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## Standards, Labeling, and Adulteration of Food HB 101

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## **Food, Drugs, and Cosmetics**

***Standards, Labeling, and Adulteration of Food: Amend Section 370 of Article 13 of Chapter 2 of Title 26 of the Official Code of Georgia Annotated, Relating to Definitions Relative to Food Service Establishments, so as to Exclude Certain Events Held by Nonprofit Organizations from the Definition of “Food Service Establishment”; Amend Article 14 of Chapter 2 of Title 26 of the Official Code of Georgia Annotated, Relating to Nonprofit Food Sales and Food Service, so as to Allow Counties or Municipalities to Delegate Permitting Authority to the Local Board of Health; Provide for Protection for Property Owners; Repeal Conflicting Laws; and for Other Purposes***

CODE SECTIONS:	O.C.G.A. §§ 26-2-370, -391, -393 (amended)
BILL NUMBER:	HB 101
ACT NUMBER:	242
GEORGIA LAWS:	2013 Ga. Laws 760
SUMMARY:	The Act makes it easier for non-profit organizations to follow food service regulations at their events. Georgia law sets forth different regulations for food service establishments, varying by the type of establishment or event. While Georgia already exempts fairs and festivals from the stricter food service establishment requirements, it does not exempt other short-term events. The Act changes this so that non-profit organizations may sell food at events lasting five days or less under the same regulations faced by fairs and festivals. Non-profit organizations still, however, have to comply with all local government permitting requirements.
EFFECTIVE DATE:	July 1, 2013

*History*

In the State of Georgia, various food regulations apply to different types of vendors and establishments.<sup>1</sup> For example, temporary food service establishments, namely fairs or festivals, are not considered to be food service establishments.<sup>2</sup>

Over the past decade, fundraising-oriented Relay for Life events have grown from grassroots events into a movement that has raised more than \$4 billion to fight cancer.<sup>3</sup> Typically, Relay for Life events last twenty-four hours.<sup>4</sup> Under prior law, Relay for Life events met the temporal requirements for temporary food service establishments, but arguably could fail to be considered a fair or festival, so some county departments of public health could require such events to follow more regulations.<sup>5</sup> Other events faced similar predicaments, including church fundraisers and Sheriffs' Association barbeques.<sup>6</sup> Previously, Representative Pam Dickerson (D-113th) introduced legislation during the 2012 legislative session to exempt non-profit events from the definition of food service establishments. The bill passed the House, was favorably reported by the Senate Agriculture and Consumer Affairs Committee, but never received a full vote by the Senate.<sup>7</sup> For the 2013 legislative session, Representatives Bubber Epps (R-144th) and Tom McCall (R-33rd) approached the Georgia Department of Public Health with the goal of solving this problem for such non-profit events through what would become House Bill (HB) 101.<sup>8</sup>

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1. See Telephone Interview with Rep. Bubber Epps (R-144th) (Apr. 16, 2013) [hereinafter Epps Interview]; O.C.G.A. § 26-2-370 (Supp. 2013).

2. Epps Interview, *supra* note 1.

3. *What is Relay?*, RELAY FOR LIFE, <http://www.relayforlife.org/learn/whatisrelay/index> (last visited May 24, 2013).

4. See *id.*

5. See Epps Interview, *supra* note 1.

6. *Id.*

7. HB 681, as introduced, 2012 Ga. Gen. Assem.; State of Georgia Final Composite Status Sheet, HB 681, May 10, 2012.

8. See Interview with David Bayne, Georgia Department of Public Health (June 20, 2013) [hereinafter Bayne Interview]; see also Epps Interview, *supra* note 1.

*Bill Tracking**Consideration and Passage by the House*

Representatives Bubber Epps (R-144th), Tom McCall (R-33rd), Rick Jasperse (R-11th), Susan Holmes (R-129th), Buddy Harden (R-148th), and Robert Dickey (R-140th) sponsored HB 101 in the House.<sup>9</sup> The House read the bill for the first time on January 28, 2013.<sup>10</sup> Speaker of the House David Ralston (R-7th) assigned it to the House Agriculture and Consumer Affairs Committee.<sup>11</sup>

On February 5, 2013, the Committee passed it unanimously without contentious debate.<sup>12</sup> Representative Epps (R-144th) explained how the bill would help short-term non-profit events avoid cumbersome permitting requirements and illustrated how an event like Relay for Life would benefit from the passage of HB 101.<sup>13</sup> Also testifying for the bill were David Bayne and Scott Uhlich, representing the Georgia Department of Public Health.<sup>14</sup> There was no opposition to the bill.<sup>15</sup> Representatives Rick Jasperse (R-11th), Ellis Black (R-174th), and Patty Bentley (D-139th) each asked questions concerning the practicality of the bill and how the law would affect existing events, including the Pig Jig Festival in Dooley County and the Tate Community Association Barbeque.<sup>16</sup> David Bayne explained to each Representative how the bill would not affect fairs or festivals, as they currently are covered under the exemption.<sup>17</sup> Further, Bayne explained that this bill aims to prevent an overzealous

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9. See Georgia General Assembly, HB 101, Bill Tracking, <http://www.legis.ga.gov/legislation/en-US/Display/20132014/HB/101>.

10. State of Georgia Final Composite Status Sheet, HB 101, May 9, 2013.

11. *Id.*

12. See Video Recording of House Agriculture and Consumer Affairs Committee Meeting, Feb. 5, 2013, at 45 min., 41 sec. (remarks by Rep. Tom McCall (R-33rd)), [http://media.legis.ga.gov/hav/13\\_14/2013/committees/ag/ag020513EDITED.wmv](http://media.legis.ga.gov/hav/13_14/2013/committees/ag/ag020513EDITED.wmv) [hereinafter House Committee Video].

13. See House Committee Video, *supra* note 12 at 34 min., 9 sec. (remarks by Rep. Bubber Epps (R-144th)).

14. *Id.* at 33 min., 52 sec. (remarks by Rep. Bubber Epps (R-144th)).

15. See Epps Interview, *supra* note 1.

16. See House Committee Video, *supra* note 12, at 38 min., 55 sec., 40 min, 33 sec. (remarks by Rep. Rick Jasperse (R-11th)); *id.* at 43 min, 43 sec., 44 min. (remarks by Rep. Ellis Black R-174th); *id.* at 44 min., 22 sec. (remarks by Rep. Patty Bentley (D-139th)).

17. *Id.* at 39 min., 28 sec. (remarks by David Bayne, Georgia Department of Public Health).

Georgia Department of Public Health from interfering in non-profit events by establishing a clear exemption.<sup>18</sup> The bill passed the House by a vote of 162 to 0 on February 12, 2013.<sup>19</sup>

*Consideration and Passage by the Senate*

On February 13, 2013, HB 101 was read for the first time and Lieutenant Governor Casey Cagle (R) referred it to the Senate Agriculture and Consumer Affairs Committee.<sup>20</sup> The bill was read the second time on February 22, 2013 and the third time on March 11, 2013.<sup>21</sup> The Senate Chairman of Agriculture and Consumer Affairs, Senator John Wilkinson (R-50th) carried HB 101 in the Senate.<sup>22</sup> Senator Wilkinson presented a Committee substitute that added language involving the rights of property owners that allow non-profit events on their property.<sup>23</sup> Representative Epps (R-144th) explained that the substitute presented in the Senate Agriculture and Consumer Affairs Committee materialized after the Georgia Municipal Association requested changes to require non-profit events to obtain permission from property owners and also gave property owners the express right to take action against unauthorized users.<sup>24</sup> The bill passed unanimously out of committee on February 21, 2013.<sup>25</sup>

On March 11, 2013, the Senate voted on and passed HB 101 by a vote of 50 to 0.<sup>26</sup> The bill was then sent back to the House to agree on the Committee Substitute, and the House voted to agree on March 14, 2013 by a vote of 162 to 1.<sup>27</sup>

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18. *Id.* at 42 min., 22 sec. (remarks by David Bayne, Georgia Department of Public Health).

19. Georgia House of Representatives Voting Record, HB 101 (Feb. 12, 2013).

20. State of Georgia Final Composite Status Sheet, HB 101, May 9, 2013.

21. *Id.*

22. See Georgia General Assembly, HB 101, Bill Tracking, <http://www.legis.ga.gov/legislation/en-US/Display/20132014/HB/101>.

23. HB 101 (SCS), § 1, p. 2, ln. 40–41, 70–73, 2013 Ga. Gen. Assem.

24. See Epps Interview, *supra* note 1.

25. State of Georgia Final Composite Status Sheet, HB 101, May 9, 2013.

26. Georgia Senate Voting Record, HB 101 (Mar. 11, 2013).

27. State of Georgia Final Composite Status Sheet, HB 101, May 9, 2013.

*Signed by the Governor*

The House of Representatives sent the bill to Governor Nathan Deal (R) on April 1, 2013.<sup>28</sup> On May 6, 2013, Governor Nathan Deal (R) signed the bill into law.<sup>29</sup>

*The Act*

The Act amends Code section 26-2-370 to replace the words “a fair or festival” with the words “an event” in describing the types of events that are exempt from the definition of a food service establishment.<sup>30</sup> The reason for this change, according to Representative Epps (R-144th), is that non-profit events like Sheriff’s Association barbeques and Relay for Life previously did not fall under the exemption because they were not considered fairs or festivals.<sup>31</sup> Further, the Act adds an additional requirement for the aforementioned events described in Code section 26-2-370(2). The new requirement, inserted as Code section 26-2-370(2)(B), states that said event “[i]s held on the property of such sponsor or on the property of a party that has provided written consent for use of such property for such event[.]”<sup>32</sup> This requirement was added at the request of the Georgia Municipal Association to ensure that property owners give permission and consent to sponsors.<sup>33</sup> Additionally, in Code section 26-2-393, the Act provides relief, including legal and equitable remedies, to individuals whose property has been used for non-profit events without their written permission.<sup>34</sup>

Additionally, the Act amends the permitting process described in Code section 26-2-391. Previously, only counties and municipalities were authorized to issue permits for the operation of food sales and food service events.<sup>35</sup> Under the Act, counties and municipalities may delegate the authority to issue permits to their county board of

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28. *Id.*

29. *Id.*

30. Compare O.C.G.A. § 26-2-370(2) (Supp. 2013), with O.C.G.A. § 26-2-370(1) (2003).

31. See Epps Interview, *supra* note 1; see also Bayne Interview, *supra* note 8.

32. O.C.G.A. § 26-2-370(2)(B) (Supp. 2013).

33. See Epps Interview, *supra* note 1.

34. O.C.G.A. § 26-2-393 (Supp. 2013).

35. O.C.G.A. § 26-2-391 (2003).

health.<sup>36</sup> Finally, the Act still forbids fee collection in the issuance of such permits, but the Act removes the words “by a county or municipality” because now county boards of health, in addition to counties and municipalities, issue the permits.<sup>37</sup>

### *Analysis*

HB 101 largely sought to clarify the Code and regulations that were unclear since it was ambiguous whether non-profit events would or could be exempt from certain regulations as fairs or festivals.<sup>38</sup> Consequently, non-profit events were often treated as falling under the fairs or festival exemptions, and there was a need to clarify the practice in the Code.<sup>39</sup>

Some news outlets reported that HB 101 completely exempted non-profit events from obtaining food service permits, but HB 101 did not eliminate the need for a permit; it only prevented non-profit events from falling under the definition of food service establishments, and thus exempted non-profit events from the stricter regulations.<sup>40</sup> Aside from concerns regarding not requiring permitting at all, there was never significant opposition to the bill.<sup>41</sup> The perception that state officials removed restrictions from these non-profit events and somehow endangered citizens has not materialized.

According to Department of Public Health officials, there may be movement in the future to pass a similar bill that applies to the Department of Agriculture’s permitting process for their regulation of farmers’ markets and similar events.<sup>42</sup> However, it is not expected to be a controversial issue or change if it is indeed sought.<sup>43</sup>

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36. Compare O.C.G.A. § 26-2-391 (Supp. 2013), with O.C.G.A. § 26-2-391 (2003).

37. *Id.*

38. See Bayne Interview, *supra* note 8.

39. *Id.*

40. See, e.g., Katie Leslie, *House OKs Easing of Food-Service Rules for Nonprofits*, ATLANTA J.-CONST., Feb. 12, 2013, available at <http://www.ajc.com/news/news/state-regional-govt-politics/house-oks-easing-of-food-service-rules-for-nonprof/nWMkF/> (“The House unanimously passed a . . . bill Tuesday exempting nonprofits from needing a state permit to sell food at short-term events.”).

41. See Bayne Interview, *supra* note 8.

42. *Id.*

43. *Id.*