet that had secret panel behind it was sufficient, coupled with defendant's admission that it was "all her house," to sustain conviction of possessing illegal liquor, although there were other people in house at time arrest was made. Grantley v. State, 90 Ga. App. 735, 84 S.E.2d 98 (1954) (decided under former Ga. L. 1937-38, Ex. Sess., p. 103).

A conviction may be had upon a free and voluntary confession corroborated only by proof of the corpus delicti, and where, upon the trial of one charged with possession of non-tax-paid whiskey, it appears from the evidence that police officers found some five and one-half pints of non-tax-paid liquor in defendant's home, and that defendant freely and voluntarily confessed that the non-tax-paid liquor belonged to the defendant, the jury is authorized to find the defendant guilty as charged. Poythress v. State, 95 Ga. App. 124, 97 S.E.2d 165 (1957) (decided under former Ga. L. 1937-38, Ex. Sess., p. 103).

Where five and one-half gallons of moonshine were found in back seat of long-unused automobile in back yard of petitioner's residence, which yard was fenced with a fence of sufficient construction and security to keep contained therein a dog, and a well-beaten path led from petitioner's back door to automobile, and there was a quantity of used whiskey bottles under back of petitioner's house, evidence was sufficient to authorize conviction for possessing non-tax-paid whiskey. West v. State, 103 Ga. App. 71, 118 S.E.2d 491 (1961) (decided under former Ga. L. 1937-38, Ex. Sess., p. 103).

Evidence insufficient for conviction for possession. — The evidence, being wholly circumstantial, was insufficient to sustain conviction for offense of possessing non-tax-paid whiskey. Weehunt v. State, 80 Ga. App. 368, 56 S.E.2d 148 (1949) (decided under former Ga. L. 1937-38, Ex. Sess., p. 103).

Whiskey found by a trail or ditch or in bushes at some distance from the house, and especially when on property not under control of the defendant, has been held insufficient as the foundation of a conviction. Freeman v. State, 84 Ga. App. 757, 67 S.E.2d 314 (1951) (decided under former Ga. L. 1937-38, Ex. Sess., p. 103).

Where the conviction for possessing non-tax-paid whiskey depends entirely upon the circumstance of liquor being found on premises belonging to or under control of the defendant, and where such liquor is located by a public path, in a public part of building, in an unenclosed field by a travelled road or alley, or other circumstances appear not negating the possibility that a person other than the defendant might have had the opportunity to conceal the liquor in place where it was found, a conviction is unauthorized. Corbin v. State, 84 Ga. App. 763, 67 S.E.2d 478 (1951) (decided under former Ga. L. 1937-38, Ex. Sess., p. 103).

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Editor's notes. — In light of the similarity of the statutory provisions, opinions rendered under former Ga. L. 1937-38, Ex. Sess., p. 103 are included in the annotations for this Code section.

Person in possession of untaxed liquor in wet (now any) county is not relieved of state tax thereon by its seizure as contraband and by criminal prosecution. 1945-47 Op. Att'y Gen. p. 377 (rendered under former Ga. L. 1937-38, Ex. Sess., p. 103).

RESEARCH REFERENCES

Am. Jur. 2d. — 45 Am. Jur. 2d, Intoxicating Liquors, §§ 47 et seq., 90 et seq., 168 et seq., 193, 194, 318 et seq, 374 et seq.

C.J.S. — 48 C.J.S., Intoxicating Liquors, §§ 454 et seq., 509, 520 et seq.

ALR. — Right to arrest without a warrant for unlawful possession or transportation of intoxicating liquor, 44 A.L.R. 132.

What constitutes "sale" of liquor in violation of statute or ordinance, 89 A.L.R.3d 551.

3-3-30. Storage and distribution of alcoholic beverages by corporations granted the privilege of establishing, operating, and maintaining foreign trade zones.

(a) Any provision of this title to the contrary notwithstanding, any public or private corporation which has been granted the privilege of establishing, operating, and maintaining a foreign trade zone by the Foreign Trade Zones Board in accordance with an act of Congress, approved June 18, 1934, entitled "An Act to provide for the establishment, operation and maintenance of foreign trade zones in ports of entry of the United States, to expedite and encourage foreign commerce and for other purposes," may store alcoholic beverages, until the termination of such privilege, within the boundaries of such foreign trade zone. Any public or private corporation which has been granted the privilege of establishing, operating, or maintaining a foreign trade zone may also distribute alcoholic beverages to destinations outside this state.

(b) Nothing contained in this Code section shall authorize the sale at retail of any alcoholic beverages within the boundaries of a foreign trade zone if the sale would otherwise be prohibited by the laws of this state.

History. — Code 1933, § 5A-518, enacted by Ga. L. 1981, p. 1269, § 24.

Cross references. — Foreign trade zones generally, T. 52, C. 10.

U.S. Code. — Foreign trade zones, referred to in this Code section, is codified at 19 U.S.C. § 81a et seq.

RESEARCH REFERENCES

Am. Jur. 2d. — 45 Am. Jur. 2d, Intoxicating Liquors, §§ 30 et seq., 98 et seq., 192 et seq.

C.J.S. — 48 C.J.S., Intoxicating Liquors, § 425 et seq.

3-3-31. Legislative findings.

The General Assembly finds, determines, and declares that the direct shipment of alcoholic beverages by persons in the business of selling alcoholic beverages in other states or countries to residents of this state in violation of this title poses a serious threat to the public health, safety, revenue, and the economy of Georgia. The General Assembly further finds, determines, and declares that the present penalties for illegal direct shipments of alcoholic beverages to residents of this state are inadequate to ensure compliance with the provisions of this title and that the measures provided for in Code Section 3-3-32 are fully consistent with the powers conferred upon the State of Georgia by the Twenty-first Amendment to the Constitution of the United States.

History. — Code 1981, § 3-3-31, enacted by Ga. L. 1997, p. 399, § 1; Ga. L. 1998, p. 128, § 3.

Cross references. — Creation of limited exceptions, § 3-6-30.

3-3-32. Shipment of alcoholic beverages into state by nonresident, without license, who is in business of selling alcoholic beverages in another state.

(a) Any person in the business of selling alcoholic beverages in another state or country who knowingly and intentionally ships or causes to be shipped any alcoholic beverages directly to any resident of this state who does not hold a valid manufacturer's, importer's, broker's, or wholesaler's license issued by the State of Georgia is in violation of this chapter.

(b) Any person found by the commissioner to be in violation of subsection (a) of this Code section shall be issued a cease and desist order by certified mail or statutory overnight delivery. Any person who, after receiving a cease and desist order, is found by the commissioner to be in violation of subsection (a) of this Code section for a second or subsequent occurrence, within a two-year period of the first violation, shall be guilty of a felony and, upon conviction thereof, shall be punished by a fine not to exceed $10,000.00. This subsection shall not apply to any person who has registered brands for sale with the commissioner pursuant to Code Section 3-4-152, 3-5-31 or 3-6-22 and who shall have current licenses and posted adequate surety bonds as required by this title; provided, however, violations of the provisions of subsection (a) of this Code section shall constitute grounds for the

commissioner to take appropriate administrative action against such person, including suspension or cancellation of license and forfeiture of bonds.

(c) This Code section shall not apply to the direct shipment of sacramental alcoholic beverages to bona fide religious organizations as authorized by the commissioner.

History. — Code 1981, § 3-3-32, enacted by Ga. L. 1997, p. 399, § 1; Ga. L. 1998, p. 128, § 3; Ga. L. 2000, p. 1589, § 3.

Editor's notes. — Ga. L. 2000, p. 1589, § 16, not codified by the General Assembly, provides that the amendment to this Code section is applicable with respect to notices delivered on or after July 1, 2000.

3-3-33. Vaporized form of alcoholic beverages and alcohol vaporizing devices prohibited.

(a) As used in this Code section, the term:

(1) "Alcohol vaporizing device" means any device, machine, or process that mixes any alcoholic beverages with pure oxygen or other gas to produce a vaporized product for the purpose of consumption by inhalation.

(2) "Licensed premises" means any premises in which alcoholic beverages are sold or dispensed for consumption on the premises and shall include any premises which are required by law to be licensed to sell or dispense alcoholic beverages for consumption on the premises.

(3) "Operator" means an owner, license holder, operator, manager, or person in charge of any licensed premises.

(b)(1) No person shall purchase, offer for sale or use, sell, or use any vaporized form of an alcoholic beverage produced by an alcohol vaporizing device. This paragraph shall not apply to a product that contains alcohol as otherwise lawfully prescribed by a health care practitioner who is licensed under Title 43.

(2) No person shall own or possess any alcohol vaporizing device, including but not limited to any machine known as an Alcohol Without Liquid (AWOL) machine. This paragraph shall not apply to any nebulizer or atomizer used to supply a product that contains alcohol as otherwise lawfully prescribed by a health care practitioner who is licensed under Title 43.

(c) No operator shall keep or allow to be kept on the licensed premises thereof any vaporized form of an alcoholic beverage produced by an alcohol vaporizing device.

(d) Any person convicted of a violation of this Code section shall be guilty of a misdemeanor. Any person convicted of a violation of this Code

section involving the offer for sale or use to a person under the age of 21 shall be guilty of a misdemeanor, except that upon the second or subsequent conviction such person so convicted shall be guilty of a misdemeanor of a high and aggravated nature.

History. — Code 1981, § 3-3-33, enacted by Ga. L. 2008, p. 346, § 1/HB 1066.

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Fingerprinting required for violators. — Offenses arising under O.C.G.A. § 3-3-33 are designated as offenses for which those charged are to be fingerprinted. 2009 Op. Att'y Gen. No. 2009-1.

3-3-34. "Powdered alcohol" defined; prohibition; exception; penalty.

(a) For purposes of this Code section, the term "powdered alcohol" means a powdered or crystalline substance that contains any amount of alcohol for direct use or reconstitution.

(b)(1) No person shall manufacture, use, offer for use, purchase, offer to purchase, sell, offer to sell, or possess powdered alcohol.

(2) No person licensed or issued a permit pursuant to this title shall use powdered alcohol as an alcoholic beverage or use powdered alcohol to create an alcoholic beverage.

(c) This Code section shall not apply to the use of powdered alcohol for bona fide research purposes by a:

(1) Health care provider that operates primarily for the purpose of conducting scientific research;

(2) State institution;

(3) Private college or university; or

(4) Pharmaceutical or biotechnology company.

(d) Any person convicted of a violation of this Code section shall be guilty of a misdemeanor.

(e) Any violation of this Code section by a person licensed or issued a permit pursuant to this title shall constitute grounds for the suspension and revocation of any and all of such licenses and permits issued to such person.

History. — Code 1981, § 3-3-34, enacted by Ga. L. 2015, p. 578, § 4/HB 152.

ARTICLE 3

PROHIBITED CONDUCT ON LICENSED PREMISES

3-3-40 through 3-3-46.

Repealed by Ga. L. 2019, p. 919, § 18-1/HB 553, effective July 1, 2019.

Editor's notes. — This article consisted of Code Sections 3-3-40 through 3-3-46, relating to prohibited conduct on licensed premises, and was based on Code 1981, §§ 3-3-40 through 3-3-46, enacted by Ga. L. 1988, p. 212, § 1; Ga. L. 2015, p. 317, § 3/SB 63.

CHAPTER 4

DISTILLED SPIRITS

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3-4-2. Applicability of chapter to ethyl alcohol used for certain purposes.
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State License Requirements and Regulations for Manufacture, Distribution, and Package Sales

3-4-20. Levy and amount of state occupational license tax; application for license.
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3-4-24.1. Distiller's license authorizing manufacture of distilled spirits from agricultural products other than perishable fruits; storage.
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3-4-24.3. Licensing for the manufacture or distribution of distilled spirits on local level.
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3-4-26. Display of advertisement or information regarding prices of distilled spirits in visible places; sales below cost prohibited; exceptions authorized.
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Article 3

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3-4-46. Procedure for conduct of election for purpose of nullifying previous election result.
3-4-47. Adoption of resolutions and ordinances; determination of location of retail or businesses licensed by local governing authorities.
3-4-48. Maximum annual license fees for municipal or county licenses.
3-4-49. Municipalities in wet counties.
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3-4-51. Redesignated [Repealed].

Article 4

Excise Taxation

Part 1

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3-4-60. Levy and amount of tax.
3-4-61. Payment of tax; report.

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3-4-80. Levy of tax on sale of distilled spirits by the package authorized; rate of tax; manner of imposition; imposition of tax by both county and municipality located within county.

Article 5

Sales by the Drink

Part 1

Authorization

3-4-90. Authorization by counties or municipalities of issuance of licenses for sale of distilled spirits by the drink generally; procedure.
3-4-91. Procedure for authorization of sale in counties and municipalities in which package sales lawful; procedure for nullifying prior approval and authorization of sales by the drink.
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3-4-93. Municipalities in wet counties.

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3-4-110. Adoption of local rules and regulations governing issuance of licenses and conduct of licensees.
3-4-111. Sale by wholesalers to licensees; purchase by licensees from wholesalers; declaration of contraband.
3-4-111.1. Occupational license tax upon retail consumption dealers; annual payment; application.

Part 3

Excise Taxation

3-4-130. Imposition of tax by municipalities authorized; rate of tax.
3-4-131. Imposition of tax by counties authorized; rate of tax; taxation by both county and municipality located within county.
3-4-132. Manner of imposition, payment, and collection of tax.
3-4-133. Allowance and reimbursement to dealers collecting tax of percentage of tax due.

Article 6

Designation of Sales Territories and Wholesalers for Out-of-State Brands

3-4-150. Short title.
3-4-151. Purposes and policies.
3-4-152. Submission of labels; designation of sales territories and exclusive wholesale distributors; approval by commissioner.
3-4-153. Regulations.

Article 7

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3-4-160. Municipalities in wet counties.

Article 8

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3-4-180. Tastings of distilled spirits; definitions; general provisions; prohibited sales; administration [Repealed].

Administrative rules and regulations. — Wholesaler of distilled spirits, Official Compilation of the Rules and Regulations of the State of Georgia, Rules of Department of Revenue, Alcohol and Tobacco Tax Unit, Subject 560-2-4.

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Editor's notes. — In light of the similarity of the statutory provisions, annotations decided under former Ga. L. 1937-38, Ex. Sess., p. 103 are included in the annotations for this Code section.

JUDICIAL DECISIONS

Legislative intent. — It was intention of the legislature in passing Ga. L. 1937-38, Ex. Sess., p. 103, to provide that voters of any dry county should have the right to determine whether the county should remain dry or become wet, and that, regardless of how that election went, voters should have an opportunity, after expiration of two years, to again determine whether county should be wet or dry. Wharton v. State, 67 Ga. App. 545, 21 S.E.2d 258 (1942) (decided under former Ga. L. 1937-38, Ex. Sess., p. 103).

ARTICLE 1

GENERAL PROVISIONS

3-4-1. Definitions.

As used in this chapter, the term:

(1) "Barrel" means 53 gallons.

(2) "Denatured alcohol" or "denatured distilled spirits" means alcohol, as defined in Code Section 3-1-2, to which denaturants have been added in order to render the alcohol unfit for beverage purposes or internal human medicinal use. As used in this paragraph, the term "denaturants" means materials authorized for use pursuant to Chapter 1 of Title 27 of the Code of Federal Regulations, as the same may now or hereafter be amended.

(3) "Distiller" means a manufacturer.

(4) "Fruit grower" means any person who grows peaches, apples, pears, grapes, or other perishable fruits in this state and who manufactures distilled spirits from the perishable fruits grown in this state.

History. — Code 1933, § 5A-2101, enacted by Ga. L. 1980, p. 1573, § 1; Ga. L. 1981, p. 1269, § 27; Ga. L. 2017, p. 406, § 1/SB 85.

The 2017 amendment, effective September 1, 2017, added paragraph (1); and redesignated former paragraphs (1) through (3) as present paragraphs (2) through (4), respectively.

RESEARCH REFERENCES

Am. Jur. 2d. — 45 Am. Jur. 2d, Intoxicating Liquors, § 3 et seq.

C.J.S. — 48 C.J.S., Intoxicating Liquors, § 1 et seq.

3-4-2. Applicability of chapter to ethyl alcohol used for certain purposes.

(a) This chapter shall not apply to ethyl alcohol intended for use or used for the following purposes:

(1) For scientific, chemical, mechanical, industrial, medicinal, and culinary purposes;

(2) For use by those authorized to procure ethyl alcohol tax free, as provided by federal law;

(3) In the manufacture of denatured alcohol or denatured distilled spirits produced and used as provided by federal law;

(4) In the manufacture of patented, patent, proprietary, medicinal, pharmaceutical, antiseptic, toilet, scientific, chemical, mechanical, and industrial preparations or products unfit for beverage purposes; or

(5) In the manufacture of flavoring extracts and syrups unfit for beverage purposes.

(b) Nothing contained in subsection (a) of this Code section shall prohibit the commissioner from promulgating reasonable rules and regulations with regard to ethyl alcohol intended for use or used for any of the above-mentioned purposes in order to ensure proper enforcement of this title.

History. — Ga. L. 1937-38, Ex. Sess., p. 103, § 13; Code 1933, § 5A-2102, enacted by Ga. L. 1980, p. 1573, § 1; Ga. L. 1982, p. 3, § 3.

Administrative rules and regulations. — Ethyl alcohol and license requirement, Official Compilation of the Rules and Regulations of the State of Georgia, Rules of Department of Revenue, Alcohol and Tobacco Tax Unit, Non-Beverage Alcohol, § 560-2-14.01.

RESEARCH REFERENCES

Am. Jur. 2d. — 45 Am. Jur. 2d, Intoxicating Liquors, § 3 et seq.

C.J.S. — 48 C.J.S., Intoxicating Liquors, § 1 et seq.

ALR. — Forbidding prescription, or restricting the amount, of intoxicating liquor for medicinal purposes, 49 A.L.R. 588.

3-4-3. Retail dealer's signs; signs advertising Georgia lottery.

(a) Except as otherwise provided in subsection (b) of this Code section, a licensed retail dealer in distilled spirits may display at the

licensee's place of business unilluminated signs, using letters not larger than eight inches in height, flat against the outside of the building, below the roof line, bearing the words "liquor," "beer," "wine," "champagne," or any combination thereof, and "package store" or "liquor store," together with the trade name of the retail dealer. In addition to such signs flat against the outside of the building, the retail dealer may display at a location on the tract of property upon which the business is located, but not affixed to the building, one unilluminated sign using letters not larger than eight inches in height bearing the words "package store" or "liquor store" and the trade name of the retail dealer. Subject to any more restrictive size limitations contained in the ordinances of the political subdivision in which the place of business is located, a sign not affixed to the building may be no larger than 16 square feet in area.

(b) Notwithstanding the provisions of subsection (a) of this Code section, the commissioner shall be authorized by rules and regulations to permit licensed retail dealers in distilled spirits to display signs inside and outside their retail establishments which advertise or promote any lottery authorized under Chapter 27 of Title 50, the "Georgia Lottery for Education Act," provided that such signs are in compliance with said Chapter 27 of Title 50 and the rules and regulations of the board of directors of the Georgia Lottery Corporation.

History. — Code 1981, § 3-4-3, enacted by Ga. L. 1987, p. 623, § 1; Ga. L. 1993, p. 1073, § 1.

RESEARCH REFERENCES

Am. Jur. 2d. — 45 Am. Jur. 2d, Intoxicating Liquors, §§ 196 et seq., 239.

C.J.S. — 48 C.J.S., Intoxicating Liquors, § 439.

ARTICLE 2

STATE LICENSE REQUIREMENTS AND REGULATIONS FOR MANUFACTURE, DISTRIBUTION, AND PACKAGE SALES

Cross references. — Occupational taxes generally, T. 48, C. 13.

3-4-20. Levy and amount of state occupational license tax; application for license.

(a) An annual occupational license tax is imposed upon each distiller, manufacturer, broker, importer, wholesaler, fruit grower, and retail dealer of distilled spirits in this state, as follows:

(1) Upon each distiller and manufacturer ..... $ 1,000.00

(2) Upon each wholesale dealer	1,000.00
(3) Upon each importer	1,000.00
(4) Upon each fruit grower	500.00
(5) Upon each broker	100.00
(6) Upon each retail dealer	100.00
(7) Upon each special event use permit applicant	100.00

(b) An annual occupational license tax shall be paid for each place of business operated. An application for the applicable license required pursuant to this title along with the payment of the tax required by subsection (a) of this Code section shall be submitted to the department immediately upon assuming control of the place of business and annually thereafter for so long as the business is operated.

History. — Ga. L. 1937-38, Ex. Sess., p. 103, §§ 5, 9; Ga. L. 1972, p. 207, § 4; Ga. L. 1974, p. 1125, § 1; Ga. L. 1979, p. 923, § 2; Code 1933, § 5A-2501, enacted by Ga. L. 1980, p. 1573, § 1; Ga. L. 1981, p. 1269, § 30; Ga. L. 2012, p. 827, § 2/HB 1066.

JUDICIAL DECISIONS

This section authorizes the licensing by state of distilling and manufacturing only in those counties which have voted in favor of taxing and controlling alcoholic liquors. A license cannot, therefore, be lawfully issued and granted by the state to a person to manufacture, sell, or distribute alcohol or distilled spirits in a dry county. It is, therefore, no penal offense, separate from the unlawful manufacture of alcoholic liquor, for a person to operate a whiskey still and manufacture such alcoholic liquor or alcohol without obtaining a license to do so from the state. Shuman v. State, 82 Ga. App. 130, 60 S.E.2d 521 (1950).

A person cannot be legally licensed by state to manufacture alcoholic liquors in dry county; hence, one found operating illicit liquor still in dry county cannot be convicted of operating a distillery without a license in violation of this section. Odum v. State, 82 Ga. App. 134, 60 S.E.2d 522 (1950); Tanner v. State, 90 Ga. App. 789, 84 S.E.2d 600 (1954).

Where commodity may be legally sold under a license, indictment alleging unlawful sale of such commodity must negate fact that accused had a license, under terms of which sale would have been legal. Thus, an indictment for unlawful sale of intoxicating liquors which fails to allege that either accused or purchasers did not have a distillers' license is insufficient. Capitol Distrib. Co. v. State, 83 Ga. App. 303, 63 S.E.2d 451 (1951).

RESEARCH REFERENCES

Am. Jur. 2d. — 45 Am. Jur. 2d, Intoxicating Liquors, §§ 168 et seq., 175 et seq.

C.J.S. — 48 C.J.S., Intoxicating Liquors, §§ 400 et seq., 409 et seq.

ALR. — Civil liability of one who takes out license for sale of intoxicating liquor for benefit of another, 2 A.L.R. 1516.

Exacting for intoxicating liquor license an amount in excess of cost of regulation in order to limit the number and deter-

mine the character and responsibility of licensees, 103 A.L.R. 327.

Intoxicating liquor business as subject to a tax imposed generally on occupations or business, 117 A.L.R. 686.

Intoxicating liquor license as subject to execution or attachment, 148 A.L.R. 492.

Power to limit the number of intoxicating liquor licenses, 163 A.L.R. 581.

Change in law pending application for permit or license, 169 A.L.R. 584.

Right to withdraw application to procure or to transfer liquor license, 73 A.L.R.2d 1223.

Liquor license as subject to execution or attachment, 40 A.L.R.4th 927.

3-4-21. Prohibition of holding or having beneficial interest in more than two retail dealer licenses.

(a) No person shall be issued more than two retail dealer licenses, nor shall any person be permitted to have a beneficial interest in more than two retail dealer licenses issued under this chapter, regardless of the degree of such interest.

(b) For purposes of this Code section:

(1) The term "person" shall include all members of a retail dealer licensee's family; and the term "family" shall include any person related to the holder of the license within the first degree of consanguinity and affinity as computed according to the canon law.

(2) The beneficiaries of a trust shall be considered to have a beneficial interest in any business forming a part of the trust estate.

(c) Nothing contained in this Code section shall prohibit the reissuance of a valid retail dealer license if the license has been:

(1) Held prior to the creation of any of the above relationships by marriage; or

(2) Held prior to April 3, 1978.

History. — Ga. L. 1978, p. 1376, § 1; Code 1933, § 5A-2502, enacted by Ga. L. 1980, p. 1573, § 1.

Administrative rules and regulations. — Retailer/Retail consumption dealers, Official Compilation of the Rules and Regulations of the State of Georgia, Rules of Department of Revenue, Alcohol and Tobacco Tax Unit, Subject 560-2-3.

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Leasing third liquor store to another licensee. — Subsection (a) of O.C.G.A. § 3-4-21 prohibits the holder of two retail liquor licenses not only from holding any other such licenses but also from having any financial, contractual, or other business interest in another retail liquor store and thus from leasing a third location for which one holds a beer or wine license to another retail liquor licensee or retail liquor business. 1984 Op. Att'y Gen. No. 84-47.

"Person" defined. — "Person," as the term is used in this section, means a licensee, a license applicant, and any person having any degree of interest in a retail liquor store. 1979 Op. Att'y Gen. No. 79-59.

Prohibition as to family members. — This section prohibits holding more than two retail liquor licenses and having an interest in more than two retail package stores by family members related within first degree of consanguinity and affinity as computed according to canon law; this class of relations would include the following: A person's spouse, parents, stepparents, parents-in-law, brothers and sisters, stepbrothers and stepsisters, brothers-in-law and sisters-in-law, children, stepchildren, and children-in-law. 1979 Op. Att'y Gen. No. 79-59.

Computing degrees of consanguinity and affinity. — Degrees of consanguinity and affinity are to be computed according to the canon law method. 1979 Op. Att'y Gen. No. 79-59.

RESEARCH REFERENCES

Am. Jur. 2d. — 45 Am. Jur. 2d, Intoxicating Liquors, § 104 et seq.

C.J.S. — 48 C.J.S., Intoxicating Liquors, § 175.

ALR. — Civil liability of one who takes out license for sale of intoxicating liquor for benefit of another, 2 A.L.R. 1516.

Power to limit the number of intoxicating liquor licenses, 124 A.L.R. 825; 163 A.L.R. 581.

3-4-21.1. Requirement for retail license; application of existing license to new location.

(a) A separate retail license shall be required for each place of business.

(b) In cases where a retail licensee is moving his package sales business to a different location, he shall be authorized to make application to have the license for the location previously occupied apply to the new location. Anything contained in Code Section 3-4-21 to the contrary notwithstanding, if the retail licensee complies with all other requirements of law, the commissioner shall authorize the existing license to apply to the new location.

History. — Code 1933, § 5A-2502.1, enacted by Ga. L. 1982, p. 1463, § 3; Code 1981, § 3-4-21.1, enacted by Ga. L. 1982, p. 1463, § 10.

RESEARCH REFERENCES

Am. Jur. 2d. — 45 Am. Jur. 2d, Intoxicating Liquors, §§ 90 et seq., 104 et seq., 144 et seq.

C.J.S. — 48 C.J.S., Intoxicating Liquors, §§ 63 et seq., 138 et seq.

3-4-22. Filing of bonds by applicants for licenses generally.

(a) All applicants for all licenses issued pursuant to this chapter shall file with the commissioner, along with each initial application, a bond:

(1) Conditioned to pay all sums which may become due by the applicant to this state as taxes, license fees, or otherwise, arising out of the operation of the business for which licensure is sought; and

(2) Conditioned to pay all penalties which may be imposed upon the applicant for failure to comply with the laws and rules and regulations pertaining to distilled spirits.

The surety for the bonds shall be a surety company licensed to do business in this state, and the bonds shall be in such form as may be required by the commissioner and may be for a term of up to five calendar years.

(b) The bonds shall be in the following calendar year amounts:

(1) For distillers and manufacturers, $10,000.00;

(2) For wholesale dealers and importers, $5,000.00; and

(3) For retail dealers and brokers, $2,500.00.

(c) All applicants for annual renewal of licenses issued pursuant to this chapter, other than retail licenses, shall file an annual bond or have a multiyear bond on file with the department that extends at least through the end of the calendar year for which renewal is sought. Such bonds shall meet the same conditions as those filed with the initial application.

History. — Ga. L. 1937-38, Ex. Sess., p. 103, § 10; Ga. L. 1978, p. 1426, § 1; Code 1933, § 5A-2503, enacted by Ga. L. 1980, p. 1573, § 1; Ga. L. 1981, p. 1269, § 31; Ga. L. 2006, p. 206, § 8/HB 1248; Ga. L. 2014, p. 759, § 1/SB 240.

RESEARCH REFERENCES

Am. Jur. 2d. — 1 Am. Jur. 2d, Abatement, Survival, and Revival, § 73 et seq. 45 Am. Jur. 2d, Intoxicating Liquors, § 162 et seq.

C.J.S. — 48 C.J.S., Intoxicating Liquors, § 388 et seq.

ALR. — Validity of statute or ordinance which requires liability or indemnity insurance or bond as condition of license for conducting business or profession, 120 A.L.R. 950.

3-4-23. Certificate of residence required for retail dealer's license; intention of Code section.

(a) No retail dealer's license shall be issued to any person unless an application is filed with the commissioner, accompanied by a certificate by the judge of the probate court of the county of the applicant's residence certifying that the applicant has been a bona fide resident of the county or municipality for at least 12 months immediately preceding the application and is a resident of the county or municipality where distilled spirits may be legally sold under this chapter.

(b) It is the purpose and intention of this Code section to prevent the sale of distilled spirits in any county or municipality other than those where distilled spirits may be legally sold under this chapter.

History. — Ga. L. 1937-38, Ex. Sess., p. 103, § 24; Ga. L. 1972, p. 207, § 10; Code 1933, § 5A-2504, enacted by Ga. L. 1980, p. 1573, § 1; Ga. L. 1981, p. 1269, § 32; Ga. L. 2006, p. 206, § 9/HB 1248.

JUDICIAL DECISIONS

License to be in own name. — Under the statutes, a person, firm, or corporation in this state cannot lawfully engage in liquor business by proxy or under the name of another, but any and all persons, firms, or corporations who desire to engage therein must first obtain a license so to do in their own name. Smith v. Nix, 206 Ga. 403, 57 S.E.2d 275 (1950).

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The word "or" (now "and") used in this section is construed to have a conjunctive, not a disjunctive, meaning; the county ordinary (now judge of probate court) where applicant resides must certify both that applicant has resided in particular county of state for the last 12 months and that county is wet. 1967 Op. Att'y Gen. No. 67-313.

RESEARCH REFERENCES

Am. Jur. 2d. — 45 Am. Jur. 2d, Intoxicating Liquors, § 117.

C.J.S. — 48 C.J.S., Intoxicating Liquors, § 174.

3-4-24. Issuance to fruit growers of license to manufacture distilled spirits; storage and disposition; limitations upon manufacture and sale; issuance of manufacturer's or distiller's license in certain counties or municipalities; tasting room limitations for certain licensees.

(a) The commissioner may issue a license to a fruit grower authorizing the grower to manufacture distilled spirits from perishable fruits grown in this state.

(b) If any distilled spirits are manufactured as permitted by this Code section in any county, municipality, or county area exclusive of certain incorporated areas, as the case may be, in which the distilled spirits are not to be sold under the terms of this chapter, the licensee shall immediately store the distilled spirits or alcohol in a warehouse or warehouses designated by the commissioner to be sold or disposed of under the supervision of the commissioner in states, counties, or municipalities permitting the legal sale of distilled spirits or alcohol.

(c) It shall be unlawful for the licensee to sell or dispose of any such distilled spirits or alcohol:

(1) In any municipality, county, or unincorporated area of a county in which the sale of distilled spirits or alcohol is prohibited by this chapter; or

(2) To any person not holding an importer's, broker's, or wholesaler's license issued pursuant to this chapter or by another state.

(d) A manufacturer's or distiller's license may be issued pursuant to this Code section to a fruit grower for the manufacture of distilled spirits in any county or municipality of this state that has approved either the package sale of distilled spirits or the sale of distilled spirits by the drink, or both, as provided in this chapter.

(e) The commissioner may issue a license pursuant to this Code section to a fruit grower licensed as a farm winery authorizing such fruit grower to manufacture distilled spirits and fortified wines for sale exclusively through a licensed and designated wholesaler; provided, however, that the farm winery has no more than one tasting room located on its licensed premises. For purposes of this subsection, the term "licensed premises" shall mean the premises for which the farm winery license is issued or property located contiguous to the farm winery and owned by the winery.

History. — Ga. L. 1937-38, Ex. Sess., p. 103, § 9; Ga. L. 1972, p. 207, § 4; Code 1933, § 5A-2505, enacted by Ga. L. 1980, p. 1573, § 1; Ga. L. 2012, p. 1028, § 1/SB 114; Ga. L. 2014, p. 214, § 1/HB 825; Ga. L. 2015, p. 317, § 4/SB 63; Ga. L. 2017, p. 406, § 2/SB 85.

The 2017 amendment, effective September 1, 2017, deleted former subsection (e), which read: "A manufacturer or distiller issued a license pursuant to this Code section may provide educational and promotional tours upon the issuance of a permit by the commissioner pursuant to Code Section 3-4-180."; and redesignated former subsection (f) as present subsection (e).

RESEARCH REFERENCES

Am. Jur. 2d. — 45 Am. Jur. 2d, Intoxicating Liquors, §§ 11, 26, 90 et seq., 102, 186, 214.

C.J.S. — 48 C.J.S., Intoxicating Liquors, §§ 19 et seq., 32 et seq., 138 et seq., 156, 425 et seq., 440, 441.

3-4-24.1. Distiller's license authorizing manufacture of distilled spirits from agricultural products other than perishable fruits; storage.

(a) The commissioner may issue a license authorizing the manufacture of distilled spirits from agricultural products other than perishable fruits grown in this state.

(b) If any distilled spirits are manufactured as permitted by this Code section in any county, municipality, or county area exclusive of certain incorporated areas, as the case may be, in which the distilled spirits are not to be sold under the terms of this chapter, the licensee shall immediately store the distilled spirits or alcohol in a warehouse or warehouses designated by the commissioner to be sold or disposed of under the supervision of the commissioner in states, counties, or municipalities permitting the legal sale of distilled spirits or alcohol.

(c) It is unlawful for the licensee to sell or dispose of any such distilled spirits or alcohol:

(1) In any municipality, county, or unincorporated area of a county in which the sale of distilled spirits or alcohol is prohibited by this chapter; or

(2) To any person not holding an importer's, broker's, or wholesaler's license issued pursuant to this chapter or by another state.

(d) A manufacturer's or distiller's license may be issued pursuant to this Code section for the manufacture of distilled spirits from agricultural products other than perishable fruits in any county or municipality of this state that has approved either the package sale of distilled spirits or the sale of distilled spirits by the drink, or both, as provided in this chapter.

History. — Code 1981, § 3-4-24.1, enacted by Ga. L. 2012, p. 1028, § 2/SB 114; Ga. L. 2015, p. 317, § 5/SB 63; Ga. L. 2017, p. 406, § 3/SB 85.

The 2017 amendment, effective September 1, 2017, deleted former subsection (e), which read: "A manufacturer or distiller issued a license pursuant to this Code section may provide educational and promotional tours upon the issuance of a permit by the commissioner pursuant to Code Section 3-4-180.".

3-4-24.2. Three-tier system of distribution and sale of distilled spirits; Sunday sales; regulatory authority; conditions or limitations.

(a) A limited exception to the provisions of this title providing a three-tier system for the distribution and sale of distilled spirits shall exist to the extent that the license to manufacture distilled spirits in this state shall include the right to sell up to 500 barrels of distilled spirits per year produced at the distiller's licensed premises to individuals who are on such premises for:

(1) Consumption on the premises; and

(2) Consumption off the premises, provided that such sales for consumption off the premises shall not exceed a maximum of 2,250 milliliters of distilled spirits per consumer per day.

(b) A distiller may sell distilled spirits pursuant to subsection (a) of this Code section on all days and at all times that sales of distilled spirits by retailers and retail consumption dealers are lawful within the county or municipality in which the licensed premises of the distiller is located, including, but not limited to, Sundays.

(c) A distiller shall not sell any distilled spirits for consumption off the premises pursuant to subsection (a) of this Code section at a price less than the price at which a person licensed to sell distilled spirits by

the package is permitted to sell distilled spirits pursuant to subsection (b) of Code Section 3-4-26.

(d) Any distiller engaging in sales of distilled spirits pursuant to subsection (a) of this Code section shall remit all state and local sales, use, and excise taxes to the proper tax collecting authority.

(e) The commissioner shall promulgate and enforce such rules and regulations as he or she may deem reasonable and necessary to effectuate the provisions of this Code section.

(f) Upon a violation by a distiller of any provision of this Code section or this title or any rule or regulation promulgated thereunder, the commissioner shall have the power to place conditions or limitations on such distiller's license and to modify or amend such conditions or limitations.

History. — Code 1981, § 3-4-24.2, enacted by Ga. L. 2017, p. 406, § 4/SB 85.

Effective date. — This Code section became effective September 1, 2017.

Code Commission notes. — Pursuant to Code Section 28-9-5, Code Section 3-4-24.2, enacted by Ga. L. 2017, p. 820, § 1/HB 485, was redesignated as Code Section 3-4-24.3.

3-4-24.3. Licensing for the manufacture or distribution of distilled spirits on local level.

The commissioner may issue licenses for the manufacture or distribution of distilled spirits in any county or municipality of this state in which licenses for such activity have been authorized and issued in accordance with the adoption of a resolution or ordinance by the local governing authority of such county or municipality. The local governing authority of a county or municipality issuing licenses pursuant to this Code section shall within its jurisdiction have the authority to determine the location of any licensed businesses, not inconsistent with this title.

History. — Code 1981, § 3-4-24.3, enacted by Ga. L. 2017, p. 820, § 1/HB 485.

Effective date. — This Code section became effective May 9, 2017.

Code Commission notes. — Pursuant to Code Section 28-9-5, in 2017, this Code section, enacted by Ga. L. 2017, p. 820, § 1/HB 485 as Code Section 3-4-24.2, was redesignated as Code Section 3-4-24.3.

3-4-25. Holder of retail dealer's license authorized to sell only unbroken packages; breaking of package or packages or drinking of contents thereof on premises prohibited.

(a) A retail dealer's license shall authorize the holder to sell distilled spirits only in the original and unbroken package or packages, which package or packages shall contain not less than 50 milliliters each.

(b) The license shall not permit the breaking of the package or packages on the premises where sold and shall not permit the drinking of the contents of the package or packages on the premises where sold.

History. — Ga. L. 1937-38, Ex. Sess., p. 103, § 9; Ga. L. 1976, p. 990, § 1; Code 1933, § 5A-2506, enacted by Ga. L. 1980, p. 1573, § 1; Ga. L. 1981, p. 1269, § 33; Ga. L. 1994, p. 553, § 2.

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The retailer's license authorizes only what is generally known as a "package store." Dinkler v. Jenkins, 118 Ga. App. 239, 163 S.E.2d 443, rev'd on other grounds, 224 Ga. 785, 164 S.E.2d 799 (1968).

RESEARCH REFERENCES

Am. Jur. 2d. — 45 Am. Jur. 2d, Intoxicating Liquors, §§ 29, 41, 42.

C.J.S. — 48 C.J.S., Intoxicating Liquors, §§ 33, 138 et seq., 425 et seq., 440, 441.

ALR. — Civil liability of one who takes out license for sale of intoxicating liquor for benefit of another, 2 A.L.R. 1516.

Constitutionality, construction, and application of statutes designed to prevent or limit control of retail liquor dealers by manufacturers, wholesalers, or importers, 136 A.L.R. 1238.

Power to limit the number of intoxicating liquor licenses, 163 A.L.R. 581.

Right to withdraw application to procure or to transfer liquor license, 73 A.L.R.2d 1223.

Liquor license as subject to execution or attachment, 40 A.L.R.4th 927.

3-4-26. Display of advertisement or information regarding prices of distilled spirits in visible places; sales below cost prohibited; exceptions authorized.

(a) No person holding a retail dealer's license to deal in distilled spirits by the package shall display any advertisement of or information regarding the price or prices of any distilled spirits in any show window or other place visible from outside the licensee's place of business.

(b) No person licensed to sell distilled spirits by the package for carry-out purposes shall sell such beverages at a price less than the cost which such licensee pays for such distilled spirits. As used in this subsection, cost shall include the wholesale price plus the local excise tax imposed, as reflected in invoices which the commissioner of revenue may require to be maintained on said licensee's place of business.

(c) The commissioner of revenue shall be authorized to adopt such regulations as he or she deems necessary to provide for exception to the prohibition provided in subsection (b) of this Code section for reasons relating to liquidation of inventory, close-out of brands, outdated products, or any other reason the commissioner may determine to merit an exception.

History. — Ga. L. 1937-38, Ex. Sess., p. 103, § 9A; Code 1933, § 5A-2507, enacted by Ga. L. 1980, p. 1573, § 1; Ga. L. 1981, p. 1269, § 34; Ga. L. 1996, p. 785, § 1.

Cross references. — Regulation of advertising generally, § 10-1-420 et seq.

Editor's notes. — Ga. L. 1996, p. 785, § 3, not codified by the General Assembly, provides for severability.

RESEARCH REFERENCES

Am. Jur. 2d. — 45 Am. Jur. 2d, Intoxicating Liquors, §§ 196 et seq., 200 et seq.

ALR. — Validity and construction of statute or ordinance requiring or prohibiting posting or other publication of price of commodity or services, 89 A.L.R.2d 901; 80 A.L.R.3d 740.

3-4-27. Notice of intention to secure retail dealer license for sale of distilled spirits.

(a) No application for a retail dealer license for the sale of distilled spirits shall be acted upon until after the applicant has published in the newspaper which publishes the legal advertisements of the county wherein such person proposes to engage in business a notice of his intention to secure a retail dealer license. Such notice shall be published at least once during the 30 days immediately preceding the filing of the application for a license. Such notice shall be in large boldface type and shall state:

(1) The type of license for which application has been filed;

(2) The exact location of the place of business for which a license is sought;

(3) The names and addresses of each owner of the business; and

(4) If the applicant is a corporation, the names and titles of all corporate officers.

(b) Proof of publication of the notice required by this Code section shall be attached to an application for a retail dealer license.

(c) An applicant for a renewal license shall not be subject to the notice requirements of this Code section.

History. — Code 1981, § 3-4-27, enacted by Ga. L. 1989, p. 881, § 1.

ARTICLE 3

LOCAL AUTHORIZATION AND REGULATIONS FOR MANUFACTURE, DISTRIBUTION, AND PACKAGE SALES

Cross references. — Sale and possession of distilled spirits in dry counties and municipalities generally, T. 3, C. 10.

Editor's notes. — The functions of calling and supervising special elections to determine whether the issuance of licenses for the package sale of distilled spirits shall be approved, formerly performed by the ordinary (now judge of probate court) of a county or the mayor of a municipality, have been vested in the election superintendent of the county or municipality by Ga. L. 1980, p. 1573, § 1. For definition of election superintendent, see §§ 21-2-2(30), 21-3-2(31).

JUDICIAL DECISIONS

In light of the similarity of the statutory provisions, decisions under Ga. L. 1937-38, Ex. Sess., p. 103 and Ga. L. 1941, p. 199, are included in the annotations for this article.

Procedure for calling elections. — The election contemplated by Ga. L. 1937-38, Ex. Sess., p. 103 (see now O.C.G.A. § 3-4-41) will be called upon a petition signed by at least 35 percent of registered voters "qualified to vote at the general election immediately preceding the presentation of the petition," and while Ga. L. 1941, p. 199 (see now O.C.G.A. § 3-4-47) does not contain the language shown in quotes, proper construction of this article requires that the elections be called in the same manner. Glass v. State, 75 Ga. App. 602, 44 S.E.2d 143 (1947).

Injunction against lawfully operated liquor store as nuisance. — Lawful operation of properly licensed package liquor store is an authorized business in those counties where a majority of qualified voters voting in an election for such purpose have approved the sale of liquor, and cannot be enjoined as a nuisance per se, since that which the law authorizes to be done, if done as the law authorizes, is not such a nuisance. Collins v. Lanier, 201 Ga. 527, 40 S.E.2d 424 (1946) (decided under Ga. L. 1937-38, Ex. Sess., p. 103).

Presumption that election superintendent properly performed duties. — All duties of the ordinary (election superintendent) required by Ga. L. 1941, p. 199, are prima facie presumed to be properly and legally performed. If legality of election is attacked, burden of proof is on complaining party to overcome it. Glass v. State, 75 Ga. App. 602, 44 S.E.2d 143 (1947).

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Editor's notes. — In light of the similarity of the statutory provisions, opinions rendered under Ga. L. 1937-38, Ex. Sess., p. 103, are included in the annotations for this article.

Where county has voted to adopt rules and regulations for sale of alcoholic liquors in county, each and every city must respond to referendum and cannot arbitrarily refuse to issue licenses where majority of those in county have voted in affirmative. 1965-66 Op. Att'y Gen. No. 65-36.

Holding election within two years of previous election. — Under Ga. L. 1937-38, Ex. Sess., p. 103 (see now O.C.G.A. § 3-4-41) the holding by a municipality of an additional election under this article within two years of a previous such election which resulted in a tie vote is prohibited. 1978 Op. Att'y Gen. No. 78-18.

RESEARCH REFERENCES

ALR. — Change of "wet" or "dry" status fixed by local option election by change of name, character, or boundaries of voting unit, without later election, 25 A.L.R.2d 863.

Power of legislative body to amend, repeal, or abrogate initiative or referendum measure, or to enact measure defeated on referendum, 33 A.L.R.2d 1118.

3-4-40. Requirement as to approval by referendum elections of issuance of licenses generally.

Licenses for the package sale of distilled spirits shall be authorized only in those counties and municipalities in which the issuance of such licenses is approved by a referendum election as provided in this article.

History. — Ga. L. 1937-38, Ex. Sess., p. 103, § 4; Ga. L. 1972, p. 207, § 3; Code 1933, § 5A-2301, enacted by Ga. L. 1980, p. 1573, § 1; Ga. L. 2017, p. 820, § 2/HB 485.

The 2017 amendment, effective May 9, 2017, in this Code section, substituted "Licenses for the package sale of distilled spirits shall be" for "Licenses provided for in this article are" near the beginning and substituted "by a referendum election" for "by referendum" near the end.

Law reviews. — For comment on Collins v. Lanier, 201 Ga. 527, 40 S.E.2d 424 (1946), see 9 Ga. B. J. 325 (1947).

JUDICIAL DECISIONS

Limits of governing authority's discretion after vote for legalization. — Where a county or municipality has voted in favor of legalizing sale of distilled spirits, the governing authority of county or municipality is vested with wide discretion in regulation of authorized businesses, but it is not authorized to prohibit such businesses and refuse to exercise its discretion. Stephens v. Moran, 221 Ga. 4, 142 S.E.2d 845 (1965).

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Municipal citizens voting in county-wide elections. — Registered and qualified voters in municipal elections may sign petitions and vote in both municipal and county elections held pursuant to O.C.G.A. § 3-4-41, but a county referendum is only binding on the unincorporated areas of the county. 1985 Op. Att'y Gen. No. U85-48.

Legislative intent. — The purpose of this section is to prohibit the collection of a license or tax levied on manufacture, sale, and distribution of distilled spirits and alcohol as authorized by this law in those counties which have not voted in favor of taxing and controlling alcoholic beverages and liquors. 1945-47 Op. Att'y Gen. p. 377.

Holding elections as to mixed drinks at same time as other elections. — Election as to mixed drinks provided for in Ga. L. 1964, p. 771 may not be held in conjunction with any other election. 1972 Op. Att'y Gen. No. U72-81.

RESEARCH REFERENCES

Am. Jur. 2d. — 45 Am. Jur. 2d, Intoxicating Liquors, §§ 58 et seq., 63 et seq., 347.

C.J.S. — 48 C.J.S., Intoxicating Liquors, § 104 et seq.

3-4-41. Petition for referendum; notice of call for referendum.

(a) A referendum election to authorize the issuance of licenses for the package sale of distilled spirits may be initiated upon written petition containing the signatures of at least 35 percent of the registered and qualified voters of any municipality or county being filed with the election superintendent of the county or municipality. Such superintendent, upon validation of the petition, shall be required to call and conduct a referendum election as provided for in Chapter 2 of Title 21, the "Georgia Election Code," for the purpose of submitting to the qualified voters of the municipality or county, as the case may be, the question of whether the issuance of licenses for the package sale of distilled spirits in the political subdivision shall be permitted or prohibited. Such petition shall not be amended, supplemented, or returned after its presentation to the appropriate authority. Validation shall, for the purposes of this Code section, be the procedure in which the election superintendent determines whether each signature on the petition is the name of a registered and qualified voter.

(b) For purposes of this Code section, the required number of signatures of registered voters of a political subdivision shall be computed based on the number of voters qualified to vote at the general election immediately preceding the presentation of the petition. Actual signers of the petition shall be registered and qualified to vote in the referendum election sought by the petition. Upon determining that the petition contains a sufficient number of valid signatures, the election superintendent shall set the date of the referendum election for not less than 30 nor more than 60 days after the call. The referendum may be held as a special referendum election or may be held at the time of holding any other primary or election in such county or municipality if such other primary or election is to be held not more than 60 days after the call.

(c) Notice of the call for the referendum election shall be published by the election superintendent in the official organ of the county or, in the case of a municipality, in a newspaper of general circulation in the municipality. The election superintendent shall also cause the date and purpose of the referendum election to be published in the official organ of the county or, in the case of a municipality, in a newspaper of general circulation in the municipality, once a week for two weeks immediately preceding the date of the referendum election.

(d) Following the expiration of two years after any referendum election is held which results in the disapproval of sales as provided in this article, another referendum election on this question shall be held if another petition, as provided in subsection (a) of this Code section, is filed with the appropriate election superintendent.

History. — Ga. L. 1937-38, Ex. Sess., p. 103, § 4; Ga. L. 1972, p. 207, § 3; Code 1933, §§ 5A-2302, 5A-2303, 5A-2309, enacted by Ga. L. 1980, p. 1573, § 1; Ga. L. 1983, p. 806, § 1; Ga. L. 1985, p. 149, § 3; Ga. L. 2017, p. 820, § 2/HB 485.

The 2017 amendment, effective May 9, 2017, substituted the present provisions of the first sentence of subsection (a) for the former provisions, which read: "Upon a written petition containing the signatures of at least 35 percent of the registered and qualified voters of any municipality or county being filed with the election superintendent of the county or municipality, such superintendent, upon validation of the petition, shall be required to call and hold a referendum election for the purpose of submitting to the qualified voters of the municipality or county, as the case may be, the question of whether the manufacture, sale, and distribution of distilled spirits in the political subdivision shall be permitted or prohibited."; in subsection (c), inserted "election" in the first and second sentences and inserted "referendum" near the end of the second sentence; and inserted "referendum" twice in subsection (d).

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Term "qualified" construed. — Voters whose names appeared on a voter registration list on the date of the last general election were "qualified" to vote in that general election within the meaning of O.C.G.A. §§ 3-4-41(a) and 21-2-231. Abercrombie v. Shaddix, 250 Ga. 170, 295 S.E.2d 832 (1982).

Striking of names from voter list for failure to vote. — Probate judge correctly applied subsection (a) of O.C.G.A. § 3-4-41 by excluding from the judge's count of names on petition to call special election those voters whose names appeared upon voter registration list on date of last general election but had been stricken from that list under O.C.G.A. § 21-2-231 for failure to vote between date of last general election and date of filing of petition to call election and thus were no longer "registered voters" of the county. Abercrombie v. Shaddix, 250 Ga. 170, 295 S.E.2d 832 (1982).

The General Assembly intended for voters whose status is affected by O.C.G.A. § 21-2-231, regarding loss of qualification for failure to vote, to remain "qualified" within meaning of subsection (a) of O.C.G.A. § 3-4-41 until their names actually are deleted from the voter registration list. Abercrombie v. Shaddix, 250 Ga. 170, 295 S.E.2d 832 (1982).

No standing to attack constitutionality. — Constitutional attack on this section by corporations who were selling intoxicants in dry county under allegedly valid licenses was dismissed since corporations had no property rights to have such license and therefore were without standing to attack this section. DeKalb County v. Florentine Corp., 228 Ga. 228, 185 S.E.2d 85 (1971).

Legislative intent. — Purpose of this section is to permit such elections to be held, not to provide technicalities by which a popular vote may be thwarted. Committee for New Cobb County Revenue v. Brown, 228 Ga. 364, 185 S.E.2d 534 (1971).

Requirement of notice of special election is mandatory, and failure to comply therewith vitiates election. Whittle v. Whitley, 202 Ga. 633, 44 S.E.2d 241 (1947).

Ga. L. 1937-38, Ex. Sess., p. 103, §§ 4 and 9 (see now O.C.G.A. §§ 3-4-41 and 3-4-47) must be construed together. Barrentine v. Griner, 205 Ga. 830, 55 S.E.2d 536 (1949).

Election a nullity absent proper petition. — A cursory reading of both Ga. L.

1937-38, Ex. Sess., p. 103, §§ 4 and 9 (see now O.C.G.A. §§ 3-4-41 and 3-4-47) will disclose that before the ordinary (election superintendent) is authorized to call an election under either section a petition signed by 35 percent or more of the qualified voters of the county must be presented. It follows that if either election be called without such petition having first been presented, such election is a nullity. Glass v. State, 75 Ga. App. 602, 44 S.E.2d 143 (1947), overruled on other grounds, Domin v. State, 85 Ga. App. 676, 70 S.E.2d 39 (1952).

Consolidated individual petitions sufficient. — Where there were several circulated petitions seeking to call a special election to nullify previously voted authority for sale of alcoholic beverages and liquors within county, but majority of names were signed to individual petitions asking in legal terms that election be called, each petition signed by one individual registered voter, and all petitions were pasted in one consolidated petition and presented to the ordinary (election superintendent), such consolidated petition was held to be sufficient in form to meet requirements of this section, there being evidence to show there was a sufficient number of signatures to bring the total to the required 35 percent. McCluney v. Stembridge, 206 Ga. 321, 57 S.E.2d 203 (1950).

Disqualification of election superintendent for signing petition. — The fact that the ordinary (election superintendent) was one of those who signed, as an individual, a petition requesting the call of a special election for purpose of submitting to qualified voters of county the question of taxing, legalizing, and controlling alcoholic beverages and liquors, did not show that the ordinary was disqualified because the ordinary was pecuniarily interested in the matter before the ordinary, or that the ordinary was otherwise disqualified from calling and holding a special election. McCluney v. Stembridge, 206 Ga. 321, 57 S.E.2d 203 (1950).

Verification of petitions prior to call for election. — The ordinary (election superintendent) is required to verify that petitions were signed by at least 35 percent of registered voters before the ordinary can issue a valid election call, and this prerequisite is mandatory. The only requirement imposed by this section with respect to the petition is that it be "signed by at least 35 percent of the registered voters qualified to vote at the general election immediately preceding the presentation of the petition." The calling of the election by the ordinary as authorized by this section determines at least prima facie that the petitioners are of the class and are of a sufficient number as required by this section for the purpose of calling an election. Committee for New Cobb County Revenue v. Brown, 228 Ga. 364, 185 S.E.2d 534 (1971).

Waiving statutory time period for holding election. — While this section provides that the ordinary (election superintendent) "shall call a special election to be held within 30 days from the filing of such petition," this is not an absolute requirement that election must be held within that period of time. Where election is not required by statute to be held on a date certain, and where election is prevented by court order, it is permissible to reschedule election after expiration of court's injunction even though the 30-day period has elapsed. If there is a statutory time period within which election must be held and, following litigation, there is no longer time to hold election within statutory period, an election may be held after statutory period has expired. Committee for New Cobb County Revenue v. Brown, 228 Ga. 364, 185 S.E.2d 534 (1971).

Compliance of call for election with section. — Where call for election as issued by the ordinary (election superintendent) on the question of legalizing alcoholic beverages gave notice that election would be held in all voting precincts of county, and that voting polls would be open in all voting precincts of county between the hours of 7:00 A.M. and 6:00 P.M., and that those qualified to vote at the election would be determined in all respects in accordance with the laws governing elections for members of General Assembly, the call was in substantial accord with this section and was sufficient. McCluney v. Stembridge, 206 Ga. 321, 57 S.E.2d 203 (1950).

Notice requirement. — If election is advertised once a week for two consecutive weeks, this will not satisfy this section if election is held on Saturday of last week during which notice is published. Under this section the two weekly publications of notice must precede the week in which election is held. Whittle v. Whitley, 202 Ga. 633, 44 S.E.2d 241 (1947).

Resubmission of question after election resulting in tie vote. — Where a liquor election was held under this section, fact that election resulted in tie vote did not make it the duty of the ordinary (election superintendent) to resubmit question to voters. Broadhurst v. Hawkins, 188 Ga. 316, 3 S.E.2d 905 (1939).

Judicial notice of dry or wet status of county. — Accusations and indictments charging liquor violations need not allege that counties in which they are preferred have held an election to comply with the law, this being a matter of which the courts will take judicial notice. Domin v. State, 85 Ga. App. 676, 70 S.E.2d 39 (1952).

OPINIONS OF THE ATTORNEY GENERAL

Municipal citizens voting in county-wide elections. — Registered and qualified voters in municipal elections may sign petitions and vote in both municipal and county elections held pursuant to O.C.G.A. § 3-4-41, but a county referendum is only binding on the unincorporated areas of the county. 1985 Op. Att'y Gen. No. U85-48.

Single petition for approval of package sales, and sales by the drink, allowed. — A single petition may be used for the purpose of invoking the referendum procedures for approval of package sales of distilled spirits and sales of distilled spirits by the drink for consumption on the premises if the petition clearly sets forth that it is for both purposes and the questions are presented separately in the referendum in the manner prescribed by law. 1985 Op. Att'y Gen. No. 85-22.

Legislative intent. — The apparent intent of this section is to require showing of significant degree of current voter support for a referendum on legalizing alcoholic beverages before actually conducting such a referendum. 1979 Op. Att'y Gen. No. 79-71.

This section requires the signatures of 35 percent of the citizens who were registered to vote at the preceding general election. 1970 Op. Att'y Gen. No. 70-172.

In the event of a conflict between Ga. L. 1972, p. 207, § 3 and former Code 1933, §§ 34-806 and 34-1314 (see now O.C.G.A. §§ 3-4-41 and 21-2-540), concerning the date for holding a liquor referendum, former Code 1933, §§ 34-806 and 34-1314 controlled. 1979 Op. Att'y Gen. No. 79-23.

"Filing" defined. — The word "filing" in this section, means the date petition is handed to the ordinary (election superintendent), not date upon which petition is determined to be valid; the situation is comparable to filing of nomination petitions. 1972 Op. Att'y Gen. No. U72-42.

The word "filing" as used in this section means the date on which petition is handed to appropriate official, not date on which petition is determined to be valid. 1979 Op. Att'y Gen. No. 79-23.

There is no time limit for circulating petition to call an election to determine whether sale of intoxicating liquor shall be approved in county. 1954-56 Op. Att'y Gen. p. 455.

Election a nullity absent proper petition. — No special election may be called by a municipality except upon the petition of at least 35 percent of the registered qualified voters, and any such election called by a city council without such petition having first been presented would be a nullity. 1975 Op. Att'y Gen. No. U75-19.

Persons qualified to vote. — Persons qualified to vote for members of General Assembly, and who were registered to vote at general election immediately preceding the filing of petition requesting the election to determine sale of intoxicating liquor, are eligible to vote in the election. 1954-56 Op. Att'y Gen. p. 456.

Percentage of voters. — There is no requirement that percentage of registered

voters relate in any way to number of electors who actually voted in any preceding general election. 1979 Op. Att'y Gen. No. 79-71.

The percentage of voters set forth in this section refers to the number of individuals qualified to have voted in the last election scheduled to have been held by the municipality even though such election was not conducted. 1979 Op. Att'y Gen. No. 79-71.

Petition for wet and dry election should be checked against official registration for last general election. 1948-49 Op. Att'y Gen. p. 173.

Challenging signatures on petition. — There is no provision in the law whereby any group or any person may challenge signatures of persons signing a petition to hold an election to legalize sale of intoxicating liquors except by attacking legality of election; nor is there any provision for publication of names on the petition. These are solely the functions of the ordinary (election superintendent). 1957 Op. Att'y Gen. p. 174.

Effect of county election on time of holding municipal election. — A municipal election is quite separate from any previous county election, and the failure of legalization at a county election would not prohibit a municipal election during the following two years under this section; a municipal election can be held as soon as the petition procedures are complied with. 1972 Op. Att'y Gen. No. U72-46.

RESEARCH REFERENCES

Am. Jur. 2d. — 45 Am. Jur. 2d, Intoxicating Liquors, §§ 58 et seq., 63 et seq.

C.J.S. — 48 C.J.S., Intoxicating Liquors, § 104 et seq.

3-4-42. Form of ballots for referendum election.

(a) The ballot used in any referendum election held pursuant to Code Section 3-4-41 shall have written or printed thereon:

"( ) YES Shall the issuance of licenses for the package sale
( ) NO of distilled spirits be approved?"

(b) Those desiring to vote in favor of the issuance of the licenses shall vote "Yes." Those desiring to vote against the issuance of the licenses shall vote "No."

History. — Ga. L. 1937-38, Ex. Sess., p. 103, § 4; Ga. L. 1972, p. 207, § 3; Code 1933, § 5A-2306, enacted by Ga. L. 1980, p. 1573, § 1; Ga. L. 2017, p. 820, § 2/HB 485.

The 2017 amendment, effective May 9, 2017, substituted "used in any referendum election held pursuant to Code Section 3-4-41" for "in the special election" in subsection (a).

RESEARCH REFERENCES

Am. Jur. 2d. — 45 Am. Jur. 2d, Intoxicating Liquors, § 73.

C.J.S. — 48 C.J.S., Intoxicating Liquors, § 104 et seq.

3-4-43. Applicability of general election laws.

County elections shall be held according to Chapter 2 of Title 21, the "Georgia Election Code," and may be held as a special election or at the time of holding any other special or general primary or special or

general election in the county. Municipal elections shall be held according to Chapter 2 of Title 21, the "Georgia Election Code," and may be held as a special election or at the time of holding any other special or general primary or special or general election in the municipality.

History. — Ga. L. 1937-38, Ex. Sess., p. 103, § 4; Ga. L. 1972, p. 207, § 3; Code 1933, § 5A-2304, enacted by Ga. L. 1980, p. 1573, § 1; Ga. L. 1983, p. 806, § 2; Ga. L. 1998, p. 295, § 3; Ga. L. 2017, p. 820, § 2/HB 485.

Editor's notes. — Ga. L. 2017, p. 820, § 2/HB 485, effective May 9, 2017, reenacted this Code section without change.

OPINIONS OF THE ATTORNEY GENERAL

Holding elections on same day as other elections prohibited prior to 1983 amendment. — See 1972 Op. Att'y Gen. No. U72-81; 1975 Op. Att'y Gen. No. U75-45.

Election held on Saturday. — Special election to determine whether intoxicating liquor may be sold in county may be held on Saturday. 1954-56 Op. Att'y Gen. p. 457.

RESEARCH REFERENCES

Am. Jur. 2d. — 45 Am. Jur. 2d, Intoxicating Liquors, § 63 et seq.

C.J.S. — 48 C.J.S., Intoxicating Liquors, §§ 92 et seq., 104 et seq.

3-4-44. Certification of results; payment of expenses.

It shall be the duty of the election superintendent of the county or the municipality, as the case may be, to canvass the returns and declare and certify the results of the election to the Secretary of State. The expense for the election shall be borne by the county or the municipality conducting the election.

History. — Ga. L. 1937-38, Ex. Sess., p. 103, § 4; Ga. L. 1972, p. 207, § 3; Code 1933, § 5A-2305, enacted by Ga. L. 1980, p. 1573, § 1; Ga. L. 1983, p. 806, § 2; Ga. L. 2017, p. 820, § 2/HB 485.

Editor's notes. — Ga. L. 2017, p. 820, § 1/HB 485, effective May 9, 2017, reenacted this Code section without change.

JUDICIAL DECISIONS

This section requires only that the ordinary (election superintendent) shall receive returns of election held and ascertain and immediately declare result thereof. No method or manner by which the ordinary may determine and announce result of election is provided; and there is no provision in the statutes for a contest or other hearing before the ordinary. It is clear that the acts of the ordinary were not judicial, but were ministerial or administrative, and that they are not reviewable by certiorari. Brockett v. Maxwell, 73 Ga. App. 663, 38 S.E.2d 176 (1946).

RESEARCH REFERENCES

Am. Jur. 2d. — 45 Am. Jur. 2d, Intoxicating Liquors, § 77.

C.J.S. — 48 C.J.S., Intoxicating Liquors, §§ 129, 130.

3-4-45. Effect of majority vote in favor of package sales.

If a majority of the votes cast in a referendum election held pursuant to Code Section 3-4-41 are in favor of the issuance of licenses for the package sale of distilled spirits, then the package sale of distilled spirits in the political subdivision shall be permitted in accordance with this chapter at the expiration of 15 days from the date of the certification of the results by the election superintendent; otherwise, the issuance of licenses for the package sale of distilled spirits in the political subdivision shall be prohibited.

History. — Ga. L. 1937-38, Ex. Sess., p. 103, § 4; Ga. L. 1972, p. 207, § 3; Code 1933, § 5A-2307, enacted by Ga. L. 1980, p. 1573, § 1; Ga. L. 1981, p. 1269, § 28; Ga. L. 1983, p. 806, § 2; Ga. L. 2017, p. 820, § 2/HB 485.

The 2017 amendment, effective May 9, 2017, substituted the present provisions of this Code section for the former provisions, which read: "If a majority of the votes cast are in favor of the issuance of the licenses, the manufacture, possession, distribution, and sale by the package of distilled spirits in the political subdivision shall be permitted in accordance with this chapter at the expiration of 15 days from the declaration of the results by the election superintendent.".

JUDICIAL DECISIONS

Injunction against lawfully operated liquor store as nuisance. — Lawful operation of properly licensed package liquor store is an authorized business in those counties where a majority of qualified voters voting in an election for such purpose have approved the sale of liquor, and cannot be enjoined as a nuisance per se, since that which the law authorizes to be done, if done as the law authorizes, is not such a nuisance. Collins v. Lanier, 201 Ga. 527, 40 S.E.2d 424 (1946).

Commissioners have no power to completely prohibit sale of liquor in county once voters have decided to permit it. Trustees of Mtg. Trust of Am. v. Holland, 554 F.2d 237 (5th Cir. 1977).

RESEARCH REFERENCES

Am. Jur. 2d. — 45 Am. Jur. 2d, Intoxicating Liquors, § 82 et seq.

C.J.S. — 48 C.J.S., Intoxicating Liquors, § 104 et seq.

ALR. — Change of "wet" or "dry" status fixed by local option election by change of name, character, or boundaries of voting unit, without later election, 25 A.L.R.2d 863.

3-4-46. Procedure for conduct of election for purpose of nullifying previous election result.

(a) In any county or municipality which has at any time held a referendum election in accordance with this article, resulting in the

approval of the issuance of licenses for the package sale of distilled spirits, the election superintendent of the county or municipality shall, upon the filing of a petition as provided in subsection (a) of Code Section 3-4-41, proceed to call another referendum election in the same manner as provided in this article for the purpose of nullifying the previous referendum election result.

(b) In the event an election referendum is held pursuant to subsection (a) of this Code section and a majority of the votes cast are against the issuance of licenses for the package sale of distilled spirits, then no new licenses for the package sale of distilled spirits within the political subdivision conducting the referendum shall be issued and any existing licensee issued a license for the package sale of distilled spirits shall be prohibited, effective upon the expiration of such license, from engaging in any package sales of distilled spirits within the political subdivision.

(c) No election held pursuant to this Code section shall be called or held within two years after the date of the declaration by the election superintendent of the results of the previous election held for such purpose under this article.

History. — Ga. L. 1941, p. 199, § 1; Ga. L. 1972, p. 207, § 3; Code 1933, § 5A-2310, enacted by Ga. L. 1980, p. 1573, § 1; Code 1981, § 3-4-47; Code 1981, § 3-4-46, as redesignated by Ga. L. 2017, p. 820, § 2/HB 485.

The 2017 amendment, effective May 9, 2017, redesignated former Code Section 3-4-47 as this Code section; substituted the present provisions of subsection (a) for the former provisions, which read: "In any county or municipality which has at any time held an election in accordance with this article, resulting in the approval of the issuance of licenses for the package sales of distilled spirits, the election superintendent of the county or municipality shall, upon a petition signed by at least 35 percent of the registered qualified voters of the political subdivision concerned, proceed to call another election in the same manner as provided in this article for the purpose of nullifying the previous election result."; added subsection (b); redesignated former subsection (b) as present subsection (c); and substituted "declaration by the election superintendent of the results" for "declaration of the result" in the middle of subsection (c).

Editor's notes. — Ga. L. 2017, p. 820, § 2/HB 485, repealed former Code Section 3-4-46, relating to the effect of majority vote against package sales, and enacted the present Code section. The former Code section was based on Ga. L. 1937-38, Ex. Sess., p. 103, § 4; Ga. L. 1972, p. 207, § 3; Code 1933, §§ 5A-2307, 5A-2308, enacted by Ga. L. 1980, p. 1573, § 1.

JUDICIAL DECISIONS

Constitutionality. — This section, insofar as it authorizes holding election for purpose of nullifying previous election legalizing alcoholic beverages in county, is not unconstitutional as violative of due process on ground that no provision is made for right to contest election held thereunder or on ground that provision is so indefinite that any proceeding amounts to a taking of property of qualified distributors of alcoholic beverages without due process of law. Sanders v. Mason, 197 Ga. 522, 29 S.E.2d 780 (1944).

No standing to attack constitutionality. — Constitutional attack on this section by corporations who were selling intoxicants in dry county under allegedly valid licenses was dismissed since corpo-

rations had no property rights to have such license and therefore were without standing to attack this section. DeKalb County v. Florentine Corp., 228 Ga. 228, 185 S.E.2d 85 (1971).

Legislative intent. — The legislature intended in enacting this section only to give those counties which had voted favorably for control the same means of abolishing or repealing the control of manufacture, sale, and distribution of alcoholic beverages and liquors; the section does not render a previous election void ab initio, so as to be retrospective. Thacker v. Morris, 196 Ga. 167, 26 S.E.2d 329 (1943).

Ga. L. 1937-38, Ex. Sess., p. 103, § 4 and Ga. L. 1941, p. 199, § 1 (see now O.C.G.A. §§ 3-4-41 and 3-4-46) must be construed together. Barrentine v. Griner, 205 Ga. 830, 55 S.E.2d 536 (1949).

Election a nullity absent proper petition. — A cursory reading of both Ga. L. 1937-38, Ex. Sess., p. 103, § 4 and Ga. L. 1941, p. 199, § 1 (see now O.C.G.A. §§ 3-4-41 and 3-4-46) would disclose that before the ordinary (election superintendent) was authorized to call an election under either section a petition signed by 35 percent or more of the qualified voters of the county must be presented. It follows that if either election be called without such petition having first been presented, such election is a nullity. Glass v. State, 75 Ga. App. 602, 44 S.E.2d 143 (1947), overruled on other grounds, Domin v. State, 85 Ga. App. 676, 70 S.E.2d 39 (1952).

Among the prerequisites to the call of an election for nullifying a previous election are: (1) no election can be called within two years after the date of the declaration of the result of a previous election; (2) no election shall be called except upon the petition of at least 35 percent of the registered qualified voters, qualified to vote in the general election immediately preceding the presentation of the petition; and (3) the election shall be held within 30 days from the filing of the petition, and notice of the election shall be published in the official gazette of the county once a week for two weeks preceding the election. Barrentine v. Griner, 205 Ga. 830, 55 S.E.2d 536 (1949).

The requirement as to notice of special election was mandatory, and failure to comply therewith vitiated election; in these circumstances, petition by licensed liquor dealers, seeking to enjoin the ordinary (election superintendent) from putting the result of such election into effect, set forth a cause of action. The prerequisite as to proper petition by 35 percent of qualified registered voters is also mandatory, and it follows that failure to comply with the mandatory prerequisite vitiates election. Barrentine v. Griner, 205 Ga. 830, 55 S.E.2d 536 (1949).

Effects of violations of mandatory and directory provisions on validity of election. — There is a marked distinction between mandatory provisions of law in regard to calling of election and those which are merely directory to officials in holding them. A substantial violation of mandatory provisions affects validity of election, while a failure of strict compliance with directory provisions of law, or mere irregularities on part of election officers, will not generally do so; and the latter are usually the subject matter of contests. Barrentine v. Griner, 205 Ga. 830, 55 S.E.2d 536 (1949).

When petition has been acted upon and election ordered by designated authorities, presumption is that petition was in due and legal form and that it was signed by requisite percentage of qualified voters, and in absence of any evidence to the contrary, that presumption is sufficient. Sanders v. Mason, 197 Ga. 522, 29 S.E.2d 780 (1944); Williams v. Gould, 203 Ga. 96, 45 S.E.2d 218 (1947).

Court of equity is not authorized to surmise or assume invalidity of signatures regularly presented to the ordinary (election superintendent), or to enjoin such officer from calling an election in the face of the ordinary's prima facie determination as to the sufficiency of the consolidated petition presented. Williams v. Gould, 203 Ga. 96, 45 S.E.2d 218 (1947).

Rebuttable presumption that election superintendent performed statutory duties. — The action of the ordinary (election superintendent), as result of petition having been filed with the ordinary, in calling election and declaring results thereof, determines prima facie that requirements of this section providing for

calling of such election have been complied with in due and legal form. This is nothing more nor less than a rebuttable presumption that the ordinary has properly performed the required duties. Sanders v. Mason, 197 Ga. 522, 29 S.E.2d 780 (1944).

Judicial notice of dry or wet status of county. — Accusations and indictments charging liquor violations need not allege that counties in which they are preferred have held an election to comply with the law, this being a matter of which the courts will take judicial notice. Domin v. State, 85 Ga. App. 676, 70 S.E.2d 39 (1952).

OPINIONS OF THE ATTORNEY GENERAL

There is no time limit for circulating a petition to call an election to determine whether sale of intoxicating liquor shall be legalized or made unlawful in county. 1954-56 Op. Att'y Gen. p. 455.

Effect of void election on holding subsequent election within two years. — An election which through noncompliance with the law has been ruled void by superior court is not considered an election within meaning of this section so as to prevent another election within two years. 1958-59 Op. Att'y Gen. p. 204.

RESEARCH REFERENCES

Am. Jur. 2d. — 45 Am. Jur. 2d, Intoxicating Liquors, § 86 et seq.

C.J.S. — 48 C.J.S., Intoxicating Liquors, § 104 et seq.

3-4-47. Adoption of resolutions and ordinances; determination of location of retail or businesses licensed by local governing authorities.

(a) A municipality or county may adopt resolutions and ordinances, consistent with this title, as may fall within the police powers of the municipality or county to regulate any business described in this chapter; provided, however, that on and after July 1, 1997, no municipality or county shall authorize the location of a new retail package liquor licensed place of business or the relocation of an existing retail package liquor licensed place of business engaged in the retail package sales of distilled spirits within 500 yards of any other business licensed to sell package liquor at retail, as measured by the most direct route of travel on the ground; provided, however, that this limitation shall not apply to any hotel licensed under this chapter. The restriction provided for in this subsection shall not apply at any location for which a license has been issued prior to July 1, 1997, nor to the renewal of such license. Nor shall the restriction of this subsection apply to any location for which a new license is applied for if the sale of distilled spirits was lawful at such location at any time during the 12 months immediately preceding such application.

(b) The local governing authority of a municipality or county issuing licenses pursuant to this article shall within its jurisdiction have the authority to determine the location of any retail business it licenses, not inconsistent with this title.

History. — Ga. L. 1937-38, Ex. Sess., p. 103, § 9; Ga. L. 1973, p. 610, § 1; Code 1933, § 5A-2312, enacted by Ga. L. 1980, p. 1573, § 1; Ga. L. 1981, p. 1269, § 29; Ga. L. 1997, p. 1588, § 1; Code 1981, § 3-4-49; Code 1981, § 3-4-47, as redesignated by Ga. L. 2017, p. 820, § 2/HB 485.

The 2017 amendment, effective May 9, 2017, redesignated former Code Section 3-4-49 as this Code section; substituted "resolutions and ordinances" for "all reasonable rules and regulations" near the beginning of the first sentence of subsection (a); and substituted the present provisions of subsection (b) for the former provisions, which read: "All municipal and county authorities issuing licenses shall within their respective jurisdictions have authority to determine the location of any distillery, wholesale business, or retail business licensed by them, not inconsistent with this title.".

Editor's notes. — Ga. L. 2017, p. 820, § 2/HB 485, effective May 9, 2017, redesignated former Code Section 3-4-47 as present Code Section 3-4-46.

JUDICIAL DECISIONS

Municipal ordinance which provides for automatic loss of a liquor license upon cessation of business is not inconsistent with this title because it permits cancellation without notice and hearing, allegedly required by § 3-2-3, because no hearing is required where revocation of license is expressly required by ordinance. City Council v. Crump, 251 Ga. 594, 308 S.E.2d 180 (1983) (decided prior to 1982 amendment of § 3-2-3).

Authority for municipality to impose special license tax of set amount per case of liquor, payable cash-on-delivery, is not supplied by Ga. L. 1937-38, Ex. Sess., p. 103, § 9 (see now O.C.G.A. § 3-4-47). City of Atlanta v. Henry Grady Hotel Corp., 220 Ga. 249, 138 S.E.2d 362 (1964).

OPINIONS OF THE ATTORNEY GENERAL

Exclusiveness of county regulation. — No valid local or special law could be enacted which would give county power to tax and regulate liquor therein to the exclusion of such power in municipalities within county. 1971 Op. Att'y Gen. No. U71-8.

RESEARCH REFERENCES

Am. Jur. 2d. — 45 Am. Jur. 2d, Intoxicating Liquors, § 58 et seq.

C.J.S. — 48 C.J.S., Intoxicating Liquors, §§ 84, 86, 92 et seq., 165.

ALR. — Power to limit the number of intoxicating liquor licenses, 124 A.L.R. 825; 163 A.L.R. 581.

Construction of provision precluding sale of intoxicating liquors within specified distance from another establishment selling such liquors, 7 A.L.R.3d 809.

Validity of municipal regulation more restrictive than state regulation as to time for selling or serving intoxicating liquor, 51 A.L.R.3d 1061.

3-4-48. Maximum annual license fees for municipal or county licenses.

The annual license fee to be charged by a municipality or county pursuant to this article shall not be more than $5,000.00 for each license.

History. — Ga. L. 1937-38, Ex. Sess., p. 103, § 9; Ga. L. 1965, p. 451, § 1; Code 1933, § 5A-2313, enacted by Ga. L. 1980, p. 1573, § 1; Code 1981, § 3-4-50; Code 1981, § 3-4-48, as redesignated by Ga. L. 2017, p. 820, § 2/HB 485.

The 2017 amendment, effective May 9, 2017, redesignated former Code Section 3-4-50 as this Code section.

Editor's notes. — Ga. L. 2017, p. 820, § 2/HB 485, repealed former Code Section 3-4-48, relating to the effective date of nullification of previous election result, and enacted the present Code section. The former Code section was based on Ga. L. 1980, p. 1573, § 1, and was repealed effective May 9, 2017.

JUDICIAL DECISIONS

Law does not require that fee for retailer's license be fixed sum. City of Atlanta v. Henry Grady Hotel Corp., 220 Ga. 249, 138 S.E.2d 362 (1964).

Special license tax unauthorized. — Special license tax of set amount per case of liquor, payable cash-on-delivery, is not an annual license fee payable in advance and is therefore unauthorized. City of Atlanta v. Henry Grady Hotel Corp., 220 Ga. 249, 138 S.E.2d 362 (1964).

City license fee authorized. — A city ordinance requiring "$1,000.00 per annum plus an amount equal to 1 percent of the gross sales of the previous year in excess of $100,000.00" is an annual license fee payable in advance, and is authorized. City of Atlanta v. Henry Grady Hotel Corp., 220 Ga. 249, 138 S.E.2d 362 (1964).

OPINIONS OF THE ATTORNEY GENERAL

Basis for differences in retail liquor license rates. — Any differences in retail liquor license rates imposed by municipality must be based on reasonable classification. 1954-56 Op. Att'y Gen. p. 493.

Issuance of free license. — County commissioners may not issue license free of charge to retailers to sell intoxicating liquors, but may issue free license for sale of beer and wine. 1954-56 Op. Att'y Gen. p. 458.

Exclusiveness of county regulation. — No valid local or special law could be enacted which would give a county power to tax and regulate liquor therein to the exclusion of such power in municipalities within the county. 1971 Op. Att'y Gen. No. U71-8.

RESEARCH REFERENCES

Am. Jur. 2d. — 45 Am. Jur. 2d, Intoxicating Liquors, §§ 168, 169.

C.J.S. — 48 C.J.S., Intoxicating Liquors, §§ 400 et seq., 409 et seq.

ALR. — Exacting for intoxicating liquor license an amount in excess of cost of regulation in order to limit the number and determine the character and responsibility of licensees, 103 A.L.R. 327.

Effect of state regulation of liquor sales on municipal power to impose occupation license or tax for revenue, 6 A.L.R.2d 737.

3-4-49. Municipalities in wet counties.

Any municipality which lies wholly or partially within a county which has approved the manufacture, distribution, or package sale of distilled spirits in a county-wide referendum election as provided in this article and which, on January 1, 1985, was issuing licenses permitting the manufacture, distribution, or package sale of distilled spirits shall be authorized to exercise the powers and shall be subject to the provisions

contained in this title relating to the manufacture, distribution, or package sale of distilled spirits.

History. — Code 1981, § 3-4-51, enacted by Ga. L. 1986, p. 1083, § 1; Code 1981, § 3-4-51; Code 1981, § 3-4-49, as redesignated by Ga. L. 2017, p. 820, § 2/HB 485.

The 2017 amendment, effective May 9, 2017, redesignated former Code Section 3-4-51 as this Code section; and in this Code section, substituted "distribution, or package sale" for "sale, or distribution" throughout, and inserted "election" near the middle.

Law reviews. — For annual survey of local government law, see 38 Mercer L. Rev. 289 (1986).

3-4-50. Redesignated.

Editor's notes. — Ga. L. 2017, p. 820, § 2/HB 485, effective May 9, 2017, redesignated former Code Section 3-4-50 as present Code Section 3-4-48.

3-4-51. Redesignated.

Editor's notes. — Ga. L. 2017, p. 820, § 2/HB 485, effective May 9, 2017, redesignated former Code Section 3-4-51 as present Code Section 3-4-49.

ARTICLE 4

EXCISE TAXATION

Cross references. — Sales and use taxes, T. 48, C. 8.

PART 1

STATE

3-4-60. Levy and amount of tax.

The following state taxes are levied and imposed:

(1) There shall be imposed upon the first sale, use, or final delivery within this state of all distilled spirits an excise tax in the amount of 50¢ per liter and, upon the first sale, use, or final delivery within this state of all alcohol, an excise tax in the amount of 70¢ per liter, and a proportionate tax at the same rate on all fractional parts of a liter;

(2) There shall be imposed upon the importation for use, consumption, or final delivery into this state of all distilled spirits an import tax in the amount of 50¢ per liter and, upon the importation for use, consumption, or final delivery into this state of all alcohol, an import tax in the amount of 70¢ per liter, and a proportionate tax at the same rate on all fractional parts of a liter; and

(3) All alcohol spirits manufactured within this state for sale within this state shall be made from Georgia grown products.

History. — Ga. L. 1937-38, Ex. Sess., p. 103, §§ 11, 12; Ga. L. 1964, p. 62, § 3; Ga. L. 1972, p. 207, § 6; Ga. L. 1974, p. 615, § 1; Ga. L. 1976, p. 692, § 1; Ga. L. 1977, p. 1154, § 2; Ga. L. 1978, p. 1645, § 1; Code 1933, § 5A-2701, enacted by Ga. L. 1980, p. 1573, § 1; Ga. L. 1981, p. 1269, § 35; Ga. L. 1985, p. 662, § 1; Ga. L. 1985, p. 665, § 2.

Editor's notes. — Ga. L. 1985, p. 662, § 1, also amended this Code section. However, that amendment has been treated as superseded by Ga. L. 1985, p. 665, § 2.

Ga. L. 1985, p. 665, § 1, not codified by the General Assembly, contained legislative findings that the cost of regulating and administering the manufacture, distribution, and sale of alcohol, distilled spirits, table wines, and dessert wines consumed in Georgia is greater for imported alcohol, spirits, and wines than it is for alcohol, spirits, and wines produced within Georgia and that it is in the best interests of the citizens of Georgia that the increased costs be provided for by taxation.

Ga. L. 1985, p. 665, § 4, not codified by the General Assembly, provided that the provisions of the Act shall not be severable and that in the event that any section or portion of any section of the Act is declared or adjudged to be invalid or unconstitutional, such declaration or adjudication shall render the entire Act invalid, void, and of no effect and shall specifically revive the provisions affected by the Act as such provisions stood before the enactment of the Act, as amended by laws other than this Act.

Law reviews. — For annual survey of state and local taxation, see 40 Mercer L. Rev. 357 (1988).

JUDICIAL DECISIONS

Constitutionality. — Georgia statutes providing for an import tax on all distilled spirits and table wines imported for use, consumption, or final delivery into the state do not violate the equal protection and commerce clauses of the federal constitution. Heublein, Inc. v. State, 256 Ga. 578, 351 S.E.2d 190, appeal dismissed, 483 U.S. 1013, 107 S. Ct. 3253, 97 L. Ed. 2d 753 (1987).

For case discussing constitutionality of former law, see Scott v. State, 187 Ga. 702, 2 S.E.2d 65 (1939), overruled on other grounds, Blackston v. State Dep't of Natural Resources, 255 Ga. 15, 334 S.E.2d 679 (1985).

The pre-1985 version of this Code section violated the commerce clause of the federal constitution because it amounted to an act of "simple economic protectionism." The rule announced in Bacchus Imports, Ltd. v. Dias, 468 U.S. 263, 104 S. Ct. 3049, 82 L. Ed. 2d 200 (1984), which held a similar Hawaii statute unconstitutional, applies retroactively to claims arising on facts antedating that decision. James B. Beam Distilling Co. v. Georgia, 501 U.S. 529, 111 S. Ct. 2439, 115 L. Ed. 2d 481 (1991).

Standing to bring action for refund. — Where, under the pre-1985 version of O.C.G.A. § 3-4-60, the manufacturer remitted the tax payment to the revenue commissioner and subsequently, in an itemized billing statement, required the wholesaler to remit payment for "state stamps" or "state tax," it was the wholesaler which was the taxpayer for purposes of O.C.G.A. § 48-2-35 and, due to its lack of standing, the manufacturer was procedurally barred from pursuing an action for refund. James B. Beam Distilling Co. v. State, 263 Ga. 609, 437 S.E.2d 782 (1993), cert. denied, 513 U.S. 1056, 115 S. Ct. 662, 130 L. Ed. 2d 597 (1994).

Predeprivation remedies for disputed taxes. — Where manufacturer remitted tax payments under the pre-1985 version of O.C.G.A. § 3-4-60, even if it was not procedurally barred from seeking a refund under O.C.G.A. § 48-2-35, its failure to avail itself of the predeprivation remedies available to it prior to payment of the disputed taxes results in denial of recovery of taxes so paid. James B. Beam Distilling Co. v. State, 263 Ga. 609, 437 S.E.2d 782 (1993), cert. denied, 513 U.S. 1056, 115 S. Ct. 662, 130 L. Ed. 2d 597 (1994).

RESEARCH REFERENCES

C.J.S. — 48 C.J.S., Intoxicating Liquors, § 409 et seq.

ALR. — Specific tax imposed on goods in stock of dealer, as excise, or property tax, 173 A.L.R. 1316.

Interplay between Twenty-First Amendment and Commerce Clause concerning state regulation of intoxicating liquors, 116 A.L.R.5th 149.

What constitutes plain, speedy, and efficient state remedy under Tax Injunction Act (28 USCS § 1341), prohibiting federal district courts from interfering with assessment, levy, or collection of state business taxes, 31 A.L.R. Fed. 2d 237.

3-4-61. Payment of tax; report.

(a) Except as may otherwise be authorized in this title, the state excise taxes imposed by this part shall be paid by the licensed wholesale dealer in distilled spirits; provided, however, that such taxes shall be imposed upon and shall be paid by the licensed distiller for distilled spirits served or sold by the distiller directly to the public pursuant to Code Section 3-4-24.2.

(b) The taxes shall be paid on or before the tenth day of the month following the calendar month in which the beverages are sold or disposed of within the particular municipality or county by the wholesale dealer.

(c) Each licensee responsible for the payment of the excise tax shall file a report itemizing for the preceding calendar month, by size and type of container, the exact quantities of distilled spirits sold during the month within the state. The licensee shall file the report with the commissioner.

(d) The licensee shall remit to the commissioner the tax imposed by the state on the tenth day of the month following the calendar month in which the sales were made.

(e) In order to phase in the reporting system of excise tax payment for distilled spirits and alcohol:

(1) The commissioner shall direct that no later than January 31, 1993, all persons who made excise tax payments in respect of distilled spirits and alcohol sales in the State of Georgia during the calendar year 1992 shall make a one-time deposit equal to the amount of 25 percent of said tax payments. This one-time advance shall be repaid in full by the state in equal semiannual installments over the period of 24 months following August 1, 1993; except that, in the event wholesalers made payments as provided for in this paragraph, the commissioner shall repay such wholesalers in the form of semiannual credits against future tax liability;

(2) On February 1, 1993, or as soon thereafter as practicable, the commissioner shall direct that an inventory be taken of stamped

merchandise and tax stamps held by manufacturers, shippers, and wholesalers. The commissioner shall issue refunds to all manufacturers and shippers for the value of tax stamps in their possession on February 1, 1993, to be paid in 12 equal installments beginning on August 1, 1993. The commissioner shall issue tax credits to wholesalers for stamps in inventory on February 1, 1993, which shall be applied as credits against the wholesaler's future tax liability for the 12 month period beginning with the report due on August 10, 1993;

(3) Nothing in this subsection shall be construed to impose an additional excise tax on distilled spirits and alcohol held in inventory by wholesalers and retailers above the excise tax paid prior to February 1, 1993; and

(4) The commissioner shall adopt rules and regulations for the implementation of a reporting method of paying distilled spirits and alcohol excise taxes as well as the elimination of the use of any type of distilled spirits and alcohol stamp. The commissioner shall have full authority to allow credits or make refunds as provided for in this subsection.

History. — Ga. L. 1937-38, Ex. Sess., p. 103, § 11; Ga. L. 1964, p. 62, § 3; Ga. L. 1972, p. 207, § 6; Ga. L. 1974, p. 615, § 1; Ga. L. 1976, p. 692, § 1; Ga. L. 1977, p. 1154, § 2; Ga. L. 1978, p. 1645, § 1; Code 1933, § 5A-2702, enacted by Ga. L. 1980, p. 1573, § 1; Ga. L. 1981, p. 1269, § 36; Ga. L. 1992, p. 1458, § 3; Ga. L. 2017, p. 406, § 6/SB 85.

The 2017 amendment, effective September 1, 2017, added the proviso at the end of subsection (a); and substituted "licensee" for "wholesaler" at the beginning of subsection (d).

Editor's notes. — Ga. L. 1992, p. 1458, § 5, not codified by the General Assembly, provides: "(a) Section 3 of this Act shall become effective February 1, 1993. All other provisions of this Act shall become effective upon its approval by the Governor [April 13, 1992] or upon its becoming law without such approval.

"(b) With regard to taxes paid and stamps purchased on or after the effective date of this Act, all provisions of this Act shall fully apply.

"(c) With regard to taxes paid and stamps purchased prior to the effective date of this Act and with regard to which no application for credit or claim for refund was filed prior to the effective date of this Act, all of the provisions of this Act shall apply, provided that, with regard to payments made less than three years prior to the effective date of this Act, the taxpayer shall have 90 days from the effective date of this Act within which to file with the commissioner the protest and the application for credit provided for by this Act, and provided, further, that no interest shall be allowed on any such taxes paid or stamps purchased.

"(d) With regard to taxes paid and stamps purchased prior to the effective date of this Act and with regard to which an application for credit or claim for refund has been filed prior to the effective date of this Act, the law which was in effect at the time the application for credit or claim for refund was filed shall apply, provided that no interest shall be allowed on any such payments, and provided, further, that if a suit for refund or credit has not been filed prior to the effective date of this Act with regard to any such application or claim, any suit for recovery of a credit pertaining to such a claim or application must be filed within 90 days after the effective date of this Act."

JUDICIAL DECISIONS

For case where evidence sustained verdict of controlling and possessing nontax paid whiskey, see Anderson v. State, 72 Ga. App. 487, 34 S.E.2d 110 (1945).

OPINIONS OF THE ATTORNEY GENERAL

The use of excise stamps which indicate the quantity and that a tax has been paid on that quantity would comply completely with this section. 1963-65 Op. Att'y Gen. p. 377.

RESEARCH REFERENCES

C.J.S. — 48 C.J.S., Intoxicating Liquors, § 415 et seq.

PART 2

LOCAL

3-4-80. Levy of tax on sale of distilled spirits by the package authorized; rate of tax; manner of imposition; imposition of tax by both county and municipality located within county.

(a) The governing authority of each municipality or county where the sale of distilled spirits by the package is permitted by Article 3 of this chapter may at its discretion levy an excise tax on the sale of distilled spirits by the package at either the wholesale or retail level, which tax shall not exceed 22¢ per liter of distilled spirits, excluding fortified wine, and a proportionate tax at the same rate on all fractional parts of a liter.

(b) The rate of taxation, the manner of its imposition, payment, and collection, and all other procedures related to the tax authorized by subsection (a) of this Code section shall be as provided for by each county or municipality electing to exercise the power conferred by subsection (a) of this Code section.

(c) No county excise tax shall be imposed, levied, or collected in any portion of a county in which a municipality within the county is imposing the same tax on distilled spirits sold by the package.

History. — Ga. L. 1937-38, Ex. Sess., p. 103, § 9; Ga. L. 1965, p. 451, § 2; Code 1933, § 5A-2703, enacted by Ga. L. 1980, p. 1573, § 1; Ga. L. 1981, p. 1269, § 37.

OPINIONS OF THE ATTORNEY GENERAL

Exclusiveness of county regulation. — No valid local or special law could be enacted which would give county power to tax and regulate liquor therein to exclusion of such power in municipalities within county. 1971 Op. Att'y Gen. No. U71-8.

RESEARCH REFERENCES

C.J.S. — 48 C.J.S., Intoxicating Liquors, §§ 400 et seq., 409 et seq.

ALR. — Excise tax on foreign corporation engaged exclusively in interstate commerce measured by net income from business within the taxing state, 44 A.L.R. 1228.

ARTICLE 5

SALES BY THE DRINK

Administrative rules and regulations. — General provisions, Official Compilation of the Rules and Regulations of the State of Georgia, Rules of Department of Revenue, Alcohol and Tobacco Tax Unit, Subject 560-2-2.

PART 1

AUTHORIZATION

JUDICIAL DECISIONS

Grants no authority to commissioner to license sale of alcoholic beverages for consumption on the premises. Mousetrap of Atlanta, Inc. v. Blackmon, 129 Ga. App. 805, 201 S.E.2d 330 (1973) (decided under former Ga. L. 1964, Ex. Sess., p. 771).

The phrases and words of Ga. L. 1964, Ex. Sess., p. 771, § 1 (see now O.C.G.A. § 3-4-90 et seq.) do not show any repugnance to Ga. L. 1937-38, Ex. Sess., p. 103, § 14 (see now O.C.G.A. § 3-3-20), which make the sale of any liquor on Sunday a criminal offense. Hawes v. Dinkler, 224 Ga. 785, 164 S.E.2d 799 (1968) (decided under former Ga. L. 1964, Ex. Sess., p. 771).

City is authorized to consider applications for licenses to sell liquor by the drink throughout corporate limits, even though section of city lies within county which is dry as to sale of liquor by the drink. Holcomb v. Gray, 234 Ga. 7, 214 S.E.2d 512 (1975) (decided under former Ga. L. 1964, Ex. Sess., p. 771).

OPINIONS OF THE ATTORNEY GENERAL

Time for holding elections. — The election as to mixed drinks provided for by statute may not be held in conjunction with any other election. 1972 Op. Att'y Gen. No. U72-81.

RESEARCH REFERENCES

ALR. — Referendum of general legislative act to people in absence of constitutional requirement in that regard, 76 A.L.R. 1053.

What amounts to "restaurant" or "restaurant business" within intoxicating liquor law, 105 A.L.R. 566.

Change of "wet" or "dry" status fixed by local option election by change of name, character, or boundaries of voting unit, without later election, 25 A.L.R.2d 863.

Power of legislative body to amend, repeal, or abrogate initiative or referendum measure, or to enact measure defeated on referendum, 33 A.L.R.2d 1118.

3-4-90. Authorization by counties or municipalities of issuance of licenses for sale of distilled spirits by the drink generally; procedure.

(a) Each county or municipality may authorize, through proper resolution or ordinance, the issuance of licenses to sell distilled spirits by the drink for consumption only on the premises where sold; except as provided in Code Section 3-9-11 for in-room service by hotels, retail consumption dealers shall not buy or sell in packages of 50 milliliters.

(b)(1) Except as otherwise provided in this subsection, a county or municipality shall adopt such resolutions or ordinances only after the authority to do so has been authorized as provided in either Code Section 3-4-91 or 3-4-92.

(2)(A) The governing authority of every county having a population of not less than 50,000 nor more than 53,000 according to the United States decennial census of 1990 or any future such census and the governing authority of every municipality within every such county, through proper resolution or ordinance, may authorize the issuance of licenses to sell alcoholic beverages by the drink for consumption only on the premises where sold. Every such governing authority shall have full power and authority to adopt all reasonable rules and regulations governing the qualifications and criteria for the issuance of any such licenses and shall further have the power and authority to promulgate reasonable rules and regulations governing the conduct of any licensee provided for in this subparagraph, including, but not limited to, the regulation of hours of business, types of employees, and other matters which may fall within the police powers of such counties and municipalities. Those persons who are duly licensed as wholesalers under this title shall be authorized to sell distilled spirits at wholesale prices to any person or persons licensed as provided in this subparagraph; and the person or persons licensed under this subparagraph shall be authorized to purchase distilled spirits from a licensed wholesaler at wholesale prices.

(B) No resolution or ordinance adopted pursuant to subparagraph (A) of this paragraph shall become effective until the governing authority of the county or municipality submits to the qualified electors of the county or municipality the question of

whether the ordinance or resolution shall be approved or rejected. If in the election a majority of the electors voting on the question vote for approval, the ordinance or resolution shall become effective at such time as is provided for in the resolution or ordinance; otherwise, it shall be of no force and effect.

History. — Ga. L. 1964, p. 771, § 1; Ga. L. 1969, p. 1140, §§ 1-4; Ga. L. 1972, p. 207, § 13; Ga. L. 1973, p. 610, § 1; Code 1933, § 5A-2901, enacted by Ga. L. 1980, p. 1573, § 1; Ga. L. 1981, p. 1269, § 38; Ga. L. 1982, p. 592, §§ 1, 2; Ga. L. 1983, p. 3, § 4; Ga. L. 1984, p. 22, § 3; Ga. L. 1992, p. 1018, §§ 1, 2; Ga. L. 1992, p. 2929, § 2; Ga. L. 1994, p. 237, § 2; Ga. L. 1994, p. 553, § 3; Ga. L. 1995, p. 740, § 1.

RESEARCH REFERENCES

ALR. — Validity of statutory classifications based on population-intoxicating liquor statutes, 100 A.L.R.3d 850.

3-4-91. Procedure for authorization of sale in counties and municipalities in which package sales lawful; procedure for nullifying prior approval and authorization of sales by the drink.

(a) In every county and municipality in which package sales of distilled spirits are lawful, sales of distilled spirits as provided in this article may be authorized after approval as provided in this Code section.

(b)(1)(A) In the event the governing authority of any municipality or county coming under the provisions of this Code section desires to exercise the powers authorized by Code Section 3-4-90, the governing authority, through the election superintendent, shall conduct a referendum election for the purpose of determining whether or not these powers shall be exercised. Any such governing authority shall notify the election superintendent of the county or the municipality, as the case may be, of the referendum, by forwarding to the superintendent a copy of a resolution of such governing authority calling for such a referendum election. Upon receipt of such resolution, it shall be the duty of such election superintendent to set a date and to issue the call for an election for the purpose of submitting the question of whether or not the governing authority of the county or municipality shall be authorized to issue licenses to sell distilled spirits for beverage purposes by the drink, such sales to be for consumption only on the premises. The superintendent shall set the date of the referendum election for not less than 30 nor more than 60 days after the call. The referendum may be held as a special referendum or may be held at the time of holding any other primary or election in such county or municipality, if such other

primary or election is to be held not more than 60 days after the call. Notice of the call for the referendum shall be published by the superintendent in the legal organ of the county or, in the case of a municipality, in a newspaper of general circulation in the municipality. The election superintendent shall also cause the date and purpose of the referendum to be published in the official organ of the county or, in the case of a municipality, in a newspaper of general circulation in the municipality once a week for two weeks immediately preceding the date of the election. The ballot shall have printed thereon the following:

"[ ] YES Shall the governing authority of _____ be authorized to issue licenses
[ ] NO to sell distilled spirits for beverage purposes by the drink, such sales to be for consumption only on the premises?"

(B) All persons desiring to vote in favor shall vote "Yes," and those persons opposed shall vote "No." If more than one-half of the votes cast on such question are in favor of issuing licenses to sell distilled spirits for beverage purposes by the drink, such sales to be for consumption only on the premises, then the governing authority shall, in accordance with this Code section, issue such licenses; otherwise, no license shall be issued. If held as a special election, it shall be the duty of the election superintendent to hold and conduct such election under the same rules that govern special elections as provided in Chapter 2 of Title 21, the "Georgia Election Code." It shall be his further duty to canvass the returns and declare and certify the results of the election to the Secretary of State. The expense for the election shall be borne by the county or the municipality conducting the election.

(C) Following the expiration of one year after any election is held which results in the disapproval of sales as provided in this article, another election on this question shall be held if the governing authority, as provided in subparagraph (A) of this paragraph, forwards a resolution to the election superintendent calling for such a referendum.

(2)(A) In the event the governing authority of any municipality or county coming under the provisions of this Code section does not adopt a resolution directing the election superintendent to issue a call for the referendum provided for in paragraph (1) of this subsection, then, upon a written petition containing the signatures of 15 percent of the registered and qualified voters of any municipality or county coming within the provisions of this Code section being filed with the appropriate election superintendent, such election superintendent, upon validation of the petition, shall be

required to call and hold a referendum election for the purpose of submitting to the qualified voters of the municipality or the county, as the case may be, the question of whether or not the governing authority shall be authorized to issue licenses to sell distilled spirits for beverage purposes by the drink, such sales to be for consumption only on the premises. A petition shall not be amended, supplemented, or returned after presentation to the appropriate authority. "Validation" shall, for the purposes of this Code section, be the procedure in which the election superintendent determines whether each signature on the petition is the name of a registered and qualified voter. For purposes of this Code section the required number of signatures of registered voters of a political subdivision shall be computed based on the number of voters qualified to vote at the general election immediately preceding the presentation of the petition. Actual signers of the petition shall be registered and qualified to vote in the referendum election sought by the petition. Upon determining that the petition contains a sufficient number of valid signatures, the election superintendent shall set the date of the referendum election for not less than 30 nor more than 60 days after the call. The referendum may be held as a special referendum election or may be held at the time of holding any other primary or election in such county or municipality, if such other primary or election is to be held not more than 60 days after the call. Notice of the call for the referendum shall be published by the superintendent in the legal organ of the county or, in the case of a municipality, in a newspaper of general circulation in the municipality. The election superintendent shall also cause the date and purpose of the referendum to be published in the official organ of the county or, in the case of a municipality, in a newspaper of general circulation in the municipality once a week for two weeks immediately preceding the date of the election. The ballot shall have printed thereon the following:

"[ ] YES Shall the governing authority of _____ be authorized to issue licenses
[ ] NO to sell distilled spirits for beverage purposes by the drink, such sales to be for consumption only on the premises?"

(B) All persons desiring to vote in favor shall vote "Yes," and those persons opposed shall vote "No." If more than one-half of the votes cast on such question are in favor of issuing licenses to sell distilled spirits for beverage purposes by the drink, such sales to be for consumption only on the premises, then the governing authority shall, in accordance with this Code section, issue such licenses; otherwise, no license shall be issued. If conducted as a special election, it shall be the duty of the election superintendent to hold

and conduct such election under the same rules that govern special elections as provided in Chapter 2 of Title 21, the "Georgia Election Code." It shall be his further duty to canvass the returns and declare and certify the results of the election to the Secretary of State. The expense for the election shall be borne by the county or the municipality conducting the election.

(C) Following the expiration of two years after any election is held which results in the disapproval of sales as provided in this article, another election on this question shall be held if another petition, as provided in subparagraph (A) of this paragraph, is filed with the appropriate election superintendent.

(c) In any municipality or county which has at any time held an election in accordance with subsection (b) of this Code section resulting in the majority of the votes being cast in favor of sales of distilled spirits by the drink, the election superintendent of the municipality or county, upon a petition signed by at least 15 percent of the registered, qualified voters of the municipality or county, shall proceed to call another election for the purpose of nullifying the previous election in the same manner as prescribed in subsection (b) of this Code section. No election shall be called or held within two years after the date of the declaration by the election superintendent of the results of the previous election held for the purposes of this Code section.

History. — Ga. L. 1964, p. 771, § 1; Ga. L. 1969, p. 1140, §§ 1-4; Ga. L. 1972, p. 207, § 13; Ga. L. 1973, p. 610, § 1; Code 1933, § 5A-2902, enacted by Ga. L. 1980, p. 1573, § 1; Ga. L. 1982, p. 1463, §§ 4, 11; Ga. L. 1983, p. 3, § 4; Ga. L. 1983, p. 806, § 3; Ga. L. 1996, p. 830, § 2; Ga. L. 1998, p. 295, § 3.

JUDICIAL DECISIONS

Ga. L. 1964, Ex. Sess., p. 771, § 1 (see now O.C.G.A. § 3-4-90 et seq.) grants no authority to commissioner to license sale of alcoholic beverages for consumption on the premises. Mousetrap of Atlanta, Inc. v. Blackmon, 129 Ga. App. 805, 201 S.E.2d 330 (1973).

The phrases and words of Ga. L. 1964, Ex. Sess., p. 771, § 1 (see now O.C.G.A. § 3-4-90 et seq.) do not show any repugnance to Ga. L. 1937-38, Ex. Sess., p. 103, § 14 (see now O.C.G.A. § 3-3-20), which make the sale of any liquor on Sunday a criminal offense. Hawes v. Dinkler, 224 Ga. 785, 164 S.E.2d 799 (1968).

OPINIONS OF THE ATTORNEY GENERAL

Municipalities are not authorized to receive funds from the sponsor of a petition calling for a referendum on the question of the sale of distilled spirits by the drink to reimburse the municipality for the costs and expense of holding the referendum. 1984 Op. Att'y Gen. No. 84-36.

RESEARCH REFERENCES

Am. Jur. 2d. — 45 Am. Jur. 2d, Intoxicating Liquors, § 58 et seq.

ALR. — What amounts to "restaurant" or "restaurant business" within intoxicating liquor law, 105 A.L.R. 566.

Power of legislative body to amend, repeal, or abrogate initiative or referendum measure, or to enact measure defeated on referendum, 33 A.L.R.2d 1118.

3-4-92. Procedure for authorization of sale in counties and municipalities in which package sales are not lawful; procedure for nullifying prior approval and authorization of sales by the drink.

(a) In every county and municipality in which package sales of distilled spirits are not lawful, sales of distilled spirits as provided in this article may be authorized after approval as provided in this Code section.

(b)(1)(A) In the event the governing authority of any municipality or county coming under the provisions of this Code section desires to exercise the powers authorized by Code Section 3-4-90, the governing authority through the appropriate election superintendent shall conduct a referendum election for the purpose of determining whether or not these powers shall be exercised. Any such governing authority shall notify the election superintendent of the county or the municipality, as the case may be, of the referendum by forwarding to the superintendent a copy of a resolution of such governing authority calling for such a referendum election. It shall be the duty of such election superintendent to issue the call and set the date for an election in accordance with Code Section 21-2-540 for the purpose of submitting the question of whether or not the governing authority of the county or municipality shall be authorized to issue licenses to sell distilled spirits for beverage purposes by the drink, such sales to be for consumption only on the premises. Notice of the call for the referendum shall be published by the superintendent in the legal organ of the county or, in the case of a municipality, in a newspaper of general circulation in the municipality. The election superintendent shall also cause the date and purpose of the referendum to be published in the official organ of the county or, in the case of a municipality, in a newspaper of general circulation in the municipality once a week for two weeks immediately preceding the date of the election. The ballot shall have printed thereon the following:

"[ ] YES Shall the governing authority of _____ be authorized to issue licenses
[ ] NO to sell distilled spirits for beverage purposes by the drink, such sales to be for consumption only on the premises?"

(B) All persons desiring to vote in favor shall vote "Yes," and those persons opposed shall vote "No." If more than one-half of the votes cast are in favor of issuing licenses to sell distilled spirits for beverage purposes by the drink, such sale to be for consumption only on the premises, then the governing authority shall in accordance with this Code section issue such licenses; otherwise, no license shall be issued. It shall be the duty of the election superintendent to hold and conduct such election under the provisions of Chapter 2 of Title 21, the "Georgia Election Code." It shall be the superintendent's further duty to canvass the returns and declare and certify the results of the election to the Secretary of State. The expense of the election shall be borne by the county or the municipality conducting the election.

(C) Following the expiration of two years after any election is held which results in the disapproval of sales as provided in this article, another election on this question shall be held if the governing authority, as provided in subparagraph (A) of this paragraph, forwards a resolution to the election superintendent calling for such a referendum.

(D) Nullification of a referendum approving such sales held pursuant to this paragraph shall be accomplished only as provided in subsection (c) of this Code section.

(2)(A) In the event the governing authority of any municipality or county coming under the provisions of this Code section does not adopt a resolution directing the election superintendent to issue a call for the referendum provided for in paragraph (1) of this subsection, then, upon a written petition containing the signatures of 35 percent of the registered and qualified voters of any municipality or county described in subsection (a) of this Code section being filed with the appropriate election superintendent, such election superintendent, upon validation of the petition, shall be required to call and hold a referendum election for the purpose of submitting to the qualified voters of the municipality or the county, as the case may be, the question of whether or not the governing authority shall be authorized to issue licenses to sell distilled spirits for beverage purposes by the drink, such sales to be for consumption only on the premises. A petition shall not be amended, supplemented, or returned after presentation to the appropriate authority. "Validation" shall, for the purposes of this Code section, be the procedure in which the election superintendent determines whether each signature on the petition is the name of a registered and qualified voter. For the purposes of this Code section, the required number of signatures of registered voters of a political subdivision shall be computed based on the number of voters

qualified to vote at the general election immediately preceding the presentation of the petition. Actual signers of the petition shall be registered and qualified to vote in the referendum election sought by the petition. Upon determining that the petition contains a sufficient number of valid signatures, the superintendent shall issue the call and set the date of the referendum election in accordance with Code Section 21-2-540. Notice of the call for the referendum shall be published by the superintendent in the legal organ of the county or, in the case of a municipality, in a newspaper of general circulation in the municipality. The election superintendent shall also cause the date and purpose of the referendum to be published in the official organ of the county or, in the case of a municipality, in a newspaper of general circulation in the municipality, once a week for two weeks immediately preceding the date of the election. The ballot shall have printed thereon the following:

"[ ] YES	Shall the governing authority of _____ be authorized to issue licenses to sell distilled spirits for beverage purposes by the drink, such sales to be for consumption only on the premises?"
[ ] NO	

(B) All persons desiring to vote in favor shall vote "Yes," and those persons opposed shall vote "No." If more than one-half of the votes cast on such a question are in favor of issuing licenses to sell distilled spirits for beverage purposes by the drink, such sales to be for consumption only on the premises, then the governing authority shall in accordance with this Code section issue such licenses; otherwise no license shall be issued. It shall be the duty of the election superintendent to hold and conduct such election under the same rules that govern special elections as provided in Chapter 2 of Title 21, the "Georgia Election Code." It shall further be the superintendent's duty to canvass the returns and declare and certify the results of the election to the Secretary of State. The expense for the election shall be borne by the county or the municipality conducting the election.

(C) Following the expiration of two years after any election is held which results in the disapproval of sales as provided in this article, another election on this question shall be held if another petition, as provided in subparagraph (A) of paragraph (2) of this subsection, is filed with the appropriate election superintendent.

(D) Nullification of a referendum approving such sales held pursuant to this paragraph shall be accomplished only as provided in subsection (c) of this Code section.

(c) In any municipality or county which has at any time held an election in accordance with subsection (b) of this Code section resulting

in a majority of the votes being cast in favor of sales of distilled spirits by the drink, the election superintendent of the municipality or county, upon a petition signed by at least 35 percent of the registered qualified voters of the municipality or county, shall proceed to call another election for the purpose of nullifying the previous election in the same manner as prescribed by paragraph (2) of subsection (b) of this Code section. No election shall be called or held within two years after the date of the declaration by the election superintendent of the results of the previous election held for the purposes of this Code section.

History. — Code 1933, § 5A-2903, enacted by Ga. L. 1980, p. 1573, § 1; Ga. L. 1982, p. 1855, §§ 2, 4; Ga. L. 1983, p. 806, § 4; Ga. L. 1995, p. 753, § 1; Ga. L. 1998, p. 295, § 3.

Code Commission notes. — Pursuant to Code Section 28-9-5, in 1995, a comma was deleted following "governing authority shall" in the second sentence of subparagraph (b)(2)(B).

JUDICIAL DECISIONS

Effect of county referendum on municipality. — A municipality which has not conducted a local referendum, but is located within a county which has held a referendum, is not empowered by the result of the county referendum to allow liquor by the drink sales. Price v. City of Snellville, 253 Ga. 166, 317 S.E.2d 834 (1984).

OPINIONS OF THE ATTORNEY GENERAL

Municipalities are not authorized to receive funds from the sponsor of a petition calling for a referendum on the question of the sale of distilled spirits by the drink to reimburse the municipality for the costs and expense of holding the referendum. 1984 Op. Att'y Gen. No. 84-36.

Municipal citizens voting in county-wide elections. — Registered and qualified voters in municipal elections may sign petitions and vote in both municipal and county elections held pursuant to O.C.G.A. § 3-4-41, but a county referendum is only binding on the unincorporated areas of the county. 1985 Op. Att'y Gen. No. U85-48.

Single petition for approval of package sales, and sales by the drink, allowed. — A single petition may be used for the purpose of invoking the referendum procedures for approval of package sales of distilled spirits and sales of distilled spirits by the drink for consumption on the premises if the petition clearly sets forth that it is for both purposes and the questions are presented separately in the referendum in the manner prescribed by law. 1985 Op. Att'y Gen. No. 85-22.

3-4-93. Municipalities in wet counties.

Any municipality which lies wholly or partially within a county which has approved the sale of distilled spirits by the drink for consumption only on the premises in a county-wide referendum as provided in this article and which, on January 1, 1985, was issuing licenses permitting the sale of distilled spirits by the drink for consumption only on the premises shall be authorized to exercise the powers and shall be subject

to the provisions contained in this title relating to the sale of distilled spirits by the drink for consumption only on the premises.

History. — Code 1981, § 3-4-93, enacted by Ga. L. 1986, p. 1083, § 2.

Law reviews. — For annual survey of local government law, see 38 Mercer L. Rev. 289 (1986).

PART 2

LICENSES

3-4-110. Adoption of local rules and regulations governing issuance of licenses and conduct of licensees.

The governing authority of every county and municipality authorized to issue licenses as provided in this article shall have the power and authority to adopt all reasonable rules and regulations governing the qualifications and criteria for the issuance of any licenses for the sale of distilled spirits by the drink and shall further have the power to promulgate reasonable rules and regulations governing the conduct of any licensee provided for in this article, including, but not limited to, the regulation of hours of business, types of employees, and other matters which may fall within the police powers of such municipalities or counties. These powers shall be exercised only after the authority to do so has been granted pursuant to the procedures prescribed in Code Section 3-4-91 or 3-4-92.

History. — Ga. L. 1964, p. 771, § 1; Ga. L. 1969, p. 1140, §§ 1-4; Ga. L. 1972, p. 207, § 13; Ga. L. 1973, p. 610, § 1; Code 1933, § 5A-2904, enacted by Ga. L. 1980, p. 1573, § 1.

Law reviews. — For comment on Moose Lodge v. Irvis, 407 U.S. 163, 92 S. Ct. 1965, 32 L. Ed. 2d 627 (1972), holding the granting of a liquor license to a discriminatory private club insufficient to constitute state action prohibited by the fourteenth amendment, see 22 J. of Pub. L. 281 (1973).

JUDICIAL DECISIONS

Effect of county referendum on municipality. — A municipality which has not conducted a local referendum, but is located within a county which has held a referendum, is not empowered by the result of the county referendum to allow liquor by the drink sales. Price v. City of Snellville, 253 Ga. 166, 317 S.E.2d 834 (1984).

RESEARCH REFERENCES

Am. Jur. 2d. — 45 Am. Jur. 2d, Intoxicating Liquors, §§ 15, 90 et seq.

ALR. — Power to exact license fees or impose a penalty for benefit of private individual or corporation, 13 A.L.R. 828; 19 A.L.R. 205.

Contributory negligence as defense to action based on violation of statute or ordinance as to condition of premises of seller of intoxicating liquor, 144 A.L.R. 827.

Validity of statute or rule which makes

specified conduct or condition a ground for cancellation or suspension of license, irrespective of licensee's personal fault, 3 A.L.R.2d 107.

Regulations forbidding employees or entertainers from drinking or mingling with patrons, or soliciting drinks from them, 99 A.L.R.2d 1216.

3-4-111. Sale by wholesalers to licensees; purchase by licensees from wholesalers; declaration of contraband.

(a) Those persons who are duly licensed as wholesalers of distilled spirits under this title may sell distilled spirits at wholesale prices to any person or persons licensed as provided in this article. Persons licensed under this article may purchase distilled spirits from a licensed wholesaler at wholesale prices.

(b) Any distilled spirits possessed, sold, or offered for sale by a retail dealer or retail consumption dealer which are purchased or otherwise acquired from any person other than a wholesale dealer authorized to do business under this chapter are declared to be contraband and shall be seized and disposed of by the commissioner in the manner provided in this title.

History. — Ga. L. 1964, p. 771, § 1; Ga. L. 1969, p. 1140, §§ 1-4; Ga. L. 1972, p. 207, § 13; Ga. L. 1973, p. 610, § 1; Code 1933, § 5A-2905, enacted by Ga. L. 1980, p. 1573, § 1; Ga. L. 2012, p. 827, § 3/HB 1066.

RESEARCH REFERENCES

Am. Jur. 2d. — 45 Am. Jur. 2d, Intoxicating Liquors, §§ 102, 201, 209.

3-4-111.1. Occupational license tax upon retail consumption dealers; annual payment; application.

(a) An annual occupational license tax in the amount of $100.00 is imposed upon each retail consumption dealer in this state.

(b) The annual occupational license tax shall be paid for each place of business operated. An application for a retail consumption dealer's license required pursuant to this title along with the payment of the tax required by subsection (a) of this Code section shall be submitted to the department immediately upon assuming control of the place of business and annually thereafter for so long as the business is operated.

History. — Code 1933, § 5A-2921, enacted by Ga. L. 1981, p. 1269, § 39; Ga. L. 2012, p. 827, § 4/HB 1066.

RESEARCH REFERENCES

Am. Jur. 2d. — 45 Am. Jur. 2d, Intoxicating Liquors, § 168 et seq. 58 Am. Jur. 2d, Occupations, Trades, and Professions, § 8 et seq.

C.J.S. — 48 C.J.S., Intoxicating Liquors, § 400 et seq., 201, 202. 53 C.J.S., Licenses, §§ 22, 23, 42.

Part 3

Excise Taxation

Cross references. — Sales and use taxes, T. 48, C. 8.

OPINIONS OF THE ATTORNEY GENERAL

Imposition of tax by county in city not imposing such tax. — Under Ga. L. 1977, Ex. Sess., p. 744 (see now O.C.G.A. § 3-4-130 et seq.), a county may impose excise tax upon sale of alcoholic beverages within a city in the county which has not imposed a similar tax, until such time as city does impose such tax. 1978 Op. Att'y Gen. No. U78-4.

3-4-130. Imposition of tax by municipalities authorized; rate of tax.

(a) The governing authority of each municipality in which the sale of distilled spirits by the drink is permitted may impose, levy, and collect an excise tax upon the sale of the beverages, which tax shall not exceed 3 percent of the charge to the public for the beverages.

(b) This Code section shall not apply to the sale of fermented beverages made in whole or in part from malt or any similar fermented beverage.

History. — Ga. L. 1977, p. 744, § 1; Code 1933, § 5A-2906, enacted by Ga. L. 1980, p. 1573, § 1.

RESEARCH REFERENCES

Am. Jur. 2d. — 45 Am. Jur. 2d, Intoxicating Liquors, §§ 168, 169. 67B Am. Jur. 2d, Sales and Use Taxes, §§ 8, 34, 80 et seq., 134 et seq..

ALR. — Excise tax on foreign corporation engaged exclusively in interstate commerce measured by net income from business within the taxing state, 44 A.L.R. 1228.

3-4-131. Imposition of tax by counties authorized; rate of tax; taxation by both county and municipality located within county.

(a) The governing authority of each county in which the sale of distilled spirits by the drink is permitted may impose, levy, and collect an excise tax upon the sale of the beverages, which tax shall not exceed 3 percent of the charge to the public for the beverages.

(b) No tax authorized by subsection (a) of the Code section may be imposed, levied, and collected in any portion of a county in which the tax provided for in Code Section 3-4-130 is being imposed, levied, and collected.

(c) The tax authorized by this Code section shall not apply to the sale of fermented beverages made in whole or in part from malt or any similar fermented beverage.

History. — Ga. L. 1977, p. 744, § 2; Code 1933, § 5A-2907, enacted by Ga. L. 1980, p. 1573, § 1.

RESEARCH REFERENCES

Am. Jur. 2d. — 45 Am. Jur. 2d, Intoxicating Liquors, §§ 168, 169. 67B Am. Jur. 2d, Sales and Use Taxes, §§ 8, 34, 80 et seq., 134 et seq.

3-4-132. Manner of imposition, payment, and collection of tax.

The rate of taxation, the manner of its imposition, payment, and collection, and all other procedures related to the tax authorized by Code Sections 3-4-130 and 3-4-131 shall be as provided for by each county or municipality electing to exercise powers conferred by Code Sections 3-4-130 and 3-4-131.

History. — Ga. L. 1977, p. 744, § 3; Code 1933, § 5A-2908, enacted by Ga. L. 1980, p. 1573, § 1.

RESEARCH REFERENCES

Am. Jur. 2d. — 67B Am. Jur. 2d, Sales and Use Taxes, §§ 8, 34, 80 et seq., 134 et seq.

3-4-133. Allowance and reimbursement to dealers collecting tax of percentage of tax due.

Dealers collecting the tax authorized by Code Sections 3-4-130 and 3-4-131 shall be allowed a percentage of the tax due and accounted for

and shall be reimbursed in the form of a deduction in submitting, reporting, and paying the amount due, if the amount is not delinquent at the time of payment. The rate of the deduction shall be the same rate authorized for deductions from state tax under Chapter 8 of Title 48.

History. — Ga. L. 1977, p. 744, § 4; Code 1933, § 5A-2909, enacted by Ga. L. 1980, p. 1573, § 1.

RESEARCH REFERENCES

ALR. — Excise tax on foreign corporation engaged exclusively in interstate commerce measured by net income from business within the taxing state, 44 A.L.R. 1228.

ARTICLE 6

DESIGNATION OF SALES TERRITORIES AND WHOLESALERS FOR OUT-OF-STATE BRANDS

Editor's notes. — The Act which enacted this article stated that the article was to be added to the end of Chapter 4 of Title 3. However, the Code sections comprising the article were enacted as §§ 3-6-150 through 3-6-153, which designations were not consistent with placement in Chapter 4. Therefore, these Code sections were redesignated as §§ 3-4-150 through 3-4-153 by Ga. L. 1985, p. 149, § 3, effective February 12, 1985.

3-4-150. Short title.

This article shall be known and may be cited as the "Georgia Distilled Spirits Distribution Act."

History. — Code 1981, § 3-6-150, enacted by Ga. L. 1984, p. 375, § 1; Code 1981, § 3-4-150, as redesignated by Ga. L. 1985, p. 149, § 3.

3-4-151. Purposes and policies.

This article is promulgated pursuant to the authority granted to the state under the provisions of the Twenty-first Amendment to the United States Constitution specifically for the following purposes and policies:

(1) To prevent unfair business practices, discrimination, and undue control of one segment of the distilled spirits industry by any other segment;

(2) To foster vigorous and healthy competition in the distilled spirits industry;

(3) To promote and keep alive a sound and stable system of distribution of distilled spirits to the public;

(4) To protect public revenues by facilitating the collection and accountability of state and local excise taxes; and

(5) To promote the public health, safety, and welfare of the people of the State of Georgia.

History. — Code 1981, § 3-6-151, enacted by Ga. L. 1984, p. 375, § 1; Code 1981, § 3-4-151, as redesignated by Ga. L. 1985, p. 149, § 3.

3-4-152. Submission of labels; designation of sales territories and exclusive wholesale distributors; approval by commissioner.

(a) Every manufacturer or shipper shipping distilled spirits for the first time into the state shall:

(1) Submit to the commissioner one label for each brand of distilled spirits to be shipped for the first time by the manufacturer or shipper into this state;

(2) Designate in the application for registration the sales territories for each of its brands sold in this state; and

(3) Name one licensed wholesaler in each territory who shall be the exclusive distributor of the brand within the territory.

(b) Designations of wholesalers and wholesalers' territories as provided in this Code section shall be initially approved by the commissioner and shall not be changed or initially disapproved except for cause. The commissioner shall determine cause after a hearing under regulations promulgated by the commissioner for such purposes.

History. — Code 1981, § 3-6-152, enacted by Ga. L. 1984, p. 375, § 1; Code 1981, § 3-4-152, as redesignated by Ga. L. 1985, p. 149, § 3.

3-4-153. Regulations.

The commissioner shall have the authority to adopt such regulations as are consistent with this article.

History. — Code 1981, § 3-6-153, enacted by Ga. L. 1984, p. 375, § 1; Code 1981, § 3-4-153, as redesignated by Ga. L. 1985, p. 149, § 3.

ARTICLE 7

SALES BY THE DRINK IN CERTAIN MUNICIPALITIES; WITHDRAWAL

3-4-160. Municipalities in wet counties.

(a)(1) Except as provided in subsection (c) of this Code section, any municipality which lies wholly or partially within a county which has approved in a county-wide referendum the manufacture, sale, or distribution of distilled spirits as provided in Article 3 of this chapter may, by ordinance or resolution and without the necessity of conducting a separate referendum, authorize the manufacture, sale, or distribution of distilled spirits and may exercise the powers contained in this title relating to the manufacture, sale, or distribution of distilled spirits.

(2) In any municipality in which the manufacture, sale, or distribution of distilled spirits is authorized as provided in this Code section, such manufacture, sale, or distribution may, by ordinance or resolution adopted by the governing authority of the municipality, be prohibited.

(b)(1) Except as provided in subsection (c) of this Code section, any municipality which lies wholly or partially within a county which has approved in a county-wide referendum the sale of distilled spirits by the drink for consumption only on the premises as provided in Part 1 of Article 5 of this chapter may, by ordinance or resolution and without the necessity of conducting a separate referendum, authorize the sale of distilled spirits by the drink for consumption only on the premises and may exercise the powers contained in this title relating to the sale of distilled spirits by the drink for consumption only on the premises.

(2) In any municipality in which the sale of distilled spirits by the drink for consumption only on the premises is authorized as provided in this Code section, such sales may, by ordinance or resolution adopted by the governing authority of the municipality, be prohibited.

(c) A municipality shall not be authorized to approve the manufacture, sale, or distribution of distilled spirits as provided in subsection (a) of this Code section or the sale of distilled spirits by the drink for consumption only on the premises as provided in subsection (b) of this Code section unless a majority of the electors voting in the county-wide referendum election who reside in the municipality voted in favor of approving the manufacture, sale, or distribution of distilled spirits or in favor of approving the sale of distilled spirits by the drink for consumption only on the premises.

History. — Code 1981, § 3-4-160, enacted by Ga. L. 1986, p. 1083, § 3; Ga. L. 1987, p. 913, § 1.

Law reviews. — For annual survey of local government law, see 38 Mercer L. Rev. 289 (1986).

ARTICLE 8

TASTINGS

3-4-180. Tastings of distilled spirits; definitions; general provisions; prohibited sales; administration.

Repealed by Ga. L. 2017, p. 406, § 5/SB 85, effective September 1, 2017.

Editor's notes. — This Code section was based on Ga. L. 2012, p. 682, § 1/HB 514; Ga. L. 2015, p. 317, § 6/SB 63.

Ga. L. 2018, p. 1112, § 3(2)/SB 365, part of an Act to revise, modernize, and correct the Code, repealed the reservation of this Code section, effective May 8, 2018.

CHAPTER 5

MALT BEVERAGES

Article 1

General Provisions

Sec.
3-5-1. Definitions.
3-5-2. Determination as to when possession occurs.
3-5-3. Malt beverages upon which taxes not paid and motor vehicles, watercraft, or aircraft used in transporting same declared contraband.
3-5-4. Production of malt beverages in private residences; consumption; transportation and delivery; home-brew special events.
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Article 2

State License Requirements and Regulations for Manufacture, Distribution, and Sale

3-5-20. Levy and amount of state occupational license tax; application for license.
3-5-21. Sale, offer for sale, or possession of bottles or cans not having prescribed identification on crowns or lids; alternate identification for use on certain imported bottles or containers.
3-5-22. Shipment of malt beverages within or into state without license prohibited; requirement as to furnishing of labels of beverages to be shipped into state for first time [Repealed].
3-5-23. License for manufacture of malt beverages — Grounds and procedure for revocation generally.
3-5-24. License for manufacture of malt beverages — Rights conferred; separate revocation of licenses for sale of malt beverages for resale within and outside state authorized; effect of revocation on sale within state.
3-5-24.1. Exception to three tier system; sales at brewer's licensed premises; taxing; regulatory authority; conditions or limitations.
3-5-25. License for manufacture of malt beverages — Renewal.
3-5-25.1. License for manufacture of malt beverages — Bond required on application for license or renewal.
3-5-26. Persons to whom malt beverages may be sold by wholesale dealers.
3-5-27. Malt beverages acquired by retail dealers from persons other than licensed wholesale dealers declared contraband.
3-5-28. Delivery, receipt, and storage of malt beverages sold by wholesale dealers to retail dealers.
3-5-29. Brewer-wholesaler relations — "Agreement" defined.
3-5-30. Brewer-wholesaler relations — Purpose; intent; enforcement.
3-5-31. Brewer-wholesaler relations — License requirement for shippers of beer; application.
3-5-32. Brewer-wholesaler relations — Conflicts of interest.
3-5-33. Brewer-wholesaler relations — Prohibited acts.
3-5-34. Brewer-wholesaler relations — Applicability of Code Sections 3-5-29 through 3-5-33.
3-5-35. Declaration of policy; "brewpubs".
3-5-36. "Brewpub" exception to three-tier distribution system.
3-5-37. "Brewpub" exception; rules and regulations.
3-5-38. Permits for free tasting of malt beverages during educational and promotional brewery tours; merchandising; fees for tours; selling of beverages; administration [Repealed].

Article 3

Local License Requirements and Regulations for Manufacture, Distribution, and Sale

Sec.
3-5-40. Requirement by counties or municipalities of licenses for manufacture, distribution, and sale of malt beverages; effect of revocation of license issued by commissioner or by county or municipality upon license issued by other.
3-5-41. Requirement and issuance of county licenses generally.
3-5-42. Requirement and issuance of municipal licenses generally; requirement by county of license for business licensed by municipality.
3-5-43. Restriction on amount of license fee charged by county or municipality other than that of wholesale dealer's principal place of business.

Article 4

Excise Taxation

PART 1

STATE

3-5-60. Levy and amount of tax.
3-5-61. Exemptions from tax.

PART 2

LOCAL

3-5-80. Levy and amount of tax.
3-5-81. Payment of tax by wholesale dealers generally; time of payment; reports by dealers as to quantities of beverages sold.
3-5-82. Requirement of markings on containers.
3-5-83. Use of excess tax revenues by consolidated governments and certain counties.
3-5-84. Enforcement of part.

PART 3

EXEMPTIONS

3-5-90. Malt beverages containing less than one-half of 1 percent alcohol by volume.

Law reviews. — For note, "Beer, Liquor, or a Little Bit of Both? Getting to the Bottom of Properly Classifying Flavored Malt Beverages in the United States and Australia," see 39 Ga. J. Int'l & Comp. L. 471 (2011).

Administrative rules and regulations. — Malt beverage regulations, Official Compilation of the Rules and Regulations of the State of Georgia, Rules of Department of Revenue, Alcohol and Tobacco Tax Unit, Chapter 560-2-7.

JUDICIAL DECISIONS

Editor's notes. — In light of the similarity of the statutory provisions, annotations decided under former Ga. L. 1935, Ex. Sess., p. 73 are included in the annotations for this chapter.

Due process not denied. — This chapter does not deprive petitioner of due process of law, but provides for privilege which may be granted or denied in discretion of local authorities. Tate v. Seymour, 181 Ga. 801, 184 S.E. 598 (1936) (decided under former Ga. L. 1935, Ex. Sess., p. 73).

The terms "malt beverage" and "beer" are, in effect, synonymous. Bilbo v. State, 73 Ga. App. 680, 37 S.E.2d 812 (1946); Turnbow v. State, 153 Ga. App. 479, 265 S.E.2d 832 (1980) (decided under former Ga. L. 1935, Ex. Sess., p. 73).

Possession or sale of malt bever-

ages is not illegal, provided seller has been licensed. Carter v. State, 60 Ga. App. 758, 5 S.E.2d 244 (1939) (decided under former Ga. L. 1935, Ex. Sess., p. 73).

OPINIONS OF THE ATTORNEY GENERAL

Editor's notes. — In light of the similarity of the statutory provisions, annotations decided under former Ga. L. 1935, Ex. Sess., p. 73 are included in the annotations for this Code chapter.

Home brew is a malt beverage and its manufacture is subject to this chapter notwithstanding that the alcoholic content exceeds 6 percent by volume. 1962 Op. Att'y Gen. p. 297 (decided under former Ga. L. 1935, Ex. Sess., p. 73).

Referendum for sale of beer. — There is no provision in this chapter for referendum relative to sale of beer in any county or municipality, and if such referendum is held it is not binding on governing authorities. 1952-53 Op. Att'y Gen. p. 457 (decided under former Ga. L. 1935, Ex. Sess., p. 73).

RESEARCH REFERENCES

Am. Jur. 2d. — 45 Am. Jur. 2d, Intoxicating Liquors, §§ 7, 8, 9, 187, 317. 71 Am. Jur. 2d, State and Local Taxation, §§ 178 et seq., 309 et seq.

C.J.S. — 48 C.J.S., Intoxicating Liquors, § 14.

ALR. — Test of intoxicating character of liquor, 4 A.L.R. 1137; 11 A.L.R. 1233; 19 A.L.R. 512; 36 A.L.R. 725; 91 A.L.R. 513.

Criminal responsibility of husband for violation of liquor law by wife, 19 A.L.R. 136; 27 A.L.R. 312.

ARTICLE 1

GENERAL PROVISIONS

3-5-1. Definitions.

As used in this chapter, the term:

(1) "Barrel" means 31 gallons.

(2) "Brewer" means a manufacturer of malt beverages.

(3) "Case" means a box or receptacle containing not more than 288 ounces of malt beverages on the average.

History. — Code 1933, § 5A-4101, enacted by Ga. L. 1980, p. 1573, § 1; Ga. L. 2017, p. 406, § 7/SB 85.

The 2017 amendment, effective September 1, 2017, added paragraph (1); and redesignated former paragraphs (1) and (2) as present paragraphs (2) and (3), respectively.

3-5-2. Determination as to when possession occurs.

For purposes of this chapter, with respect to malt beverages manufactured within this state, possession occurs when the product is first identifiable as a malt beverage, in accordance with this title and such regulations as may be promulgated by the commissioner pursuant to

this title. With respect to malt beverages shipped from outside this state to a destination within this state, possession in the consignee occurs when the malt beverage first physically enters the state or when the risk of loss from destruction or casualty to the malt beverage is shifted from the consignor to the consignee located in this state, in accordance with the contract of the parties and the substantive commercial laws of this state, whichever event occurs first.

History. — Code 1933, § 5A-4102, enacted by Ga. L. 1980, p. 1573, § 1.

Cross references. — Placement of risks of loss in absence of breach of contract, § 11-2-509.

3-5-3. Malt beverages upon which taxes not paid and motor vehicles, watercraft, or aircraft used in transporting same declared contraband.

Malt beverages in quantities exceeding the amount specified in Code Section 3-3-8, upon which the taxes imposed by or authorized pursuant to this chapter have not been paid in this state, are declared to be contraband; and any motor vehicle, watercraft, or aircraft used in transporting such beverages in excess of the amount specified in Code Section 3-3-8 are also declared to be contraband and subject to seizure and disposition as provided by this title.

History. — Ga. L. 1937, p. 148, § 4; Ga. L. 1971, p. 817, § 1; Ga. L. 1976, p. 476, § 1; Ga. L. 1978, p. 1424, § 1; Code 1933, § 5A-4103, enacted by Ga. L. 1980, p. 1573, § 1; Ga. L. 1981, p. 1269, § 40.

3-5-4. Production of malt beverages in private residences; consumption; transportation and delivery; home-brew special events.

(a)(1) Malt beverages may be produced by a person in his or her private residence subject to the limitations provided in this Code section.

(2) The total quantity of malt beverages that may be produced in any private residence shall be as follows:

(A) Not more than 100 gallons per calendar year if there is only one person of legal drinking age living in such residence; or

(B) Not more than 200 gallons per calendar year if there are two or more persons of legal drinking age living in such residence;

provided, however, that no more than 50 gallons shall be produced in a 90 day period.

(b) Except as provided for in subsections (d) and (e) of this Code section, malt beverages produced in compliance with this Code section

may only be consumed at the residence where produced. Such malt beverages may only be consumed by persons of legal drinking age.

(c) Malt beverages produced under the provisions of this Code section may be removed from the residence where produced for transportation and delivery by the producer for use at home-brew special events in a quantity not to exceed 25 gallons, provided that such malt beverages are securely sealed in one or more containers and clearly labeled with the following information:

(1) The name of the producer;

(2) The address of the residence at which it was produced;

(3) The name and address of the home-brew special event to which it is being transported; and

(4) The permit number under which the home-brew special event is being held.

If transported in a motor vehicle, the securely sealed containers shall be placed in a locked glove compartment, a locked trunk, or the area behind the last upright seat of a motor vehicle that is not equipped with a trunk.

(d) Malt beverages produced under the provisions of this Code section may be removed from the residence where produced for transportation and delivery by the producer to a location not licensed under this title and for which a permit has not been issued pursuant to subsection (e) of this Code section; provided that not more than 128 ounces of such malt beverages produced in the same residence shall be transported at one time; and provided, further, that such malt beverages shall be securely sealed in one or more containers and clearly labeled with the following information:

(1) The name of the producer; and

(2) The address of the residence at which it was produced.

If transported in a motor vehicle, the securely sealed containers shall be placed in a locked glove compartment, a locked trunk, or the area behind the last upright seat of a motor vehicle that is not equipped with a trunk.

(e)(1) Notwithstanding any other provision of this title to the contrary, in all counties and municipalities in which the sale of malt beverages is lawful, the local governing authority may issue a home-brew special event permit for the holding of home-brew special events, including contests, tastings, and judgings. Any governing authority desiring to allow home-brew special events to be held within its jurisdiction shall provide by resolution or ordinance for the

issuance of home-brew special event permits and shall specify the events that shall qualify as home-brew special events. A home-brew special event permit shall cost $50.00 and shall be valid for not more than six events per calendar year.

(2) Home-brew special events shall not be held at any location licensed under this title.

(3) Consumption of malt beverages at home-brew special events shall be limited solely to malt beverages produced pursuant to this Code section, and such malt beverages shall only be consumed by the participants in and judges of the home-brew special events.

(f) Malt beverages produced pursuant to this Code section shall not be sold, offered for sale, or made available for consumption by the general public.

History. — Code 1981, § 3-5-4, enacted by Ga. L. 1993, p. 537, § 1; Ga. L. 2013, p. 617, § 1/HB 99; Ga. L. 2014, p. 187, § 2/HB 737.

3-5-5. Retail sale of kegs; required labeling; removal of labels.

(a) As used in this Code section, the term:

(1) "Keg" means any brewery-sealed container or barrel containing, by liquid volume, more than two gallons of malt beverage.

(2) "Retail dealer," "retail licensee," or "licensee" means a person holding either a retail dealer license, a permit issued by the commissioner authorizing the sale of alcoholic beverages for consumption only on the premises for a period not to exceed one day, or a beverage alcohol caterer license.

(b) No person licensed under this chapter shall sell malt beverages at retail by the keg except as provided in subsections (c), (d), and (e) of this Code section. The commissioner may take punitive action against violators, up to and including revocation of the state retail dealer's license of any licensed retail dealer who fails to comply with this Code section. The undertaking of any punitive action allowed under this Code section shall not prohibit criminal prosecution for sale to underage persons.

(c) Each retail licensee selling kegs containing malt beverages for consumption off licensed premises shall require each keg purchaser to present a Georgia driver's license or other proper identification at the time of purchase. The licensee shall record for each keg sale: the date of sale; the size of keg; the keg identification number; the amount of container deposit; the name; address; date of birth of the purchaser; and the form of identification presented by such purchaser. The purchaser shall sign a statement at the time of purchase attesting to the accuracy

of the purchaser's name and address, the location where the contents of the keg will be consumed, and acknowledging that a violation of Code Section 3-3-23, as it relates to furnishing alcoholic beverages to persons under the age of 21 years, may result in civil liability, criminal prosecution, or both. The licensee shall retain the identification form and purchaser's signed statement attesting to the accuracy of the purchaser's name and address and acknowledging that a violation of Code Section 3-3-23, as it relates to furnishing alcoholic beverages to persons under the age of 21 years, may result in civil liability, criminal prosecution, or both, for a minimum of six months following the sale of the keg.

(d) Each keg sold at retail for consumption off licensed premises shall be labeled with the name and address of the retail licensee, the keg identification number, and the state alcohol license number of the business. The Department of Revenue will prescribe the form of registration label or tag to be used for this purpose. The registration label or tag shall be supplied by the Department of Revenue without fee and securely affixed to the keg by the licensee making the sale. In addition to the label or tag, the Department of Revenue shall provide guidelines to the licensee on the information to be recorded on the identification form required under subsection (c) of this Code section.

(e) The licensee shall record the date of return of the keg on the identification form required under subsection (c) of this Code section. If there is no label or tag affixed to the keg or if the identification number is not legible, the licensee shall indicate this fact on the identification form required under subsection (c) of this Code section. The licensee shall not refund a deposit for a keg that is returned without the required label or tag and identification number intact and legible.

(f) The removal of the required label shall be unlawful until such time that it is lawfully returned to the retailer by the purchaser. Possession of a keg without the required label and identification number shall be unlawful and subject to penalty pursuant to Code Section 3-3-9.

History. — Code 1981, § 3-5-5, enacted by Ga. L. 2001, p. 1100, § 1; Ga. L. 2002, p. 415, § 3.

ARTICLE 2

STATE LICENSE REQUIREMENTS AND REGULATIONS FOR MANUFACTURE, DISTRIBUTION, AND SALE

Cross references. — Occupational taxes generally, T. 48, C. 13.

JUDICIAL DECISIONS

Sale of malt beverages is a privilege, and denial of license does not deprive accused of anything to which the accused has an absolute right. Collier v. State, 54 Ga. App. 346, 187 S.E. 843 (1936); Ebling v. City of Rome, 54 Ga. App. 608, 188 S.E. 727 (1936); Acree v. Ragsdale, 60 Ga. App. 717, 4 S.E.2d 708 (1939); Lamb v. Fedderwitz, 68 Ga. App. 233, 22 S.E.2d 657 (1942), aff'd, 195 Ga. 691, 25 S.E.2d 414 (1943); Hudon v. North Atlanta, 108 Ga. App. 370, 133 S.E.2d 58 (1963).

Nature of license and power of revocation. — A license to sell beer in this state is neither a contract nor a right of property within legal and constitutional meaning of those terms. It is no more than a temporary permit to do that which would otherwise be unlawful, and forms part of the internal police system of this state. Hence, authority which granted license retains power to revoke it for due cause. Ebling v. City of Rome, 54 Ga. 608, 188 S.E. 727 (1936).

Charge that sale of alcoholic beverages has been made without alleging that no license has been obtained does not constitute crime. Plemmons v. State, 58 Ga. App. 131, 198 S.E. 104 (1938).

OPINIONS OF THE ATTORNEY GENERAL

A license to deal in malt beverages is not a right but a privilege. 1948-49 Op. Att'y Gen. p. 264.

3-5-20. Levy and amount of state occupational license tax; application for license.

(a) An annual occupational license tax is imposed upon each brewer, manufacturer, broker, importer, wholesaler, and retail dealer of beer in this state, as follows:

(1) Upon each brewer	$ 1,000.00
(2) Upon each wholesale dealer	500.00
(3) Upon each importer	500.00
(4) Upon each broker	50.00
(5) Upon each retail dealer	50.00
(6) Upon each brewpub operator	1,000.00
(7) Upon each special event use permit applicant	50.00

(b) An annual occupational license tax shall be paid for each place of business operated. An application for the applicable license required pursuant to this title along with the payment of the tax required by subsection (a) of this Code section shall be submitted to the department immediately upon assuming control of the place of business and annually thereafter for so long as the business is operated.

History. — Ga. L. 1935, p. 73, § 5; Ga. L. 1937, p. 148, § 1; Ga. L. 1937-38, Ex. Sess., p. 173, § 1; Ga. L. 1939, p. 101, § 1; Ga. L. 1949, Ex. Sess., p. 5, § 1; Ga. L.

1951, p. 356, § 1; Ga. L. 1955, Ex. Sess., p. 23, § 1; Code 1933, § 5A-4501, enacted by Ga. L. 1980, p. 1573, § 1; Ga. L. 1995, p. 734, § 2; Ga. L. 2012, p. 827, § 5/HB 1066.

OPINIONS OF THE ATTORNEY GENERAL

Organizations not exempt from license taxes. — Law does not exempt American Legion posts or similar organizations from payment of state tax, nor is there any provision in which would exempt such organizations from paying county tax. 1958-59 Op. Att'y Gen. p. 205.

Person possessing mild home brew is required to procure appropriate licenses from commissioner. 1952-53 Op. Att'y Gen. p. 455.

RESEARCH REFERENCES

Am. Jur. 2d. — 45 Am. Jur. 2d, Intoxicating Liquors, § 168 et seq. 71 Am. Jur. 2d, State and Local Taxation, § 309 et seq.

C.J.S. — 48 C.J.S., Intoxicating Liquors, §§ 400 et seq., 409 et seq.

ALR. — Exacting for intoxicating liquor license an amount in excess of cost of regulation in order to limit the number and determine the character and responsibility of licensees, 103 A.L.R. 327.

Intoxicating liquor business as subject to a tax imposed generally on occupations or business, 117 A.L.R. 686.

Right of one who acquires title to, or other interest in, real property to benefit of a license previously issued by the public, permitting use of property for a specified purpose, 131 A.L.R. 1339.

3-5-21. Sale, offer for sale, or possession of bottles or cans not having prescribed identification on crowns or lids; alternate identification for use on certain imported bottles or containers.

(a) The commissioner may prescribe by regulation that no person engaged in the business of selling, manufacturing, or distributing malt beverages specified in this chapter in bottles or cans may sell, offer for sale, or possess for the purpose of sale any bottles or cans containing such malt beverages unless the crowns or lids contain the word "Georgia" or its abbreviation, such as "GA."

(b) The commissioner may prescribe an alternate identification for certain bottles or containers of malt beverages manufactured in a foreign country and which have been imported into this state by a licensed importer, manufacturer, or wholesaler for resale.

History. — Code 1933, § 5A-4502, enacted by Ga. L. 1980, p. 1573, § 1; Ga. L. 1984, p. 790, § 2.

3-5-22. Shipment of malt beverages within or into state without license prohibited; requirement as to furnishing of labels of beverages to be shipped into state for first time.

Reserved. Repealed by Ga. L. 1983, p. 1214, § 1, effective July 1, 1983.

Editor's notes. — This section was based on Code 1933, § 5A-4503 enacted by Ga. L. 1980, p. 1573, § 1.

3-5-23. License for manufacture of malt beverages — Grounds and procedure for revocation generally.

(a) No license issued by the state or by any other duly authorized licensing authority to any person for the manufacture of malt beverages shall be revoked except for due cause.

(b) Due cause for the revocation of a brewer's license shall consist only of violation of the laws regulating the manufacture of malt beverages and of regulations made pursuant to authority lawfully granted for the purpose of regulating the manufacture of malt beverages.

History. — Ga. L. 1955, p. 657, § 1; Code 1933, § 5A-4507, enacted by Ga. L. 1980, p. 1573, § 1.

JUDICIAL DECISIONS

Editor's notes. — In light of the similarity of the statutory provisions, annotations decided under former Ga. L. 1935, Ex. Sess., p. 73 are included in the annotations for this Code section.

Effect of section on rule that selling beer is privilege. — This section, which is limited in its scope to revocation of licenses pertaining to manufacture of malt beverages, does not modify rule that business of selling beer at wholesale or retail is a privilege under laws of this state. Lewis v. City of Smyrna, 214 Ga. 323, 104 S.E.2d 571 (1958) (decided under former Ga. L. 1935, Ex. Sess., p. 73).

RESEARCH REFERENCES

Am. Jur. 2d. — 45 Am. Jur. 2d, Intoxicating Liquors, §§ 7, 8, 9, 102, 152 et seq., 187.

C.J.S. — 48 C.J.S., Intoxicating Liquors, § 297 et seq.

3-5-24. License for manufacture of malt beverages — Rights conferred; separate revocation of licenses for sale of malt beverages for resale within and outside state authorized; effect of revocation on sale within state.

(a) A license to manufacture malt beverages shall include the right to sell the product of the brewer for resale within and outside the limits of this state.

(b) The right to sell the manufactured product to duly licensed wholesalers for resale within this state may be revoked separately from the right to manufacture and sell the product of such manufacturer for resale outside of this state.

(c) The revocation by the state or by any other duly authorized licensing authority of the license to sell for resale within this state shall not in any way interfere with or otherwise affect or impair the license to manufacture and sell the product of the manufacturer for resale beyond the limits of this state.

History. — Ga. L. 1955, p. 657, § 2; Code 1933, § 5A-4508, enacted by Ga. L. 1980, p. 1573, § 1.

RESEARCH REFERENCES

Am. Jur. 2d. — 45 Am. Jur. 2d, Intoxicating Liquors, §§ 7, 8, 9, 102, 152 et seq., 187.

C.J.S. — 48 C.J.S., Intoxicating Liquors, §§ 138 et seq., 297 et seq., 425 et seq.

3-5-24.1. Exception to three tier system; sales at brewer's licensed premises; taxing; regulatory authority; conditions or limitations.

(a) A limited exception to the provisions of this title providing a three-tier system for the distribution and sale of malt beverages shall exist to the extent that the license to manufacture malt beverages in this state shall include the right to sell up to 3,000 barrels of malt beverages per year produced at the brewer's licensed premises to individuals who are on such premises for:

(1) Consumption on the premises; and

(2) Consumption off the premises, provided that such sales for consumption off the premises shall not exceed a maximum of 288 ounces of malt beverages per consumer per day.

(b) A brewer may sell malt beverages pursuant to subsection (a) of this Code section on all days and at all times that sales of malt beverages by retailers are lawful within the county or municipality in

which the licensed premises of the brewer is located, including, but not limited to, Sundays.

(c) Any brewer engaging in sales of malt beverages pursuant to subsection (a) of this Code section shall remit all state and local sales, use, and excise taxes to the proper tax collecting authority.

(d) The commissioner shall promulgate and enforce such rules and regulations as he or she may deem reasonable and necessary to effectuate the provisions of this Code section.

(e) Upon a violation by a brewer of any provision of this Code section or this title or any rule or regulation promulgated thereunder, the commissioner shall have the power to place conditions or limitations on such brewer's license and to modify or amend such conditions or limitations.

History. — Code 1981, § 3-5-24.1, enacted by Ga. L. 2017, p. 406, § 8/SB 85.

Effective date. — This Code section became effective September 1, 2017.

3-5-25. License for manufacture of malt beverages — Renewal.

Every unrevoked license authorizing the manufacture of malt beverages, whether issued by the state or by any other duly authorized licensing authority, shall be renewable to the holder of the license as of right upon the payment of fees and taxes lawfully assessed and fixed for the issuance of licenses of that kind and character.

History. — Ga. L. 1955, p. 657, § 3; Code 1933, § 5A-4509, enacted by Ga. L. 1980, p. 1573, § 1.

RESEARCH REFERENCES

Am. Jur. 2d. — 45 Am. Jur. 2d, Intoxicating Liquors, §§ 7, 8, 9, 102, 140 et seq., 187.

C.J.S. — 48 C.J.S., Intoxicating Liquors, § 239 et seq.

3-5-25.1. License for manufacture of malt beverages — Bond required on application for license or renewal.

The commissioner may require, in addition to other bonds required by this title, a bond to be filed with the application for a license or the renewal of a license, conditioned to pay all sums which may become due by the applicant to this state as taxes, license fees, or otherwise, by reason of or incident to, the operation of the business of the applicant and to comply with all the laws, rules, and regulations pertaining to malt beverages. The bond shall be in such form and in such amount approved by the commissioner, not to exceed $5,000.00 for brewers and $500.00 for retailers.

History. — Code 1933, § 5A-4510, enacted by Ga. L. 1981, p. 1269, § 44.

RESEARCH REFERENCES

Am. Jur. 2d. — 58 Am. Jur. 2d, Occupations, Trades, and Professions, § 8 et seq.

C.J.S. — 48 C.J.S., Intoxicating Liquors, §§ 239 et seq., 388. 53 C.J.S., Licenses, § 42.

3-5-26. Persons to whom malt beverages may be sold by wholesale dealers.

Licensed wholesale dealers may sell malt beverages only to other licensed wholesale dealers and to importers and retail dealers licensed in this state.

History. — Code 1933, § 5A-4506, enacted by Ga. L. 1980, p. 1573, § 1.

3-5-27. Malt beverages acquired by retail dealers from persons other than licensed wholesale dealers declared contraband.

Any malt beverage possessed, sold, or offered for sale by a retail dealer which was purchased or otherwise acquired from any person other than a wholesale dealer authorized to do business under this chapter is declared to be contraband and shall be seized by the commissioner or the appropriate local authorities and disposed of by the commissioner in the manner provided in this title.

History. — Ga. L. 1950, p. 185, § 1; Code 1933, § 5A-4504, enacted by Ga. L. 1980, p. 1573, § 1.

JUDICIAL DECISIONS

County sheriff is "appropriate local authority" — The reference to "appropriate local authorities" does not appear to vest the power of seizure in a county commissioner, but rather to vest the power of seizure in the person who is traditionally responsible for the enforcement of the laws of a county — the county sheriff. Scoggins v. Moore, 579 F. Supp. 1320 (N.D. Ga.), aff'd, 747 F.2d 1466 (11th Cir. 1984).

RESEARCH REFERENCES

ALR. — Constitutionality of statute making unlawful possession of intoxicating liquor legally obtained or providing for its confiscation, 37 A.L.R. 1386.

Constitutionality of statute providing for confiscation or destruction, without notice, of intoxicating liquors, and vehicles or other property used in connection with same, 45 A.L.R. 93.

3-5-28. Delivery, receipt, and storage of malt beverages sold by wholesale dealers to retail dealers.

All malt beverages sold by a wholesale dealer to a retail dealer shall be delivered only to the premises of a licensed retail dealer and transported only by a conveyance owned, or leased, and operated by a wholesale dealer who is designated to deal in the brands of malt beverages sold and is licensed to make sales and deliveries within the municipality or county in which the sale or delivery is made. The malt beverages so sold shall not be delivered to, received, or stored at any place other than premises for which state and local retail licenses have been issued.

History. — Ga. L. 1950, p. 185, § 1; Code 1933, § 5A-4505, enacted by Ga. L. 1980, p. 1573, § 1.

JUDICIAL DECISIONS

Transportation of malt beverages. — Contrary to the argument of the two associations, O.C.G.A. § 3-5-28 prohibited a retailer from picking up malt beverages at the wholesaler's premises; thus, the Georgia Department of Revenue's regulation that required a retailer to take delivery of alcoholic beverages only at its place of business was not in conflict with the statute and was not invalid. Ga. Oilmen's Ass'n v. Ga. Dep't of Revenue, 261 Ga. App. 393, 582 S.E.2d 549 (2003).

OPINIONS OF THE ATTORNEY GENERAL

Relinquishment of damaged cans by distributor to licensed or unlicensed carrier. — Georgia beer distributors do not have standing to sue for refund of beer tax paid on cans of beer subsequent to transfer of title from brewer to distributor; distributor, however, may relinquish damaged cans to carrier for claims salvage regardless of whether carrier has retail beer license, provided carrier does not resell damaged cans of beer. Such relinquishment to carrier is a sale within meaning of general law. 1970 Op. Att'y Gen. No. U70-162.

RESEARCH REFERENCES

Am. Jur. 2d. — 45 Am. Jur. 2d, Intoxicating Liquors, §§ 102, 201, 209.

C.J.S. — 48 C.J.S., Intoxicating Liquors, §§ 78, 160, 404, 425 et seq., 440, 441.

3-5-29. Brewer-wholesaler relations — "Agreement" defined.

As used in Code Sections 3-5-30 through 3-5-34, the term "agreement" shall mean a commercial relationship, not required to be evidenced in writing, of definite or indefinite duration between a brewer and a malt beverage wholesaler pursuant to which the wholesaler has been authorized to distribute one or more of the brewer's brands of malt beverage.

History. — Code 1981, § 3-5-29, enacted by Ga. L. 1983, p. 1214, § 2; Ga. L. 1984, p. 22, § 3.

RESEARCH REFERENCES

Am. Jur. 2d. — 45 Am. Jur. 2d, Intoxicating Liquors, §§ 114, 118, 119.

C.J.S. — 48 C.J.S., Intoxicating Liquors, §§ 78, 160, 404, 425 et seq., 440, 441.

3-5-30. Brewer-wholesaler relations — Purpose; intent; enforcement.

(a) Code Sections 3-5-31 through 3-5-34 are promulgated pursuant to the authority granted to the state under the provisions of the Twenty-first Amendment to the United States Constitution and specifically for the following purposes and policies:

(1) To prohibit unfair business practices and to prevent any one segment of the malt beverage industry to gain unfair advantage over the other segments;

(2) To foster vigorous and healthy interbrand competition in the malt beverage industry;

(3) To provide an orderly three-tier system for the distribution and sale of good quality malt beverages in the State of Georgia;

(4) To promote the public health, safety, and welfare of the people of the State of Georgia; and

(5) To provide a distribution system for malt beverages that will facilitate the collection and accountability of state and local excise taxes.

(b) The provisions of Code Sections 3-5-31 through 3-5-34 may not be varied by separate agreement and any such attempt shall be void and unenforceable as being violative of the public policy of this state.

(c) The commissioner shall have the authority to promulgate such regulations as are consistent with the stated policies of this article.

History. — Code 1981, § 3-5-30, enacted by Ga. L. 1983, p. 1214, § 2.

JUDICIAL DECISIONS

Regulations consistent with statute permitted. — Georgia Department of Revenue's regulations challenged by the two associations, regarding the distribution of malt beverages in Georgia, were not invalid on the ground that they were unauthorized since the regulations at issue were consistent with the various pol-

icies set out in O.C.G.A. § 3-5-30. Ga. Oilmen's Ass'n v. Ga. Dep't of Revenue, 261 Ga. App. 393, 582 S.E.2d 549 (2003).

3-5-31. Brewer-wholesaler relations — License requirement for shippers of beer; application.

(a) No shipper shall be permitted to ship beer into the state without first obtaining a proper license from the commissioner in the manner provided in this title.

(b) In addition to the bond required in Code Section 3-5-25.1 and such other documentation required by the commissioner pursuant to this title, each shipper shall:

(1) Submit with his application one label for each brand of beer to be shipped for the first time by the shipper into the state;

(2) Designate in the application for registration sales territories for each of its brands sold in Georgia; and

(3) Name one licensed wholesaler in each territory who, within the territory, shall be the exclusive distributor of the brand within the territory.

(c) Designations of wholesalers or wholesalers' territories as provided in this Code section shall be initially approved by the commissioner and shall not be changed nor initially disapproved except for cause. The commissioner shall determine cause after a hearing under regulations promulgated by the commissioner for such purposes.

History. — Code 1981, § 3-5-31, enacted by Ga. L. 1983, p. 1214, § 2.

JUDICIAL DECISIONS

Exclusive distributor permitted. — O.C.G.A. § 3-5-31(a) permitted the Georgia Department of Revenue to implement a regulation that named one licensed wholesaler in each sales territory who, within the territory, was the exclusive distributor of a brand of malt beverage within the sales territory, as the plain language of the statute permitted the department to do so. Ga. Oilmen's Ass'n v. Ga. Dep't of Revenue, 261 Ga. App. 393, 582 S.E.2d 549 (2003).

3-5-32. Brewer-wholesaler relations — Conflicts of interest.

No licensed registered brewer, broker, or importer authorized to do business in this state nor any of his employees or members of such brewer's, broker's, or importer's immediate family shall have, own, or enjoy ownership interest in or partnership arrangement with the business of any wholesaler or retailer licensee. Cooperative advertising

and incentive programs shall not be deemed to constitute a partnership agreement.

History. — Code 1981, § 3-5-32, enacted by Ga. L. 1983, p. 1214, § 2.

3-5-33. Brewer-wholesaler relations — Prohibited acts.

No brewer, broker, or importer shall:

(1) Induce or coerce, or attempt to induce or coerce, any wholesaler to accept delivery of any malt beverage which has not been ordered or agreed upon by the wholesaler, provided that recommendation, endorsement, exposition, persuasion, or argument shall not be deemed to constitute inducements, coercion, or requirements prohibited by this Code section;

(2) Require a wholesaler to assent to any unreasonable requirement, condition, understanding, or term of an agreement limiting the wholesaler's right to sell the product of any other brewer, broker, or importer;

(3) Fix or maintain the price at which a wholesaler may resell beer, whether by the terms or requirements imposed on the wholesaler under an agreement or otherwise; or

(4) Require or prohibit any change in the management or supervisory employees of a wholesaler unless the current or proposed employees fail to meet essential, reasonable, and nondiscriminatory requirements imposed by an agreement's express terms.

History. — Code 1981, § 3-5-33, enacted by Ga. L. 1983, p. 1214, § 2.

3-5-34. Brewer-wholesaler relations — Applicability of Code Sections 3-5-29 through 3-5-33.

Code Sections 3-5-29 through 3-5-33 shall apply to designations in effect on or after July 1, 1983.

History. — Code 1981, § 3-5-34, enacted by Ga. L. 1983, p. 1214, § 2.

3-5-35. Declaration of policy; "brewpubs".

The General Assembly reaffirms the policy of this state of strict enforcement of laws and regulations applicable to the manufacture or sale of beer, including without limitation those establishing the three-tier distribution system with prohibitions against ownership and employment interests between the three tiers but creates a limited

exception for the operation of "brewpubs" as such term is defined in Code Section 3-1-2.

History. — Code 1981, § 3-5-35, enacted by Ga. L. 1995, p. 734, § 3.

Administrative rules and regulations. — Brewpubs, Official Compilation of the Rules and Regulations of the State of Georgia, Rules of Department of Revenue, Alcohol and Tobacco Tax Unit, Subject 560-2-8.

Code Commission notes. — Pursuant to Code Section 28-9-5, in 1995, Code Section 3-5-35 as enacted by Ga. L. 1995, p. 486, § 1, was redesignated as Code Section 3-5-38.

3-5-36. "Brewpub" exception to three-tier distribution system.

A limited exception to the provisions of Code Sections 3-5-29 through 3-5-32 providing a three-tier system for the distribution and sale of malt beverages shall exist for owners and operators of brewpubs, subject to the following terms and conditions:

(1) No individual shall be permitted to own or operate a brewpub without first obtaining a proper license from the commissioner in the manner provided in this title, and each brewpub licensee shall comply with all other applicable state and local license requirements;

(2) A brewpub license authorizes the holder of such license to:

(A) Manufacture on the licensed premises not more than 10,000 barrels of malt beverages in a calendar year solely for retail sale;

(B) Operate an eating establishment that shall be the sole retail outlet for such malt beverages;

(C) Operate an eating establishment that may offer for sale for consumption on the premises any other alcoholic beverages produced by other manufacturers which are authorized for retail sale under this title, including wine, distilled spirits, and malt beverages, provided that such alcoholic beverages are purchased from a licensed wholesaler; and, provided, further, that in addition to draft beer manufactured on the premises, each brewpub licensee shall offer for sale commercially available canned or bottled malt beverages from licensed wholesalers; and

(D) Notwithstanding any other provision of this paragraph, sell up to a maximum of 5,000 barrels annually of such malt beverages to licensed wholesale dealers. Under no circumstances shall such malt beverages be sold by a brewpub licensee to any person holding a retail consumption dealer's license or a retailer's license for the purpose of resale;

(3) Possession of a brewpub license shall not prevent the holder of such license from obtaining a retail consumption dealer's license or a retailer's license for the same premises;

(4) A brewpub license holder shall not be prohibited from selling wine or malt beverages by the package for consumption off the premises where so permitted by resolution or ordinance of the county or municipality;

(5) The commissioner shall not issue a brewpub license if the premises to be licensed is located in a county or municipality in which the sale of alcoholic beverages is prohibited; and

(6) A brewpub licensee shall:

(A) Pay all state and local license fees and excise taxes applicable to individuals licensed by this state as manufacturers, retailers, and, where applicable, wholesalers under this title;

(B) At the request of the commissioner, provide an irrevocable letter of credit or bond in favor of the State of Georgia in an amount sufficient to guarantee such brewpub licensee's estimated tax liability for the first year of operation; and

(C) Measure malt beverages manufactured on the premises and otherwise comply with applicable rules and regulations respecting excise and enforcement tax determination of such malt beverages as required by this title.

History. — Code 1981, § 3-5-36, enacted by Ga. L. 1995, p. 734, § 3; Ga. L. 1997, p. 1514, § 1; Ga. L. 2012, p. 680, § 2/HB 472; Ga. L. 2015, p. 317, § 7/SB 63; Ga. L. 2017, p. 406, § 9/SB 85.

The 2017 amendment, effective September 1, 2017, substituted the present provisions of paragraph (4) for the former provisions, which read: "A brewpub license does not authorize the holder of such license to sell alcoholic beverages by the package for consumption off the premises;".

Code Commission notes. — Pursuant to Code Section 28-9-5, in 1995, semicolons were substituted for periods at the end of paragraphs (2) through (5) and "and" was added at the end of former paragraph (6) [now paragraph (5).

3-5-37. "Brewpub" exception; rules and regulations.

The Department of Revenue shall be authorized to promulgate and enforce such rules and regulations as it may deem necessary to carry out or make effective the provisions of Code Sections 3-5-35 and 3-5-36.

History. — Code 1981, § 3-5-37, enacted by Ga. L. 1995, p. 734, § 3.

3-5-38. Permits for free tasting of malt beverages during educational and promotional brewery tours; merchandising; fees for tours; selling of beverages; administration.

Repealed by Ga. L. 2017, p. 406, § 10/SB 85, effective September 1, 2017.

Editor's notes. — This Code section was based on Ga. L. 1995, p. 486, § 1; Ga. L. 1997, p. 1514, § 1A; Ga. L. 2015, p. 317, § 8/SB 63.

Ga. L. 2018, p. 1112, § 3(3)/SB 365, part of an Act to revise, modernize, and correct the Code, repealed the reservation of this Code section, effective May 8, 2018.

ARTICLE 3

LOCAL LICENSE REQUIREMENTS AND REGULATIONS FOR MANUFACTURE, DISTRIBUTION, AND SALE

JUDICIAL DECISIONS

Sale of malt beverages is privilege, and denial of license does not deprive accused of anything to which the accused has an absolute right. Collier v. State, 54 Ga. App. 346, 187 S.E. 843 (1936); Ebling v. City of Rome, 54 Ga. App. 608, 188 S.E. 727 (1936); Acree v. Ragsdale, 60 Ga. App. 717, 4 S.E.2d 708 (1939); Lamb v. Fedderwitz, 68 Ga. App. 233, 22 S.E.2d 657 (1942), aff'd, 195 Ga. 691, 25 S.E.2d 414 (1943); Hudon v. North Atlanta, 108 Ga. App. 370, 133 S.E.2d 58 (1963).

Nature of license and power of revocation. — A license to sell beer in this state is neither a contract nor a right of property within legal and constitutional meaning of those terms. It is no more than a temporary permit to do that which would otherwise be unlawful, and forms part of internal police system of this state. Hence, authority which granted license retains power to revoke it for due cause. Ebling v. City of Rome, 54 Ga. 608, 188 S.E. 727 (1936).

Charge that sale of alcoholic beverages has been made without alleging that no license has been obtained does not constitute a crime. Plemmons v. State, 58 Ga. App. 131, 198 S.E. 104 (1938).

State not only must allege but also prove that defendant had no license to sell beer in prosecution for selling without license. Cheek v. State, 98 Ga. App. 874, 107 S.E.2d 247 (1959).

Enforcement of licensing regulation by writ of mandamus. — Since no one has inherent right to engage in intoxicating liquor business, licensing regulation is not proper subject for enforcement by writ of mandamus. Lindsey v. Hill, 221 Ga. 518, 145 S.E.2d 556 (1965).

Indictment need not specify kind of beer sold. — An allegation that accused sold beer in county without first obtaining permit to do so from governing authority of such county is a good indictment; it need not specify kind of beer sold. Williams v. State, 73 Ga. App. 421, 36 S.E.2d 839 (1946).

OPINIONS OF THE ATTORNEY GENERAL

Legislative intent. — The General Assembly intended that business of selling malt beverages be in hands of some person other than licensing authority, and did not intend for municipality to be licensing power in municipality and also licensee. 1948-49 Op. Att'y Gen. p. 260.

General Assembly, in legalizing sale of malt beverages, intended for municipalities to be part of machinery for proper control and supervision of sale of malt beverages within municipalities, and did not intend to place municipalities in business of selling beer with public funds in competition with private business. 1948-49 Op. Att'y Gen. p. 260.

No authority for municipalities to sell malt beverages. — Unless express power has been generally conferred upon municipalities by General Assembly to engage in selling of malt beverages, as now legalized and codified, there is no authority of law for municipality to engage in such business. 1948-49 Op. Att'y Gen. p. 260.

A license to deal in malt beverages is not a right but a privilege. 1948-49 Op. Att'y Gen. p. 264.

Sale of beer where county has voted "dry". — Where county has voted "dry," it is still permissible for county, or any municipality therein, to issue licenses for sale of beer. 1954-56 Op. Att'y Gen. p. 455.

3-5-40. Requirement by counties or municipalities of licenses for manufacture, distribution, and sale of malt beverages; effect of revocation of license issued by commissioner or by county or municipality upon license issued by other.

(a) The businesses of manufacturing, distributing, and selling malt beverages at wholesale or retail shall not be conducted in any county or incorporated municipality of this state without a license from the governing authority of the county or municipality.

(b) When any county or municipal license issued pursuant to this Code section is revoked by the governing authority of the county or municipality, any similar malt beverage license issued to the same person by the commissioner pursuant to this chapter shall automatically become invalid.

(c) When any state malt beverage license issued pursuant to this chapter is revoked by the commissioner, any similar malt beverage license issued to the same person by any county or municipality shall automatically become invalid.

History. — Ga. L. 1935, p. 73, § 15A; Ga. L. 1937, p. 148, § 3; Ga. L. 1973, p. 14, § 1; Code 1933, § 5A-4301, enacted by Ga. L. 1980, p. 1573, § 1; Ga. L. 1981, p. 1269, § 41.

Law reviews. — For comment on Hornsby v. Allen, 326 F.2d 605 (5th Cir. 1964), see 1 Ga. St. B. J. 550 (1965).

JUDICIAL DECISIONS

Constitutionality. — O.C.G.A. §§ 3-5-40 and 3-6-40, which grant municipalities power regarding licensing and sale of malt beverages without resort to public referendum, are not unconstitutional on ground that the statutes arbitrarily remove from public the right to have referendum on such sales. Newsome v. City of Union Point, 249 Ga. 434, 291 S.E.2d 712 (1982).

Construction. — This section clearly states that the proper governing body to issue a license within corporate limits of municipality is governing body of municipality and that governing body of county is limited in its authority to issue licenses to unincorporated areas of county. Hudon v. North Atlanta, 108 Ga. App. 370, 133 S.E.2d 58 (1963).

For right to sell malt beverages, petitioner must obtain license from governing authority of the petitioner's county. Tate v. Seymour, 181 Ga. 801, 184 S.E. 598 (1936).

No malt beverage business shall be conducted in any incorporated municipality of this state without a license from governing authority of municipality, and governing authority is given discretionary powers as to granting or refusal of licenses. Hudon v. North Atlanta, 108 Ga. App. 370, 133 S.E.2d 58 (1963).

License required for sale even though license tax not required. — License from governing authorities of municipality for wholesale or retail sale of beer is required, even though no license tax be required by municipality. Day v. State, 53 Ga. App. 487, 186 S.E. 202 (1936).

Governing authority's discretion to grant or deny licenses. — Right to sell malt beverages or beer is subject to determination of governing authorities of city or county; they have the right to prohibit its sale and deny all applicants a license. Tipton v. City of Dudley, 242 Ga. 807, 251 S.E.2d 545 (1979).

Legislature has vested appellees, city officials, with discretionary powers in granting and refusal of licenses or permits for the privileges of retail selling of beer under O.C.G.A. § 3-5-40, and wine under O.C.G.A. § 3-6-40. Grandpa's Store, Inc. v. City of Norcross, 247 Ga. 350, 275 S.E.2d 59 (1981).

Mandamus as remedy for arbitrary refusal. — Mandamus is an available remedy where refusal to authorize sale of malt beverages is arbitrary and illegal. Tate v. Seymour, 181 Ga. 801, 184 S.E. 598 (1936).

This section empowers county authorities to grant licenses, but the power to act is left to discretion of local authority, and if commissioner refuses to grant license, mandamus will not control the commissioner's discretion; however, when the refusal is arbitrary and contrary to law, mandamus is a remedy. Harbin v. Holcomb, 181 Ga. 800, 184 S.E. 603 (1936).

Denial of license when standards met. — If governing authority of city or county decides to permit sale of malt beverages or beer, it shall adopt an ordinance setting forth the prescribed standards for issuance of licenses. When an applicant for a license meets these standards, refusal by governing authority to issue the license constitutes denial of equal protection, entitling applicant to writ of mandamus. Tipton v. City of Dudley, 242 Ga. 807, 251 S.E.2d 545 (1979); Grandpa's Store, Inc. v. City of Norcross, 247 Ga. 350, 275 S.E.2d 59 (1981).

No denial of equal protection absent ordinance and proof showing plaintiff met standards. — Absent indication that the city has adopted some ordinance setting forth prescribed standards for the issuance of a license to sell beer or wine and that the plaintiff has met such standards, the refusal by the city to issue the license does not constitute a denial of equal protection, entitling the applicant to a writ of mandamus. Grandpa's Store, Inc. v. City of Norcross, 247 Ga. 350, 275 S.E.2d 59 (1981).

Sales by "implied consent" illegal. — The privilege of sales of beer and wine is conditional upon the city's exercise of its discretion in performing an affirmative act in either granting or refusing a permit or license; hence, sales by "implied consent" are not authorized or legal, and there is no violation of equal protection. Grandpa's Store, Inc. v. City of Norcross, 247 Ga. 350, 275 S.E.2d 59 (1981).

Plaintiff has no right to permit where other businesses are selling beer illegally. — The fact that one or more businesses are selling beer and/or wine in violation of the statutes, even if proved, does not give the plaintiff any right to have a permit issued to it. The city has the right to prohibit the sale of beer and/or wine and deny all applicants a license. Grandpa's Store, Inc. v. City of Norcross, 247 Ga. 350, 275 S.E.2d 59 (1981).

Commissioner cannot legally authorize one to sell malt beverages unless municipal or county authorities, as case may be, also grant a license. Tate v. Seymour, 181 Ga. 801, 184 S.E. 598 (1936).

Indictment of selling without license sufficient. — Indictment alleging that defendant sold malt beverages in municipality without first having obtained license from governing authorities of such municipality to engage in retail sale of malt beverages was sufficient to show that defendant sold malt beverages as retail dealer in violation of law. Day v. State, 53 Ga. App. 487, 186 S.E. 202 (1936).

State not only must allege but also prove that defendant had no license to sell beer in prosecution for selling without license. Cheek v. State, 98 Ga. App. 874, 107 S.E.2d 247 (1959).

Judicial notice of dry or wet status. — Court of appeals does not take judicial notice of counties which do or do not permit possession and sale of beer; where proof does not show otherwise it will assume that beer may be legally sold within county. Crowe v. State, 98 Ga. App. 185, 105 S.E.2d 353 (1958).

Guilt of one unaware of sale but not of possession. — If defendant's partner or another had beer for purpose of sale and sold it without defendant's knowledge, the defendant would not be guilty even though the defendant knew the beer was there but did not know the reason for its presence, since mere possession of beer is perfectly legal. Crowe v. State, 98 Ga. App. 185, 105 S.E.2d 353 (1958).

Guilt of one aware of but not actually selling beer. — If defendant and another individual were partners, defendant, if the defendant knew of and acquiesced in the illegal sale of beer or its possession for purposes of sale by the other would be guilty even though the defendant was not the person actually selling it, since the defendant had joint control of premises and all who aid or abet in commission of misdemeanor must be considered principals. Crowe v. State, 98 Ga. App. 185, 105 S.E.2d 353 (1958).

Evidence insufficient to convict for selling without license. — Allegations in indictment charging that defendant possessed for sale and sold beer without first having obtained a license from Commissioner of Roads and Revenues of county is a material allegation, proof of which is essential to state's case. Where there is no testimony in record on subject of whether defendant did or did not have license to sell beer, under evidence as a whole a verdict in the defendant's favor was demanded. Crowe v. State, 98 Ga. App. 185, 105 S.E.2d 353 (1958).

OPINIONS OF THE ATTORNEY GENERAL

Extent of county license requirements. — A county may require a wholesale beer dealer to obtain a county wholesale beer license if the dealer is "doing business" in the county, notwithstanding the fact that the dealer may have its principal place of business located in another county. 1987 Op. Att'y Gen. No. U87-3.

Local governments are not empowered to require licensing of wholesalers of alcoholic beverages that take orders for sales and make deliveries of alcoholic beverages within those local governments, but do not have locations or offices within the boundaries of those local governments. 2017 Op. Att'y Gen. No. U17-2.

The governing authority of a city has discretionary powers to grant or refuse a license to sell malt beverages. 1971 Op. Att'y Gen. No. U71-26.

Power to adopt rules and regulations. — A municipality in the granting of licenses to sell malt beverages may adopt rules and regulations under which malt beverages shall be sold. 1960-61 Op. Att'y Gen. p. 287.

A municipality may permit the sale of beer in drug stores where minors visit. 1960-61 Op. Att'y Gen. p. 286.

A municipality may require a vendor of beer to partition off the section of the establishment where the beer is sold. 1960-61 Op. Att'y Gen. p. 287.

A municipality could refuse to license the sale of malt beverages in places of business selling other merchandise. 1960-61 Op. Att'y Gen. p. 287.

There is no provision for an election to prohibit sale of malt beverages; discretion as to granting or refusal of licenses is vested in county and municipal authorities. 1945-47 Op. Att'y Gen. p. 394.

Prevention of legalized sale. — Under Ga. L. 1935, p. 73, § 15A (see now O.C.G.A. § 3-5-40), the county commissioners of any county have a right to pass a resolution authorizing the sale of malt beverages in the county and, under Ga. L. 1935, p. 73, § 7 (see now O.C.G.A. § 3-5-41), to fix an annual license fee therefor; the only recourse to prevent the sale would be election of county commissioners who were opposed to legalized sale of malt beverages in the county. 1958-59 Op. Att'y Gen. p. 205.

Referendum regarding sale of no effect. — Referendum held to determine

whether governing authority of county should grant licenses for sale of malt beverages would have no legal effect upon governing authority. 1967 Op. Att'y Gen. No. 67-67.

Duty of commissioner to licensee upon license revocation by local authorities. — Since this section provides that, upon revocation by municipal authorities of malt beverage license, state license is automatically revoked, commissioner need only inform licensee that the licensee's conduct may subject the licensee to criminal prosecution where question is in issue as to who the duly qualified municipal authorities are. 1952-53 Op. Att'y Gen. p. 219 (rendered under former Ga. L. 1937, p. 148).

RESEARCH REFERENCES

Am. Jur. 2d. — 45 Am. Jur. 2d, Intoxicating Liquors, §§ 7, 8, 9, 102, 140 et seq., 187.

C.J.S. — 48 C.J.S., Intoxicating Liquors, §§ 84, 86, 92 et seq., 165.

ALR. — Provisions of statute regarding personal qualifications necessary to entitle one to license for sale of intoxicating liquor, as denial of equal protection of laws, 145 A.L.R. 509.

3-5-41. Requirement and issuance of county licenses generally.

If any business allowed under this chapter is proposed to be carried on within the unincorporated area of a county, the applicant for a license shall pay to the proper officer, to be designated by the governing authority of the county, an annual license fee as fixed by the governing authority. The license shall apply to and be required for each brewer or place of manufacture and also for each place of wholesale and retail distribution outside of any incorporated municipality.

History. — Ga. L. 1935, p. 73, § 7; Code 1933, § 5A-4303, enacted by Ga. L. 1980, p. 1573, § 1; Ga. L. 1981, p. 1269, § 42.

JUDICIAL DECISIONS

Construction of section. — This section clearly states that the proper governing body to issue a license within corporate limits of municipality is governing body of municipality and that governing body of county is limited in its authority to issue licenses to unincorporated areas of county. Hudon v. North Atlanta, 108 Ga. App. 370, 133 S.E.2d 58 (1963).

Exacting license fee from traveling salesperson. — County authorities have no right to exact from traveling salesperson a license fee under this section. Traveling salesperson of wholesaler located in another county, which has no place of business in county seeking to tax salesperson, is not a "business located" in county where sales are made by traveling salesperson. Gaissert v. State, 186 Ga. 599, 198 S.E. 675 (1938).

One who sells beer without having obtained a license from county governing authority is in violation of this section. Elder v. Stark, 200 Ga. 452, 37 S.E.2d 598 (1946).

Licensing authority for place in neither municipality nor incorporated town. — With respect to a place in county neither in municipality nor within limits of incorporated town, governing authority of county is only government authority which can lawfully issue license to sell beer. Elder v. Stark, 200 Ga. 452, 37 S.E.2d 598 (1946).

State not only must allege but also prove that defendant had no license

to sell beer in prosecution for selling without license. Cheek v. State, 98 Ga. App. 874, 107 S.E.2d 247 (1959).

OPINIONS OF THE ATTORNEY GENERAL

Extent of county license requirements. — A county may require a wholesale beer dealer to obtain a county wholesale beer license if the dealer is "doing business" in the county, notwithstanding the fact that the dealer may have its principal place of business located in another county. 1987 Op. Att'y Gen. No. U87-3.

Local governments are not empowered to require licensing of wholesalers of alcoholic beverages that take orders for sales and make deliveries of alcoholic beverages within those local governments, but do not have locations or offices within the boundaries of those local governments. 2017 Op. Att'y Gen. No. U17-2.

Effect of referendum on right of governing authorities to issue licenses. — Ga. L. 1935, p. 73, § 7 (see now O.C.G.A. §§ 3-5-41 and 3-5-42), give municipal or county authorities the right to issue licenses for sale of malt beverages; it is solely within the discretion of such governing authorities to issue or not to issue a license, and an election called to determine if the sale of malt beverages should be allowed or prohibited would have no legal effect upon such governing authorities. 1950-51 Op. Att'y Gen. p. 362.

Prevention of legalized sale. — County commissioners of any county have a right to pass a resolution authorizing sale of malt beverages in the county and to fix an annual license fee therefor; the only recourse to prevent the sale would be election of county commissioners who were opposed to legalized sale of malt beverages in the county. 1958-59 Op. Att'y Gen. p. 205.

RESEARCH REFERENCES

Am. Jur. 2d. — 45 Am. Jur. 2d, Intoxicating Liquors, §§ 94, 105, 109, 122.

C.J.S. — 48 C.J.S., Intoxicating Liquors, §§ 84, 86, 92 et seq., 165.

ALR. — Power to limit the number of intoxicating liquor licenses, 163 A.L.R. 581.

3-5-42. Requirement and issuance of municipal licenses generally; requirement by county of license for business licensed by municipality.

(a) If any business allowed under this chapter is proposed to be carried on within the corporate limits of a municipality, the applicant for a license shall pay to the proper officer, to be designated by the governing authority of the municipality, an annual license fee as fixed by the governing authority. The license shall apply to and be required for each brewer or place of manufacture and also for each place of wholesale and retail distribution.

(b) When any of the businesses described in this Code section are licensed by the municipal governing authority, no county license fee shall be required by the county governing authority.

History. — Ga. L. 1935, p. 73, § 7; Code 1933, § 5A-4302, enacted by Ga. L. 1980, p. 1573, § 1.

JUDICIAL DECISIONS

Construction. — This section clearly states that the proper governing body to issue a license within corporate limits of municipality is governing body of municipality and that governing body of county is limited in its authority to issue licenses to unincorporated areas of county. Hudon v. North Atlanta, 108 Ga. App. 370, 133 S.E.2d 58 (1963).

A case to reissue revoked annual license becomes moot upon date of expiration thereof. Stover v. City Council, 220 Ga. 670, 141 S.E.2d 399 (1965).

State not only must allege but also must prove that defendant had no license to sell beer in prosecution for selling without license. Cheek v. State, 98 Ga. App. 874, 107 S.E.2d 247 (1959).

OPINIONS OF THE ATTORNEY GENERAL

Effect of referendum on right of governing authorities to issue licenses. — Former Code 1933, §§ 58-716 and 58-717 (see now O.C.G.A. §§ 3-5-41 and 35-42) gave municipal or county authorities the right to issue licenses for sale of malt beverages; it was solely within the discretion of such governing authorities to issue or not to issue a license, and an election called to determine if the sale of malt beverages should be allowed or prohibited would have no legal effect upon such governing authorities. 1950-51 Op. Att'y Gen. p. 362.

Dual taxation is not permissible. 1963-65 Op. Att'y Gen. p. 451.

Person who procures proper license from governing authorities of municipality may legally sell beer in such municipality notwithstanding fact that county is dry. 1952-53 Op. Att'y Gen. p. 218.

RESEARCH REFERENCES

Am. Jur. 2d. — 45 Am. Jur. 2d, Intoxicating Liquors, §§ 94, 105, 109, 122. 57 Am. Jur. 2d, Municipal, School, and State Tort Liability, § 166 et seq.

Am. Jur. Pleading and Practice Forms. — 14C Am. Jur. Pleading and Practice Forms, Intoxicating Liquors, §§ 7 et seq., 15 et seq.

C.J.S. — 48 C.J.S., Intoxicating Liquors, §§ 84, 86, 92 et seq., 165.

ALR. — Power to limit the number of intoxicating liquor licenses, 163 A.L.R. 581.

3-5-43. Restriction on amount of license fee charged by county or municipality other than that of wholesale dealer's principal place of business.

Where a wholesale dealer is licensed to do business in more than one municipality or county of this state, no municipality or county other than that of the wholesale dealer's principal place of business shall charge a license fee exceeding $100.00.

History. — Ga. L. 1950, p. 185, § 1; Code 1933, § 5A-4304, enacted by Ga. L. 1980, p. 1573, § 1; Ga. L. 1981, p. 1269, § 43.

Cross references. — Exemption of certain salespeople and merchants from municipal taxes and license fees, § 48-5-354.

JUDICIAL DECISIONS

Maximum fee. — This Code section means that when a license fee is authorized, it may not exceed $100.00. City of Gainesville v. Georgia Crown Distrib. Co., 231 Ga. 352, 201 S.E.2d 410 (1973).

OPINIONS OF THE ATTORNEY GENERAL

Extent of county license requirements. — A county may require a wholesale beer dealer to obtain a county wholesale beer license if the dealer is "doing business" in the county, notwithstanding the fact that the dealer may have its principal place of business located in another county. 1987 Op. Att'y Gen. No. U87-3.

Local governments are not empowered to require licensing of wholesalers of alcoholic beverages that take orders for sales and make deliveries of alcoholic beverages within those local governments, but do not have locations or offices within the boundaries of those local governments. 2017 Op. Att'y Gen. No. U17-2.

RESEARCH REFERENCES

C.J.S. — 48 C.J.S., Intoxicating Liquors, §§ 64, 165, 400 et seq.

ARTICLE 4

EXCISE TAXATION

Cross references. — Sales and use taxes, T. 48, C. 8.

PART 1

STATE

3-5-60. Levy and amount of tax.

There is levied and imposed on the first sale, use, or possession within this state of malt beverages the following taxes:

(1) Where malt beverages are sold in or from a barrel or bulk container, such malt beverages being commonly known as tap or draft beer, an excise tax of $10.00 on each container sold containing not more than 31 gallons and a proportionate tax at the same rate on all fractional parts of 31 gallons;

(2) Where malt beverages are sold in bottles, cans, or other containers, except barrel or bulk containers, an excise tax of 4 1/2¢ per 12 ounces and a proportionate tax at the same rate on all fractional parts of 12 ounces; and

(3) A tax on all such beverages in excess of 576 ounces or two standard cases of 12 ounce size or the equivalent thereof or one 7.75 gallon keg or barrel of such beverages at the same rates of taxation as imposed in this part for other such beverages and on which the taxes are not otherwise imposed by either paragraph (1) or (2) of this Code section.

History. — Ga. L. 1935, p. 73, § 5; Ga. L. 1937, p. 148, § 1; Ga. L. 1937-38, Ex. Sess., p. 173, § 1; Ga. L. 1939, p. 101, § 1; Ga. L. 1949, Ex. Sess., p. 5, § 1; Ga. L. 1951, p. 356, § 1; Ga. L. 1955, Ex. Sess., p. 23, § 1; Ga. L. 1964, p. 60, § 1; Ga. L. 1977, p. 1154, § 1; Code 1933, § 5A-4701, enacted by Ga. L. 1980, p. 1573, § 1; Ga. L. 1981, p. 1269, § 45; Ga. L. 1982, p. 3, § 3; Ga. L. 1984, p. 790, § 3.

OPINIONS OF THE ATTORNEY GENERAL

Unless malt beverage is sold or held for sale, no taxable event occurs and no tax would be due. 1969 Op. Att'y Gen. No. 69-510.

RESEARCH REFERENCES

Am. Jur. 2d. — 45 Am. Jur. 2d, Intoxicating Liquors, §§ 168 et seq., 175 et seq. 71 Am. Jur. 2d, State and Local Taxation, § 178 et seq.

C.J.S. — 45 C.J.S., Intoxicating Liquors, §§ 36, 199 et seq.

ALR. — Excise tax on foreign corporation engaged exclusively in interstate commerce measured by net income from business within the taxing state, 44 A.L.R. 1228.

Specific tax imposed on goods in stock of dealer, as excise, or property tax, 173 A.L.R. 1316.

3-5-61. Exemptions from tax.

The taxes imposed by paragraphs (1) and (2) of Code Section 3-5-60 are not levied with respect to:

(1) Malt beverages sold to persons outside this state for resale or consumption outside this state; or

(2) Malt beverages sold to stores or canteens located on United States military reservations.

History. — Ga. L. 1935, p. 73, § 5; Ga. L. 1937, p. 148, § 1; Ga. L. 1937-38, Ex. Sess., p. 173, § 1; Ga. L. 1939, p. 101, § 1; Ga. L. 1949, Ex. Sess., p. 5, § 1; Ga. L. 1951, p. 356, § 1; Ga. L. 1955, Ex. Sess., p. 23, § 1; Ga. L. 1964, p. 60, § 1; Ga. L. 1977, p. 1154, § 1; Code 1933, § 5A-4702, enacted by Ga. L. 1980, p. 1573, § 1; Ga. L. 1981, p. 1269, § 46.

PART 2

LOCAL

JUDICIAL DECISIONS

Ga. L. 1974, p. 1447 was not violative of the municipal home rule provision of the Georgia Constitution. State v. Golia, 235 Ga. 791, 222 S.E.2d 27 (1976).

Ga. L. 1974, p. 1447 was sufficiently precise as to meet due process standard of definiteness, and was therefore not void for vagueness. State v. Golia, 235 Ga. 791, 222 S.E.2d 27 (1976).

Rational basis for imposition of tax. — State's interest in assuring that malt beverages be taxed uniformly throughout state provided sufficient rational basis for imposition of tax even though tax might be imposed without strict regard to financial needs of particular local taxing unit. This tax was not imposed arbitrarily in violation of due process requirements. State v. Golia, 235 Ga. 791, 222 S.E.2d 27 (1976).

The tax imposed was a state levy for local purposes. Blackmon v. Golia, 231 Ga. 381, 202 S.E.2d 186 (1973).

Ga. L. 1974, p. 1447 did not impose a state tax for state purposes which would invoke constitutional provisions listing state purposes for taxation and requiring that taxation be "for public purposes only"; instead, it imposed a state tax for local purposes, and counties' adherence to tests of constitutional provisions, delineating allowable scope of county purposes of taxation, was all that is required. Chanin v. Bibb County, 234 Ga. 282, 216 S.E.2d 250 (1975).

Construction. — Ga. L. 1974, p. 1447 is construed to require that taxes be imposed in mutually exclusive fashion by municipalities within their boundaries and by counties within their unincorporated areas. Chanin v. Bibb County, 234 Ga. 282, 216 S.E.2d 250 (1975).

RESEARCH REFERENCES

Am. Jur. 2d. — 45 Am. Jur. 2d, Intoxicating Liquors, §§ 94, 105, 109, 122, 168 et seq.

C.J.S. — 48 C.J.S., Intoxicating Liquors, §§ 84, 86, 92 et seq.

ALR. — Specific tax imposed on goods in stock of dealer, as excise, or property tax, 173 A.L.R. 1316.

3-5-80. Levy and amount of tax.

Municipalities and counties permitting the sale of malt beverages shall impose an excise tax, in addition to the excise taxes levied by the state, as follows:

(1) Where malt beverages, commonly known as tap or draft beer, are sold in or from a barrel or bulk container, a tax of $6.00 on each container sold containing not more than 15 1/2 gallons and a proportionate tax at the same rate on all fractional parts of 15 1/2 gallons;

(2) Where malt beverages are sold in bottles, cans, or other containers, except barrel or bulk containers, a tax of 5¢ per 12 ounces and a proportionate tax at the same rate on all fractional parts of 12 ounces.

History. — Ga. L. 1973, p. 328, § 1; Ga. L. 1974, p. 1447, § 1; Ga. L. 1976, p. 282, § 1; Code 1933, § 5A-4731, enacted by Ga. L. 1980, p. 1573, § 1; Ga. L. 1981, p. 1269, § 47; Ga. L. 1992, p. 6, § 3.

JUDICIAL DECISIONS

Constitutionality. — The classifications established in this section are reasonably related to purposes of this part; therefore, this part does not violate equal protection clauses of state and federal constitutions. State v. Golia, 235 Ga. 791, 222 S.E.2d 27 (1976).

3-5-81. Payment of tax by wholesale dealers generally; time of payment; reports by dealers as to quantities of beverages sold.

(a) The excise taxes provided for in this part shall be imposed upon and shall be paid by the licensed wholesale dealer in malt beverages; provided, however, that such taxes shall be imposed upon and shall be paid by the licensed brewer for malt beverages served or sold by the brewer directly to the public pursuant to Code Section 3-5-24.1.

(b) The taxes shall be paid on or before the tenth day of the month following the calendar month in which the beverages are sold or disposed of within the particular municipality or county.

(c) Each licensee responsible for the payment of the excise tax shall file a report itemizing for the preceding calendar month the exact quantities of malt beverages, by size and type of container, sold during the month within each municipality or county. The licensee shall file the report with each municipality or county wherein the beverages are sold by the licensee.

(d) The licensee shall remit to the municipality or county on the tenth day of the month following the calendar month in which the sales were made the tax imposed by the municipality or county.

History. — Ga. L. 1973, p. 328, § 1; Ga. L. 1974, p. 1447, § 1; Ga. L. 1976, p. 282, § 1; Code 1933, § 5A-4732, enacted by Ga. L. 1980, p. 1573, § 1; Ga. L. 2017, p. 406, § 11/SB 85.

The 2017 amendment, effective September 1, 2017, added the proviso at the end of subsection (a); deleted "by the wholesale dealer" following "or county" at the end of subsection (b); and substituted "licensee" for "wholesaler" near the beginning of subsection (d).

3-5-82. Requirement of markings on containers.

No decal, stamp, or other marking shall be required on malt beverage containers designating the particular municipality or county in which a sale of malt beverages is made or in which resides a licensed retailer to whom the beverages are delivered.

History. — Ga. L. 1973, p. 328, § 1; Ga. L. 1974, p. 1447, § 1; Ga. L. 1976, p. 282, § 1; Code 1933, § 5A-4733, enacted by Ga. L. 1980, p. 1573, § 1.

3-5-83. Use of excess tax revenues by consolidated governments and certain counties.

(a) Any tax revenue realized pursuant to this part by a consolidated government existing on July 1, 1981, which is in excess of the amount levied locally on December 1, 1972, shall be used to construct a convention center or to pay for the operation of a convention center.

(b) Any tax revenue realized pursuant to this part by a county having a population of not less than 162,000 nor more than 165,000 according to the United States decennial census of 1970 or any future such census or by any municipality in any such county, which is in excess of the amount levied locally on December 1, 1972, shall be used for the construction of a coliseum or civic center.

History. — Ga. L. 1973, p. 328, § 2; Ga. L. 1974, p. 1447, § 1; Ga. L. 1976, p. 282, § 1; Code 1933, § 5A-4735, enacted by Ga. L. 1980, p. 1573, § 1; Ga. L. 1981, p. 1269, § 48.

RESEARCH REFERENCES

ALR. — Validity of statutory classifications based on population—intoxicating liquor statutes, 100 A.L.R.3d 850.

3-5-84. Enforcement of part.

This part shall be enforced by the commissioner or by any municipality or county permitting the sale of malt beverages within its boundaries, especially with regard to collection and payment of the taxes provided for by this part.

History. — Ga. L. 1973, p. 328, § 1; Ga. L. 1974, p. 1447, § 1; Ga. L. 1976, p. 282, § 1; Code 1933, § 5A-4734, enacted by Ga. L. 1980, p. 1573, § 1.

PART 3

EXEMPTIONS

RESEARCH REFERENCES

C.J.S. — 48 C.J.S., Intoxicating Liquors, § 400 et seq.

3-5-90. Malt beverages containing less than one-half of 1 percent alcohol by volume.

Malt beverages which contain less than one-half of 1 percent alcohol by volume shall not be subject to any tax levied under this title or any tax levied pursuant to authority granted by this title.

History. — Code 1981, § 3-5-90, enacted by Ga. L. 1987, p. 562, § 1.

CHAPTER 6

WINE

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RESEARCH REFERENCES

ALR. — Criminal responsibility of husband for violation of liquor law by wife, 19 A.L.R. 136; 27 A.L.R. 312.

Constitutionality of statute providing for confiscation or destruction, without notice, of intoxicating liquors, and vehicles or other property used in connection with same, 45 A.L.R. 93.

ARTICLE 1

GENERAL PROVISIONS

3-6-1. Definitions.

As used in this chapter, the term:

(1) "Dessert wine" means a wine having an alcoholic strength of more than 14 percent alcohol by volume but not more than 24 percent alcohol by volume.

(2) "Domestic winery" means any winery, manufacturer, maker, producer, or bottler of wine located within the state.

(3) "Foreign winery" means any winery, manufacturer, maker, producer, or bottler of wine located outside the state.

(4) "Table wine" means a wine having an alcoholic strength of not more than 14 percent alcohol by volume.

(5) "Winery" means a manufacturer of wine.

History. — Code 1933, § 5A-5101, enacted by Ga. L. 1980, p. 1573, § 1; Ga. L. 2014, p. 366, § 2/SB 286.

3-6-2. Determination as to when possession occurs.

For purposes of this chapter, with respect to wines manufactured within this state, possession occurs when the product is first identifiable as wine, in accordance with this title and such regulations as may be promulgated by the commissioner pursuant to this title. With respect to wines shipped from outside this state to a destination within this state, possession in the consignee occurs when the wine first physically enters the state or when the risk of loss from destruction or casualty to the wine is shifted from the consignor to the consignee located in this state, in accordance with the contract of the parties and the substantive commercial law of this state, whichever event occurs first.

History. — Code 1933, § 58-803, enacted by Ga. L. 1977, p. 1316, § 1; Code 1933, § 5A-5102, enacted by Ga. L. 1980, p. 1573, § 1.

Cross references. — Placement of risk of loss in absence of breach of contract, § 11-2-509.

3-6-3. Household production.

(a) A head of a household may produce 200 gallons of wine in any one calendar year to be consumed within his own household without any requirement to be licensed for such purpose. Wine so produced shall not be subject to any excise tax imposed by this chapter.

(b) For purposes of this Code section, a single individual who is not a dependent of another person for purposes of Georgia income taxation shall be considered a head of a household.

History. — Code 1933, § 58-826, enacted by Ga. L. 1977, p. 1316, § 1; Code 1933, § 5A-5103, enacted by Ga. L. 1980, p. 1573, § 1.

RESEARCH REFERENCES

ALR. — What constitutes manufacturing and who is a manufacturer under tax laws, 17 A.L.R.3d 7.

3-6-4. Removal of partially consumed bottle of wine from premises.

Notwithstanding any other contrary provision of law, any restaurant which is licensed to sell alcoholic beverages for consumption on the premises may permit a patron to remove one unsealed bottle of wine per patron for consumption off premises, if the patron has purchased a meal and consumed a portion of the bottle of wine which has been purchased on the premises with such meal on the restaurant's premises. A partially consumed bottle of wine that is to be removed from the

premises must be securely resealed by the licensee or its employees before removal from the premises. The partially consumed bottle of wine shall be placed in a bag or other container that is secured in such a manner that it is visibly apparent if the container has been subsequently opened or tampered with, and a dated receipt for the bottle of wine and meal shall be provided by the licensee and attached to the container. If transported in a motor vehicle, the container with the resealed bottle of wine shall be placed in a locked glove compartment, a locked trunk, or the area behind the last upright seat of a motor vehicle that is not equipped with a trunk.

History. — Code 1981, § 3-6-4, enacted by Ga. L. 2008, p. 834, § 1/SB 55.

Cross references. — Consumption of alcoholic beverage or possession of open container of alcoholic beverage in passenger area of motor vehicle, § 40-6-253.

OPINIONS OF THE ATTORNEY GENERAL

Construction with other law. — The enforcement provisions of O.C.G.A. § 40-6-253 remain in effect, including for bottles of wine resealed pursuant to O.C.G.A. § 3-6-4; the 2008 changes in the law were not intended to and did not authorize carrying open alcoholic beverage containers in the passenger area of vehicles. 2008 Op. Att'y Gen. No. 2008-7.

ARTICLE 2

STATE LICENSE REQUIREMENTS AND REGULATIONS FOR DISTRIBUTION AND SALE

Cross references. — Occupational taxes generally, T. 48, C. 13.

3-6-20. Levy and amount of state occupational tax; application for license.

(a) An annual occupational license tax is imposed upon each winery, manufacturer, broker, importer, wholesaler, and retail dealer of wine in this state, as follows:

(1) Upon each winery and manufacturer	$ 1,000.00
(2) Upon each wholesale dealer	500.00
(3) Upon each importer	500.00
(4) Upon each broker	50.00
(5) Upon each retail dealer	50.00
(6) Upon each special event use permit applicant	50.00

(b) An annual occupational license tax shall be paid for each place of business operated. An application for the applicable license required

pursuant to this title along with the payment of the tax required by subsection (a) of this Code section shall be submitted to the department immediately upon assuming control of the place of business and annually thereafter for so long as the business is operated.

History. — Code 1933, § 58-804, enacted by Ga. L. 1977, p. 1316, § 1; Code 1933, § 5A-5501, enacted by Ga. L. 1980, p. 1573, § 1; Ga. L. 2012, p. 827, § 6/HB 1066.

RESEARCH REFERENCES

Am. Jur. 2d. — 45 Am. Jur. 2d, Intoxicating Liquors, §§ 120 et seq., 168 et seq. 51 Am. Jur. 2d, Licenses and Permits, § 7 et seq.

C.J.S. — 48 C.J.S., Intoxicating Liquors, §§ 400 et seq., 409 et seq.

ALR. — Exacting for intoxicating liquor license an amount in excess of cost of regulation in order to limit the number and determine the character and responsibility of licensees, 103 A.L.R. 327.

Intoxicating liquor business as subject to a tax imposed generally on occupations or business, 117 A.L.R. 686.

3-6-21. Filing of bonds by applicants for licenses generally; waiver of bond requirement.

(a) All applicants for licenses other than retail licenses shall file with the commissioner, along with each initial application, a bond:

(1) Conditioned to pay all sums which may become due by the applicant to the state as taxes, license fees, or otherwise, arising out of the operation of the business for which licensure is sought; and

(2) Conditioned to pay all penalties which may be imposed upon the applicant for failure to comply with the laws and rules and regulations pertaining to wines.

The surety for the bonds shall be a surety company licensed to do business in this state, and the bonds shall be in such form as may be required by the commissioner and may be for a term of up to five calendar years.

(b) The bonds required pursuant to subsection (a) of this Code section shall be in the amount of $5,000.00.

(c) All applicants for annual renewal of licenses other than retail licenses must file an annual bond or have a multiyear bond on file with the department that extends at least through the end of the calendar year for which renewal is sought. Such bonds must meet the same conditions as those filed with the initial application.

History. — Code 1933, § 58-807, enacted by Ga. L. 1977, p. 1316, § 1; Code 1933, § 5A-5502, enacted by Ga. L. 1980, p. 1573, § 1; Ga. L. 1981, p. 1269, § 49; Ga. L. 2006, p. 206, § 10/HB 1248.

Code Commission notes. — Pursuant

to Code Section 28-9-5, in 2006, a period was added at the end of subsection (b).

RESEARCH REFERENCES

Am. Jur. 2d. — 45 Am. Jur. 2d, Intoxicating Liquors, § 162 et seq.

C.J.S. — 48 C.J.S., Intoxicating Liquors, § 388 et seq.

3-6-21.1. Licensing of farm wineries to engage in retail and wholesale sales; surety bond; excise taxes.

(a) As used in this Code section, the term:

(1) "Farm winery" means a winery which makes at least 40 percent of its annual production from agricultural produce grown in the state where the winery is located and:

(A) Is located on premises, a substantial portion of which is used for agricultural purposes, including the cultivation of grapes, berries, or fruits to be utilized in the manufacture or production of wine by the winery; or

(B) Is owned and operated by persons who are engaged in the production of a substantial portion of the agricultural produce used in its annual production.

For purposes of this paragraph, the commissioner shall determine what is a substantial portion of such winery premises or agricultural produce.

(2) "Georgia farm winery" means a farm winery which is licensed by the commissioner to manufacture wine in Georgia.

(3) "Tasting room" means an outlet for the promotion of a farm winery's wine by providing samples of such wine to the public and for the sale of such wine at retail for consumption on the premises and for sale in closed packages for consumption off the premises. Samples of wine can be given free of charge or for a fee.

(b) The commissioner may authorize any Georgia farm winery to offer wine samples and to make retail sales of its wine and the wine of any other Georgia farm winery in tasting rooms at the winery and at five additional locations in this state for consumption on the premises and in closed packages for consumption off the premises; provided, however, that notwithstanding any other provisions of this title to the contrary, if the licensee is also issued a license pursuant to Code Section 3-4-24, the commissioner shall not authorize more than one tasting room for such Georgia farm winery and shall require that such tasting room shall be located on the licensed premises of the Georgia farm winery; and provided, further, that the Georgia farm winery shall not

sell its wine or the wine of any other farm winery in more than one tasting room, and such tasting room shall be located on the licensed premises of the Georgia farm winery. For purposes of this subsection, the term "licensed premises" shall mean the premises for which the farm winery license is issued or property located contiguous to the farm winery and owned by the farm winery.

(c)(1) The commissioner may authorize any licensee which is a farm winery to sell up to 24,000 gallons per calendar year of its wine at wholesale within the state; provided, however, that the commissioner shall not authorize any licensed farm winery to sell its wine at wholesale unless such licensed farm winery shall have first offered its products for sale at a fair market wholesale price to a licensed Georgia wholesaler and such wholesaler does not accept the farm winery's product within 30 days of such offer.

(2) A farm winery licensee shall also be authorized to sell, deliver, or ship its wine in bulk or in bottles, whether labeled or unlabeled, in accordance with regulations of the commissioner, to Georgia farm winery licensees and shall be authorized to acquire and receive deliveries and shipments of such wine made by Georgia farm winery licensees.

(3) A Georgia farm winery licensee shall be authorized, in accordance with regulations of the commissioner, to acquire and receive deliveries and shipments of wine in bulk from out-of-state producers and shippers in an amount not to exceed 40 percent of its annual production, provided that the Georgia farm winery licensee receiving any such shipment or shipments files timely reports with the commissioner and keeps such records of the receipt of such shipment or shipments as may be required by the commissioner.

(4) Any wine received in bulk pursuant to paragraph (3) of this subsection shall have levied thereon the requisite taxes as prescribed by Code Section 3-6-50, and such taxes shall be reported and remitted to the commissioner as provided in Code Section 3-2-6.

(d) The annual license tax for each license issued pursuant to this Code section shall be $50.00.

(e) The surety bond required as a condition upon issuance of a license pursuant to this Code section shall be the same as that required pursuant to Code Section 3-6-21 with respect to wineries.

(f) Wines sold at retail by a manufacturer as provided in subsection (b) of this Code section shall have levied thereon an excise tax as prescribed by Code Section 3-6-50, and such tax shall be reported and remitted to the commissioner as provided in Code Section 3-2-6.

History. — Code 1933, § 5A-5511, enacted by Ga. L. 1981, p. 1269, § 52; Ga. L. 1982, p. 1111, §§ 1, 3; Ga. L. 1983, p. 1116, § 1; Ga. L. 1984, p. 1142, § 1; Ga. L. 1985, p. 1403, § 1; Ga. L. 2001, p. 1026, § 1; Ga. L. 2008, p. 773, § 1/HB 393; Ga. L. 2009, p. 8, § 3/SB 46; Ga. L. 2014, p. 214, § 2/HB 825; Ga. L. 2017, p. 770, § 1/SB 226.

The 2017 amendment, effective May 9, 2017, substituted "40 percent" for "20 percent" in the middle of paragraph (c)(3); and substituted "paragraph 3" for "paragraph(3)" near the beginning of paragraph (c)(4).

Code Commission notes. — Pursuant to Code Section 28-9-5, in 2017, "paragraph (3)" was substituted for "paragraph 3" in paragraph (c)(4).

RESEARCH REFERENCES

Am. Jur. 2d. — 45 Am. Jur. 2d, Intoxicating Liquors, §§ 11, 186, 214, 228, 231, 238. 58 Am. Jur. 2d, Occupations, Trades, and Professions, § 8 et seq.

C.J.S. — 48 C.J.S., Intoxicating Liquors, §§ 19, 32 et seq., 83, 84, 425 et seq. 53 C.J.S., Licenses, §§ 18, 19, 36.

3-6-21.2. Sunday sales on farm wineries; off-site sales; sales in "special entertainment districts."

Notwithstanding any other provisions of this title to the contrary, in all counties in which the sale of wine is lawful by a farm winery and in all municipalities in which the sale of wine is lawful by a farm winery, a farm winery which is licensed to sell its wine in a tasting room or other licensed farm winery facility within the county or municipality, as the case may be, for consumption on the premises or in closed packages for consumption off the premises shall be authorized to sell its wine and the wine of any other Georgia farm winery licensee on Sundays from 12:30 P.M. until 12:00 Midnight in a tasting room or other licensed farm winery facility, to the same extent as its county or municipal license would otherwise permit; provided, however, that if such sales of wine on Sundays are lawful at a time earlier than 12:30 P.M. within the county or municipality in which the licensed premises of the Georgia farm winery is located, the Georgia farm winery shall be authorized to sell its wine and the wine of any other Georgia farm winery licensee beginning at such earlier time. Nothing in this Code section shall be construed so as to authorize a farm winery to sell wine as provided in this Code section on any other premises which are not actually located on the property where such farm wine is produced, except in special entertainment districts designated by the local governing authority of the county or municipality, as applicable.

History. — Code 1981, § 3-6-21.2, enacted by Ga. L. 1988, p. 222, § 1; Ga. L. 1991, p. 1164, § 1; Ga. L. 1997, p. 1514, § 1B; Ga. L. 2001, p. 1026, § 1; Ga. L. 2018, p. 896, § 2/SB 17.

The 2018 amendment, effective May 8, 2018, in the first sentence of this Code section, substituted "a tasting" for "the tasting", and added the proviso.

Code Commission notes. — Pursuant to Code Section 28-9-5, in 1988, "license" was substituted for "licenses" near the end of the first sentence.

Law reviews. — For article on the

2018 amendment of this Code section, see 35 Ga. St. U. L. Rev. 1 (2018).

RESEARCH REFERENCES

Am. Jur. 2d. — 45 Am. Jur. 2d, Intoxicating Liquors, §§ 11, 186, 214, 228, 231, 238.

C.J.S. — 48 C.J.S., Intoxicating Liquors, §§ 19, 32 et seq., 83, 84, 85, 86, 425 et seq.

3-6-21.3. Sale by farm wineries of wines, distilled spirits, and malt beverages on or contiguous to its own premises.

(a) As used in this Code section, the term:

(1) "Affiliate" means any person controlling, controlled by, or under common control with a farm winery.

(2) "Farm winery" means a farm winery as defined in Code Section 3-6-21.1 that is located in Georgia.

(3) "Tasting room" has the meaning provided by Code Section 3-6-21.1.

(b)(1) Notwithstanding any other provision of this title to the contrary, in all counties or municipalities in which the sale of wine is lawful, the commissioner may authorize any farm winery licensee to sell its wine and the wine of any other farm winery licensee for consumption on the premises at facilities located on the premises of the winery or on property located contiguous to the winery and owned by the winery or by an affiliate of the winery.

(2) Notwithstanding any other provisions of this title to the contrary, in all counties or municipalities in which the sale of distilled spirits, malt beverages, and wines is lawful, the commissioner further may authorize such licensee to make sales of distilled spirits, malt beverages, and wines not produced by a farm winery for consumption in its tasting rooms and at facilities located on the premises of the winery or on property located contiguous to the winery and owned by the winery or by an affiliate of the winery, provided that any alcoholic beverages sold pursuant to this paragraph shall be purchased by the winery from a licensed wholesaler at wholesale prices.

History. — Code 1981, § 3-6-21.3, enacted by Ga. L. 1997, p. 397, § 1; Ga. L. 2001, p. 1026, § 1; Ga. L. 2008, p. 773, § 2/HB 393.

3-6-21.4. Routes and signage for the Georgia Wine Highway.

The Department of Community Affairs and the Department of Transportation shall, with due consideration to the farm wineries in

Georgia, collaborate to designate appropriate routes and signage for the Georgia Wine Highway.

History. — Code 1981, § 3-6-21.4, enacted by Ga. L. 2001, p. 1026, § 1.

Cross references. — Traffic signs, signals, and markings, T. 40, Ch. 6, A. 2.

3-6-21.5. Production of fortified wine.

A winery may purchase distilled spirits directly from a manufacturer of distilled spirits and blend with wine manufactured by the winery to produce fortified wine. Such distilled spirits shall not be used by the winery for any other purpose or used to create any other type of alcoholic beverage or product.

History. — Code 1981, § 3-6-21.5, enacted by Ga. L. 2014, p. 366, § 3/SB 286.

3-6-22. Requirement of license for shipment of wines into state; contents of application; accompanying documents and labels; approval of wholesalers and wholesalers' territories by commissioner.

(a) No shipper shall be permitted to ship wines into this state without first obtaining a proper license from the commissioner in the manner provided in this article.

(b) In addition to the bond required in Code Section 3-6-21 and such other documentation required by the commissioner pursuant to this title, each shipper shall:

(1) Submit with his application one label for each brand of wine to be shipped for the first time by the shipper into this state;

(2) Designate in the application for registration the sales territories for each of its brands sold in this state; and

(3) Name one licensed wholesaler in each territory who shall be the exclusive distributor of the brand within the territory.

(c) Designations of wholesalers and wholesalers' territories as provided in this Code section shall be initially approved by the commissioner and shall not be changed or initially disapproved except for cause. The commissioner shall determine cause after a hearing under regulations promulgated by the commissioner for such purposes.

History. — Code 1933, § 58-809, enacted by Ga. L. 1977, p. 1316, § 1; Code 1933, § 5A-5503, enacted by Ga. L. 1980, p. 1573, § 1.

Law reviews. — For note and comment, "Dude, Where's My Wine? The Potential Effect of Granholm v. Heald on Georgia Direct Wine Shipment Regulations," see 23 Ga. St. U. L. Rev. 631 (2007).

JUDICIAL DECISIONS

Effect of section on contractual rights between wholesaler and subjobber. — This section does not purport to regulate private contractual rights between wine wholesaler, designated by out-of-state wineries as exclusive distributor of certain brands, and wholesaler's subjobber or salesperson, also a wholesaler. Chilivis v. National Distrib. Co., 239 Ga. 651, 238 S.E.2d 431 (1977).

Cited in Ga. Oilmen's Ass'n v. Ga. Dep't of Revenue, 261 Ga. App. 393, 582 S.E.2d 549 (2003).

RESEARCH REFERENCES

Am. Jur. 2d. — 45 Am. Jur. 2d, Intoxicating Liquors, §§ 11, 30 et seq., 102, 186, 192 et seq., 201, 209.

C.J.S. — 48 C.J.S., Intoxicating Liquors, §§ 78, 160, 404, 425 et seq., 440, 441.

3-6-23. Persons to whom wine may be sold by wholesale dealers.

Except as provided in paragraph (5) of subsection (a) of Code Section 3-2-13, licensed wholesale dealers shall sell wine only to other licensed wholesale dealers and to importers and retail dealers licensed in this state.

History. — Code 1933, § 58-821, enacted by Ga. L. 1977, p. 1316, § 1; Code 1933, § 5A-5507, enacted by Ga. L. 1980, p. 1573, § 1; Ga. L. 1981, p. 1269, § 50; Ga. L. 1993, p. 91, § 3; Ga. L. 1994, p. 97, § 3.

RESEARCH REFERENCES

Am. Jur. 2d. — 45 Am. Jur. 2d, Intoxicating Liquors, §§ 11, 102, 186, 201, 209.

C.J.S. — 48 C.J.S., Intoxicating Liquors, §§ 78, 160, 404, 425 et seq., 440, 441.

3-6-24. Preparation and retention of invoices of sales by wholesale dealers.

Each wholesale dealer, at the time of any sale of wine, shall prepare and keep a copy of a sales invoice containing:

(1) The name of the wholesale dealer;

(2) The name, address, and license number of the licensed importer, wholesaler, or retailer making the purchase;

(3) The quantity and container sizes of wine sold;

(4) The date of the sale; and

(5) Any other information the commissioner may require.

History. — Code 1933, § 58-820, enacted by Ga. L. 1977, p. 1316, § 1; Code 1933, § 5A-5506, enacted by Ga. L. 1980, p. 1573, § 1.

RESEARCH REFERENCES

C.J.S. — 48 C.J.S., Intoxicating Liquors, §§ 78, 160, 404, 415 et seq., 440, 441.

3-6-25. Wine acquired by retail dealers from persons other than licensed wholesale dealers declared contraband.

Except as provided in Code Sections 3-6-21.1 through 3-6-21.3 and Code Section 3-6-21.5, wine possessed, sold, or offered for sale by a retail dealer which was purchased or otherwise acquired from any person other than a wholesale dealer authorized to do business under this chapter is declared to be contraband and shall be seized and disposed of by the commissioner in the manner provided in this title.

History. — Code 1933, § 58-815, enacted by Ga. L. 1980, p. 1316, § 1; Code 1933, § 5A-5504, enacted by Ga. L. 1980, p. 1573, § 1; Ga. L. 2014, p. 366, § 4/SB 286.

RESEARCH REFERENCES

Am. Jur. 2d. — 45 Am. Jur. 2d, Intoxicating Liquors, § 393 et seq.

C.J.S. — 48 C.J.S., Intoxicating Liquors, 33, 78, 160, 404, 425 et seq., 440, 441. 48A C.J.S., Intoxicating Liquors, §§ 750 et seq., 777 et seq.

3-6-25.1. Display of advertisement or information regarding prices of wine in visible places; sales below cost prohibited; exceptions authorized.

(a) No person holding a retail dealer's license to deal in wine by the package shall display any advertisement of or information regarding the price or prices of any wine in any show window or other place visible from outside the licensee's place of business.

(b) No person licensed to sell wine by the package for carry-out purposes shall sell such beverages at a price less than the cost which such licensee pays for such wine. As used in this subsection, cost shall include the wholesale price plus the local excise tax imposed, as reflected in invoices which the commissioner of revenue may require to be maintained on said licensee's place of business.

(c) The commissioner of revenue shall be authorized to adopt such regulations as he or she deems necessary to provide for exception to the prohibition provided in subsection (b) of this Code section for reasons relating to liquidation of inventory, close-out of brands, outdated products, or any other reason the commissioner may determine to merit an exception.

History. — Code 1981, § 3-6-25.1, enacted by Ga. L. 1996, p. 785, § 2.
Editor's notes. — Ga. L. 1996, p. 785, § 3, not codified by the General Assembly, provides for severability.

3-6-26. Delivery, transportation, receipt, and storage of wine sold by wholesale dealers to retail dealers.

All wines sold by a wholesale dealer to a retail dealer shall be delivered only to the premises of a licensed retail dealer and transported only by a conveyance owned, or leased, and operated by a wholesale dealer, or owned, or leased, and operated by a wholesale dealer's employee, who is designated to deal in the brands of wines sold and is licensed to make sales and deliveries within the municipality or county in which the sale or delivery is made. The wine so sold shall not be delivered to, received, or stored at any place other than premises for which state and local retail licenses have been issued.

History. — Code 1933, § 58-819, enacted by Ga. L. 1977, p. 1316, § 1; Code 1933, § 5A-5505, enacted by Ga. L. 1980, p. 1573, § 1; Ga. L. 1993, p. 83, § 2.

RESEARCH REFERENCES

Am. Jur. 2d. — 45 Am. Jur. 2d, Intoxicating Liquors, §§ 11, 102, 186, 201, 209.
C.J.S. — 48 C.J.S., Intoxicating Liquors, §§ 78, 160, 404, 425 et seq., 440, 441.

3-6-26.1. Requirement as to possession of invoices or delivery tickets when transporting wine upon which taxes not paid; seizure as contraband when transported without invoices or delivery tickets.

(a) Every person who transports wine, upon which the taxes imposed by this title have not been paid, into or out of or within this state shall have in his actual personal possession invoices or delivery tickets showing the name and address of the seller or consignor, the name and address of the purchaser or consignee, the quantity of wine being transported, and the name and address of the person responsible for payment of the state tax at the ultimate destination.

(b) All wines, and the vehicles in which the wines are being transported, which are transported into or out of or within this state without accompanying invoices or delivery tickets are declared to be contraband and shall be seized by the commissioner or his agents. The seizure, disposition, and any claims shall be handled pursuant to Code Section 3-2-35.

History. — Code 1933, § 5A-5510, enacted by Ga. L. 1981, p. 1269, § 51.

RESEARCH REFERENCES

Am. Jur. 2d. — 45 Am. Jur. 2d, Intoxicating Liquors, §§ 26 et seq., 90 et seq., 192 et seq.

C.J.S. — 48 C.J.S., Intoxicating Liquors, § 415 et seq. 48A C.J.S., Intoxicating Liquors, §§ 750 et seq., 777 et seq.

3-6-27. Registration of agents, representatives, salesmen, and employees of manufacturers, importers, producers, or brokers.

Every agent, representative, salesman, and employee of each winery, manufacturer, importer, producer, or broker shipping, or causing to be shipped, wines into the state shall register with the commissioner on forms prepared by the commissioner before engaging in the selling, promoting, displaying, or advertising of wine.

History. — Code 1933, § 58-823, enacted by Ga. L. 1977, p. 1316, § 1; Code 1933, § 5A-5508, enacted by Ga. L. 1980, p. 1573, § 1.

RESEARCH REFERENCES

C.J.S. — 48 C.J.S., Intoxicating Liquors, §§ 442, 522, 524 et seq.

3-6-28. Wine to be in containers specified; standards of fill for wine; exemptions from requirements as to container size.

All wine shipped into this state and all wine manufactured within this state shall be in containers specified in the Standards of Fill for Wine prescribed by the United States Department of the Treasury for wines shipped in interstate commerce. The federal regulations relating to Standards of Fill for Wine are adopted and incorporated by reference in this Code section. Wines manufactured and produced in this state shall be exempt from this Code section, provided the container sizes were in use and exempt from such federal regulations on January 1, 1977.

History. — Code 1933, § 58-824, enacted by Ga. L. 1977, p. 1316, § 1; Code 1933, § 5A-5509, enacted by Ga. L. 1980, p. 1573, § 1.

Code of Federal Regulations. — As to Standards of Fill for Wine, see 27 CFR § 4.70 et seq.

RESEARCH REFERENCES

C.J.S. — 48 C.J.S., Intoxicating Liquors, § 436 et seq.

3-6-29. Content requirements for wines manufactured by domestic and farm wineries; rules and regulations.

Reserved. Repealed by Ga. L. 2008, p. 773, § 3/HB 393, effective July 1, 2008.

Editor's notes. — This Code section was based on Ga. L. 1985, p. 979, § 2; Ga. L. 1986, p. 10, § 3.

3-6-30. Creation of limited exceptions regarding direct shipments.

The General Assembly reaffirms the findings, determinations, and declarations in Code Section 3-3-31 regarding direct shipments of alcoholic beverages, but creates limited exceptions set forth in Code Sections 3-6-31 and 3-6-32 to permit the direct shipment of wine to residents of this state under certain circumstances.

History. — Code 1981, § 3-6-30, enacted by Ga. L. 2000, p. 1401, § 2.

Cross references. — Legislative findings, § 3-3-31.

Law reviews. — For note on 2000 enactment of O.C.G.A. §§ 3-6-30 to 3-6-32, see 17 Ga. St. U. L. Rev. 7 (2000). For note and comment, "Dude, Where's My Wine? The Potential Effect of Granholm v. Heald on Georgia Direct Wine Shipment Regulations," see 23 Ga. St. U. L. Rev. 631 (2007).

3-6-31. Special order shipping license requirements and regulations.

(a) For purposes of this Code section, the term "winery" means any maker or producer of wine whether in this state or in any other state, who holds a valid federal basic wine manufacturing permit.

(b) Notwithstanding any other provision of this title to the contrary, any shipper which is also a winery may be authorized to make direct shipments of wine to consumers in this state, without complying with the provisions of Code Section 3-6-22, upon obtaining a special order shipping license from the commissioner pursuant to this Code section.

(c) A special order shipping license shall only be issued to a winery upon compliance with all applicable provisions of this title and the regulations promulgated pursuant to this title, and upon payment of the license fee designated for retail dealers in Code Section 3-6-20.

(d) A special order shipping license shall entitle the winery to ship wine upon order directly to consumers for personal or household use in this state without designating wholesalers as required by Code Section 3-6-22, provided that:

(1) The holder of a special order shipping license shall only ship brands of wine for which the holder has submitted labels to the commissioner;

(2) No holder of a special order shipping license shall be permitted to ship in excess of 12 standard cases of wine of one brand or a combination of brands into this state to any one consumer or address per calendar year;

(3) Before accepting an order from a consumer in this state, the holder of a special order shipping license shall require that the person placing the order state affirmatively that he or she is of the age required by Code Section 3-3-23 and shall verify the age of such person placing the order either by the physical examination of an approved government issued form of identification or by utilizing an Internet based age and identification service;

(4) A special order shipping license shall not authorize the shipment of any wine to any premises licensed to sell alcoholic beverages pursuant to this title; and

(5) Every shipment of wine by the holder of a special order shipping license shall be clearly marked "Alcoholic Beverages, Adult Signature Required," and the carrier delivering such shipment shall be responsible for obtaining the signature of an adult who is at least 21 years of age as a condition of delivery.

(e) The failure to comply strictly with the requirements of this Code section, Code Section 3-3-23, and all applicable provisions of this title and regulations promulgated pursuant to this title shall be grounds for the revocation of a special order shipping license or other disciplinary action by the commissioner. Upon revocation of a special order shipping license for shipment of wine to a person not of age as required by Code Section 3-3-23, such winery shall not be issued any special order shipping license pursuant to this Code section for a period of five years from the date of revocation.

(f) The holder of a special order shipping license shall collect all excise taxes imposed by Code Section 3-6-50, shall remit such taxes in the same manner as licensed wine wholesalers, and shall accompany such remittance with such reports, documentation, and other information as may be required by the commissioner. In addition, an applicant for and a holder of a special order shipping license, as a condition of receiving and holding a valid license, shall:

(1) Agree to collect and to pay applicable Georgia state and local sales tax on each sale shipped to a consumer in Georgia;

(2) Accompany each remittance with such sales tax reports, documentation, and other information as may be required by the commissioner; and

(3) Consent to enforcement of the provisions of this Code section by the department and to the jurisdiction of the courts of Georgia for the

collection of such taxes or other moneys owing, including interest and penalties.

(g) The commissioner may promulgate such rules and regulations as are necessary and appropriate for the enforcement of this Code section.

History. — Code 1981, § 3-6-31, enacted by Ga. L. 2000, p. 1401, § 2; Ga. L. 2008, p. 376, § 1/HB 1061.

Cross references. — Minimum age for furnishing, purchasing, or possession of alcoholic beverages, § 3-3-23.

Law reviews. — For note and comment, "Dude, Where's My Wine? The Potential Effect of Granholm v. Heald on Georgia Direct Wine Shipment Regulations," see 23 Ga. St. U. L. Rev. 631 (2007).

3-6-32. Shipment of wine by winery to consumers; circumstances.

(a) Notwithstanding any other provision of this title to the contrary, a winery located within this state or outside this state that holds a federal basic wine manufacturing permit, whether licensed under this title or not and without regard to brand or label registrations or designations of wholesalers pursuant to Code Section 3-6-22, shall be permitted to ship wine directly to consumers in this state for personal or household use under the following circumstances:

(1) The consumer must purchase the wine while physically present on the premises of the winery;

(2) The winery must verify that the consumer purchasing the wine is of the age required by Code Section 3-3-23 and is not licensed pursuant to this title; and

(3) No winery shall ship in excess of five cases of any brand or combination of brands to any one consumer or any one address in this state in any calendar year.

(b) The commissioner may promulgate such rules and regulations as are necessary and appropriate for the enforcement of this Code section.

History. — Code 1981, § 3-6-32, enacted by Ga. L. 2000, p. 1401, § 2.

Cross references. — Minimum age for furnishing, purchasing, or possession of alcoholic beverages, § 3-3-23.

Law reviews. — For note and comment, "Dude, Where's My Wine? The Potential Effect of Granholm v. Heald on Georgia Direct Wine Shipment Regulations," see 23 Ga. St. U. L. Rev. 631 (2007).

ARTICLE 3

LOCAL LICENSE REQUIREMENTS

3-6-40. Requirement by counties or municipalities of licenses for manufacture, distribution, or sale of wine; effect of revocation of license issued by commissioner or by county or municipality upon license issued by other.

(a) Except as otherwise provided in this Code section, the businesses of manufacturing, distributing, and selling wine at wholesale or retail shall not be conducted in any county or incorporated municipality of this state without a license from the governing authority of the county or municipality. A farm winery, as defined in Code Section 3-6-21.1, which is qualified and licensed by the state shall need no county or municipal license to manufacture wine or to distribute such wine at wholesale in accordance with this chapter if the farm winery has given to the municipal or county governing authority 60 days' written notice of its intention to commence operations in the county or municipality and the county or municipal governing authority has not within said 60 day period adopted a resolution prohibiting the farm winery from commencing operations in the county or municipality without a local license.

(b) When any county or municipal license issued pursuant to this Code section is revoked by the governing authority of such county or municipality, any similar wine license issued to the same person by the commissioner pursuant to this chapter shall automatically become invalid in the county or municipality in which the license was revoked.

(c) When any state wine license issued pursuant to this chapter is revoked by the commissioner, any similar wine license issued to the same person by any county or municipality of this state shall automatically become invalid.

History. — Code 1933, § 58-811, enacted by Ga. L. 1977, p. 1316, § 1; Code 1933, § 5A-5301, enacted by Ga. L. 1980, p. 1573, § 1; Ga. L. 1984, p. 1142, § 2.

JUDICIAL DECISIONS

Constitutionality. — O.C.G.A. §§ 3-5-40 and 3-6-40, which grant municipalities power regarding licensing and sale of malt beverages and wine without resort to public referendum, are not unconstitutional on ground that they arbitrarily remove from the public the right to have a referendum on such sales. Newsome v. City of Union Point, 249 Ga. 434, 291 S.E.2d 712 (1982).

RESEARCH REFERENCES

Am. Jur. 2d. — 45 Am. Jur. 2d, Intoxicating Liquors, §§ 94, 105, 109, 122.

C.J.S. — 48 C.J.S., Intoxicating Liquors, §§ 84, 86, 92 et seq., 165.

ARTICLE 4

EXCISE TAXATION

Cross references. — Sales and use taxes, T. 48, C. 8.

PART 1

STATE

3-6-50. Levy and amount of tax.

(a) There shall be levied and imposed on the first sale, use, or final delivery within this state of all table wines an excise tax in the amount of 11¢ per liter and a proportionate tax at the same rate on all fractional parts of a liter.

(b) There shall be imposed upon the importation for use, consumption, or final delivery into this state of all table wines an import tax in the amount of 29¢ per liter and a proportionate tax at the same rate on all fractional parts of a liter.

(c) There shall be levied and imposed upon the first sale, use, or final delivery within this state of all dessert wines an excise tax in the amount of 27¢ per liter and a proportionate tax at the same rate on all fractional parts of a liter.

(d) There shall be levied and imposed upon the importation for use, consumption, or final delivery into this state of all dessert wines an import tax in the amount of 40¢ per liter and a proportionate tax at the same rate on all fractional parts of a liter.

History. — Code 1933, § 58-803, enacted by Ga. L. 1977, p. 1316, § 1; Code 1933, § 5A-5701, enacted by Ga. L. 1980, p. 1573, § 1; Ga. L. 1981, p. 1269, § 53; Ga. L. 1982, p. 1111, §§ 2, 4; Ga. L. 1983, p. 3, § 4; Ga. L. 1985, p. 662, § 2; Ga. L. 1985, p. 665, § 3.

Editor's notes. — Ga. L. 1985, p. 662, § 2, effective March 31, 1985, also amended this Code section. However, that amendment has been treated as superseded by Ga. L. 1985, p. 665, § 3.

Ga. L. 1985, p. 665, § 1, not codified by the General Assembly, contained legislative findings that the cost of regulating and administering the manufacture, distribution, and sale of alcohol, distilled spirits, table wines, and dessert wines consumed in Georgia is greater for imported alcohol, spirits, and wines than it is for alcohol, spirits, and wines produced within Georgia and that it is in the best interests of the citizens of Georgia that the increased costs be provided for by taxation.

Ga. L. 1985, p. 665, § 4, not codified by the General Assembly, provided that the provisions of the Act shall not be severable

and that in the event that any section or portion of any section of the Act is declared or adjudged to be invalid or unconstitutional, such declaration or adjudication shall render the entire Act invalid, void, and of no effect and shall specifically revive the provisions affected by the Act as such provisions stood before the enactment of the Act, as amended by laws other than the Act.

JUDICIAL DECISIONS

Constitutionality. — Georgia statutes providing for an import tax on all distilled spirits and table wines imported for use, consumption, or final delivery into the state do not violate the equal protection and commerce clauses of the federal constitution. Heublein, Inc. v. State, 256 Ga. 578, 351 S.E.2d 190, appeal dismissed, 483 U.S. 1013, 107 S. Ct. 3253, 97 L. Ed. 2d 753 (1987).

RESEARCH REFERENCES

C.J.S. — 48 C.J.S., Intoxicating Liquors, § 409 et seq.

PART 2

LOCAL

3-6-60. Levy and amount of tax generally; rate of tax; manner of imposition, payment, and collection; imposition of tax by both county and municipality located within county.

(a) The governing authority of each municipality or county where the sale of wine is permitted by this chapter, at its discretion, may levy an excise tax on the first sale or use of wine by the package, which tax shall not exceed 22¢ per liter and a proportionate tax at the same rate on all fractional parts of a liter.

(b) The rate of taxation, the manner of its imposition, payment, and collection, and all other procedures related to the tax authorized by subsection (a) of this Code section shall be as provided for by each county or municipality electing to exercise the power conferred by subsection (a) of this Code section.

(c) No county excise tax shall be imposed, levied, or collected in any portion of a county in which a municipality within the county is imposing the same tax on wine sold by the package.

History. — Code 1933, § 5A-5731, enacted by Ga. L. 1980, p. 1573, § 1; Ga. L. 1981, p. 1269, § 54.

PART 3

EXEMPTIONS

3-6-70. Exemptions from tax.

The taxes imposed by this article shall not be levied with respect to:

(1) Wine sold to and used by established and recognized churches and synagogues for use in sacramental services only;

(2) Any sale of wine which is exempt from taxation by the state under the Constitution of the United States; or

(3) Wine sold to persons outside this state for resale or consumption outside this state.

History. — Code 1933, § 58-803, enacted by Ga. L. 1977, p. 1316, § 1; Code 1933, § 5A-5761, enacted by Ga. L. 1980, p. 1573, § 1; Ga. L. 1983, p. 1116, § 2.

RESEARCH REFERENCES

C.J.S. — 48 C.J.S., Intoxicating Liquors, § 400 et seq.

3-6-71. Wines containing less than one-half of 1 percent alcohol by volume.

Wines which contain less than one-half of 1 percent alcohol by volume shall not be subject to any tax levied under this title or any tax levied pursuant to authority granted by this title.

History. — Code 1981, § 3-6-71, enacted by Ga. L. 1987, p. 562, § 2.

CHAPTER 7

SALE OF DISTILLED SPIRITS BY PRIVATE CLUBS

Article 1

General Provisions

Sec.

3-7-1. Definitions.

3-7-2. Applicability of chapter to private clubs.

Article 2

State Authorization and Regulation

3-7-20. Issuance of alcoholic beverage licenses to private clubs by commissioner generally; promulgation of rules and regulations generally; privileges conferred by licenses.

3-7-21. License fees; prelicense investigation fee.

3-7-22. Promulgation of rules and regulations as to sale, possession, and use of alcoholic beverages in private clubs.

Article 3

Local Authorization and Regulation

3-7-40. Authority of counties or municipalities to regulate and license private clubs generally.

3-7-41. Calling of special elections upon direction of governing authorities; notice; rules and regulations; timing; ballots; frequency; approval of licenses.

3-7-42. Calling of special elections upon presentation of petitions by voters; rules and regulations; frequency; procedure for calling and conduct of elections for purpose of nullifying previous election results; approval of licenses.

3-7-43. Issuance of alcoholic beverage licenses to private clubs by governing authorities of certain counties and municipalities; privileges conferred by licenses; rules and regulations; sale by wholesalers to licensees.

Article 4

Local Excise Taxation

3-7-60. Levy and amount of tax on sale of distilled spirits; persons required to pay tax; collection of tax.

3-7-61. Imposition of tax on sale of mixed drinks.

Administrative rules and regulations. — Farm wineries, Official Compilation of the Rules and Regulations of the State of Georgia, Rules of Department of Revenue, Alcohol and Tobacco Tax Unit, Chapter 560-2-10.

OPINIONS OF THE ATTORNEY GENERAL

Authorization for sales. — If sales of distilled spirits are not already lawful in a local jurisdiction, they may be made lawful only at private clubs by the procedure set out in O.C.G.A. T. 3, Ch. 7. 1983 Op. Att'y Gen. No. U83-12.

RESEARCH REFERENCES

ALR. — Test of intoxicating character of liquor, 4 A.L.R. 1137; 11 A.L.R. 1233; 19 A.L.R. 512; 36 A.L.R. 725; 91 A.L.R. 513.

Criminal responsibility of one who acts as sentinel during violation of intoxicating liquor law, 64 A.L.R. 427.

Intoxicating liquor business as subject to a tax imposed generally on occupations or businesses, 117 A.L.R. 686.

What constitutes injury to means of support within civil damage or dramshop act, 4 A.L.R.3d 1332.

Third person's participating in or encouraging drinking as barring him from recovering under civil damage or similar acts, 26 A.L.R.3d 1112.

Sale of liquor to homosexuals or permitting their congregation at licensed premises as ground for suspension or revocation of liquor license, 27 A.L.R.3d 1254.

Criminal liability of member or agent of private club or association, or of owner or lessor of its premises, for violation of state or local liquor or gambling laws thereon, 98 A.L.R.3d 694.

ARTICLE 1

GENERAL PROVISIONS

Cross references. — Nonprofit corporations generally, T. 14, C. 3. County and municipal regulation of roadhouses, public dance halls, and other facilities, § 43-21-50.

3-7-1. Definitions.

As used in this chapter, the term:

(1) "Bona fide private club" means any nonprofit association organized under the laws of this state which:

(A) Has been in existence at least one year prior to the filing of its application for a license to be issued pursuant to this chapter;

(B) Has at least 75 regular dues-paying members;

(C) Owns, hires, or leases a building or space within a building for the reasonable use of its members, which building or space:

(i) Has suitable kitchen and dining room space and equipment; and

(ii) Is staffed with a sufficient number of employees for cooking, preparing, and serving meals for its members and guests; and

(D) Has no member, officer, agent, or employee directly or indirectly receiving, in the form of salary or other compensation, any profits from the sale of alcoholic beverages beyond a fixed salary.

(2) "Fixed salary" means the amount of compensation paid any member, officer, agent, or employee of a bona fide private club as may be fixed for him by its members at a prior annual meeting or by the governing body out of the general revenue of the club and shall not include any commission on any profits from the sale of alcoholic beverages. For the purposes of this definition, tips or gratuities which

are added to the bills under club regulations shall not be considered profits from the sale of alcoholic beverages.

History. — Ga. L. 1978, p. 1155, § 2; Code 1933, § 5A-6101, enacted by Ga. L. 1980, p. 1573, § 1.

OPINIONS OF THE ATTORNEY GENERAL

"Bona fide private club." — The definition of "bona fide private club" contained in O.C.G.A. § 3-7-1 does not restrict a local government from otherwise exercising its regulatory authority over beer and wine, nor over distilled spirits if their sale is already lawful therein. 1983 Op. Att'y Gen. No. U83-12.

RESEARCH REFERENCES

C.J.S. — 48 C.J.S., Intoxicating Liquors, § 170.

3-7-2. Applicability of chapter to private clubs.

Notwithstanding any other provision of this chapter, a bona fide private club at which the sale of distilled spirits or other alcoholic beverages by the drink for consumption only on the premises where sold is otherwise authorized pursuant to this chapter is authorized to sell those same distilled spirits and other alcoholic beverages by the drink at any time on Sundays.

History. — Code 1981, § 3-7-2, enacted by Ga. L. 1996, p. 830, § 1A; Ga. L. 1999, p. 1225, § 2.

Cross references. — Service of alcohol at technical institute, § 3-8-6.

OPINIONS OF THE ATTORNEY GENERAL

Exemption from local regulation. — O.C.G.A. § 3-7-2 exempts bona fide private clubs from regulation by local counties and municipalities regarding hours of sale of distilled spirits by the drink for consumption on Sundays. 1996 Op. Att'y Gen. No. U96-23.

Sale of alcohol by the drink. — O.C.G.A. § 3-7-2 does not apply to private clubs conducting sales of alcoholic beverages by the drink where the sales are authorized under a provision of law other than O.C.G.A. Ch. 7, T. 3. 2002 Op. Att'y Gen. No. U2002-4.

ARTICLE 2

STATE AUTHORIZATION AND REGULATION

3-7-20. Issuance of alcoholic beverage licenses to private clubs by commissioner generally; promulgation of rules and regulations generally; privileges conferred by licenses.

The commissioner may issue alcoholic beverage licenses to bona fide private clubs in any county or municipality within the state and may promulgate such regulations as he deems necessary for the proper enforcement of this chapter after the approval of such authority by an election held pursuant to Code Section 3-7-41 or 3-7-42. These licenses shall authorize the sale of distilled spirits by the drink for consumption only on the premises where sold.

History. — Ga. L. 1978, p. 1155, § 1; Code 1933, § 5A-6102, enacted by Ga. L. 1980, p. 1573, § 1.

OPINIONS OF THE ATTORNEY GENERAL

An application for liquor permit is a public record and is not confidential or secret under former Code 1933, § 92-8414 (see now O.C.G.A. § 48-2-15). 1963-65 Op. Att'y Gen. p. 171.

RESEARCH REFERENCES

Am. Jur. 2d. — 45 Am. Jur. 2d, Intoxicating Liquors, §§ 15 et seq., 25 et seq., 90 et seq., 103.

C.J.S. — 48 C.J.S., Intoxicating Liquors, § 170.

ALR. — Validity of statute or rule which makes specified conduct or condition a ground for cancelation or suspension of license, irrespective of licensee's personal fault, 3 A.L.R.2d 107.

3-7-21. License fees; prelicense investigation fee.

The license fees for a club shall be the same fees as provided in subsection (a) of Code Section 3-4-111.1 for the sale of distilled spirits in licensed public places of business; and, in addition, a prelicense investigation fee of $100.00 shall be required.

History. — Ga. L. 1978, p. 1155, § 3; Code 1933, § 5A-6103, enacted by Ga. L. 1980, p. 1573, § 1; Ga. L. 1981, p. 1269, § 55.

RESEARCH REFERENCES

Am. Jur. 2d. — 45 Am. Jur. 2d, Intoxicating Liquors, §§ 168 et seq., 175 et seq.

C.J.S. — 48 C.J.S., Intoxicating Liquors, §§ 64, 400 et seq.

3-7-22. Promulgation of rules and regulations as to sale, possession, and use of alcoholic beverages in private clubs.

The commissioner may promulgate such reasonable regulations as are necessary and appropriate to regulate the sale, possession, and use of alcoholic beverages in private clubs.

History. — Ga. L. 1978, p. 1155, § 5; Code 1933, § 5A-6106, enacted by Ga. L. 1980, p. 1573, § 1.

RESEARCH REFERENCES

Am. Jur. 2d. — 45 Am. Jur. 2d, Intoxicating Liquors, §§ 15 et seq., 25 et seq., 90 et seq., 103.

C.J.S. — 48 C.J.S., Intoxicating Liquors, § 170.

ARTICLE 3

LOCAL AUTHORIZATION AND REGULATION

3-7-40. Authority of counties or municipalities to regulate and license private clubs generally.

(a) Nothing contained in this chapter shall be so construed as to limit the licensing and regulatory authority of any municipality or county in which the sale of alcoholic beverages is lawful.

(b) Each municipality and county may license and regulate any bona fide private club located within the licensing and regulatory jurisdiction of the municipality or county.

History. — Ga. L. 1978, p. 1155, § 5; Code 1933, § 5A-6107, enacted by Ga. L. 1980, p. 1573, § 1.

RESEARCH REFERENCES

Am. Jur. 2d. — 45 Am. Jur. 2d, Intoxicating Liquors, §§ 94, 103, 109, 122, 212.

C.J.S. — 48 C.J.S., Intoxicating Liquors, §§ 84, 86, 92 et seq., 165.

3-7-41. Calling of special elections upon direction of governing authorities; notice; rules and regulations; timing; ballots; frequency; approval of licenses.

(a) The governing authority of any county or municipality at its discretion may direct its election superintendent to issue the call for an election to determine if the sale of distilled spirits by private clubs, as provided in this chapter, shall be allowed. Upon such direction, the election superintendent shall call a special election at least 30 days

prior to the date of the election and shall publish the notice of the call of the election in the official gazette of the county or, in the case of a municipal election, in a newspaper of general circulation in the municipality, once a week for two weeks preceding the election.

(b)(1) A county election held pursuant to this Code section shall be held according to the rules and regulations governing special elections contained in Chapter 2 of Title 21, and may be held at the time of holding any other primary or election in the county.

(2) A municipal election held pursuant to this Code section shall be held according to the rules and regulations governing special elections contained in Chapter 2 of Title 21 and may be held at the time of holding any other primary or election in the municipality.

(c) The returns of the election held pursuant to this Code section shall be made within three days after the election to the election superintendent who shall ascertain and declare the result after the receipt of the returns.

(d) The ballot in the election shall have written or printed thereon:

"[ ] YES Shall alcoholic beverages by the drink, for
[ ] NO consumption on the premises only, be allowed in private clubs?"

Those desiring to vote in favor of the sales shall vote "Yes." Those desiring to vote against the sales shall vote "No." If at the election a majority of the votes cast are in favor of the sales in private clubs, the sales shall be permitted in accordance with this article. If at the election a majority of the votes cast are against the sales, they shall be prohibited in the political subdivision, except as otherwise provided in this article.

(e) No election under this Code section shall be held within two years after the date of the declaration of the result of a previous election held under this Code section.

(f) The local governing authority must approve any license within its jurisdiction before issuance of the license.

History. — Ga. L. 1978, p. 1155, § 6; Code 1933, § 5A-6108, enacted by Ga. L. 1980, p. 1573, § 1.

RESEARCH REFERENCES

Am. Jur. 2d. — 45 Am. Jur. 2d, Intoxicating Liquors, § 63 et seq.

C.J.S. — 48 C.J.S., Intoxicating Liquors, § 104 et seq.

3-7-42. Calling of special elections upon presentation of petitions by voters; rules and regulations; frequency; procedure for calling and conduct of elections for purpose of nullifying previous election results; approval of licenses.

(a) Upon the presentation of a petition to the election superintendent of a county or municipality, which petition must be signed by at least 25 percent of the registered voters of such county or municipality who were qualified to vote at the general election immediately preceding the presentation of the petition, the election superintendent shall call a special election at least 30 days prior to the date of the election and shall publish the notice of the call of the election in the official gazette of the county or, in the case of a municipal election, in a newspaper of general circulation in the municipality once a week for two weeks preceding the election. The purpose of the election provided for in this Code section shall be to determine if the sale of distilled spirits in private clubs, as provided by this chapter, shall be allowed.

(b) Each election held pursuant to this Code section shall be held according to the same rules and regulations and subject to the same procedures provided for elections held pursuant to Code Section 3-7-41.

(c) No election under this Code section shall be held within two years after the date of the declaration of the result of a previous election held under this Code section.

(d) In any county or municipality which has at any time held an election in accordance with this Code section resulting in approval of the sale of distilled spirits in private clubs, the election superintendent of the county or municipality, upon a petition signed by at least 25 percent of the registered, qualified voters of the political subdivision concerned, shall proceed to call another election in the same manner as provided in Code Section 3-7-41 for the purpose of nullifying the result of the previous election. No election under this subsection shall be held within two years after the date of the declaration of the result of a previous election held under this Code section.

(e) The local governing authority must approve any license within its jurisdiction before issuance of the license.

History. — Ga. L. 1978, p. 1155, § 6; Code 1933, § 5A-6109, enacted by Ga. L. 1980, p. 1573, § 1; Ga. L. 1981, p. 1269, § 57.

RESEARCH REFERENCES

Am. Jur. 2d. — 45 Am. Jur. 2d, Intoxicating Liquors, § 63 et seq.

C.J.S. — 48 C.J.S., Intoxicating Liquors, § 104 et seq.

3-7-43. Issuance of alcoholic beverage licenses to private clubs by governing authorities of certain counties and municipalities; privileges conferred by licenses; rules and regulations; sale by wholesalers to licensees.

(a) As used in this Code section, the term "bona fide private club" shall be defined as provided in Code Section 3-7-1.

(b) The governing authority of each county having a population of not less than 36,800 nor more than 36,990 according to the United States decennial census of 1980 or any future such census in which the sale of alcoholic beverages is lawful and the governing authority of each municipality in which the sale of alcoholic beverages is lawful in each such county may issue, through proper resolution or ordinance, alcoholic beverage licenses to bona fide private clubs.

(c) The licenses provided for in this Code section shall authorize the sale of alcoholic beverages by the drink for consumption only on the premises where sold.

(d) Every such governing authority may adopt all reasonable rules and regulations governing the qualifications and criteria for the issuance of such licenses and may promulgate reasonable rules and regulations governing the conduct of any licensee provided for in this Code section, including, but not limited to, the regulation of the hours when alcoholic beverages may be served, the types of employees, and other matters which may fall within the police powers of such counties and municipalities.

(e) Those persons who are duly licensed as wholesalers under this title shall be authorized to sell alcoholic beverages at wholesale prices to any person or persons licensed as provided in this Code section. Any person licensed under this Code section may purchase alcoholic beverages from a licensed wholesaler at wholesale prices.

History. — Code 1933, § 5A-6121, enacted by Ga. L. 1980, p. 1573, § 1; Ga. L. 1982, p. 511, §§ 1, 2; Ga. L. 1983, p. 3, § 4; Ga. L. 1984, p. 22, § 3.

JUDICIAL DECISIONS

O.C.G.A. § 3-7-43 is unconstitutional as a special law in conflict with existing general law. Regency Club v. Stuckey, 253 Ga. 583, 324 S.E.2d 166 (1984).

RESEARCH REFERENCES

ALR. — Validity of statutory classifications based on population — intoxicating liquor statutes, 100 A.L.R.3d 850.

ARTICLE 4

LOCAL EXCISE TAXATION

Cross references. — Sales and use taxes, T. 48, C. 8.

RESEARCH REFERENCES

Am. Jur. 2d. — 45 Am. Jur. 2d, Intoxicating Liquors, § 168 et seq.

C.J.S. — 48 C.J.S., Intoxicating Liquors, § 92 et seq.

3-7-60. Levy and amount of tax on sale of distilled spirits; persons required to pay tax; collection of tax.

(a) When any license is issued by the commissioner as provided in this chapter for the sale of distilled spirits within the corporate limits of any municipality, the municipality shall impose an excise tax, in addition to the excise taxes levied by the state, in the sum of 22¢ per liter on distilled spirits.

(b) In the event a license is issued as provided in this chapter for sales in the unincorporated areas of any county, the county shall impose an excise tax in the same amount as provided in subsection (a) of this Code section.

(c) Local excise taxes provided for in this Code section shall be imposed upon and shall be paid by the licensed wholesale dealer in distilled spirits.

(d) The taxes provided for in this Code section shall be imposed and collected monthly on distilled spirits sold or disposed of within the particular taxing jurisdiction.

History. — Ga. L. 1978, p. 1155, § 4; Code 1933, § 5A-6104, enacted by Ga. L. 1980, p. 1573, § 1; Ga. L. 1981, p. 1269, § 56; Ga. L. 1982, p. 3, § 3.

3-7-61. Imposition of tax on sale of mixed drinks.

An excise tax of not more than 3 percent may be imposed by municipalities or counties on the sale of mixed drinks where the sales by a private club are lawful.

History. — Ga. L. 1978, p. 1155, § 4; Code 1933, § 5A-6105, enacted by Ga. L. 1980, p. 1573, § 1.

CHAPTER 8

SALE OF ALCOHOLIC BEVERAGES AT PUBLICLY OWNED FACILITIES

Sec.		Sec.	
3-8-1.	Regulation and taxation of sale, storage, and distribution of alcoholic beverages at airports owned or operated by counties or municipalities.	3-8-4.	Sale of alcohol by continuing education centers.
3-8-2.	Sale of malt beverages, wine, and distilled spirits at public golf courses operated by counties or municipalities.	3-8-5.	Sale of alcoholic beverages at coliseums during professional sports events [Repealed].
3-8-3.	Sale of alcoholic beverages at coliseums.	3-8-6.	Technical institutes; service of alcoholic beverages; regulation and tax.

3-8-1. Regulation and taxation of sale, storage, and distribution of alcoholic beverages at airports owned or operated by counties or municipalities.

(a) The issuance of licenses for the package sale, sale by the drink, storage, and distribution of alcoholic beverages within the boundaries of any airport owned or operated, or both, by a county or municipality may be approved by a proper resolution or ordinance of the county or municipal governing authority owning or operating the airport. A license for such sales, storage, and distribution of distilled spirits may be issued only by the governing authority of a municipality or county in which the sale of alcoholic beverages is lawful.

(b) This Code section shall apply regardless of the location of the airport.

(c) For the purposes of regulating the sale, storage, and distribution of alcoholic beverages, but not for the purposes of taxation, the airport boundaries of an airport owned or operated, or both, by a county or municipality shall be treated:

(1) If the airport is owned or operated, or both, by a county, as though the airport boundaries were located entirely within the boundaries of the county which owns or operates, or owns and operates, the airport; or

(2) If the airport is owned or operated, or both, by a municipality, as though the airport boundaries were located entirely within the corporate limits of that municipality and entirely within the boundaries of the county in which the greater portion of the municipality owning or operating, or owning and operating, the airport lies.

(d) No county or municipality may control, license, regulate, or exercise police powers over the sale, storage, or distribution of alcoholic beverages within the boundaries of an airport owned or operated, or both, by another municipality or county which has lawfully approved the sale in any fashion or storage of any alcoholic beverages within all or part of the municipality or county.

(e) The county or municipality authorized by law to impose and collect taxes on the sale, storage, and distribution of alcoholic beverages at the airport may impose and collect such taxes, unaffected by this Code section; and the county or municipality owning or operating, or both, the airport shall not impose or collect such taxes. The proceeds of the taxes which the county and the municipality are authorized by law to impose and collect on the sale, storage, and distribution of alcoholic beverages at the airport shall be equally divided between the county and the municipality.

(f) The county or municipality which issues the license pursuant to subsection (a) of this Code section may impose, collect, and receive licensing fees generally paid in connection with the licensing of the sale, storage, and distribution of alcoholic beverages; and any county or municipality that would, apart from this Code section, otherwise license or regulate, or both, the sale, storage, and distribution of alcoholic beverages at the airport shall not impose or receive any such licensing fees unless it is the county or municipality issuing the license.

History. — Ga. L. 1968, p. 1441, § 1; Ga. L. 1968, p. 1443, § 1; Code 1933, § 58-828, enacted by Ga. L. 1977, p. 1316, § 1; Ga. L. 1980, p. 501, § 1; Code 1933, § 5A-6501, enacted by Ga. L. 1980, p. 1573, § 1; Ga. L. 1983, p. 759, § 1.

Cross references. — Construction and regulation of airports generally, T. 6, C. 3.

JUDICIAL DECISIONS

Entitlement to taxes between municipalities. — Trial court granted an impermissible advisory opinion when the court granted a second city's request for a declaratory judgment that the second city was authorized to impose and collect taxes on the sale, storage, and distribution of alcoholic beverages at an airport within that city's limits because the second city failed to show that there was any justiciable controversy; the first city conceded that, under Georgia's Alcoholic Beverages Code, O.C.G.A. § 3-8-1 et seq., only the second city was authorized to impose and collect taxes on the sale, storage, and distribution of alcoholic beverages at the airport within the city's limits and that the first city had to refund any alcoholic beverage taxes that the city received in error for the sale, storage, and distribution of alcohol in portions of the airport located within the corporate boundaries of the second city. City of Atlanta v. City of College Park, 311 Ga. App. 62, 715 S.E.2d 158 (2011).

Applicability of sovereign immunity to action between city and county. — In a suit by a city against a county, seeking a portion of tax revenue raised by the county from alcoholic beverage sales, there was a threshold question of whether sovereign immunity applied in suits between political subdivisions of the same sovereign (such as the city and the county), which the trial court had not addressed; therefore, remand was re-

quired. Clayton County v. City of College Park, 301 Ga. 653, 803 S.E.2d 63 (2017).

RESEARCH REFERENCES

Am. Jur. 2d. — 45 Am. Jur. 2d, Intoxicating Liquors, §§ 188 et seq., 213.

3-8-2. Sale of malt beverages, wine, and distilled spirits at public golf courses operated by counties or municipalities.

The Department of Natural Resources or any county or municipality operating a public golf course and offering food or drink for retail sale as an incident to the operation of the golf course may sell at retail malt beverages, wine, and distilled spirits by the drink as an incident to the operation of the golf course upon obtaining a retail consumption license.

History. — Ga. L. 1974, p. 587, § 1; Code 1933, § 5A-6502, enacted by Ga. L. 1980, p. 1573, § 1; Ga. L. 2011, p. 558, § 0.5/SB 121.

RESEARCH REFERENCES

Am. Jur. 2d. — 45 Am. Jur. 2d, Intoxicating Liquors, §§ 103, 188 et seq., 212.

ALR. — Power of municipal corporation to establish and maintain golf course, 36 A.L.R. 1301.

3-8-3. Sale of alcoholic beverages at coliseums.

(a) As used in this Code section, the term:

(1) "Coliseum" means any multiuse coliseum-type facility which has a seating capacity of 9,000 or more and which is a project of a coliseum authority, together with related buildings, facilities, and extensions of the project.

(2) "Coliseum authority" means any public coliseum authority created by law in any county having a population of more than 140,000 according to the United States decennial census of 1990 or any future such census.

(b) Any coliseum authority operating a coliseum may sell or authorize others to sell, upon obtaining a license from the department, alcoholic beverages for consumption on the premises only upon property owned or controlled by the authority, including but not limited to the coliseum. The authority shall determine by resolution, as it may amend from time to time, the conditions, including hours and days of sale, under which such sales shall be permitted.

(c) For the purposes of regulating and taxing the sale, storage, and distribution of alcoholic beverages as provided in this Code section, a

coliseum shall be considered to be within a municipality if the coliseum, or the greater part of the coliseum, is within the limits of the municipality. A coliseum shall be considered to be within an unincorporated area of a county if the coliseum, or the greater part of the coliseum, is located within an unincorporated area of the county.

History. — Code 1933, § 5A-6503, enacted by Ga. L. 1980, p. 1573, § 1; Ga. L. 1982, p. 1463, §§ 5, 12; Ga. L. 1983, p. 3, § 4; Ga. L. 1992, p. 2929, § 3; Ga. L. 1993, p. 325, § 1.

RESEARCH REFERENCES

ALR. — Validity of statutory classifications based on population — intoxicating liquor statutes, 100 A.L.R.3d 850.

3-8-4. Sale of alcohol by continuing education centers.

(a) As used in this Code section, the term "continuing education center" means any facility offering adult education which is operated by a unit of the University System of Georgia and which has housing facilities capable of accommodating 200 people and banquet facilities capable of serving 400 people.

(b) Notwithstanding the provisions of subsection (a) of Code Section 3-3-21, a continuing education center may sell alcoholic beverages as an incident to its operation. Such sales may be made during all hours during which sales are lawful in the state.

(c) For purposes of regulating and taxing the sale, storage, and distribution of alcoholic beverages as provided in this Code section, a continuing education center shall be considered to be within a municipality if the center, or a greater part of the center, is within the limits of the municipality. A continuing education center shall be considered to be within the unincorporated area of a county if the center, or a greater part of the center, is located within the unincorporated area of the county.

History. — Code 1981, § 3-8-4, enacted by Ga. L. 1997, p. 977, § 1.

3-8-5. Sale of alcoholic beverages at coliseums during professional sports events.

Reserved. Repealed by Ga. L. 1997, p. 977, § 1, effective January 1, 2000.

Editor's notes. — This Code Section was based on Code 1981, § 3-8-5, enacted by Ga. L. 1997, p. 977, § 1; Ga. L. 1998, p. 128, § 3.

Ga. L. 2013, p. 141, § 3/HB 79, reserved the designation of this Code section, effective April 24, 2013.

3-8-6. Technical institutes; service of alcoholic beverages; regulation and tax.

(a) As used in this Code section, the term "technical institute" means any facility which is operated by a unit of the Technical College System of Georgia and which has a business conference center capable of accommodating 200 people or more incident to its operation.

(b) Notwithstanding the provisions of Code Sections 3-3-21 and 3-3-21.1, a technical institute may serve alcoholic beverages incident to its operation of a business conference center.

(c) For purposes of regulating and taxing the sale, storage, and distribution of alcoholic beverages as provided in this Code section, a technical institute shall be considered to be within a municipality if the institute, or a greater part of the institute, is within the limits of the municipality. A technical institute shall be considered to be within the unincorporated area of a county if the institute, or a greater part of the institute, is located within the unincorporated area of the county.

History. — Code 1981, § 3-8-6, enacted by Ga. L. 1999, p. 1225, § 3; Ga. L. 2008, p. 335, § 3/SB 435.

CHAPTER 9

SALE OF ALCOHOLIC BEVERAGES BY PASSENGER CARRIERS, NONPROFIT ORGANIZATIONS, AND HOTELS AND MOTELS

Article 1

Public Carriers; Nonprofit Organizations

Sec.
3-9-1. Authorization of distribution or sale of distilled spirits by airlines, railway passenger carriers, and cruise ships; annual authorization fee; payment of taxes on containers; reports.
3-9-2. Authorization of distribution or sale of wine and malt beverages by airlines, railway passenger carriers, and cruise ships; annual authorization fee; payment of taxes on containers; reports.
3-9-3. Issuance of permits for sale by nonprofit civic organizations of alcoholic beverages for consumption on the premises or wine at retail for off-premises consumption.
3-9-4. Issuance of special use temporary permits for wine auctions by nonprofit civic organizations.
3-9-5. Meaning of the term "bona fide nonprofit civic organization".
3-9-6. Limousine carrier furnishing alcoholic beverages.
3-9-7. Nonprofit distiller license to nonprofit museum; requirements.

Article 2

Hotels and Motels

3-9-10. Definitions.
3-9-11. Licenses for in-room service.
3-9-12. Source of beverages sold; taxes.
3-9-13. In-room service sales in dry areas prohibited.

JUDICIAL DECISIONS

Cited in Campbell v. State Rd. & Tollway Auth., 276 Ga. 714, 583 S.E.2d 32 (2003).

ARTICLE 1

PUBLIC CARRIERS; NONPROFIT ORGANIZATIONS

Editor's notes. — Ga. L. 1986, p. 778, § 1, designated the existing Code sections in this chapter (§§ 3-9-1 through 3-9-3) as Article 1 of this chapter.

Administrative rules and regulations. — Trade practices — Point-of-sale advertising, Official Compilation of the Rules and Regulations of the State of Georgia, Rules of Department of Revenue, Alcohol and Tobacco Tax Unit, General Provisions, § 560-2-2.18.

3-9-1. Authorization of distribution or sale of distilled spirits by airlines, railway passenger carriers, and cruise ships; annual authorization fee; payment of taxes on containers; reports.

(a) Notwithstanding anything contained in this title or any other law, the commissioner may authorize the distribution or sale of containers of distilled spirits, containing not more than 50 milliliters per container, by licensed airlines, railway passenger carriers, and cruise ships.

(b) These passenger carriers and cruise ships shall annually obtain, for a fee of $100.00, an authorization from the commissioner for the distribution or sale of such containers.

(c) The carriers and cruise ships shall pay taxes in the proper amounts on the containers distributed or sold in or over the state.

(d) The carriers and cruise ships shall file reports of all distributions or sales of the containers with the commissioner on or before the fifteenth day of the month following the month of distribution or sale and shall remit the proper tax for the distributions or sales at that time. The carriers and cruise ships shall further report to the commissioner any other information the commissioner may deem necessary for the purposes of this title.

History. — Code 1933, § 5A-6301, enacted by Ga. L. 1980, p. 1573, § 1; Ga. L. 1981, p. 1269, § 58; Ga. L. 2000, p. 1416, § 1.

Cross references. — Airline carriers of passengers, T. 6, C. 2 and T. 6, C. 3. Carriers of passengers generally, § 46-9-130 et seq.

3-9-2. Authorization of distribution or sale of wine and malt beverages by airlines, railway passenger carriers, and cruise ships; annual authorization fee; payment of taxes on containers; reports.

(a) Notwithstanding anything contained in this title or any other law, the commissioner may authorize the distribution or sale of wine and malt beverages in variously sized containers by licensed airlines, railway passenger carriers, and cruise ships.

(b) The carriers and cruise ships shall annually obtain, for a fee of $50.00 for a wine license and $50.00 for a malt beverage license, an authorization from the commissioner for the distribution or sale of wine and malt beverages in variously sized containers.

(c) The carriers and cruise ships shall pay taxes in the proper amounts on the containers distributed or sold in or over the state.

(d) The carriers and cruise ships shall file reports of all distributions or sales of the containers with the commissioner on or before the

fifteenth day of the month following the month of distribution or sale and shall remit the proper tax for the distributions or sales at that time. The carriers and cruise ships shall further report to the commissioner any other information the commissioner may deem necessary for the purposes of this title.

History. — Ga. L. 1976, p. 508, § 1; Code 1933, § 5A-6302, enacted by Ga. L. 1980, p. 1573, § 1; Ga. L. 1981, p. 1269, § 59; Ga. L. 2000, p. 1416, § 2.

Cross references. — Airline carriers of passengers, T. 6, C. 2 and T. 6, C. 3. Carriers of passengers generally, § 46-9-130 et seq.

RESEARCH REFERENCES

Am. Jur. 2d. — 45 Am. Jur. 2d, Intoxicating Liquors, §§ 99, 213.

3-9-3. Issuance of permits for sale by nonprofit civic organizations of alcoholic beverages for consumption on the premises or wine at retail for off-premises consumption.

(a) Upon the filing of an application and payment of a fee of $25.00 by a bona fide nonprofit civic organization, the commissioner may issue a permit authorizing the organization to sell alcoholic beverages for consumption on the premises or to sell wine at retail for off-premises consumption, or both, for a period not to exceed three days, subject to any law regulating the time for selling such beverages.

(b) No more than six permits may be issued to an organization in any one calendar year pursuant to this Code section.

(c) Permits issued pursuant to this Code section shall be valid only for the place specified in the permit. No permit may be issued unless the sale of distilled spirits, wine, or malt beverages is lawful in the place for which the permit is issued.

History. — Code 1933, § 5A-6303, enacted by Ga. L. 1980, p. 1573, § 1; Ga. L. 2008, p. 4, § 1/HB 1243.

Administrative rules and regulations. — Alcoholic beverage license hearings, Official Compilation of the Rules and Regulations of the State of Georgia, Rules of Department of Revenue, Alcohol and Tobacco Tax Unit, Subject 560-2-9.

3-9-4. Issuance of special use temporary permits for wine auctions by nonprofit civic organizations.

(a) Upon the filing of an application and payment of a fee of $25.00 by a bona fide nonprofit civic organization, the commissioner may issue a special use temporary permit authorizing a bona fide nonprofit civic organization to auction wine in sealed containers only for a period not to exceed three days, subject to any law regulating the time for selling wine.

(b) No more than six special use temporary permits may be issued to a bona fide nonprofit civic organization in any calendar year.

(c) Special use temporary permits issued pursuant to this Code section shall be valid only for the location specified in the permit. No special use temporary permit may be issued unless local licensing authorities have issued to the bona fide nonprofit civic organization a permit or approval for the sale of wine at the location specified in the special use temporary permit. Prior to the commencement of the event described in the special use temporary permit, the bona fide nonprofit civic organization shall furnish to the commissioner a detailed inventory list of the wine to be auctioned including:

(1) The name, address, telephone number, and taxpayer identification number of the person who furnishes the wine for the event; and

(2) The type, brand, label, and quantity of each wine to be sold at auction.

(d) Bona fide nonprofit civic organizations which hold a special use temporary permit issued pursuant to this Code section may auction for off-premises consumption wine in sealed containers, which has been donated to the bona fide nonprofit civic organization by a person who does not currently hold a license that has been issued by the department pursuant to this title, wine which has been donated by a Georgia licensed retailer, or wine which has been donated or purchased from a Georgia licensed wine wholesaler. The bona fide nonprofit civic organization may ship or otherwise transport to the location specified in the special use temporary permit wine donated by a person who does not currently hold a license that has been issued by the department pursuant to this title or wine donated by a Georgia licensed retailer. Georgia excise tax shall be paid to the department on any donated wine. If the bona fide nonprofit civic organization cannot verify, within ten days of the conclusion of the permitted event, that Georgia excise tax for the wine was previously paid to the department, the bona fide nonprofit civic organization shall pay to the department the appropriate excise tax as required by law.

History. — Code 1981, § 3-9-4, enacted by Ga. L. 2008, p. 4, § 2/HB 1243.

Code Commission notes. — Pursuant to Code Section 28-9-5, in 2008, Code Section 3-9-4, as enacted by Ga. L. 2008, p. 536, § 1, was redesignated as Code Section 3-9-6.

3-9-5. Meaning of the term "bona fide nonprofit civic organization".

As used in this article, the term "bona fide nonprofit civic organization" means an entity which is exempt from federal income tax

pursuant to the provisions of subsection (c), (d), or (e) of 26 U.S.C. Section 501.

History. — Code 1981, § 3-9-5, enacted by Ga. L. 2008, p. 4, § 2/HB 1243; Ga. L. 2009, p. 8, § 3/SB 46.

3-9-6. Limousine carrier furnishing alcoholic beverages.

(a) Notwithstanding any provision contained in this title or any other law, the commissioner may issue an annual permit authorizing a limousine carrier to sell alcoholic beverages for consumption only in the vehicle supplied by the limousine carrier upon the filing of an application and payment of a fee of $50.00 by such limousine carrier that holds a certificate issued in accordance with Article 3 of Chapter 7 of Title 46. In addition to the permit fee, the limousine carrier shall pay an annual fee of $15.00 for each vehicle to be authorized for the sale of alcoholic beverages. The commissioner shall issue a sticker for each vehicle so authorized.

(b) A permit issued in accordance with this Code section shall not authorize the wholesale purchase of alcoholic beverages by a limousine carrier and only authorizes purchase from a retail dealer. A permit issued in accordance with this Code section shall be subject to any law regulating the time for selling such beverages.

(c) A permit issued in accordance with this Code section shall not authorize a limousine carrier to purchase or sell an alcoholic beverage in a location where the sale of such alcoholic beverage is unlawful.

(d) Limousine carriers holding permits issued in accordance with this Code section shall comply with the provisions of paragraph (1) of subsection (a) of Code Section 3-3-23.

History. — Code 1981, § 3-9-6, enacted by Ga. L. 2008, p. 536, § 1/SB 385.

Administrative rules and regulations. — Limousine, Official Compilation of the Rules and Regulations of the State of Georgia, Rules of Department of Revenue, Alcohol and Tobacco Tax Unit, Subject 560-2-12.

Code Commission notes. — Pursuant to Code Section 28-9-5, in 2008, Code Section 3-9-4, as enacted by Ga. L. 2008, p. 536, § 1, was redesignated as Code Section 3-9-6.

3-9-7. Nonprofit distiller license to nonprofit museum; requirements.

(a) As used in this Code section, the term "nonprofit museum" means a museum whose mission includes educating the public about the local, state, and national history of the United States and that is owned and operated by a bona fide nonprofit civic organization which holds title to

improved real property with a structure listed on the National Register of Historic Places.

(b) Notwithstanding any other provision contained in this title or any other law, the commissioner may issue a nonprofit distiller license to a nonprofit museum, regardless of whether or not such nonprofit museum holds an annual license to sell malt beverages, wine, or distilled spirits for consumption on the premises, upon the filing of an application and payment of an annual occupational license tax of $100.00. Such nonprofit distiller license shall entitle the nonprofit museum to produce distilled spirits, provided that:

(1) The nonprofit museum shall not produce more than 800 liters of distilled spirits each calendar year;

(2) The nonprofit museum is located in a county or municipality where the production of distilled spirits is authorized, and the local governing authority of such county or municipality has issued a license to the nonprofit museum pursuant to Code Section 3-3-2 for the production of distilled spirits;

(3) The production of distilled spirits, except as otherwise provided in this Code section, shall be used for educational purposes only;

(4) The distilled spirits produced by the nonprofit museum shall be stored and aged only on the premises of the nonprofit museum for which the nonprofit distiller license has been issued and shall not be removed from such premises except through disposal methods consistent with federal and state law and any applicable rules or regulations promulgated thereunder; and

(5) The distilled spirits produced by the nonprofit museum shall only be used on the premises of the nonprofit museum for which the nonprofit distiller license has been issued and only to provide samples pursuant to subsection (c) of this Code section. Such distilled spirits shall not be sold or offered for sale by the nonprofit museum to any person or entity.

(c) The nonprofit distiller license shall authorize the nonprofit museum to provide not more than one-half of one ounce as a complimentary sample of the distilled spirits produced at the nonprofit museum to a guest who has completed an educational tour of the distillery at the nonprofit museum and is of legal drinking age; provided, however, that the nonprofit museum shall not impose a separate charge for the sample and shall not provide, directly or indirectly, more than one sample to a guest in a calendar day. Such sample shall be provided in a designated tasting area on the premises of the nonprofit museum for which the nonprofit distiller license has been issued, and all open bottles shall be visible at all times.

(d) No bond shall be required to be filed with the commissioner for the initial application or the annual renewal application of a nonprofit distiller license.

(e) The annual license fee to be charged by a county or municipality for a nonprofit distiller license shall not be more than $100.00 for each license.

History. — Code 1981, § 3-9-7, enacted by Ga. L. 2014, p. 759, § 2/SB 240.

ARTICLE 2

HOTELS AND MOTELS

Administrative rules and regulations. — Hotels, Charitable Events & REAP, Official Compilation of the Rules and Regulations of the State of Georgia, Rules of Department of Revenue, Alcohol and Tobacco Tax Unit, Subject 560-2-11.

RESEARCH REFERENCES

Am. Jur. 2d. — 45 Am. Jur. 2d, Intoxicating Liquors, §§ 101, 213.

C.J.S. — 48 C.J.S., Intoxicating Liquors, §§ 32 et seq., 166 et seq.

3-9-10. Definitions.

As used in this article, the term:

(1) "Hotel" means any hotel, inn, or other establishment which offers overnight accommodations to the public for hire.

(2) "In-room service" means:

(A) The delivery of alcoholic beverages in unbroken packages by an employee of the hotel to a registered guest's room or to a registered guest at any other location in the same building as the hotel when such alcoholic beverages have been ordered by the guest and when the guest shall be billed for the cost of such alcoholic beverages at the time of delivery and when the sale of such alcoholic beverages is completed at the time of delivery; and

(B) The provision of a cabinet or other facility located in a hotel's guest room which contains alcoholic beverages and which is provided upon written request of the guest and which is accessible by lock and key only to the guest and for which the sale of the alcoholic beverages contained therein is deemed to be final at the time requested except for a credit which may be given to the guest for any unused portion.

(3) "Registered guest" means the lessor or tenant of one or more hotel rooms; the lessor, tenant, or owner of a condominium unit

located in the same building as one or more hotel rooms; or the lessor, owner, or tenant of a commercial space located in the same building as one or more hotel rooms, provided that the name of such lessor, owner, or tenant appears on a guest registry maintained by the hotel.

History. — Code 1981, § 3-9-10, enacted by Ga. L. 1986, p. 778, § 1; Ga. L. 1994, p. 553, § 4; Ga. L. 1997, p. 483, § 1.
Code Commission notes. — Pursuant to Code Section 28-9-5, in 1986, in subparagraph (2)(B) "beverages" was substituted for "beverage" the first time the former appears.

3-9-11. Licenses for in-room service.

(a) Notwithstanding anything contained in this title or any other law, in any county or municipality in which the sale of alcoholic beverages either by the package or by the drink is authorized, the commissioner may authorize any hotel which is licensed to sell alcoholic beverages either by the package or by the drink or any hotel which is licensed to sell alcoholic beverages both by the package and by the drink to provide in-room service.

(b) No hotel shall be authorized to provide in-room service until it has been issued a license to do so by the commissioner. A license fee of $100.00 shall be imposed to provide alcoholic beverages by in-room service, except that a license fee of $50.00 shall be imposed to provide only beer or wine by in-room service.

(c) The sale of alcoholic beverages by in-room service shall be subject to all restrictions and limitations in this title relative to the sale of alcoholic beverages, except as provided otherwise in this article, and shall be authorized only on such days and only during such hours as the sale of alcoholic beverages is otherwise authorized in the county or municipality.

(d) Distilled spirits sold pursuant to this article shall not be sold in packages containing less than 50 milliliters each.

History. — Code 1981, § 3-9-11, enacted by Ga. L. 1986, p. 778, § 1; Ga. L. 1994, p. 553, § 5.

3-9-12. Source of beverages sold; taxes.

All alcoholic beverages sold pursuant to this article shall be subject to all state and local taxes imposed on alcoholic beverages and shall be purchased from a licensed wholesaler.

History. — Code 1981, § 3-9-12, enacted by Ga. L. 1986, p. 778, § 1.

3-9-13. In-room service sales in dry areas prohibited.

Nothing in this article shall be construed to authorize the sale of alcoholic beverages through in-room service in any county or municipality in which the sale of alcoholic beverages both by the package and by the drink is prohibited.

History. — Code 1981, § 3-9-13, enacted by Ga. L. 1986, p. 778, § 1.

CHAPTER 10

SALE OR POSSESSION OF DISTILLED SPIRITS IN DRY COUNTIES AND MUNICIPALITIES

Sec.
3-10-1. Scope of chapter.
3-10-2. Sale, exchange, or other possession of distilled spirits.
3-10-3. Keeping of distilled spirits in building not exclusively used for dwelling deemed prima-facie evidence of possession for sale or distribution.
3-10-4. Quantities of distilled spirits which may be lawfully possessed.
3-10-5. Allowing use of premises for unlawful sale, manufacture, or other disposition of distilled spirits.
3-10-6. Forfeiture of rights of lessee or tenant where unlawful act performed upon premises with lessee's or tenant's knowledge or permission.
3-10-7. Transportation or shipment of distilled spirits for sale or use in violation of title; exceptions for possession for personal use and transportation through counties or municipalities.
3-10-8. Common nuisances — Defined; institution of quo warranto proceedings against clubs or associations maintaining nuisances.
3-10-9. Common nuisances — Proceedings for abatement of nuisances.
3-10-10. Existence of property rights in distilled spirits or vessels kept or used in violation of chapter; contraband.
3-10-11. Contraband apparatus and appliances; existence of property rights therein; summary destruction of contraband; governing procedure for forfeiture of vehicles, boats, and vessels.
3-10-12. Raw materials or substances, fixtures, implements, or apparatus used or intended for use in unlawful distillation or manufacture of distilled spirits declared contraband; property rights in contraband; governing procedures for seizure and forfeiture.
3-10-13. Duties of district attorneys as to investigation and prosecution of violations of chapter; duties of sheriffs.
3-10-14. Evidence as to color, odor, appearance, and taste of beverage manufactured, sold, or disposed of by defendant; burden of proof when defendant claims beverage not a distilled spirit.
3-10-15. Penalty for violations of provisions of chapter.

Cross references. — Special elections in counties and municipalities pertaining to prohibition of package sale of distilled spirits, § 3-4-40 et seq.

RESEARCH REFERENCES

ALR. — Test of intoxicating character of liquor, 4 A.L.R. 1137; 11 A.L.R. 1233; 19 A.L.R. 512; 36 A.L.R. 725; 91 A.L.R. 513.

Criminal responsibility of husband for violation of liquor law by wife, 19 A.L.R. 136; 27 A.L.R. 312.

Constitutionality, construction, and effect of statute making possession of intoxicating liquor evidence of violation of law, 31 A.L.R. 1222.

Rights and protection of innocent persons where property in which they are interested is seized because of its illegal use in connection with intoxicating liquor,

47 A.L.R. 1055; 61 A.L.R. 551; 73 A.L.R. 1087; 82 A.L.R. 607; 124 A.L.R. 288.

Operation and effect, in dry territory, of general state statute making sale or possession for sale of intoxicating liquor, without a license, an offense, 8 A.L.R.2d 750.

What constitutes injury to means of support within civil damage or dramshop act, 4 A.L.R.3d 1332.

Liability, under dramshop acts, of one who sells or furnishes liquor otherwise than in operation of regularly established liquor business, 8 A.L.R.3d 1412.

Criminal liability for death resulting from unlawfully furnishing intoxicating liquor or drugs to another, 32 A.L.R.3d 589.

Construction of statute or ordinance making it an offense to possess or have alcoholic beverages in opened package in motor vehicle, 35 A.L.R.3d 1418.

Validity of statute or ordinance making it an offense to consume or have alcoholic beverages in open package in motor vehicle, 57 A.L.R.3d 1071.

Contributory negligence allegedly contributing to cause of injury as defense in Civil Damage Act proceeding, 64 A.L.R.3d 849.

Proof of causation of intoxication as a prerequisite to recovery under Civil Damage Act, 64 A.L.R.3d 882.

Liability of one who furnishes liquor to another for consumption by third parties, for injury caused by consumer, 64 A.L.R.3d 922.

3-10-1. Scope of chapter.

Except as otherwise provided in Code Section 3-10-11, this chapter shall only be applicable within counties or municipalities in which the sale of distilled spirits is not lawful.

History. — Ga. L. 1937-38, Ex. Sess., p. 103, § 2; Ga. L. 1972, p. 207, § 1; Code 1933, § 5A-7101, enacted by Ga. L. 1980, p. 1573, § 1; Ga. L. 1986, p. 1605, § 1.

JUDICIAL DECISIONS

Judicial notice of dry or wet status of county. — In prosecution for selling tax-paid whiskey it is entirely unnecessary to allege or prove as a fact that a county is not exempted from provisions of law prohibiting sale of whiskey, this being a matter which shall be judicially recognized without introduction of proof. Dye v. State, 118 Ga. App. 570, 165 S.E.2d 183 (1968).

3-10-2. Sale, exchange, or other possession of distilled spirits.

It is unlawful for any person knowingly and intentionally to sell, offer for sale, keep for sale, barter, exchange, furnish at public places, keep on hand at a place of business, or otherwise possess distilled spirits in any quantity, except as provided in this title.

History. — Ga. L. 1915, Ex. Sess., p. 77, § 2; Ga. L. 1917, Ex. Sess., p. 7, § 23; Code 1933, § 58-102; Code 1933, § 5A-7102, enacted by Ga. L. 1980, p. 1573, § 1.

JUDICIAL DECISIONS

Applicability of § 3-10-4. — Ga. L. 1937-38, Ex. Sess., p. 103, § 23B (see now O.C.G.A. § 3-10-4), which permitted a person to possess one quart of liquor in a dry

county which may have been purchased for use and consumption from a lawful retailer and properly stamped, had no applicability to express prohibition of former Code 1933, § 58-102 (see now O.C.G.A. § 3-10-2). Blackmon v. Brotherhood Protective Order of Elks, Toccoa Lodge No. 1820, 232 Ga. 671, 208 S.E.2d 483 (1974) (decided under former Code 1993 § 58-102).

Judicial notice of status of county as wet or dry. — In prosecution for selling tax-paid whiskey it is entirely unnecessary to allege or prove that county is not exempted from the provisions of law prohibiting sale of whiskey, this being a matter which shall be judicially recognized without introduction of proof. Dye v. State, 118 Ga. App. 570, 165 S.E.2d 183 (1968).

Inducement to sell or possess prohibited liquor no defense. — If, at time in question and at time of solicitation for sale of whiskey, defendant was engaged in business of selling and possessing intoxicating liquor, it would be no defense that the defendant was merely induced by solicitation and misrepresentation to sell or possess such prohibited liquor. Sutton v. State, 59 Ga. App. 198, 200 S.E. 225 (1938), overruled on other grounds, Keaton v. State, 253 Ga. 70, 316 S.E.2d 452 (1984).

Defendant need not be owner to be convicted for illegal sale. — All engaged in commission of misdemeanor are principals, and when a defendant works for another at the defendant's place of business, where the defendant's duties are to be performed, the defendant may be guilty of selling whiskey in dry county, even though the defendant is not owner of whiskey, but merely employee and agent of owner. Faucette v. State, 71 Ga. App. 331, 30 S.E.2d 808 (1944) (decided under former Code 1993 § 58-102).

No offense charged when indictment failed to allege whiskey bore no tax stamps. — When a person is indicted merely for possession of whiskey at place of business for purpose of sale in wet county, indictment charges no offense unless it further charges that whiskey possessed did not bear required stamps. Womack v. State, 60 Ga. App. 761, 5 S.E.2d 96 (1939).

Burdens of proof. — On an accusation or indictment couched in language of this section, defendant has burden of proving that liquor possessed is properly stamped and within legal limit. Requirement of purchase from authorized liquor retailer and requirement that liquor be held for use and not for sale are matters about which state has burden of proof. Jenkins v. State, 93 Ga. App. 360, 92 S.E.2d 43 (1956).

Evidence insufficient to raise defense of entrapment. — Evidence that witness purchased whiskey with money furnished by officer, telling defendant that the witness had just gotten over a drunk and was feeling bad and begging defendant to sell the witness whiskey was not sufficient to raise defense of entrapment. Sutton v. State, 59 Ga. App. 198, 200 S.E. 225 (1938), overruled on other grounds, Keaton v. State, 253 Ga. 70, 316 S.E.2d 452 (1984) (decided under former Code 1993 § 58-102).

Evidence of possession alone insufficient to support conviction of sale. — When one is being tried for illegal sale of whiskey, evidence that one was in possession of whiskey at or near time of alleged sale is admissible as a circumstance that one kept whiskey for sale or as corroboration of evidence that a sale had taken place, but such evidence, considered alone, will not support conviction of sale, and a charge to jury which leaves them under impression that it is sufficient, in and of itself, is clearly error. Springer v. State, 60 Ga. App. 641, 4 S.E.2d 679 (1939) (decided under former Code 1993 § 58-102).

Sufficient proof for conviction of owner's employee for illegal sale. — Proof either that defendant directly or personally committed criminal offense (selling whiskey in dry county), or that the defendant aided or abetted criminal transaction of the defendant's employer at the employer's place of business, would authorize the defendant's conviction of offense of selling whiskey. Faucette v. State, 71 Ga. App. 331, 30 S.E.2d 808 (1944).

Evidence sufficient to convict for illegal possession. — Statement of defendant that the defendant thought the

defendant would be notified in the event of a raid, in connection with the defendant's other remarks and actions during course of search of club house, was sufficient to authorize jury to infer that the defendant was aiding and assisting in commission of misdemeanors of illegal possession of liquor and slot machines. Miller v. State, 94 Ga. App. 259, 94 S.E.2d 120 (1956).

OPINIONS OF THE ATTORNEY GENERAL

Fraternal club cannot sell liquor to its members in a dry county, but each member can keep one quart of liquor at the meeting place for the member's own use without violating the law. 1954-56 Op. Att'y Gen. p. 454.

RESEARCH REFERENCES

Am. Jur. 2d. — 45 Am. Jur. 2d, Intoxicating Liquors, §§ 47 et seq., 192 et seq.

C.J.S. — 48 C.J.S., Intoxicating Liquors, § 425 et seq.

ALR. — Power to prohibit the possession of intoxicating liquor, irrespective of any intention to traffic therein, 2 A.L.R. 1085.

Entrapment to commit offense against laws regulating sales of liquor, 55 A.L.R.2d 1322.

What constitutes "sale" of liquor in violation of statute or ordinance, 89 A.L.R.3d 551.

Criminal liability of member or agent of private club or association, or of owner or lessor of its premises, for violation of state or local liquor or gambling laws thereon, 98 A.L.R.3d 694.

3-10-3. Keeping of distilled spirits in building not exclusively used for dwelling deemed prima-facie evidence of possession for sale or distribution.

The keeping of distilled spirits in any building not exclusively used for a dwelling shall be prima-facie evidence that they are kept for sale or with intent to dispose of same contrary to this chapter.

History. — Ga. L. 1915, Ex. Sess., p. 77, § 7; Code 1933, § 58-107; Code 1933, § 5A-7109, enacted by Ga. L. 1980, p. 1573, § 1.

JUDICIAL DECISIONS

Meaning of section. — This section, in substance, declares that the keeping of any of the prohibited liquors or beverages in any building not exclusively used for a dwelling shall be prima facie evidence that they are kept for sale or with intent to dispose of the liquors or beverages contrary to law. Elder v. Stark, 200 Ga. 452, 37 S.E.2d 598 (1946).

Applicability of section. — The law as to the possession of whiskey in counties of this state which have not legalized sale thereof is still general law as to those counties. Davidson v. State, 68 Ga. App. 166, 22 S.E.2d 190 (1942).

RESEARCH REFERENCES

Am. Jur. 2d. — 45 Am. Jur. 2d, Intoxicating Liquors, § 291 et seq.

C.J.S. — 48 C.J.S., Intoxicating Liquors, §§ 454 et seq., 505 et seq, 520 et seq.

ALR. — Test of intoxicating character of liquor, 11 A.L.R. 1233; 19 A.L.R. 512; 36 A.L.R. 725; 91 A.L.R. 513.

Admissibility in prosecution for violation of liquor law of attempt to conceal or dispose of liquor, 60 A.L.R. 1191.

3-10-4. Quantities of distilled spirits which may be lawfully possessed.

It is not unlawful for any person to have and possess, for use and not for sale, in any county or municipality within the state, one standard case of 1.75 liter, liter, or 750 milliliter size containers of distilled spirits, but not more than eight individual containers of distilled spirits of a size of 200 milliliters or four individual containers of distilled spirits of a size of 500 milliliters, which may have been purchased by the person for use and consumption from a lawful and authorized retailer and properly stamped.

History. — Ga. L. 1937-38, Ex. Sess., p. 103, § 23B; Ga. L. 1976, p. 1715, §§ 1, 2; Code 1933, § 5A-7105, enacted by Ga. L. 1980, p. 1573, § 1; Ga. L. 1981, p. 1269, § 61.

JUDICIAL DECISIONS

Legislative intent. — It was the purpose and intent of the General Assembly to legalize the possession, in a dry county, of one quart (now one standard case of 1.75 liter, or 750 milliliter size containers, but not more than eight individual containers of distilled spirits of a size of 200 milliliters or four individual containers of distilled spirits of a size of 500 milliliters) of whiskey legally purchased for use and consumption, when properly stamped, and no more. Pierce v. State, 73 Ga. App. 627, 37 S.E.2d 431 (1946).

This section is intended to provide a method whereby a person in a dry county may legally possess a quart or less (now more) of tax-paid whiskey bearing revenue stamps so indicating which were originally purchased by the person or the person's donor from a lawful and authorized retailer in a wet county, provided such possession was for use and not for sale. This intention also is that such person may possess such whiskey in this quantity and under these circumstances and conditions without being in constant jeopardy of harassment and arrest. Jenkins v. State, 93 Ga. App. 360, 92 S.E.2d 43 (1956).

This section provides an exception to prohibition law in those counties which have not voted to legalize sale and possession of liquors. Barfield v. State, 59 Ga. App. 383, 1 S.E.2d 47 (1939), overruled on other grounds, Jenkins v. State, 93 Ga. App. 360, 92 S.E.2d 43 (1956).

Burdens of proof. — On an accusation or indictment couched in language of former Code 1933, § 58-102 (see now O.C.G.A. § 3-10-2), the defendant had the burden of proving that liquor possessed was properly stamped and within the legal limit. As to the requirement of purchase from authorized liquor retailer and the requirement that the liquor be held for use and not for sale, these were matters about which the state had the burden of proof. Jenkins v. State, 93 Ga. App. 360, 92 S.E.2d 43 (1956).

Presumptions. — All presumptions being in favor of innocence, possession of

whiskey in quantity within limit described by this section is prima facie presumed to be lawful. Jenkins v. State, 93 Ga. App. 360, 92 S.E.2d 43 (1956).

Validity of admission of evidence to show purpose for which whiskey and wine possessed. — See Elder v. Stark, 200 Ga. 452, 37 S.E.2d 598 (1946).

OPINIONS OF THE ATTORNEY GENERAL

Possession of out-of-state purchased liquor. — The Code allows possession of up to one-half gallon of distilled spirits purchased by the possessor outside of this state in accordance with the laws of the place where purchased and brought into this state by the purchaser. 1984 Op. Att'y Gen. No. U84-16.

There is no quantity limitation for possessing Georgia-tax-paid distilled spirits in a wet county for personal use, which in this context means for the possessor's own personal consumption, including free gifts to the possessor's family or friends. 1984 Op. Att'y Gen. No. U84-16.

RESEARCH REFERENCES

Am. Jur. 2d. — 45 Am. Jur. 2d, Intoxicating Liquors, § 47 et seq.

C.J.S. — 48 C.J.S., Intoxicating Liquors, § 505 et seq.

ALR. — Right to arrest without a warrant for unlawful possession or transportation of intoxicating liquor, 44 A.L.R. 1342.

3-10-5. Allowing use of premises for unlawful sale, manufacture, or other disposition of distilled spirits.

It is unlawful for any person to permit the use of any premises which he owns or controls for the unlawful sale, manufacture, or other unlawful disposition of distilled spirits.

History. — Ga. L. 1915, Ex. Sess., p. 77, § 5; Code 1933, § 58-105; Code 1933, § 5A-7103, enacted by Ga. L. 1980, p. 1573, § 1.

JUDICIAL DECISIONS

A proceeding to abate a common nuisance brought under this section is a civil action. Burgess v. State, 221 Ga. 586, 146 S.E.2d 288 (1965).

Judgment denying relief on owner's petition to reopen premises closed as nuisance undisturbed. — Judgment denying relief on petition brought by owner of premises padlocked as nuisance under former Code 1933, § 58-104 (see now O.C.G.A. § 3-10-9), on which there was a hearing, in which the owner asserted the owner's lack of knowledge of illegal purpose for which the tenant, the defendant in original proceeding, used premises, and praying that the owner be permitted to reopen the premises will not be disturbed when it appears the evidence at the hearing was sufficient to show guilty knowledge on the part of the owner. Baskin v. Meadors, 196 Ga. 802, 27 S.E.2d 696 (1943).

RESEARCH REFERENCES

Am. Jur. 2d. — 45 Am. Jur. 2d, Intoxicating Liquors, § 249 et seq.

C.J.S. — 48 C.J.S., Intoxicating Liquors, §§ 454 et seq., 509, 520 et seq.

ALR. — Effect of interference by law with liquor business on lease of property for that purpose, 22 A.L.R. 821.

Criminal liability of member or agent of

private club or association, or of owner or lessor of its premises, for violation of state or local liquor or gambling laws thereon, 98 A.L.R.3d 694.

3-10-6. Forfeiture of rights of lessee or tenant where unlawful act performed upon premises with lessee's or tenant's knowledge or permission.

The unlawful manufacture, sale, or keeping for sale or disposition of any distilled spirits shall work, at the option of the landlord, a forfeiture of the rights of any lessee or tenant under any lease or contract for rent of the premises where the unlawful act is performed by the lessee or tenant or by any agent, servant, clerk, or employee of the lessee or tenant with the latter's knowledge or permission.

History. — Ga. L. 1915, Ex. Sess., p. 77, § 6; Code 1933, § 58-106; Code 1933, § 5A-7108, enacted by Ga. L. 1980, p. 1573, § 1.

Cross references. — Landlord and tenant relationship generally, T. 44, C. 7.

RESEARCH REFERENCES

Am. Jur. 2d. — 45 Am. Jur. 2d, Intoxicating Liquors, § 374 et seq. 49 Am. Jur. 2d, Landlord and Tenant, §§ 39, 41, 295 et seq.

C.J.S. — 48 C.J.S., Intoxicating Liquors, § 468 et seq. 48A C.J.S., Intoxicating Liquors, § 750 et seq.

ALR. — Effect of interference by law with liquor business on lease of property for that purpose, 22 A.L.R. 821.

Lease of property for sale of liquor in violation of law as affecting right to rent, 42 A.L.R. 1036.

3-10-7. Transportation or shipment of distilled spirits for sale or use in violation of title; exceptions for possession for personal use and transportation through counties or municipalities.

(a) It is unlawful for any person knowingly and intentionally to transport, ship, or carry from any point outside this state to any point within this state or from place to place within this state any distilled spirits intended by any person interested in such beverages to be received, possessed, sold, or in any manner used in violation of this title.

(b) It is not unlawful for any person to transport, ship, carry, or possess distilled spirits in any county or municipality when the beverages are in the amounts specified by Code Section 3-10-4 and are intended for personal use and not for sale.

(c) It is not unlawful for any licensed wholesaler, importer, or common carrier to transport, ship, or carry any distilled spirits through any county or municipality where the destination of the beverages is beyond the respective jurisdictional boundaries of the county or municipality and such destination is within a county or municipality in which

the sale of distilled spirits has been authorized. The commissioner may issue a permit to any person to transport, ship, or carry distilled spirits pursuant to this chapter.

History. — Ga. L. 1917, Ex. Sess., p. 7, § 1; Code 1933, § 58-201; Ga. L. 1937-38, Ex. Sess., p. 103, §§ 16, 27; Ga. L. 1972, p. 207, §§ 7, 11; Code 1933, § 5A-7104, enacted by Ga. L. 1980, p. 1573, § 1; Ga. L. 1981, p. 1269, § 60.

JUDICIAL DECISIONS

Intoxicating liquor may be subject matter of larceny, though it is not subject matter of lawful sale. Windham v. Harmon, 50 Ga. App. 322, 178 S.E. 160 (1935).

Possession of non-tax-paid whiskey. — Nothing in Ga. L. 1937-38, Ex. Sess., p. 103 (see now O.C.G.A. Ch. 4, T. 3), purports to legalize possession of non-tax-paid whiskey. Its possession, in any quantity in any county of the state, is unlawful under existing law of the state. Pierce v. State, 200 Ga. 384, 37 S.E.2d 201, answer conformed to, 73 Ga. App. 627, 37 S.E.2d 431 (1946).

Quantity of contraband possessed immaterial. — The possession of any quantity of contraband whiskey in a dry county subjects the accused to a violation and it is immaterial what quantity of contraband whiskey the accused possessed. Pierce v. State, 73 Ga. App. 627, 37 S.E.2d 431 (1946) (decided under former Code 1933 § 58-201).

Possession of contraband whiskey in a dry county constitutes two offenses, one under Ga. L. 1937-38, Ex. Sess., p. 103 (see now O.C.G.A. § 3-3-29), for having non-tax-paid whiskey, and the other for illegally possessing whiskey under former Code 1933, § 58-201 (see now O.C.G.A. § 3-10-7). Pierce v. State, 73 Ga. App. 627, 37 S.E.2d 431 (1946).

Possession of contraband whiskey violative of two sections. — Since Ga. L. 1937-38, Ex. Sess., p. 103 (see now O.C.G.A. § 3-3-29), did not conflict with former Code 1933, § 58-201 (see now O.C.G.A. § 3-10-7), which latter section made unlawful the mere possession of contraband whiskey, possession of non-tax-paid whiskey in a dry county was a violation of both sections. Pierce v. State, 73 Ga. App. 627, 37 S.E.2d 431 (1946).

This section is still in force and effect in dry counties. Thus, sale of spirituous alcoholic beverages in any quantity to any person is strictly prohibited in such county. It is immaterial in such circumstances whether the liquors are tax-paid or non-tax-paid or to whom they are offered for sale or to whom they are sold. Martin v. State, 96 Ga. App. 557, 100 S.E.2d 645 (1957).

Burden on defendant to show applicability of exceptions. — This section, a violation of which was charged, creates a general offense, and exceptions stated in the section are merely exceptions to general offense and are not essential elements in offense charged. The burden is on defendant to show that the defendant comes within one of exceptions. Frierson v. State, 67 Ga. App. 829, 21 S.E.2d 438 (1942).

Admissibility of evidence of prior, similar transactions. — It was not error for trial court to allow the state to show that the defendant, prior to the transaction under investigation, had transported liquor in county where trial was had, which evidence tended to refute the defendant's statement that the defendant did not employ a codefendant to transport liquor in that county and the defendant's statement that the defendant had not had liquor transported in that county for over three years. Crow v. State, 52 Ga. App. 192, 182 S.E. 685 (1935).

RESEARCH REFERENCES

Am. Jur. 2d. — 45 Am. Jur. 2d, Intoxicating Liquors, §§ 30 et seq., 279, 397 et seq.

C.J.S. — 48 C.J.S., Intoxicating Liquors, §§ 454 et seq., 502 et seq.

ALR. — Test of intoxicating character of liquor, 4 A.L.R. 1137; 11 A.L.R. 1233; 19 A.L.R. 512; 36 A.L.R. 725; 91 A.L.R. 513.

Constitutionality of statute making unlawful possession of intoxicating liquor legally obtained, or providing for its confiscation, 37 A.L.R. 1386.

What amounts to transportation of intoxicating liquor, 65 A.L.R. 983.

State statute or ordinance prohibiting or regulating transportation of intoxicating liquor as interference with interstate commerce, 110 A.L.R. 931; 138 A.L.R. 1150.

Transportation of liquor within state some counties or districts of which are "wet" and others "dry," 134 A.L.R. 424.

Regulations regarding bringing into state intoxicating liquor intended for personal use of consignee or carrier, 155 A.L.R. 816.

Operation and effect, in dry territory, of general state statute making sale or possession for sale of intoxicating liquor, without a license, an offense, 8 A.L.R.2d 750.

What constitutes such discriminatory prosecution or enforcement of laws as to provide valid defense in state criminal proceedings, 95 A.L.R.3d 280.

3-10-8. Common nuisances — Defined; institution of quo warranto proceedings against clubs or associations maintaining nuisances.

(a) The following are declared to be common nuisances and may be abated or enjoined as such upon complaint of the Attorney General, or the district attorney of the superior court, or any citizen of the county where the common nuisance is located:

(1) Any place used for the unlawful manufacture, sale, barter, keeping for sale, or other unlawful disposition of distilled spirits;

(2) Any place where distilled spirits are sold, bartered, kept for sale, or otherwise disposed of, for consumption on or near the premises;

(3) Any resort or public eating place where distilled spirits are sold, served, or consumed; and

(4) Any club or other place in which distilled spirits are received or kept for the purpose of sale, barter, use, storage, gift, consumption, or for distribution or division among, or to be furnished to, the membership of any club or association of persons.

(b) Any club or association of persons chartered or incorporated under the laws of this state, which club or association violates any provision of this Code section or maintains or keeps any place as described in this Code section shall forfeit its charter. The forfeiture may be declared by proceedings in quo warranto against the club or incorporated association in a court of competent jurisdiction in the county where the unlawful act is committed.

History. — Ga. L. 1915, Ex. Sess., p. 77, §§ 4, 9; Code 1933, §§ 58-104, 58-109; Code 1933, § 5A-7106, enacted by Ga. L. 1980, p. 1573, § 1.

Cross references. — Abatement of nuisances generally, T. 41, C. 2.

JUDICIAL DECISIONS

This section is not in force within the limits of a wet county. Wood v. City of Atlanta, 93 Ga. App. 578, 92 S.E.2d 263 (1956).

Common nuisances abatable. — Any structure used for unlawful manufacture, sale, keeping for sale, or other unlawful disposition of liquor, and all shops, houses, and places where liquor is sold or kept for sale, are common nuisances and may be abated as such upon complaint of the solicitor-general of the circuit (now district attorney of superior court). Lokey v. Davis, 194 Ga. 175, 21 S.E.2d 69 (1942).

Maintaining structure, not act of possessing or selling, constitutes common nuisance. — It is not the act of possessing liquor or selling liquor that this section declares to be a common nuisance, but it is the structure maintained and used for the purpose of keeping or selling intoxicating liquors therein that is declared to be a common nuisance.

Place where distilled spirits kept for sale or illegal disposition is common nuisance. — A building or structure in which are kept distilled spirits for purpose of sale or other illegal disposition is a common nuisance and may be enjoined or abated under former Code 1933, § 58-104 (see now O.C.G.A. § 3-10-9).

Evidence sufficient to support injunction. — While one isolated act of selling a pint of whiskey in a structure, absent any evidence or circumstances to indicate that structure was being used for purpose of illegally selling whiskey, would be insufficient to authorize grant of interlocutory injunction, where there is positive, uncontradicted testimony that there was one actual sale of liquor within premises described, and that employee testified that the employee would not sell liquor on one occasion because the employee did not know the person seeking to buy and that conditions prevailing at the time made it dangerous, judge was authorized to find that premises were being used continually for purpose of keeping and selling whiskey. Lokey v. Davis, 194 Ga. 175, 21 S.E.2d 69 (1942).

Evidence sufficient to support finding that business is nuisance. — Evidence that business has numerous trap doors, secret passages, tunnels, numerous cottages which are also used for drinking purposes; that owner sells beer and wine in dry county without license from governing authorities, has no license to carry on place of amusement, and secretly sells large quantities of assorted liquors, whiskey, rum, gin, and brandy; that such operation is continuous, and in flagrant violation of law; and that building and premises are used as gambling house, supports jury finding that place is a nuisance and supports a court's decree that place of business and all buildings used in connection therewith be immediately treated as a nuisance and be closed and padlocked, and that a receiver be appointed to sell the property. Elder v. Stark, 200 Ga. 452, 37 S.E.2d 598 (1946).

Admissibility of evidence concerning expired liquor licenses. — In an action under former Code 1933, § 58-109 (see now O.C.G.A. § 3-10-8), liquor licenses were relevant, although expired, since the licenses tended to show that operation of place in question was continuous over period of months and years, and continuity was one of the circumstances illustrating the character of the place of business. Elder v. Stark, 200 Ga. 452, 37 S.E.2d 598 (1946).

Admissibility of testimony as to general reputation of alleged common nuisance. — See Elder v. Stark, 200 Ga. 452, 37 S.E.2d 598 (1946).

Admissibility of testimony as to quantity of wine found. — Testimony as to quantity of wine found might be a circumstance in itself for jury to consider as to whether place complained of was operated in violation of law. Elder v. Stark, 200 Ga. 452, 37 S.E.2d 598 (1946).

Evidence of bottles of wine admissible. — When the petition alleged and the evidence showed that no license had been issued by governing authorities for the sale of wine, it was not error to admit in evidence several bottles of wine found at the place as a circumstance for the jury to consider whether or not the place was operated in violation of law. Elder v. Stark, 200 Ga. 452, 37 S.E.2d 598 (1946).

It was not error to admit into evidence several bottles of wine, over objection that there was no evidence of sale of wine but evidence only of possession, because possession of wine in quantities found may have been a circumstance to illustrate the contention that the place was a public nuisance, especially since other evidence disclosed that no license had been issued by the governing authorities for the sale of wine. Elder v. Stark, 200 Ga. 452, 37 S.E.2d 598 (1946).

Admissibility of testimony regarding finding liquor in course of raids. — Testimony of witness as to finding 10 pints and two four-fifths of a quart of whiskey on a raid about four months before filing of instant action, and testimony of another witness as to finding 11 fifths of gin and one pint of whiskey at place in question on a raid about nine months before such action, were admissible where it was shown otherwise that building contained secret panels, traps, and like devices of concealment, and there was additional evidence, circumstantial and direct, of continuity of operation and intention to operate place in violation of law after the previous raids and confiscations. Elder v. Stark, 200 Ga. 452, 37 S.E.2d 598 (1946).

Evidence, including whiskey found in building, sufficient to support abatement. — When, upon interlocutory hearing on petition to padlock building as common nuisance, evidence showed that 13 pints of whiskey were found in building and other evidence was sufficient to authorize trial judge to find that whiskey was sold in presence, and with consent, of party operating business therein, the interlocutory judgment enjoining operation of any business therein and directing sheriff to padlock building until further order of court was authorized. Edgeworth v. Wyatt, 202 Ga. 708, 44 S.E.2d 542 (1947).

Guilty pleas entered before instant action material evidence. — Pleas of guilty to two charges of selling wine without license in county, entered about six months before action under this section was instituted, were material circumstances for consideration with the other evidence, although the evidence as to these pleas, without more, would not have authorized a finding that defendant's place of business was common nuisance within meaning of this section, at time action was filed. Sprayberry v. Wyatt, 203 Ga. 27, 45 S.E.2d 625 (1947).

Evidence sufficient to support finding of continuing violations. — While single transaction might not be sufficient to authorize abatement of place of business as common nuisance, in that law contemplates some continuity of violation, and evidence did not show directly any act of possession or sale later than about a month before action was filed, yet, in view of evidence as to pleas of guilty to selling without a license entered about six months before and evidence as to subsequent sales and possession, the judge was authorized to find that defendant was continuing in such violations of law and that the defendant's place of business was common nuisance within statute at time action was instituted. Sprayberry v. Wyatt, 203 Ga. 27, 45 S.E.2d 625 (1947).

Evidence sufficient to support finding of common nuisance. — Where evidence showed an illegal sale of whiskey, coupled with other circumstances, such as evidence showing that when sale was made the defendant named several brands of whiskey from which buyer might choose, and proof of application for and issuance of retail liquor license, which was in effect at time of sale and bringing of action, the trial judge was amply authorized to find that defendant's place of business was common nuisance at time action was instituted. Norris v. State ex rel. Willingham, 204 Ga. 441, 50 S.E.2d 22 (1948).

One illegal sale, together with other evidence, sufficient to abate place as nuisance. — Evidence as to one illegal sale, coupled with corroborative circumstances indicating continuity of such conduct, is sufficient to authorize abatement

of place of business as common nuisance. Norris v. State ex rel. Willingham, 204 Ga. 441, 50 S.E.2d 22 (1948).

Entire building not abatable as nuisance. — Under proper interpretation of this section, entire building could not be abated as nuisance without some evidence tending to show that different portions of building were operated as a unit and that in such operation intoxicating liquors were kept and sold in violation of law. Norris v. State ex rel. Willingham, 204 Ga. 441, 50 S.E.2d 22 (1948).

Abuse of discretion in padlocking defendant's dwelling. — Although evidence authorized abatement of nuisance, an order of the trial court was too broad in that it required padlocking of entire premises of defendant, notwithstanding all the evidence as to illegal sales of whiskey related solely to defendant's place of business, there being no evidence of sale or location of whiskey in the defendant's dwelling; and trial court, therefore, abused its discretion in passing so much of order as would result in padlocking of defendant's dwelling and dispossession of the defendant's family. Norris v. State ex rel. Willingham, 204 Ga. 441, 50 S.E.2d 22 (1948).

In trial of action under this section, judge may, without request, require jury to render special verdict on issues of fact involved. Elder v. Stark, 200 Ga. 452, 37 S.E.2d 598 (1946).

RESEARCH REFERENCES

Am. Jur. 2d. — 45 Am. Jur. 2d, Intoxicating Liquors, § 342 et seq.

C.J.S. — 48A C.J.S., Intoxicating Liquors, § 788 et seq.

ALR. — Dispensing liquor as within charter power of club, 5 A.L.R. 1192.

Charge of maintaining a liquor nuisance predicated on permitting guests to bring and consume their own liquor, 49 A.L.R. 1451.

Sale of liquor to homosexuals or permitting their congregation at licensed premises as ground for suspension or revocation of liquor license, 27 A.L.R.3d 1254.

Criminal liability of member or agent of private club or association, or of owner or lessor of its premises, for violation of state or local liquor or gambling laws thereon, 98 A.L.R.3d 694.

3-10-9. Common nuisances — Proceedings for abatement of nuisances.

Any common nuisance as defined in Code Section 3-10-8 shall be an unlawful place, and the act of keeping and maintaining any such place shall be deemed a separate offense for each day that it continues. Common nuisances may be abated by writ of injunction issued out of the superior court upon a complaint filed by the Attorney General, or the district attorney of the superior court, or any citizen of the county in which the nuisance exists. The complaint shall be filed in the county in which the nuisance exists.

History. — Ga. L. 1915, Ex. Sess., p. 77, § 4; Code 1933, § 58-104; Code 1933, § 5A-7107, enacted by Ga. L. 1980, p. 1573, § 1.

JUDICIAL DECISIONS

Bringing injunctive action in county of defendant's residence constitutionally required. — In an injunctive action solely against owner of property on which an alleged public nuisance is being operated, the action must be

brought in county of residence of defendant, as required by Ga. Const. 1983, Art. VI, Sec. II, Para. III. This is true, even though this section states that action is to be filed in county where nuisance exists, since the constitutional mandate must control. Chancey v. Hancock, 225 Ga. 715, 171 S.E.2d 302 (1969).

Nuisance may be abated by writ of injunction issued out of superior court upon a complaint filed by Attorney General or district attorney of superior court, or by any citizen of the county in which the nuisance exists. Ogletree v. Atkinson, 195 Ga. 32, 22 S.E.2d 783 (1942).

This section is not of force within the limits of a wet county. Wood v. City of Atlanta, 93 Ga. App. 578, 92 S.E.2d 263 (1956).

Judgment denying relief on owner's petition to reopen premises closed as nuisance undisturbed. — A judgment denying relief on petition brought by owner of premises padlocked as a nuisance under this section on which there was a hearing, in which the owner asserted the owner's lack of knowledge of illegal purpose for which the tenant, defendant in original proceeding, used premises, and praying that the owner be permitted to reopen the premises will not be disturbed where it appears that the evidence at the hearing was sufficient to show guilty knowledge on part of the owner. Baskin v. Meadors, 196 Ga. 802, 27 S.E.2d 696 (1943).

RESEARCH REFERENCES

ALR. — Charge of maintaining a liquor nuisance predicated on permitting guests to bring and consume their own liquor, 49 A.L.R. 1451.

Admissibility, in prosecution for maintaining liquor nuisance, of evidence of general reputation of premises, 68 A.L.R.2d 1300.

3-10-10. Existence of property rights in distilled spirits or vessels kept or used in violation of chapter; contraband.

No property rights of any kind shall exist in distilled spirits or in the vessels kept or used for the purpose of violating this chapter, or in any such liquors when received, possessed, or stored at any forbidden place or anywhere in a quantity forbidden by law or when kept, stored, or deposited for the purpose of sale or unlawful disposition, furnishing, or distribution. In all such cases the distilled spirits, the vessels and receptacles in which the distilled spirits are contained, and any property kept or used for the purpose of violating this chapter are declared to be contraband and are to be forfeited to the state when seized in accordance with the procedures set forth in Chapter 16 of Title 9.

History. — Ga. L. 1915, Ex. Sess., p. 77, § 20; Code 1933, § 58-122; Code 1933, § 5A-7112, enacted by Ga. L. 1980, p. 1573, § 1; Ga. L. 2015, p. 693, § 3-1/HB 233.

Editor's notes. — Ga. L. 2015, p. 693, § 4-1/HB 233, not codified by the General Assembly, provides: "This Act shall become effective on July 1, 2015, and shall apply to seizures of property for forfeiture that occur on or after that date. Any such seizure that occurs before July 1, 2015, shall be governed by the statute in effect at the time of such seizure."

Law reviews. — For article on the 2015 amendment of this Code section, see 32 Ga. St. U. L. Rev. 1 (2015).

JUDICIAL DECISIONS

Constitutionality. — This section is not unconstitutional for lack of due process in failing to provide for notice and hearing prior to seizure or prior to disposition of liquor declared therein to be contraband and forfeited to state. Blackmon v. Brotherhood Protective Order of Elks, Toccoa Lodge No. 1820, 232 Ga. 671, 208 S.E.2d 483 (1974).

Former owners barred from claim to seized liquor. — Under express terms, liquor seized is contraband per se and former owners have no property rights therein. Accordingly, they can have no claim to seized liquor. Blackmon v. Brotherhood Protective Order of Elks, Toccoa Lodge No. 1820, 232 Ga. 671, 208 S.E.2d 483 (1974).

Property used in illegal keeping of liquors contraband and forfeited to state. — This section declares that any and all property used in illegal keeping of liquors or beverages is contraband, in which owner has no property right, and authorizes state to destroy or seize such property. Elder v. Stark, 200 Ga. 452, 37 S.E.2d 598 (1946).

Disposition of contraband liquor. — The contraband liquor referred to in former Code 1933, § 58-122 (see now O.C.G.A. § 3-10-10) was legal liquor within meaning of Ga. L. 1937-38, Ex. Sess., p. 103 (see now O.C.G.A. § 3-4-1 et seq.), and not merely prohibited liquor within the meaning of former § 58-122, and the court erred in refusing to make mandamus absolute, as sheriff should have delivered the contraband liquor over to state revenue commissioner as required by Ga. L. 1937-38, Ex. Sess., p. 103 (see now O.C.G.A. § 3-2-33). Redwine v. Berry, 210 Ga. 567, 81 S.E.2d 837 (1954).

Prohibited liquors contraband, forfeited to state, and under court jurisdiction. — No property rights exist in prohibited liquors and they are declared by law to be contraband, to be forfeited to state when seized, and may be ordered condemned and destroyed by court acquiring jurisdiction thereof. Redwine v. Berry, 210 Ga. 567, 81 S.E.2d 837 (1954).

RESEARCH REFERENCES

Am. Jur. 2d. — 45 Am. Jur. 2d, Intoxicating Liquors, § 393 et seq.

C.J.S. — 48A C.J.S., Intoxicating Liquors, §§ 750 et seq., 777 et seq.

ALR. — Power to prohibit the possession of intoxicating liquor, irrespective of any intention to traffic therein, 2 A.L.R. 1085.

Constitutionality of statute providing for forfeiture of property upon which intoxicating liquor is manufactured or sold, 10 A.L.R. 1591.

Constitutional guaranties against unreasonable searches and seizures as applied to search for or seizure of intoxicating liquor, 39 A.L.R. 811; 74 A.L.R. 1418.

Rights and protection of innocent persons where property in which they are interested is seized because of its illegal use in connection with intoxicating liquor, 47 A.L.R. 1055; 61 A.L.R. 551; 73 A.L.R. 1087; 82 A.L.R. 607; 124 A.L.R. 288.

Lawfulness of seizure of property used in violation of law as prerequisite to forfeiture action or proceeding, 8 A.L.R.3d 473.

3-10-11. Contraband apparatus and appliances; existence of property rights therein; summary destruction of contraband; governing procedure for forfeiture of vehicles, boats, and vessels.

(a)(1) All apparatus or appliances which are used for the unlawful purpose of distilling or manufacturing any distilled spirits are declared to be contraband.

(2) No person shall have any property right in or to the contraband specified in this subsection.

(3) Whenever apparatus or appliances used or about to be used for the unlawful purpose of manufacturing, using, holding, or containing any distilled spirits are found or discovered by any sheriff, deputy sheriff, or other law enforcement officer of this state, the same shall be summarily destroyed and rendered useless by him or her without any formal order of the court.

(b) All vehicles and conveyances of every kind and description in this state and all boats and vessels of every kind and description in any of the waters of this state used in conveying, removing, concealing, or storing any distilled spirits, the transportation, possession, or storing of which is in violation of law, are declared to be contraband and shall be seized by any law enforcement officer. Such contraband shall be subject to forfeiture in accordance with the procedures set forth in Chapter 16 of Title 9, including those counties and municipalities in which the sale of distilled spirits is lawful.

History. — Ga. L. 1917, Ex. Sess., p. 7, § 20; Ga. L. 1924, p. 198, § 1; Code 1933, § 58-207; Ga. L. 1946, p. 96, § 1; Ga. L. 1977, p. 632, § 1; Code 1933, § 5A-7113, enacted by Ga. L. 1980, p. 1573, § 1; Ga. L. 1981, p. 1269, § 62; Ga. L. 1986, p. 1605, § 2; Ga. L. 1987, p. 3, § 3; Ga. L. 2015, p. 693, § 3-2/HB 233.

Cross references. — Disposition of property seized, T. 17, C. 5, A. 3.

Editor's notes. — Ga. L. 2015, p. 693, § 4-1/HB 233, not codified by the General Assembly, provides: "This Act shall become effective on July 1, 2015, and shall apply to seizures of property for forfeiture that occur on or after that date. Any such seizure that occurs before July 1, 2015, shall be governed by the statute in effect at the time of such seizure."

Law reviews. — For article on the 2015 amendment of this Code section, see 32 Ga. St. U. L. Rev. 1 (2015).

JUDICIAL DECISIONS

This section, being in derogation of common law, is to be strictly construed. Bowman v. Davis, 51 Ga. App. 478, 180 S.E. 917 (1935); Leath v. Rosser, 52 Ga. App. 587, 183 S.E. 839 (1936); State v. Patterson, 80 Ga. App. 450, 56 S.E.2d 195 (1949); State v. McRee, 83 Ga. App. 284, 63 S.E.2d 348 (1951).

Applicability of limitation period to claim by officer for share of proceeds from sales of contraband. — The 12-month limitation period relating to filing of claims against county does not apply to claim by county police officer for the officer's share of proceeds of sales of automobiles confiscated for engaging in illegal transportation of liquor. Cloud v. DeKalb County, 70 Ga. App. 777, 29 S.E.2d 441 (1944).

Applicability to malt beverages. — It is not a violation merely to transport, possess, or store fermented beverages made from malt, and a vehicle being used for such purpose cannot legally be seized and condemned as contraband (but see Ga. L. 1937, p. 148 (see now O.C.G.A. § 3-5-3)) State v. Patterson, 80 Ga. App. 450, 56 S.E.2d 195 (1949).

The only application that this section has in a wet county is to fix the court procedure. Clements v. State, 85 Ga. App. 614, 70 S.E.2d 70 (1952).

Condemnation action properly prosecuted by state. — Proceeding to condemn automobile allegedly used in illegal transportation of liquors presupposes violation of criminal laws, and such proceeding is properly prosecuted by

state. Thompson v. State, 74 Ga. App. 821, 41 S.E.2d 583 (1947).

Right of condemnation in state. — Right of condemnation is in state, not in officers seizing property illegally used in conveying liquors or beverages, and law requiring solicitor (now prosecuting attorney) of county, city, or superior court having jurisdiction in county where seizure was made to institute condemnation proceedings, necessarily imply that such proceedings shall be in name of state. Fact that arresting officer may be interested financially in proceeds from condemnation does not make such officer a necessary party plaintiff in first instance. Thompson v. State, 74 Ga. App. 821, 41 S.E.2d 583 (1947).

Right of state to condemn nonowner's equity in vehicle while protecting lien holder's interest. — State can condemn equity, if any, in an automobile held by operator who illegally transports liquors and beverages therein although legal title to the automobile may be held by another. It is the intention of the legislature to protect bona fide lien holders without destroying right of state to condemn. Consolidated Loan Co. v. State, 75 Ga. App. 77, 41 S.E.2d 802 (1947).

Proceeding brought in name of state. — Proceeding for condemnation of vehicle used in illegally transporting prohibited liquors and beverages is properly brought in name of state. State v. Weaver, 87 Ga. App. 172, 73 S.E.2d 227 (1952).

Procedure. — Sheriff or other peace officer must report property seized, because of its use in conveying illegal liquor, to solicitor (now prosecuting attorney) of court having jurisdiction within ten days after such seizure, and thereupon condemnation proceedings will be instituted as set forth. Kitchens v. Beverly, 86 Ga. App. 880, 72 S.E.2d 819 (1952).

Report by sheriff of seized property to prosecuting attorney. — County sheriff, in no way connected with federal government, has no right by reason of his office to turn property over to federal authorities instead of making a report to proper prosecuting attorney in conformity with this section. Kitchens v. Beverly, 86 Ga. App. 880, 72 S.E.2d 819 (1952).

Consequences of sheriff's turning contraband vehicle over to federal authorities. — Where a sheriff, upon seizing a vehicle conveying illegal liquor, turns it over to the federal government for condemnation under the federal Internal Revenue Code, instead of reporting its seizure to the prosecuting attorney as required by state statute, the sheriff does so at the sheriff's peril as a private citizen seizing private property for forfeiture to the federal government. If, however, the officer turns the property over to proper federal authorities for condemnation in federal court in a proceeding regular on its face, of which owner of vehicle had due notice of time and place of trial thereof, act of state officer in turning property over to federal government for condemnation is thereby ratified by federal government and such adoption on its part is sufficient recognition and confirmation of seizure to give it an equal validity in law with an original seizure under proper authority by an agent of federal government. Kitchens v. Beverly, 86 Ga. App. 880, 72 S.E.2d 819 (1952).

Truck as contraband apparatus or appliance used in manufacture of moonshine. — Pickup truck not alleged to have been used in conveying, removing, concealing, or storing of non-tax-paid liquor may not be declared contraband as some "apparatus or appliances" used in manufacture of moonshine. Vaughan v. State, 110 Ga. App. 709, 140 S.E.2d 66 (1964).

Salaried officers not precluded from receiving authorized fees. — Fact that officer making seizure of automobile engaged in illegal transportation of intoxicating liquors received a salary does not preclude the officer from receiving the officer's part of fees provided by this section for officers responsible for confiscation of such automobiles. Cloud v. DeKalb County, 70 Ga. App. 777, 29 S.E.2d 441 (1944).

Liquors seized in dry county unrecoverable in trover action. — Liquors, possession of which is prohibited by law in county which has not by vote made operative the provisions of Ga. L. 1937-38, Ex. Sess., p. 103 (see now O.C.G.A. § 3-4-1 et seq.) even though bearing revenue

stamps, are without property value and are subject to seizure by the Department of Revenue, and, even though transported from such county into a wet county by department, cannot be the basis of trover action by person from whom they were seized in the dry county. Williams v. Snelling, 71 Ga. App. 525, 31 S.E.2d 105 (1944).

Trover action against sheriff holding property more than 10 days. — When seizure is effected contrary to this section, and sheriff attempts to hold vehicle in excess of 10 days without reporting the seizure, the sheriff is, as to plaintiff's property, mere trespasser, and trover action will lie against the sheriff for recovery of property. Kitchens v. Beverly, 86 Ga. App. 880, 72 S.E.2d 819 (1952).

Interest of innocent lien holder not condemnable. — State has right to condemn only the equity of lienor or owner of vehicle, and cannot condemn any interest of an innocent lien holder, whether that interest is of record or not. State v. McRee, 83 Ga. App. 284, 63 S.E.2d 348 (1951).

Courts having jurisdiction. — This section does not limit jurisdiction to superior courts or constitutional city courts, but specifically provides that any county, city, or superior court having jurisdiction in county where automobile is seized shall have jurisdiction. Bowman v. Davis, 51 Ga. App. 478, 180 S.E. 917 (1935).

Jurisdiction in condemnation proceeding. — Jurisdiction of proceeding to condemn vehicle seized for violation of this section as to transportation of intoxicating liquors is confined to county of seizure, and in such a proceeding such jurisdiction must affirmatively appear. Bowman v. Davis, 51 Ga. App. 478, 180 S.E. 917 (1935).

Jurisdiction of state and federal courts. — The State of Georgia under this section, and the United States government under 26 U.S.C. § 2803, have concurrent jurisdiction, and each has power and authority to seize and condemn automobiles used in illegally transporting liquor. As to actions in rem, between state and federal court, the one first taking steps equivalent to exercising dominion over and possession of the res will have exclusive jurisdiction. Kitchens v. Beverly, 86 Ga. App. 880, 72 S.E.2d 819 (1952).

Jurisdiction of court in county where vehicle seized. — Only a court having jurisdiction in the county where vehicle is seized has jurisdiction of the condemnation proceeding; therefore, in order to confer jurisdiction upon the court in which condemnation proceedings are instituted against such vehicle, it must affirmatively appear that the vehicle was seized within the county over which the court has jurisdiction. State v. Weaver, 87 Ga. App. 172, 73 S.E.2d 227 (1952).

Recording instrument prior to intervention in condemnation action not required. — It is not necessary that lien or mortgage upon which intervenor relies be properly recorded in order that lienee or mortgagee may assert it as evidence of the intervenor's right to intervene in proceeding to condemn mortgaged vehicle. Cummings v. State, 84 Ga. App. 698, 67 S.E.2d 156 (1951).

Arresting officer's not being party to action no ground for dismissal. — In an action involving condemnation of vehicle allegedly used in illegally transporting prohibited liquors and beverages, and brought in name of state, in which arresting officer was not made a party in trial court, and trial court finds in favor of intervenor and against condemnation of vehicle, it is no ground for dismissal of bill of exceptions by court that arresting officer was not made a party in court, as the officer's interest is not adverse to that of state as plaintiff in error. State v. Weaver, 87 Ga. App. 172, 73 S.E.2d 227 (1952) (decided under former Code 1933, § 58-207).

Dismissal of intervenor's writ of error. — Where, after seizure by two empowered officers, state condemned truck, and thereafter under order of court the truck was sold at public auction, after which a party intervened and claimed truck and, after court sustained demurrer (now motion to dismiss) filed by solicitor general (now district attorney) on behalf of state, the intervenor excepted and brought case to Supreme Court by writ of error, but served only state with copy of bill of exceptions, writ of error would be dismissed as state was only a formal or technical party, and two officers were real contestants. Carter v. State, 180 Ga. 578, 180 S.E. 110 (1935).

Notice to owner of condemnation of vehicle. — A motor vehicle owned or leased by third party other than operator cannot be condemned without notice to such third person, if known, and without proving that the motor vehicle was being used for illegal transportation of contraband liquors by operator. Bentley v. State, 70 Ga. App. 494, 28 S.E.2d 658 (1944).

Requirement of service on officers making seizure. — Since officers making seizure are necessary parties to a proceeding to condemn an automobile used in illegal transport of liquor and have an interest in proceeds from the sale of the vehicle, service of process should be had on them or acknowledgment of service by them. Alford v. State, 82 Ga. App. 79, 60 S.E.2d 431 (1950).

Service only of copy of petition on defendant. — In an action instituted to condemn an automobile carrying intoxicating liquor, defendant must be served with copy of petition, but there is no requirement that process be issued. Thomas v. State, 97 Ga. App. 761, 104 S.E.2d 547 (1958).

When defense is filed in condemnation proceeding, case proceeds as other civil cases. Grant v. State, 74 Ga. App. 493, 40 S.E.2d 406 (1946).

Required defenses of owners, lessees, and lien holders. — Requirement as to showing proper registration of vehicle applies only to owner or lessee, and sole prerequisite as to lien holder is that the owner or lessee show that such illegal use was without the owner's or lessee's knowledge or consent. State v. McRee, 83 Ga. App. 284, 63 S.E.2d 348 (1951).

Failure to allege registration of vehicle insufficient for dismissal. — In proceeding by state to condemn vehicles found to be illegally transporting or conveying intoxicating liquor, failure of intervenor to allege that vehicle was legally registered with Department of Motor Vehicles (now Motor Vehicle Division of Department of Revenue) in true name and address of owner did not subject petition to demurrer (now motion to dismiss) and dismissal. State v. McRee, 83 Ga. App. 284, 63 S.E.2d 348 (1951).

Allegation of lack of knowledge of illegal use of vehicles sufficient. — In proceeding to condemn automobile truck-tractor and trailer on ground that vehicles had been used in illegally transporting and conveying intoxicating liquor, petition of intervenor alleging that the use of vehicles was without knowledge, express or implied, was sufficient; it was not necessary for intervenor to allege both the intervenor's lack of knowledge of illegal use the intervenor of vehicle and also that such use was without the intervenor's connivance or consent because if the intervenor did not know of illegal use the intervenor could not have connived in or consented to such use. State v. McRee, 83 Ga. App. 284, 63 S.E.2d 348 (1951).

State's burden of proof not met. — Where, in condemnation proceeding, the only evidence as to any actual use of automobile to convey alcoholic liquors was that it was standing in private way near a residence where 42 gallons of whiskey were seized, that two gallons of whiskey were taken from car, and that a person was seen approaching car with another gallon of whiskey, this evidence being equally if not more indicative that automobile was merely being prepared for use to transport liquor than that it had been so used, state did not meet burden of showing that this section had been violated. Thompson v. State, 52 Ga. App. 355, 183 S.E. 214 (1936).

Burden of proof as to illegal use of vehicle. — When the state shows illegal use of vehicle, burden then shifts to intervenor to show that illegal use of automobile was without the intervenor's knowledge, connivance, or consent, express or implied. Intervenor must also show that property seized, if a motor vehicle, was legally registered with Department of Motor Vehicles (now Motor Vehicle Division of Department of Revenue) in true name and address of such owner or the owner's predecessor in title, unless vehicle was bought new from dealer within 30 days of time of seizure. Strickland Motors, Inc. v. State, 81 Ga. App. 824, 60 S.E.2d 254 (1950); Simpson v. State, 82 Ga. App. 319, 60 S.E.2d 537 (1950).

Preparatory acts insufficient to evoke penalties of section. — Acts merely preparatory to commission of quasi-criminal acts which, if completed,

would subject automobile to condemnation under this section, are not sufficient to evoke penalties of section. Thompson v. State, 52 Ga. App. 355, 183 S.E. 214 (1936).

Evidence insufficient to infer hitched team used in conveying moonshine. — Evidence that team consisting of mules and wagon was found hitched at place where a still producing alcoholic liquor was in operation, and that there was some alcoholic liquor in wagon, was insufficient to authorize inference that team was used in conveying such liquors along public road or private way of this state. Leath v. Rosser, 52 Ga. App. 587, 183 S.E. 839 (1936).

Evidence requiring new trial. — In proceeding for condemnation of vehicle used in transporting liquor, where evidence showed that finance company did not have notice on date it purchased conditional sales contract in question that automobile buyer was engaged in dealing in liquor, trial court erred in overruling intervening finance company's motion for new trial. Liberal Fin. Co. v. State, 80 Ga. App. 697, 57 S.E.2d 220 (1950).

Motion for new trial denied where intervenor had notice of truck's use. — New trial motion brought by intervenor claiming sole ownership in proceeding to condemn truck was properly denied, where conditional sale agreement for vehicle was dated prior to seizure, even though contract was actually made at later date, after seizure, at which time seller (intervenor) had notice of purposes for which truck was being used. Walker-Durant Motor Co. v. State, 51 Ga. App. 261, 180 S.E. 239 (1935).

OPINIONS OF THE ATTORNEY GENERAL

Section controls as to disposition of proceeds over act creating city court. — This section, governing disposition of proceeds from condemnation and sale of vehicles used in violation of liquor laws, controls over provisions for disposition of fines and forfeitures in act creating city court. 1945-47 Op. Att'y Gen. p. 75.

Sharing proceeds of condemnation sale with member of uniform division. — Member of uniform division of Department of Public Safety is not authorized to accept any money for sale of condemned conveyances used in transporting contraband, but there is no law which would prohibit sheriff or other peace officer receiving such reward from voluntarily sharing it with member of uniform division. 1952-53 Op. Att'y Gen. p. 247.

Payments from sale of seized vehicles to members of state patrol. — Uniformed members of Georgia State Patrol cannot legally accept payments from proceeds of sale of seized vehicles since they are specifically precluded from receiving money other than their salaries, except for criminal apprehension awards. 1962 Op. Att'y Gen. p. 436.

Authorization of officers to seize contraband vehicles and to receive special fees. — Special agents and enforcement officers designated by revenue commissioner for enforcement of laws with respect to transportation and possession of non-tax-paid liquors are authorized to seize and take possession of contraband vehicles and would be entitled to receive special fees provided. 1963-65 Op. Att'y Gen. p. 241.

Parked car not condemnable absent certain evidence. — Parked car containing alcoholic liquors may not be condemned in absence of evidence that it was used to transport the alcoholic liquors in violation of this section. 1945-47 Op. Att'y Gen. p. 379.

Sheriff or any other peace officer is not authorized merely to resell condemned vehicle to owner without following statutory procedure. 1952-53 Op. Att'y Gen. p. 247.

RESEARCH REFERENCES

Am. Jur. 2d. — 45 Am. Jur. 2d, Intoxicating Liquors, § 393 et seq.

C.J.S. — 48 C.J.S., Intoxicating Liquors, §§ 90, 325 et seq. 48A C.J.S., In-

toxicating Liquors, §§ 750 et seq., 777 et seq.

ALR. — Constitutional guaranties against unreasonable searches and seizures as applied to search for or seizure of intoxicating liquor, 3 A.L.R. 1514; 13 A.L.R. 1316; 27 A.L.R. 709; 39 A.L.R. 811; 74 A.L.R. 1418.

Constitutionality of statute providing for forfeiture of property upon which intoxicating liquor is manufactured or sold, 10 A.L.R. 1591.

Right to jury trial in case of seizure of property alleged to be illegally used, 17 A.L.R. 568; 50 A.L.R. 97.

Constitutionality of statute making unlawful possession of intoxicating liquor legally obtained, or providing for its confiscation, 37 A.L.R. 1386.

Criticism of attitude of the court or judge toward violations of liquor law as contempt, 58 A.L.R. 1001.

Rights and protection of innocent persons where property in which they are interested is seized because of its illegal use in connection with intoxicating liquor, 61 A.L.R. 551; 73 A.L.R. 1087; 82 A.L.R. 607; 124 A.L.R. 288.

Criminal responsibility of one who acts as sentinel during violation of intoxicating liquor law, 64 A.L.R. 427.

Jurisdiction to quash search warrant and order return of property seized in liquor cases under federal statutes, 65 A.L.R. 1246.

Presence of liquor in vehicle at the time of search and seizure as condition of forfeiture for violating prohibition law, 71 A.L.R. 911.

Admissibility, in prosecution for violation of intoxicating liquor law, of general reputation of person with whom defendant had dealings, as tending to show such violation, 83 A.L.R. 1401.

Lawfulness of seizure of property used in violation of law as prerequisite to forfeiture action or proceeding, 8 A.L.R.3d 473.

Requirements for allowance of remission or mitigation of forfeiture of vehicle used in violation of liquor laws under 18 U.S.C. § 3617(b), 14 A.L.R.3d 128.

Relief to claimant of interest in motor vehicle subject to state forfeiture for use in violation of liquor laws, 14 A.L.R.3d 221.

3-10-12. Raw materials or substances, fixtures, implements, or apparatus used or intended for use in unlawful distillation or manufacture of distilled spirits declared contraband; property rights in contraband; governing procedures for seizure and forfeiture.

(a) Any raw materials or substances, including, but not limited to, sugar of any grade or type, and any fixture, implement, or apparatus used or intended for use in the unlawful distilling or manufacturing of any distilled spirits are declared to be contraband.

(b) No person shall have any property right in or to any contraband specified in subsection (a) of this Code section.

(c) Whenever any item used or about to be used as specified in subsection (a) of this Code section is found or discovered, whether in transit, in storage, or at a site of unlawful distillation or manufacture, by any law enforcement officer, it shall be subject to the following dispositions:

(1) When found or discovered at a site of unlawful distillation or manufacture, it may be summarily destroyed and rendered useless by any law enforcement officer without any formal order of the court

or, in the event any of the raw materials or substances are fit for human consumption or if any of the fixtures, implements, or apparatus are of any beneficial use to the educational authorities of the county for use in any of their educational programs, they may be delivered to the public schools of the county in which seized for use in the schools. When any of the foregoing items are delivered to a public school system, the officer delivering the items shall obtain from the appropriate school authorities an itemized receipt detailing all items delivered to the system and report such information as provided in subsection (g) of Code Section 9-16-19. In the event any of the foregoing items are destroyed by a law enforcement officer, the officer shall execute an affidavit of such fact in which all items destroyed shall be listed. The receipts and affidavits shall be maintained by the officer and shall be open to inspection by the public upon request; or

(2) When found or discovered in transit or in storage by any law enforcement officer, the items shall be seized by the officer and forfeited in accordance with the procedures set forth in Chapter 16 of Title 9.

History. — Ga. L. 1964, p. 722, § 1; Ga. L. 1968, p. 1051, § 1; Code 1933, § 5A-7114, enacted by Ga. L. 1980, p. 1573, § 1; Ga. L. 1981, p. 1269, § 63; Ga. L. 2015, p. 693, § 3-3/HB 233.

Editor's notes. — Ga. L. 2015, p. 693, § 4-1/HB 233, not codified by the General Assembly, provides: "This Act shall become effective on July 1, 2015, and shall apply to seizures of property for forfeiture that occur on or after that date. Any such seizure that occurs before July 1, 2015, shall be governed by the statute in effect at the time of such seizure."

Law reviews. — For article on the 2015 amendment of this Code section, see 32 Ga. St. U. L. Rev. 1 (2015).

OPINIONS OF THE ATTORNEY GENERAL

Terms defined. — Terms "raw materials" and "substances" in this section mean ingredients used in making the alcoholic beverage — things that become a part thereof, such as sugar or malt or grain. 1963-65 Op. Att'y Gen. p. 449.

Automobiles or other motor vehicles are not contraband. 1963-65 Op. Att'y Gen. p. 449.

RESEARCH REFERENCES

C.J.S. — 48 C.J.S., Intoxicating Liquors, §§ 90, 325 et seq. 48A C.J.S., Intoxicating Liquors, §§ 750 et seq., 777 et seq.

ALR. — Constitutional guaranties against unreasonable searches and seizures as applied to search for or seizure of intoxicating liquor, 3 A.L.R. 1514; 13 A.L.R. 1316; 27 A.L.R. 709; 39 A.L.R. 811; 74 A.L.R. 1418.

Constitutionality of statute providing for forfeiture of property upon which intoxicating liquor is manufactured or sold, 10 A.L.R. 1591.

Right to jury trial in case of seizure of property alleged to be illegally used, 17 A.L.R. 568; 50 A.L.R. 97.

Rights and protection of innocent persons where property in which they are interested is seized because of its illegal

use in connection with intoxicating liquor, 61 A.L.R. 551; 73 A.L.R. 1087; 82 A.L.R. 607; 124 A.L.R. 288.

Lawfulness of seizure of property used in violation of law as prerequisite to forfeiture action or proceeding, 8 A.L.R.3d 473.

3-10-13. Duties of district attorneys as to investigation and prosecution of violations of chapter; duties of sheriffs.

(a) Any district attorney in a county may commence prosecution on his own affidavit against any party violating any provision of this chapter. The district attorney, upon receiving information giving him probable cause to believe that there has been a violation of this chapter, shall lay the matter before the grand jury or institute a criminal prosecution against the party by affidavit before a court or judge of competent jurisdiction, if the district attorney is willing and able to make the affidavit for the institution of a criminal prosecution. If he is not willing or able to make the affidavit and any citizen is willing to make an affidavit for the institution of a criminal prosecution against any party for the violation, the district attorney shall superintend the preparation of the papers and the institution of the prosecution, provided the district attorney is of the opinion upon the facts at hand that there is reasonable ground to believe that a conviction ought to be had.

(b) Sheriffs are charged with the duty of enforcing this chapter and cooperating with the district attorneys.

History. — Ga. L. 1915, Ex. Sess., p. 77, § 18; Code 1933, § 58-120; Code 1933, § 5A-7110, enacted by Ga. L. 1980, p. 1573, § 1.

3-10-14. Evidence as to color, odor, appearance, and taste of beverage manufactured, sold, or disposed of by defendant; burden of proof when defendant claims beverage not a distilled spirit.

(a) In all prosecutions against any persons for manufacturing, selling, offering for sale, keeping, or having or otherwise disposing of distilled spirits, it shall be competent for the state to give in evidence the fact that the beverage which the evidence may tend to show the defendant had manufactured, sold, bartered, exchanged, furnished, given away, or otherwise disposed of, possessed or possesses the same color, odor, and general appearance or the same taste, color, and general appearance of a distilled spirit.

(b) The fact that a beverage in question is of the same color, odor, and general appearance or of the same taste, color, and general appearance as a distilled spirit shall constitute prima-facie evidence that the beverage is a distilled spirit.

(c) If the defendant claims the beverage in question is not a distilled spirit even though it possesses the same color, odor, and general appearance or the same taste, color, and general appearance as a distilled spirit, the burden of proof shall be upon the defendant to establish to the reasonable satisfaction of the judge, court, or jury trying the case that the beverage in question is not a distilled spirit and that it is a beverage which is not prohibited by law to be manufactured, sold, offered for sale, or otherwise disposed of.

(d) The rule of evidence provided in this Code section shall be applicable in all cases for the abatement of liquor nuisances and in all prosecutions for violations of this chapter when it becomes necessary to determine whether the beverage is a distilled spirit.

History. — Ga. L. 1915, Ex. Sess., p. 77, § 19; Code 1933, § 58-121; Code 1933, § 5A-7111, enacted by Ga. L. 1980, p. 1573, § 1.

Cross references. — Abatement of nuisances generally, T. 41, C. 2.

RESEARCH REFERENCES

Am. Jur. 2d. — 45 Am. Jur. 2d, Intoxicating Liquors, § 306.

C.J.S. — 48 C.J.S., Intoxicating Liquors, §§ 571, 572, 573, 618 et seq. 48A C.J.S., Intoxicating Liquors, § 869.

ALR. — Test of intoxicating character of liquor, 4 A.L.R. 1137; 11 A.L.R. 1233; 19 A.L.R. 512; 36 A.L.R. 725; 91 A.L.R. 513.

Criticism of attitude of the court or judge toward violations of liquor law as contempt, 58 A.L.R. 1001.

Admissibility and weight of testimony based on taste, sight, and smell as to unlawful content of liquor, 78 A.L.R. 439.

Admissibility, in prosecution for violation of intoxicating liquor law, of general reputation of person with whom defendant had dealings, as tending to show such violation, 83 A.L.R. 1401.

Admissibility, in prosecution for maintaining liquor nuisance, of evidence of general reputation of premises, 68 A.L.R.2d 1300.

3-10-15. Penalty for violations of provisions of chapter.

(a) It is unlawful for any person knowingly and intentionally to violate any prohibition contained in this chapter relating to provisions applicable only in dry political subdivisions.

(b) Any person who violates any prohibition contained in this chapter shall be guilty of a misdemeanor.

History. — Ga. L. 1915, Ex. Sess., p. 77, § 23; Code 1933, § 58-123; Code 1933, § 5A-9903, enacted by Ga. L. 1980, p. 1573, § 1.

JUDICIAL DECISIONS

The same crime which occurred at different times but on same day constitutes separate crimes authorizing separate penalty as to each. As long as respective sentences are not greater than maximum sentence provided by law, they

are not excessive. Rucker v. State, 133 Ga. App. 180, 210 S.E.2d 365 (1974) (decided under former Code 1933, § 58-123).

RESEARCH REFERENCES

C.J.S. — 48 C.J.S., Intoxicating Liquors, § 544 et seq.

CHAPTER 11

SALES OFF PREMISES FOR CATERED FUNCTIONS

Sec.		Sec.	
3-11-1.	Definitions.	3-11-3.	Event permits.
3-11-2.	Licensed alcoholic beverage caterers eligible for off-premise licenses; application; fee.	3-11-4.	Violations.
		3-11-5.	Rules and regulations.

Administrative rules and regulations. — Alcoholic beverage catering, Official Compilation of the Rules and Regulations of the State of Georgia, Rules of Department of Revenue, Alcohol and Tobacco Tax Unit, Subject 560-2-13.

3-11-1. Definitions.

As used in this chapter, the term:

(1) "Food caterer" means any person who prepares food for consumption off the premises.

(2) "Licensed alcoholic beverage caterer" means any retail dealer who has been licensed pursuant to Article 2 of Chapter 4, Article 2 of Chapter 5, or Article 2 of Chapter 6 of this title.

(3) "Person" means any individual, company, corporation, association, partnership, or other legal entity.

History. — Code 1981, § 3-11-1, enacted by Ga. L. 1992, p. 1145, § 1.

3-11-2. Licensed alcoholic beverage caterers eligible for off-premise licenses; application; fee.

(a) Any licensed alcoholic beverage caterer who additionally holds a valid license from a county or municipality which authorizes the licensee to sell malt beverages or wine by the drink for consumption on the premises may be issued from the same licensing authority an off-premise license which authorizes such licensed alcoholic beverage caterer to sell malt beverages or wine by the drink off premises and in connection with an authorized catered function.

(b) Any licensed alcoholic beverage caterer who additionally holds a valid license from a county or municipality which authorizes the licensee to sell malt beverages or wine by the package for consumption off the premises may be issued from the same licensing authority an off-premise license which authorizes such licensed alcoholic beverage caterer to sell malt beverages or wine by the drink off premises and in connection with an authorized catered function.

(c) Any licensed alcoholic beverage caterer who additionally holds a valid license from a county or municipality which authorizes the licensee to sell distilled spirits by the drink for consumption on the premises may be issued from the same licensing authority an off-premise license which authorizes such licensed alcoholic beverage caterer to sell distilled spirits by the drink off premises and in connection with an authorized catered function.

(d) Any licensed alcoholic beverage caterer who additionally holds a valid license from a county or municipality which authorizes the licensee to sell distilled spirits by the package for consumption off the premises may be issued from the same licensing authority an off-premise license which authorizes such licensed alcoholic beverage caterer to sell distilled spirits by the drink off premises and in connection with an authorized catered function.

(e) An alcoholic beverage caterer shall make application for an off-premise license as provided in subsections (a) and (c) or subsections (b) and (d) of this Code section with the appropriate local licensing authority and shall pay to the local licensing authority an annual license fee as fixed by the local licensing authority, provided that the total of such local license fees shall not exceed $5,000.00 for any one licensed location.

History. — Code 1981, § 3-11-2, enacted by Ga. L. 1992, p. 1145, § 1.

3-11-3. Event permits.

In order to distribute or sell distilled spirits, malt beverages, or wine at an authorized catered function, a licensed alcoholic beverage caterer shall be required to:

(1) Apply to the local governing authority of the jurisdiction where the function is to be catered for an event permit. The application shall include the name of the caterer; the date, address, and time of the event; and the licensed alcoholic beverage caterer's license number. When the catered function is domiciled in a local political subdivision other than that which issues the alcoholic beverage caterer's license, that local governing authority shall be authorized to charge an event permit fee of $50.00 and levy local excise taxes on the total quantity of alcoholic beverages brought into such political subdivision by the caterer;

(2) Provide satisfactory reports to the commissioner on forms provided by the department stating the quantity of any and all alcoholic beverages transported from the licensee's primary premises to the location of the authorized catered function and such other information as required by the commissioner; and

(3) Maintain original local event permits and documents required by the department in the vehicle transporting the alcoholic beverages to the catered function at all times.

History. — Code 1981, § 3-11-3, enacted by Ga. L. 1992, p. 1145, § 1.

Code Commission notes. — Pursuant to Code Section 28-9-5, in 1992, "licensee's" was substituted for "licensees" in paragraph (2).

3-11-4. Violations.

(a) It shall be unlawful for a food caterer to distribute or sell distilled spirits, malt beverages, or wine off the premises of the food caterer's business without a license issued pursuant to this chapter. This subsection shall not affect any other provisions of this title which may require a food caterer who has a license to sell alcoholic beverages on the premises of the food caterer's business.

(b) It shall be unlawful for a licensed alcoholic beverage caterer licensed under this chapter to distribute or sell distilled spirits, malt beverages, or wine off premises except in connection with an authorized catered function within the scope of the event permit.

(c)(1) It shall be unlawful for a licensed alcoholic beverage caterer to distribute or sell distilled spirits in any jurisdiction which does not permit the sale of distilled spirits by the drink for consumption only on the premises.

(2) It shall be unlawful for a licensed alcoholic beverage caterer to distribute or sell malt beverages or wine in any jurisdiction which does not permit the sale of malt beverages or wine by the drink for consumption only on the premises.

(d) It shall be unlawful for a licensed alcoholic beverage caterer to distribute or sell distilled spirits, malt beverages, or wine during any hours in which the sale of alcoholic beverages by the drink for consumption only on the premises is not permitted in the jurisdiction.

(e) It shall be unlawful for a licensed alcoholic beverage caterer to employ any person under 21 years of age who, in the course of such employment, would dispense, serve, sell, or handle alcoholic beverages. It is the intent of this subsection to prevent any person employed by such caterer, or any other employee, to knowingly violate any prohibitions contained in Code Section 3-3-23, relating to furnishing alcoholic beverages to, and purchase and possession of alcoholic beverages by, a person under 21 years of age.

(f) Nothing in this chapter shall be construed to authorize the sale of alcoholic beverages by a caterer in any jurisdiction where the sale of distilled spirits by the drink for consumption only on the premises has not been legalized.

(g) Any person violating the provisions of this Code section shall be guilty of a misdemeanor.

History. — Code 1981, § 3-11-4, enacted by Ga. L. 1992, p. 1145, § 1.

3-11-5. Rules and regulations.

The commissioner shall be authorized to promulgate rules and regulations to implement and carry out the provisions of this chapter.

History. — Code 1981, § 3-11-5, enacted by Ga. L. 1992, p. 1145, § 1.

CHAPTER 12

RESIDENTIAL COMMUNITY DEVELOPMENT DISTRICTS

Sec.		Sec.	
3-12-1.	"Residential community development district" defined.	3-12-3.	Licenses for sale of alcoholic beverages; adoption of resolution or ordinance; election; state license required; restrictions.
3-12-2.	Establishment of districts; articles of establishment; contents; filing; fees.		

3-12-1. "Residential community development district" defined.

As used in this chapter, the term "residential community development district" or "district" means a private residential development that:

(1) Is not less than 500 acres of contiguous land area;

(2) Is located either within a county where the sale of alcoholic beverages is authorized or within a county that has one or more municipalities where the sale of alcoholic beverages is authorized, but outside the corporate limits of any municipality;

(3) Has at least 200 residential sites, platted and recorded in the office of the clerk of the superior court of the county as a residential subdivision;

(4) Has streets that were or will be built with private funds and are or will be maintained by private funds of the developers or property owners within the development; and

(5) Has a social club with:

(A) An 18 hole golf course of regulation size;

(B) A restaurant or eatery used exclusively for the purpose of preparing and serving meals, with a seating capacity of at least 60 patrons;

(C) A golf or social club membership and has at least 200 paid-up members who have paid a membership fee for family or individual membership;

(D) A membership policy whereby membership is not denied or limited by an applicant's race, color, creed, sex, religion, or national origin; and

(E) A full-time management staff for the social activities of the club, including the management of the premises where food and drink are sold.

History. — Code 1981, § 3-12-1, enacted by Ga. L. 1995, p. 486, § 2.

3-12-2. Establishment of districts; articles of establishment; contents; filing; fees.

(a) The exclusive and uniform method for the establishment of a residential community development district shall be by the filing of the articles of establishment of a community development district with the clerk of the superior court of the county in which the district is to be located or, if located in more than one county, of each of the counties in which the district is located.

(b) The articles of establishment of a residential community development district shall contain the following:

(1) The written consent to the establishment of the district by the owner or owners of 80 percent of the real property to be included in the district, or documentation demonstrating that the petitioner has control of 80 percent of the real property to be included in the district by deed, trust agreement, contract, or option;

(2) A metes and bounds description of the external boundaries of the district, with a specific metes and bounds description of any real property within the boundaries of the district which is to be excluded from the district;

(3) A schematic layout of the proposed district with a map of the proposed and existing residential subdivisions, streets, and roads in the district and the buildings and grounds to be used in common by members of the club operating in the district, together with a commitment that the owner or owners of the real property located within the district will bear the costs of the construction of such proposed streets and roads and will maintain the same at no expense to the county;

(4) The proposed name of the district and the location and the mailing address of the principal office of the district; and

(5) A list of at least three persons designated to be the initial members of the board of control of the district who shall serve in that capacity until replaced by elected members; provided, that the members of the board of control shall be elected by the owners of the real estate within the district who may vote in person or by proxy in writing at an annual meeting of the district which date shall be specified in the petition. Each landowner within the district shall be entitled to cast one vote per one acre of land owned and located within the district for each person to be elected. A landowner whose parcel of land measures less than one acre shall be entitled to one vote with

respect thereto. The selected number of candidates receiving the highest number of votes shall be elected to the board of control for a period of one year, or until his or her successor is duly elected and qualified.

(c) The articles of establishment and two copies thereof shall be delivered to the clerk of the superior court who shall, upon the payment of the fees prescribed in this Code section:

(1) Endorse on the articles and on each of such copies the word "Filed" and the hour, day, month, and year of the filing thereof;

(2) File the articles in his or her office and certify the two copies thereof; and

(3) Issue a certificate of establishment to which he or she shall affix one certified copy of the articles of establishment and return such certificate with a certified copy of the articles of establishment affixed thereto to the board of control of the district.

(d) Upon the filing of the articles of establishment of the community development district with the clerk of the superior court, the district's existence shall begin.

(e) In lieu of all other charges and fees, the clerk of the superior court shall charge and collect a fee for filing the articles of establishment and issuing a certificate of establishment not to exceed $100.00 for the county and $35.00 for the clerk of the superior court.

History. — Code 1981, § 3-12-2, enacted by Ga. L. 1995, p. 486, § 2.

3-12-3. Licenses for sale of alcoholic beverages; adoption of resolution or ordinance; election; state license required; restrictions.

(a) As used in this Code section, the term:

(1) "Member" means any person whose membership application has been approved by the social club, which membership shall not become effective for purposes of purchasing alcoholic beverages less than five days following both approval and payment of the membership initiation fee.

(2) "On-premises consumption" means consumption on the property of the social club including the club house, golf course, and other outside recreational facilities of the club. Sales of alcoholic beverages for on-premises consumption shall be made only by authorized charge to a member's account or to a major credit card. There shall be no cash sales of alcoholic beverages.

(b)(1) Upon the establishment of a residential community development district as provided in Code Section 3-12-2, each county which encompasses such a district, through proper resolution or ordinance, may authorize the issuance of licenses to sell alcoholic beverages by the drink for consumption on the premises within a community development district. Each such governing authority shall have full power and authority to adopt all reasonable rules and regulations governing the qualifications and criteria for the issuance of any such licenses and shall further have the power and authority to promulgate reasonable rules and regulations governing the conduct of any licensee provided for in this subsection.

(2) No resolution or ordinance adopted pursuant to paragraph (1) of this subsection shall become effective until the governing authority of the county submits to the qualified electors of the voting precinct wherein the residential community development district is located the question of whether the ordinance or resolution shall be approved or rejected. If in the election, a majority of the electors voting on the question vote for approval, the ordinance or resolution shall become effective at such time as is provided for in the resolution or ordinance; otherwise, it shall be of no force and effect.

(3) The county governing authority shall establish the date of the election, which shall be not less than 30 days after the call of the election, and shall notify the county election superintendent of its decision as to the date. The election superintendent shall issue the call for the election and shall specify that the election shall be held on the date determined by the county governing authority. The election superintendent shall cause the date and purpose of the election to be published once a week for two weeks immediately preceding the date thereof in the official organ of the county. The ballot shall have written or printed thereon the following:

"[	]	YES	Shall the issuance of licenses to sell distilled spirits by the drink to certain residential community development districts be approved?"
[	]	NO	

Those persons desiring to vote in favor of issuance of the licenses shall vote "Yes" and those persons opposed to issuance of the licenses shall vote "No." If more than one-half of the votes cast on the question are in favor of issuance of the licenses, then the licenses may be issued in accordance with paragraph (1) of this subsection; otherwise, the licenses may not be issued. The question of the issuance of the licenses may not again be submitted to the voters of the precinct within 24 months immediately following the month in which such election was held. The county election superintendent shall hold and conduct the election under the same rules and regulations as govern

special elections. He or she shall canvass the returns and declare and certify the result of the election to the Secretary of State and to the commissioner. The expense of any such elections shall be borne by the county wherein the election was held.

(c)(1) Upon being licensed by the county governing authority, a residential community development district shall then apply to the commissioner for the appropriate state license and shall be subject to all state licensing requirements.

(2) Upon being licensed by the county governing authority and the commissioner, alcoholic beverages may be sold by the social club of the district to members and their guests for on-premises consumption only.

(3) The social club shall be licensed to sell alcoholic beverages to its members and their guests pursuant to such regulations as the county governing authority may deem necessary for the proper enforcement of this chapter.

(4) The original application for licensure by the county governing authority shall be accompanied by a certificate from the board of control of the district in which the social club is located consenting to and approving the sale of alcoholic beverages at the club.

History. — Code 1981, § 3-12-3, enacted by Ga. L. 1995, p. 486, § 2.

CHAPTER 13

SALE OF ALCOHOLIC BEVERAGES BY REGIONAL ECONOMIC ASSISTANCE PROJECT

Sec.
3-13-1. Definitions.
3-13-2. State license requirements to sell alcoholic beverages.
3-13-3. Local taxation of alcoholic beverage sales.
3-13-4. Powers, duties, and authority of commissioner.

3-13-1. Definitions.

As used in this chapter, the term:

(1) "Alcoholic beverages for consumption on premises" shall mean malt beverages, wine, or distilled spirits by the drink for consumption on the premises only.

(2) "Licensee" shall mean the developer, owner, or operator of the REAP or the developer, owner, or operator of or any certified project or facility located in a REAP to whom a state retail consumption dealer license is issued.

(3) "Regional Economic Assistance Project" or "REAP" shall have the same meaning as in Code Section 50-8-190 and shall specifically include any certified project or facility located in a REAP.

History. — Code 1981, § 3-13-1, enacted by Ga. L. 2008, p. 363, § 1/HB 1280.

3-13-2. State license requirements to sell alcoholic beverages.

(a) A REAP shall be authorized to sell alcoholic beverages for consumption on premises on days and at times authorized in any jurisdiction within this state for the sale of alcoholic beverages, upon obtaining state license from the commissioner for the sale of alcoholic beverages.

(b) Prior to the issuance of a state license, the applicant shall obtain a license for the sale of alcoholic beverages from the local governing authority of any county or municipal corporation in which the REAP of developer, owner, or operator to be issued a state license is wholly or partially located; provided, however, that if said local governing authority is not authorized by ordinance or resolution to issue licenses for the sale of alcoholic beverages for consumption on premises, then no local license shall be required. If the local governing authority authorizes the issuance of licenses for the sale of alcoholic beverages for consumption on premises by resolution or ordinance after a state license has been

issued or renewed, the licensee shall have 60 days after such an ordinance or resolution is passed to obtain the local license. If the applicant or licensee fails to obtain such local license, the applicant shall be denied a state license or the state license shall be subject to suspension or revocation by the commissioner.

(c) A state license issued pursuant to this chapter shall entitle the licensee the right to sell alcoholic beverages for consumption on premises on days and at times authorized in any jurisdiction within this state for the sale of alcoholic beverages, regardless of what local ordinance or regulations may be in effect in any jurisdiction in which the REAP is wholly or partially located. The sale of alcoholic beverages for consumption on premises by a licensee on days and at times authorized by subsection (a) of this Code section which differ from those days and times permitted under a licensee's local license shall not constitute lawful grounds for the denial, revocation, suspension, or nonrenewal of said local license by the local governing authority.

(d) A state license issued pursuant to this chapter shall entitle the licensee the right to sell alcoholic beverages for consumption on premises anywhere within the REAP.

History. — Code 1981, § 3-13-2, enacted by Ga. L. 2008, p. 363, § 1/HB 1280.

3-13-3. Local taxation of alcoholic beverage sales.

A local government shall be authorized to levy and collect any local taxes on any sale of alcoholic beverages made within its jurisdiction by a licensee as are otherwise authorized by law.

History. — Code 1981, § 3-13-3, enacted by Ga. L. 2008, p. 363, § 1/HB 1280.

3-13-4. Powers, duties, and authority of commissioner.

The commissioner may promulgate such reasonable rules and regulations as are necessary and appropriate to regulate the issuance of state retail consumption dealer licenses to developers, owners, or operators of a REAP and the developers, owners, or operators of any certified project or facility located in a REAP and to enforce the provisions of this chapter.

History. — Code 1981, § 3-13-4, enacted by Ga. L. 2008, p. 363, § 1/HB 1280.

CHAPTER 14

SPECIAL EVENT USE PERMITS

Sec.
3-14-1. Authority and requirements for special event use permits.

3-14-1. Authority and requirements for special event use permits.

The commissioner may issue a special event use permit for the sale of alcoholic beverages for certain events which would otherwise require a retailer or retail dealers license. The commissioner shall specify by rule or regulation the events that shall qualify for a special event use permit; provided, however, that estate sales, the sale of inventory authorized under a bankruptcy proceeding, and activities that are similar in nature shall so qualify. Such permit shall not be valid for more than ten days.

History. — Code 1981, § 3-14-1, enacted by Ga. L. 2012, p. 827, § 7/HB 1066.