Testimony of

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*before the*

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Chairmen Waxman and Stupak, Ranking Members Barton and Walden, and Distinguished Members of the Subcommittee, I would like to thank you for the opportunity to offer this testimony today. I am here at the request of Georgia's Commissioner of Agriculture, Tommy Irvin.

I am Oscar Garrison, Assistant Commissioner responsible for the Georgia Department of Agriculture's Consumer Protection Division. I have been directly involved with food safety at various levels for more than 15 years. I started as an inspector, was promoted to senior operations analyst, served as primary emergency coordinator for the Department, and was appointed Assistant Commissioner in January, 2007.

The Georgia Department of Agriculture takes its commitment to food safety very seriously. We are more concerned about the safety of food being processed in Georgia than anyone. To more effectively carry out our mission, the Department is working with our state legislature on an amendment to the Georgia Food Act that would require regular testing by food processing plants in Georgia. The legislation would require processing plants to promptly report to the Department the presence of any suspected contamination that would render food injurious to health or otherwise unfit for consumption. We encourage this committee to consider federal legislation that would require similar testing and reporting nationwide. A copy of the latest draft of the Georgia legislation is attached.

We would like to have additional resources that would permit us to perform inspections more frequently and comprehensively, along with more product testing, but with tightened budgets, FDA, Georgia and other states are stretching their resources about as effectively as they are able.

The Department has requested, and our Governor has recommended, $24 million to help fund a laboratory to be located in south Georgia that would increase the product testing that our Department is capable of performing. Currently we are able to conduct about 4,500 tests on products per year. Additionally, the Department has a request pending with the state that would enable us to fill five more inspector positions.

The Georgia Department of Agriculture is required through the Georgia Food Act to license and inspect food sales establishments and processing plants. We inspect approximately 16,000 facilities ranging from processing plants to food storage warehouses to retail grocery stores. These inspections currently are conducted by 60 field inspectors.

For many years, the Georgia Department of Agriculture, like similar agencies in other states, has had a contractual relationship with the Food and Drug Administration that requires us to conduct inspections at various food processing facilities in Georgia that ship products in interstate commerce. We will conduct 175 inspections for FDA under our current contract. We conducted inspections for the FDA at the Peanut Corporation of America's ("PCA") plant in Blakely, Georgia, in 2007 and 2008.

Including the inspections we conducted for the FDA, our Department conducted a total of nine inspections at the plant between 2006 and 2008. During these inspections, our inspectors did not see any condition that would raise a red flag indicating an imminent health hazard. An inspection is a "snapshot in time." An inspector can only see what is there at that time. Reports from plant workers of problems with a leaking roof, or birds getting into the facility were never witnessed by our inspectors nor reported by PCA staff or anyone else to our inspectors or to our main office at any time.

In 2007 and 2008, our Department pulled and tested 35 product samples from the five Georgia facilities that produce peanut butter. All were negative for Salmonella. The last sample pulled from PCA's Blakely plant was in August 2007 and was negative.

The Department uses all the resources available to us to verify that food processors are operating responsibly. However, it is important to recognize that if processors do not act responsibly, and most certainly if they engage in criminal activity designed to avoid detection, the most rigorous and regular inspections would not readily detect a problem. We do not have all the facts, but once PCA had test results disclosing the presence of Salmonella, it was unconscionable for the company to ship the product, fail to recall the product, or fail to notify us, FDA and public health officials.

In closing, let me thank you for joining with us in an effort to improve the safety of the country's food supply. This tragic situation must serve as a wake-up call leading to reforms in the U.S. food safety network, and to additional funding that will permit food safety agencies at the federal, state and local levels to more effectively perform their jobs.

_____ offers the following substitute to SB 80:

A BILL TO BE ENTITLED

AN ACT

To amend Article 2 of Chapter 2 of Title 26 of the Official Code of Georgia Annotated, relating to adulteration and misbranding of food, so as to change certain provisions relating to prohibited acts; to provide requirements for testing of samples or specimens of foods by food processing plants for the presence of poisonous or deleterious substances or other contaminants rendering such foods injurious to health or otherwise unfit for consumption; to provide for rules and regulations; to change certain provisions relating to right of entry in food establishments and transport vehicles and examination of samples obtained; to provide for inspection of records; to provide for related matters; to provide an effective date; to repeal conflicting laws; and for other purposes.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF GEORGIA:

**SECTION 1.**

Article 2 of Chapter 2 of Title 26 of the Official Code of Georgia Annotated, relating to adulteration and misbranding of food, is amended in Code Section 26-2-22, relating to prohibited acts, by adding a new paragraph to read as follows:

"(5.1) The failure to comply with testing, reporting, or record-keeping requirements provided by or pursuant to Code Section 26-2-27.1;"

**SECTION 2.**

Said article is further amended by adding a new Code section to read as follows:

"26-2-27.1.

(a)(1) In order to protect the public health, safety, and welfare and ensure compliance with this article, the Commissioner shall by rule or regulation establish requirements for regular testing of samples or specimens of foods by food processing plants for the presence of poisonous or deleterious substances or other contaminants rendering such foods injurious to health or otherwise unfit for consumption. Such rules or regulations shall identify the specific classes or types of food processing plants, foods, and poisonous

26 or deleterious substances or other contaminants that shall be subject to such testing
27 requirements and the frequency with which such tests shall be performed by food
28 processing plants, provided that any required test shall be performed not less than
29 annually by a plant that is subject to such testing requirement.
30 (2) In addition to any regular tests required pursuant to paragraph (1) of this subsection,
31 the Commissioner may order any food processing plant to have samples or specimens of
32 its foods tested for the presence of any poisonous or deleterious substances or other
33 contaminants whenever in his or her determination there are reasonable grounds to
34 suspect that such foods may be injurious to health or otherwise unfit for consumption.
35 (3) If a food processing plant has reasonable grounds to suspect the presence of any
36 poisonous or deleterious substance or other contaminant rendering any of its foods
37 injurious to health or otherwise unfit for consumption, such plant shall report the same
38 to the department not later than the next business day after becoming aware of such
39 grounds for suspicion.
40 (b) Any test required pursuant to this Code section shall be performed by qualified
41 personnel at a laboratory approved by the department.
42 (c) A food processing plant shall be responsible for the cost of any testing required
43 pursuant to this Code section.
44 (d) If as a result of testing required pursuant to this Code section the presence of a
45 poisonous or deleterious substance or other contaminant rendering a food injurious to
46 health or otherwise unfit for consumption is detected, such result shall be reported by the
47 food processing plant to the department not later than the next business day after the receipt
48 of such result from the laboratory.
49 (e) Records of the results of any tests required pursuant to this Code section shall be kept
50 by a food processing plant and made available to the department for inspection for a period
51 of not less than two years from the date the results were reported by the laboratory.
52 (f) This Code section shall not apply to any food processing plant operating under a federal
53 grant of inspection from the United States Department of Agriculture Food Safety and
54 Inspection Service."

55 **SECTION 3.**

56 Said article is further amended by revising Code Section 26-2-36, relating to right of entry
57 in food establishments and transport vehicles and examination of samples obtained, as
58 follows:
59 "26-2-36.
60 (a) The Commissioner or his duly authorized agent shall have free access at all reasonable
61 hours to any factory, warehouse, or establishment in which food is manufactured,

62 processed, packed, or held for introduction into commerce and any vehicle being used to
63 transport or hold such foods to commerce for the purposes:
64 (1) Of inspecting such factory, warehouse, establishment, or vehicle, and any records of
65 testing of samples or specimens of foods for the presence of poisonous or deleterious
66 substances or other contaminants and the results thereof as may be required pursuant to
67 Code Section 26-2-27.1, to determine if any of the provisions of this article are being
68 violated; and
69 (2) Of securing samples or specimens of any food, after paying or offering to pay for
70 such sample.
71 (b) It shall be the duty of the Commissioner to make or cause to be made examinations of
72 samples secured under subsection (a) of this Code section to determine whether or not this
73 article is being violated."

74 **SECTION 4.**

75 This Act shall become effective upon its approval by the Governor or upon its becoming law
76 without such approval.

77 **SECTION 5.**

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