

O.C.G.A. § 2-10-50

Current through the 2022 Regular Session of the General Assembly.

Official Code of Georgia Annotated > TITLE 2 Agriculture (Chs. 1 — 23) > CHAPTER 10 Marketing Facilities, Organizations, and Programs (Arts. 1 — 4) > Article 2 Farmers' Markets (§§ 2-10-50 — 2-10-62)

2-10-50. Short title.

This article shall be known as the “Georgia Marketing Act of 1981.”

History

Ga. L. 1981, p. 1354, § 1.

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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.

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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.

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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.

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2-10-53.1. Oversight by legislative advisory committee; membership; duties; expiration.

- (a) The Commissioner shall establish, operate, and maintain this state's farmers' markets under the oversight of a legislative advisory committee to be composed as follows:
- (1) The chairpersons of the House Appropriations Subcommittee for Economic Development and Tourism and the Senate Appropriations Subcommittee for Agriculture and Consumer Affairs or their designees, ex officio;
 - (2) The chairperson of the House Agriculture and Consumer Affairs Committee or his or her designee;
 - (3) The chairperson of the Senate Agriculture and Consumer Affairs Committee or his or her designee;
 - (4) Three members of the House of Representatives appointed by the chairperson of the House Agriculture and Consumer Affairs Committee; and
 - (5) Three members of the Senate appointed by the chairperson of the Senate Agriculture and Consumer Affairs Committee.
- (b) The members of the legislative advisory committee shall appoint the committee's chairperson and vice-chairperson, who shall each serve two-year terms to coincide with the legislative biennium of the General Assembly.
- (c) The members of the legislative advisory committee shall receive the allowances provided for in Code Section 28-1-8.
- (d) The legislative advisory committee created by this Code section shall be tasked with the duty to:
- (1) Commission an independent study of the economic viability and public benefit of each existing farmers' market with an analysis of the benefits to this state's agribusiness economy, including this state's farmers, food supply chain, grocers, restaurants, agri-tourism, local economies, and the effectiveness of the marketing of Georgia grown products. Upon completion of the study, the findings shall be presented to the legislative advisory committee; and
 - (2) Using such findings as provided for in paragraph (1) of this subsection, coordinate with the Commissioner and the department to develop a five-year plan for all of this state's farmers' markets that maximizes the public benefit of all farmers' market properties and ensures efficient and fiscally responsible operation of such markets.
- (e) This Code section shall stand repealed on January 10, 2027.

History

Code 1981, § 2-10-53.1, enacted by Ga. L. 2021, p. 434, § 1/HB 676.

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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.

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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.

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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.

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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

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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.

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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

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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.

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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 department 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

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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.

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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.

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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.

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