

The House Committee on Agriculture & Consumer Affairs offers the following substitute to HB 1669:

A BILL TO BE ENTITLED
AN ACT

1 To amend Chapter 8 of Title 2 of the Official Code of Georgia Annotated, relating to
2 agricultural commodities promotion, so as to create the Agricultural Commodities
3 Commission for Beef and provide for its members, powers, duties, and procedures; to define
4 certain terms; to provide for marketing orders and assessments related thereto; to provide
5 penalties for violations; to provide for enforcement; to provide a contingent effective date;
6 to provide for contingent repeal; to repeal conflicting laws; and for other purposes.

7 BE IT ENACTED BY THE GENERAL ASSEMBLY OF GEORGIA:

8 **SECTION 1.**

9 Chapter 8 of Title 2 of the Official Code of Georgia Annotated, relating to agricultural
10 commodities promotion, is amended by adding a new article to read as follows:

11 "ARTICLE 4

12 2-8-90.

13 This article shall apply only to the Agricultural Commodity Commission for Beef.

14 2-8-91.

15 As used in this article, the term:

16 (1) 'Advertising and sales promotion' means, in addition to the ordinarily accepted
17 meaning thereof, trade promotion and activities for the prevention, modification, or
18 removal of trade barriers which restrict the normal flow of beef to market and may
19 include the presentation of facts to and negotiations with state, federal, or foreign
20 governmental agencies on matters which affect the marketing of beef included in any
21 marketing order made effective pursuant to this article.

22 (2) 'Beef' means flesh of cattle and beef products.

23 (3) 'Beef products' means edible products produced in whole or in part from beef,
24 excluding milk and products made therefrom.

1 (4) 'Cattle' means live domesticated bovine animals, regardless of age.

2 (5) 'Commission' means the Agricultural Commodity Commission for Beef created under
3 this article.

4 (6) 'Market agent' means any person who sells, offers for sale, markets, distributes,
5 trades, or processes cattle that have been purchased or acquired from a producer or that
6 are marketed on behalf of a producer or any meat packing firm or its agent that purchases
7 or consigns to purchase cattle.

8 (7) 'Marketing order' means an order issued pursuant to this article prescribing rules and
9 regulations governing producer marketing or the processing, distributing, or handling in
10 any manner of cattle or beef within this state or establishing an assessment for financing
11 the programs established under this article.

12 (8) 'Person' means an individual, firm, corporation, association, or any other business
13 unit or any combination thereof and includes any state agency which engages in any of
14 the commercial activities regulated pursuant to this article.

15 (9) 'Producer' means any person who owns or acquires ownership of cattle, except that
16 a person shall not be considered to be a producer if the person's only share in the
17 proceeds of a sale of cattle or beef is a sales commission, handling fee, or other service
18 fee.

19 (10) 'Producer marketing' or 'marketed by producers' means any or all operations
20 performed by any producer in preparing for market and includes selling, delivering, or
21 disposing of, for commercial purposes, cattle which he or she has produced to any market
22 agent as defined in this Code section.

23 (11) 'Retailer' means any person who purchases or acquires beef for resale at retail to the
24 general public for consumption off the premises; however, such person shall also be
25 included within the definition of 'market agent,' as set forth in this Code section, to the
26 extent that he or she engages in the business of a market agent as defined in this Code
27 section.

28 2-8-92.

29 (a) The Agricultural Commodity Commission for Beef shall be composed of 11 members
30 as follows:

31 (1) Six members who shall be producers actively engaged in the beef cattle business;

32 (2) Three members who shall own or have significant interest in a business actively
33 engaged in the marketing of cattle; and

34 (3) Two members who shall be producers actively engaged in the dairy cattle business.

35 The members of the commission shall be appointed by a committee consisting of the
36 Commissioner, the chairperson of the House of Representatives Committee on Agriculture

1 and Consumer Affairs, and the chairperson of the Senate Agriculture and Consumer Affairs
2 Committee. Prior to making such appointments, the committee shall seek significant input
3 from members of the cattle industry.

4 (b)(1) Initial appointments of those members described in paragraph (1) of subsection
5 (a) of this Code section shall be made for two members for a term of two years each from
6 the effective date of this article and until their successors are appointed and qualified, two
7 members for a term of three years each from the effective date of this article and until
8 their successors are appointed and qualified, and two members for a term of four years
9 each from the effective date of this article and until their successors are appointed and
10 qualified. Thereafter, successors shall be appointed for a term of three years each from
11 the effective date of their appointment and until their successors are appointed and
12 qualified.

13 (2) Initial appointments of those members described in paragraph (2) of subsection (a)
14 of this Code section shall be made for one member for a term of two years from the
15 effective date of this article and until a successor is appointed and qualified, one member
16 for a term of three years from the effective date of this article and until a successor is
17 appointed and qualified, and one member for a term of four years from the effective date
18 of this article and until a successor is appointed and qualified. Thereafter, successors shall
19 be appointed for a term of three years each from the effective date of their appointment
20 and until their successors are appointed and qualified.

21 (3) Initial appointments of those members described in paragraph (3) of subsection (a)
22 of this Code section shall be made for one member for a term of three years from the
23 effective date of this article and until a successor is appointed and qualified and one
24 member for a term of four years from the effective date of this article and until a
25 successor is appointed and qualified. Thereafter, successors shall be appointed for a term
26 of three years each from the effective date of their appointment and until their successors
27 are appointed and qualified.

28 (c) Vacancies in the offices of appointed members shall be filled by appointment, in like
29 manner as the original appointment, for the unexpired term. Any appointed member shall
30 be eligible for reappointment.

31 (d) The appointed members of the commission shall receive compensation and
32 reimbursement of expenses as shall be provided by the commission, and such funds shall
33 be payable from the funds of the commission.

34 (e) It shall be the duty of the Commissioner to certify to the Secretary of State the
35 membership of the commission and each change in membership as the same occurs.

1 2-8-93.

2 (a) The commission is authorized to appoint advisory boards, special committees, and
3 individuals, including technical and clerical personnel, to advise, aid, and assist the
4 commission in the performance of its duties. Compensation for such services shall be fixed
5 by the commission and may be paid from the funds of the commission. The Attorney
6 General shall represent the commission in legal matters and shall be the attorney for the
7 commission. If the Attorney General determines that outside legal counsel is necessary or
8 desirable in connection with any legal matter of the commission, he or she shall so inform
9 the commission and, upon approval of the commission, he or she shall employ such outside
10 counsel. Compensation for such outside counsel shall be agreed upon between such counsel
11 and the Attorney General, subject to the approval of the commission. Such compensation
12 shall be paid from the funds of the commission. Neither Code Section 16-10-9 nor any
13 other law shall prohibit or be applicable to the employment of such counsel.

14 (b) The commission is authorized to accept donations, gifts, and other property and to use
15 the same for commission purposes. The commission may exercise the powers and authority
16 conferred by law upon corporations.

17 (c) The commission shall continue as a public corporation and instrumentality of the State
18 of Georgia until abolished by law or until terminated by referendum.

19 (d) The commission is authorized to acquire, lease as lessee, purchase, hold, own, and use
20 any franchise or real or personal property, whether tangible or intangible, or any interest
21 therein and, whenever the same is no longer required for purposes of the commission, to
22 sell, lease as lessor, transfer, or dispose thereof or to exchange the same for other property
23 or rights which are useful for its purposes.

24 2-8-94.

25 The commission shall be a public corporation and an instrumentality of the State of
26 Georgia. By that name, style, and title, the commission may contract and be contracted
27 with, implead and be impleaded, and complain and defend in all courts. The commission
28 shall name its chairperson and determine a quorum for the transaction of business. The
29 commission shall assume the duties and exercise the authority provided in this article
30 without further formality than that provided in this article. Each member of the commission
31 shall be a public officer and shall take an oath of office faithfully to perform his or her
32 duties. Such oath shall be administered by the Governor or some other person qualified to
33 administer oaths. The fact of a member's election shall be certified to the Secretary of
34 State, who shall issue the appropriate commission under the seal of his or her office.

1 2-8-95.

2 The commission is authorized and it shall be its duty to receive, collect, and disburse the
3 funds of the commission.

4 2-8-96.

5 Funds received by the commission under this article shall be held in trust for the
6 commission. Such funds shall be deposited, accounted for, and disbursed in the same
7 manner as the funds of this state but shall not be required to be deposited in the state
8 treasury and appropriated therefrom as are other state funds. It is the express intent and
9 purpose of this article to authorize the receipt, collection, and disbursement by the
10 commission of such funds as trust funds of the commission without complying with the
11 requirement applicable to funds collected for the use and benefit of the state.

12 2-8-97.

13 Any persons who handle funds under this article shall be bonded with good and sufficient
14 surety in an amount determined by the commission for the accounting of any and all funds
15 coming into their hands. All checks, drafts, and negotiable instruments which are drawn
16 on or payable from the funds of the Agricultural Commodity Commission for Beef shall
17 be signed by either the chairperson or treasurer of the commission. It shall be the duty of
18 the commission to elect annually a treasurer from among the membership of the
19 commission. The treasurer shall have such powers and perform such duties as shall be
20 provided by the commission.

21 2-8-98.

22 The members and employees of the commission shall not be held responsible individually
23 in any way whatsoever to any producer, market agent, or any other person for errors in
24 judgment, mistakes, or other acts, either of commission or omission, as principal, agent,
25 person, or employee, except for their own individual acts of dishonesty or crime. No such
26 person or employee shall be held responsible individually for any act or omission of any
27 other member of the commission. The liability of the members of the commission shall be
28 several and not joint and no member shall be liable for the default of any other member.

29 2-8-99.

30 The commission is authorized to confer with and to make any information obtained
31 pursuant to this article available to the duly constituted governmental authorities of this
32 state, of other states, of political subdivisions of this state or other states, and of the United
33 States who, by reason of their duties, have legitimate concern with the subject and to

1 cooperate with all such authorities for the purpose of obtaining administrative uniformity
2 and achieving the objectives of this article.

3 2-8-100.

4 (a) The commission is authorized to issue, administer, and enforce the provisions of
5 marketing orders.

6 (b)(1) Whenever the commission has reason to believe that the issuance of a marketing
7 order or amendments to an existing marketing order will tend to effectuate the declared
8 policy of this chapter with respect to beef, it shall, either upon its own motion or upon the
9 application of any producer or any organization of such persons, give due notice of and
10 an opportunity for a public hearing upon a proposed marketing order or amendments to
11 an existing marketing order.

12 (2) Notice of any hearing called for such purpose shall be given by the commission by
13 publishing a notice of such hearing for a period of not less than five days in a newspaper
14 of general circulation published in the capital of the state and in such other newspapers
15 as the commission may prescribe. No such public hearing shall be held prior to five days
16 after the last day of such period of publication. The commission shall also mail a copy
17 of such notice of hearing and a copy of such proposed marketing order or proposed
18 amendments to all producers whose names and addresses appear upon lists of such
19 persons on file with the commission and who may be directly affected by the provisions
20 of such proposed marketing order or such proposed amendments. Such notice of hearing
21 shall in all respects comply with the requirements of Chapter 13 of Title 50, the 'Georgia
22 Administrative Procedure Act.'

23 (3) The hearing shall be public and all testimony shall be received under oath. A full and
24 complete record of the proceedings at such hearing shall be made and maintained on file
25 in the office of the commission. The hearing shall, in all respects, be conducted in
26 accordance with Chapter 13 of Title 50, the 'Georgia Administrative Procedure Act.' The
27 hearing may be conducted by the commission or by a member of the commission, as may
28 be designated by the commission in each instance, but no decision shall be made based
29 on hearings conducted other than by the commission itself, at which a majority of the
30 members thereof are present, until the members of the commission have been afforded
31 an opportunity to review the hearing record. Where the commission conducts hearings,
32 its recommendation shall be based on the findings reached after a review of the record
33 of the hearing.

34 (c)(1) In order to provide the commission with accurate and reliable information with
35 respect to the persons who may be directly affected by any proposed marketing order for
36 beef when such information is not then on file with the commission, the commission is

1 authorized and directed, whenever the commission has reason to believe that the issuance
2 of a marketing order will tend to effectuate the declared policy of this chapter or upon
3 receipt of a written application for a hearing pursuant to subsection (b) of this Code
4 section, to notify all market agents, by publication of a notice as required in paragraph
5 (2) of this subsection, to file with the commission within ten days from the last date of
6 such publication a report, properly certified, showing:

7 (A) The correct name and address of such market agent;

8 (B) The quantities of cattle affected by the proposed marketing order handled by such
9 market agent in the calendar year next preceding the filing of such report;

10 (C) The correct names and addresses of all producers who may be directly affected by
11 such proposed marketing order, from whom such market agent received cattle in the
12 calendar year next preceding the filing of such report; and

13 (D) The quantities of cattle received by such market agent from each such producer in
14 the calendar year next preceding the filing of such report.

15 (2) The notice to market agents requiring them to file a report shall be published by the
16 commission for a period of not less than five days in a newspaper of general circulation
17 published in the capital of the state and in such other newspaper or newspapers as the
18 commission may prescribe. The commission shall also mail a copy of such notice to all
19 market agents whose names and addresses appear upon the lists on file with the
20 commission who may be directly affected by such proposed marketing order.

21 (3) Each market agent directly affected by a proposed marketing order shall file his or
22 her verified report with the commission within the time specified in paragraph (1) of this
23 subsection. Failure or refusal of any market agent to file such report shall not invalidate
24 any proceeding taken or marketing order issued. The commission is authorized and
25 directed to proceed upon the basis of such information and reports as may otherwise be
26 available.

27 (4) From the reports so filed and the information so received or available to the
28 commission, including any proper corrections, the commission shall prepare a list of the
29 names and addresses of such producers and the quantities of cattle produced or marketed
30 by all such producers and a list of the names and addresses of such market agents and the
31 quantities of cattle handled by all such market agents, directly affected by such proposed
32 marketing order or amendments thereto, in the preceding calendar year. Such lists shall
33 constitute complete and conclusive lists for use in any finding made by the commission
34 pursuant to subsection (a) of Code Section 2-8-102 and such findings shall be conclusive.

35 (5) The information contained in the individual reports of market agents filed with the
36 commission pursuant to this Code section shall not be made public in such form. The
37 information contained in such reports may be prepared in combined form for use by the

1 commission, its agents, or other interested persons in the formulation, administration, and
2 enforcement of a marketing order or may be made available pursuant to court order. Such
3 information shall not be made available to anyone for private purposes.

4 2-8-101.

5 If, upon the basis of the record of testimony and documentary evidence received at the
6 hearing provided for in Code Section 2-8-100 and the facts officially noticed therein from
7 official publications or institutions of recognized standing, the commission determines that
8 the issuance of a marketing order or an amendment will tend to effectuate the intent and
9 purpose of this article, it may recommend the promulgation of a marketing order or
10 amendment with respect to the matters specified in the hearing notice and supported by the
11 record, containing any or all of the following provisions, but no others:

12 (1) Provisions for the establishment of plans for advertising and sales promotion to
13 maintain present markets or to create new or larger markets for cattle raised or marketed
14 in this state or for the prevention, modification, or removal of trade barriers which
15 obstruct the normal flow of beef to market. The commission is authorized to prepare,
16 issue, administer, and enforce plans for promoting the sale of beef, provided that any such
17 plan shall be directed toward promoting and increasing the sale, use, and utilization of
18 beef without reference to a particular brand or trade name; and provided, further, that no
19 advertising or sales promotion program shall be issued by the commission which makes
20 use of false or unwarranted claims in behalf of any such product or disparages the quality,
21 value, sale, or use of any other agricultural commodity;

22 (2) Provisions prohibiting unfair trade practices by which any producer or market agent
23 tends toward establishment of monopoly, unfairly discriminates among customers as to
24 price or quality, or engages in fraudulent, deceptive, or misleading representations,
25 concealment, or other similar sharp business practices which are harmful to his, her, or
26 its customers, injurious to competitors, likely to bring into disrepute persons generally
27 engaged in production and handling of beef, or detrimental to the intent and purpose of
28 this article;

29 (3) Provisions for carrying on research studies in promoting the production, marketing,
30 sale, use and utilization, processing, and improvement of cattle or beef or any
31 combination thereof and for the expenditure of moneys for such purposes. In any research
32 carried on under this paragraph, the commission shall seek the cooperation of the dean
33 of the College of Agricultural and Environmental Sciences of the University of Georgia
34 in selecting the research project or projects to be carried on from time to time. Insofar as
35 practicable, the commission shall seek to have such projects carried out by the College
36 of Agricultural and Environmental Sciences but, if the dean of the college determines that

1 the college has no facilities for a particular project or if the commission determines that
2 some other research agency has better facilities therefor, the project may be carried out
3 by other research agencies selected by the commission; and

4 (4) Provisions establishing or providing authority for establishing, either as cattle are
5 produced or delivered by producers to market agents or as cattle or beef is handled or
6 otherwise prepared for market or as cattle or beef is marketed by producers or market
7 agents, an educational program designed to acquaint producers, market agents, or other
8 interested persons with quality improvement, including sanitation practices, procedures,
9 or methods as applied to cattle or beef.

10 2-8-102.

11 (a)(1) Except as otherwise provided by subsection (i) of this Code section, no
12 marketing order or major amendment thereto, directly affecting producers or producer
13 marketing, issued pursuant to this article shall be made effective by the commission
14 unless the commission finds that such marketing order or amendment thereto has been
15 approved or favored in a referendum among producers directly affected by a majority
16 of the valid votes cast in such referendum and the total number of valid votes cast
17 represents not less than 10 percent of the total number of producers of record with the
18 commission.

19 (2) If the commission determines that a referendum shall be had, the commission shall
20 establish a referendum period of 30 days. At the close of such referendum period, the
21 commission shall count and tabulate the ballots filed during such period. If from such
22 tabulation the commission finds that the number of producers voting in favor of such
23 marketing order or amendment thereto is a majority of those casting valid votes and the
24 total number of valid votes cast represents not less than 10 percent of the total number of
25 producers of record with the commission, the commission may make such marketing
26 order or amendment thereto effective. The commission is authorized to prescribe such
27 additional procedures as may be necessary to conduct such referendum.

28 (3) In the event of the failure of any proposed marketing order to be approved, no
29 additional referendum thereon shall be held during a period of 12 months from the date
30 of the close of the previous referendum period.

31 (b)(1) Upon the recommendation of a majority of the members of the commission, the
32 commission may make effective minor amendments to a marketing order. The
33 commission may require a public hearing upon minor amendments if in its opinion the
34 substance of such minor amendments so warrants. The commission, however, shall not
35 be required to submit minor amendments for referendum approval.

1 (2) In making effective major amendments to a marketing order, the commission shall
2 follow the same procedures prescribed in this article for the institution of a marketing
3 order. For the purpose of this article, a major amendment to a marketing order shall
4 include, but shall not be limited to, any amendment which adds to or deletes from any
5 such marketing order any of the following types of regulations or authorizations:

6 (A) Authority for the establishment of plans for advertising and sales promotion of
7 cattle or beef;

8 (B) Authority to prohibit unfair trade practices;

9 (C) Authority for carrying out research studies in the production, processing, or
10 distribution of cattle or beef;

11 (D) Authority to increase an assessment rate beyond the maximum rate authorized by
12 the marketing order in effect; or

13 (E) Authority to extend the application of the provisions of any marketing order to
14 portions or uses of cattle or beef not previously subject to such provisions or to restrict
15 or extend the application of such provisions upon the producers or market agents of
16 such portions or uses of such cattle or beef.

17 (3) Modification of any provisions of any marketing order in effect, for the purpose of
18 clarifying the meaning or application of such provisions or of modifying administrative
19 procedures for carrying out such provisions, are declared not to be a major amendment
20 of such marketing order.

21 (c) Upon the issuance of any order making effective a marketing order or any suspension,
22 amendment, or termination thereof, a notice thereof shall be posted on a public bulletin
23 board maintained at the offices of the commission; and a copy of such notice shall be
24 published as the commission may prescribe. No marketing order nor any suspension,
25 amendment, or termination thereof shall become effective until the termination of a period
26 of five days from the date of such posting and publication. It shall also be the duty of the
27 commission to mail a copy of the notice of such issuance to all persons directly affected
28 by the terms of such marketing order, suspension, amendment, or termination whose names
29 and addresses are on file in the office of the commission and to every person who files in
30 the office of the commission a written request for such notice.

31 (d) The commission shall have the power, consistent with this article and in accordance
32 with marketing orders and agreements made effective under this article, to establish such
33 general rules and regulations for uniform application to all marketing orders issued under
34 this article as may be necessary to facilitate the administration and enforcement of such
35 marketing orders. The provisions of subsection (c) of this Code section relative to posting,
36 publication, and time of taking effect shall be applicable to any such general rule or
37 regulation established pursuant to this subsection and applicable to marketing orders

1 generally. Such notice shall be furnished by the commission for each marketing order in
2 active operation.

3 (e) The commission shall have the power, consistent with this article, to establish
4 administrative rules and regulations for each marketing order issued and made effective as
5 may be necessary to facilitate the supervision, administration, and enforcement of each
6 such order. The provisions of subsection (c) of this Code section relative to posting,
7 publication, mailing of notice, and time of taking effect shall be applicable to any such
8 administrative rules and regulations.

9 (f) Unless extended as provided in this Code section, all marketing orders issued under the
10 authority of this article shall expire, terminate, and become of no force and effect at the
11 expiration of five years from the date of the issuance of the original marketing order or, if
12 such marketing order has been extended, at the expiration of five years after the date of any
13 such extension.

14 (g) A marketing order shall be extended for a period of five years after the date of its
15 original expiration only if extension of such marketing order has been approved or favored
16 in a referendum among producers directly affected by at least 60 percent of the valid votes
17 cast in such referendum and the total number of valid votes cast represents not less than 10
18 percent of the total number of producers of record with the commission.

19 (h) If the commission determines that a referendum shall be held, the commission shall
20 establish a referendum period of 30 days, such referendum period to terminate at least 30
21 days prior to the expiration date of the marketing order which is the subject of such
22 referendum. At the close of such referendum period, the commission shall count and
23 tabulate the ballots cast during such period. If from such tabulation the commission finds
24 that the number of producers voting in favor of the extension of such marketing order is not
25 less than 60 percent of the total number of valid ballots cast and the total number of valid
26 ballots cast represents not less than 10 percent of the total number of producers of record
27 with the commission, then such marketing order shall be extended for a period of five years
28 after the expiration date; otherwise, the marketing order shall expire, terminate, and be of
29 no force and effect as provided in subsection (f) of this Code section.

30 (i) In lieu of the procedures provided by this Code section, the commission may elect to
31 follow the procedures and requirements provided by Code Section 2-8-23 for purposes of
32 making marketing orders or amendments or extensions thereof effective pursuant to
33 referendum or assent.

1 2-8-103.

2 Marketing orders issued by the commission under this article may be limited in their
3 application by prescribing the marketing areas or portions of the state in which a particular
4 order shall be effective, provided that no marketing order shall be issued by the
5 commission unless it embraces all persons of a like class who are engaged in a specific and
6 distinctive agricultural industry or trade within this state.

7 2-8-104.

8 (a)(1) For the purpose of providing funds to defray the necessary expenses incurred by
9 the commission in the formulation, issuance, administration, and enforcement of each
10 marketing order issued under this article, each such marketing order shall provide for the
11 levying and collection of assessments in sufficient amounts to defray such expenses. Each
12 marketing order shall indicate the maximum rate of any such assessment which may be
13 collected and the proportion, if any, payable by each producer and market agent directly
14 regulated or affected by such marketing order. In administering such marketing order, the
15 commission shall adopt, from time to time, budgets to cover necessary expenses and the
16 assessment rate necessary to provide sufficient funds. If the commission finds that each
17 such budget and assessment rate are proper and equitable and will provide sufficient
18 moneys to defray the necessary expenses, it may approve such budget and rate of
19 assessment and order that each producer and market agent so assessed shall pay to the
20 commission, at such times and in such installments as the commission may prescribe, an
21 assessment, based upon the units in which beef is marketed or upon any other uniform
22 basis which the commission determines to be reasonable and equitable, but in amounts
23 which (A) in the case of producers will not exceed 2 1/2 percent of the gross dollar
24 volume of sales of the cattle affected by all such producers regulated by such marketing
25 order, or (B) in the case of market agents will not exceed 2 1/2 percent of the gross dollar
26 volume of purchases of cattle affected by the marketing order from producers or of the
27 gross dollar volume of sales of cattle affected by the marketing order and handled by all
28 such market agents regulated by such marketing order during the period during which
29 such marketing order is effective.

30 (2) No assessments levied and collected under this subsection shall be used in carrying
31 out any advertising or sales promotion plans.

32 (b)(1) Each marketing order which authorizes the carrying out of advertising and sales
33 promotion plans shall provide for the levying and collection of assessments in sufficient
34 amounts to defray the expenses of such activities. Each such marketing order shall
35 indicate the maximum rate of any such assessment and the proportion, if any, payable by
36 each producer and market agent directly regulated or affected by such marketing order.

1 The commission shall adopt budgets to cover such expenses and establish the assessment
2 rate necessary to provide sufficient funds. If the commission finds that each such budget
3 and assessment rate are proper and equitable and will provide sufficient moneys to defray
4 such expenses, it may approve such budget and approve and levy such assessment. Any
5 assessments so established shall be based upon the units in which cattle are marketed or
6 upon any other uniform basis which the commission determines to be proper and
7 equitable. Any assessment rates established under this subsection shall be in amounts not
8 to exceed 4 percent of the gross dollar volume of sales by all producers or by all market
9 agents regulated by such marketing order during the period during which such marketing
10 order is effective.

11 (2) Assessments levied and collected under this subsection shall be the only assessments
12 used in carrying out advertising or sales promotion plans for purposes of this article.

13 (3) Any producer may at any time elect not to be subject to any assessment levied for
14 purposes of this subsection, and any producer who has so elected in accordance with this
15 paragraph shall be exempt from levy, not be assessed, and have no liability for
16 assessment for purposes of this subsection. Any producer who has so elected may
17 thereafter cancel such election at any time, in which event the producer's exemption shall
18 cease. Any such election or cancellation by a producer shall be submitted in writing to
19 the commission, in such form and manner as specified by the Commissioner.

20 (c) At no time shall the combined amount of assessments in effect pursuant to subsections
21 (a) and (b) of this Code section exceed \$1.00 per head of cattle.

22 (d) In the event that the commission has reason to believe that the administration of a
23 marketing order will be facilitated or the attainment of the purposes and objectives of the
24 marketing order will be promoted thereby, the commission is authorized to borrow money,
25 with or without interest, to carry out any provision of any marketing order authorized by
26 this article and may hypothecate anticipated assessment collections applicable to such
27 respective provisions.

28 (e) In lieu of requiring advance deposits for defraying administrative or advertising and
29 sales promotion expenses until such time as sufficient moneys are collected for such
30 purposes from the payment of assessments established pursuant to this Code section, the
31 commission is authorized to receive and disburse for such purposes contributions made by
32 producers or market agents. The commission shall not be held responsible for the
33 repayment of such contributions, provided that whenever collections from the payment of
34 established assessments credited to the respective marketing order accounts are sufficient
35 so to warrant, the commission shall repay contributions or shall authorize the application
36 of such contributions to the assessment obligations of the persons who made such
37 contributions.

1 (f)(1) Each and every market agent for which an assessment has been established by or
2 pursuant to this article shall, at the time of purchasing or acquiring any such cattle from
3 the producer thereof, collect from such producer the assessment established by or in
4 accordance with this article and remit the same to the commission. The liability of such
5 market agent under this article shall not be discharged except upon receipt of such sums
6 by the commission. For the purpose of this subsection, to ensure compliance with this
7 Code section, and for the administrative convenience of the commission in enforcing
8 payment and collection of such assessments, delivery by a producer to a market agent for
9 processing of any cattle upon which an assessment has been established shall be deemed
10 a sale of such cattle within the meaning of this Code section; and the assessment shall
11 thereupon attach and become due, regardless of whether such market agent actually
12 purchases such cattle for himself or herself or only processes same for a consideration
13 payable by the producer or another person and such cattle are thereafter sold to another
14 person, provided that upon collection of such assessment by the market agent to whom
15 such cattle are so delivered for processing only, no further or additional assessment shall
16 attach or become due by reason of the subsequent sale by such producer of such
17 processed cattle to another person or market agent.

18 (2) This subsection shall not apply to an assessment against a producer from which such
19 producer is exempt under subsection (b) of this Code section.

20 (g) The commission may prescribe such rules as may be necessary and reasonable for the
21 orderly reporting and transmitting of assessments by market agents and may take all legal
22 action necessary to enforce payment of the same by market agents. The commission is
23 authorized to issue executions for the same in like manner as executions are issued for ad
24 valorem property taxes due the state. It shall be the duty of each and every sheriff of this
25 state and their lawful deputies, upon the request of the commission, to levy and collect such
26 executions and to make their return thereof to the commission in like manner as such tax
27 executions are levied and return thereof made to county tax collectors and tax
28 commissioners. The commission shall likewise be authorized to collect, by execution as
29 provided in this subsection or otherwise, directly from the producer against whom any
30 assessment levied under this Code section may be found due whenever it is determined that
31 such producer has sold such affected cattle giving rise to such liability to a person other
32 than to a market agent who has collected such assessment and is required by this Code
33 section to remit the same to the commission. Furthermore, the commission may proceed
34 against such producer and the purchaser of such cattle simultaneously if the purchaser is
35 a market agent required to collect such assessment, until satisfaction is obtained.

36 (h) Any moneys collected by the commission pursuant to this article shall be deposited in
37 a bank or other depository approved by the commission and shall be disbursed by the

1 commission only for the necessary expenses incurred by the commission, as approved by
2 the commission. Funds so collected shall be deposited and disbursed in conformity with
3 appropriate rules and regulations prescribed by the commission. All such expenditures by
4 the commission shall be audited at least annually by the state auditor and a copy of such
5 audit shall be delivered within 30 days after the completion thereof to the Governor and the
6 commission. If the commission is abolished, any funds remaining in its hands at such time
7 shall be used to pay the existing obligations of the commission and the expenses incurred
8 in winding up the affairs of the commission. Any excess remaining shall escheat to the
9 state and shall be paid into the state treasury as unclaimed trust funds.

10 (i) Moneys deposited by the commission pursuant to this Code section which the
11 commission determines are available for investment may be invested or reinvested by the
12 commission as provided for funds of this state or of any retirement system created by law,
13 provided that all moneys invested shall be invested in those areas of production that will
14 provide a return at the highest bank interest rate available. It shall be the duty of the
15 commission annually to review these investments and determine whether they are in
16 compliance with this Code section.

17 2-8-105.

18 (a) Any assessment levied or established in accordance with this article in such specified
19 amount as may be determined by the commission pursuant to this article shall constitute
20 a personal debt of every person so assessed and shall be due and payable to the commission
21 when payment is called for by the commission. In the event of the failure of such person
22 to pay any such assessment upon the date determined by the commission, the commission
23 may file an action against such person in a court of competent jurisdiction for the collection
24 thereof.

25 (b) In the event that any producer or market agent duly assessed pursuant to this article
26 fails to pay to the commission the amount so assessed on or before the date specified by
27 the commission, the commission is authorized to add to such unpaid assessment an amount
28 not exceeding 10 percent of such unpaid assessment to defray the cost of enforcing the
29 collection of such unpaid assessment.

30 (c) The provisions of subsection (a) of this Code section with respect to collection of
31 assessments by action are in addition to and cumulative of the provisions of this article
32 authorizing the issuance of executions for assessments by the commission. The 10 percent
33 penalty authorized to be assessed upon delinquent assessments under subsection (b) of this
34 Code section may likewise be included in any execution issued by the commission. Such
35 remedies may be pursued concurrently until satisfaction is obtained upon either. Any

1 penalty recovered shall become a part of the principal assessment levied and shall be for
2 the use of the commission as are other moneys received under this article.

3 (d) This Code section shall not apply to an assessment against a producer from which such
4 producer is exempt under subsection (b) of Code Section 2-8-104.

5 2-8-106.

6 (a) The commission may require any and all market agents subject to the provisions of any
7 marketing order issued pursuant to this article:

8 (1) To maintain books and records reflecting their operations under the marketing order;

9 (2) To furnish to the commission or its duly authorized or designated representatives
10 such information as may from time to time be requested by them relating to operations
11 under the marketing order; and

12 (3) To permit inspection by the commission or its duly authorized or designated
13 representatives of such portions of such books and records as relate to operations under
14 the marketing order.

15 (b) Information obtained by any person under this Code section shall be confidential and
16 shall not be disclosed by him or her to any other person, except to a person with like right
17 to obtain the information or to any attorney employed to give legal advice thereupon or by
18 court order.

19 (c) In order to carry out the purposes of this Code section, the commission may hold
20 hearings, take testimony, administer oaths, subpoena witnesses, and issue subpoenas for
21 the production of books, records, or documents of any kind.

22 2-8-107.

23 Any person who violates any provision of this article or any marketing order duly issued
24 by the commission and in effect under this article or who violates any rule or regulation
25 issued by the commission pursuant to this article or of any marketing order duly issued and
26 effective under this article shall be civilly liable to the commission for a penalty in an
27 amount not to exceed \$500.00 for each and every violation thereof, the amount of such
28 penalty to be fixed by the commission after notice and hearing as provided by Chapter 13
29 of Title 50, the 'Georgia Administrative Procedure Act,' for contested cases and recoverable
30 by a civil action brought in the name of the commission or by execution issued in like
31 manner as for assessments provided by Code Section 2-8-104. Any moneys recovered
32 pursuant to this Code section shall be deposited and disbursed in accordance with
33 subsection (e) of Code Section 2-8-104 as are other moneys.

1 2-8-108.

2 (a) The Attorney General of this state shall, upon complaint by the commission, or may,
3 upon his or her own initiative if after examination of the complaint and evidence he or she
4 believes a violation has occurred, bring an action in the superior court in the name of the
5 commission for civil penalties or for injunctive relief, including specific performance of
6 any obligation imposed by a marketing order or any rule or regulation issued under this
7 article, or both, against any person violating any provisions of this article or of any
8 marketing order or any rule or regulation duly issued by the commission under this article.

9 (b) If it appears to the court, upon any application for a temporary restraining order, upon
10 the hearing of any order to show cause why a preliminary injunction should not be issued,
11 or upon the hearing of any motion for a preliminary injunction, or if the court finds in any
12 such action that any defendant therein is violating or has violated any provision of this
13 article or of any marketing order or any rule or regulation duly issued by the commission
14 under this article, then the court shall enjoin the defendant from committing further
15 violations and may compel specific performance of any obligation imposed by a marketing
16 order or any rule or regulation issued by the commission under this article. It shall not be
17 necessary in such event to allege or prove lack of an adequate remedy at law.

18 (c) In any action brought by the Attorney General to enforce any of the provisions of this
19 article or of any marketing order issued by the commission and effective under this article
20 or of any rule or regulation issued by the commission pursuant to any marketing order, the
21 judgment, if in favor of the commission, may provide that the defendant pay to the
22 commission the costs incurred by the commission in the prosecution of such action.

23 2-8-109.

24 (a) The commission on its own motion may, and upon the complaint of any interested
25 party charging a violation of any provision of this article or of any provision of any
26 marketing order or any rule or regulation issued by the commission and effective under this
27 article shall, either refer the matter directly to the Attorney General of this state or to any
28 prosecuting attorney of this state for the institution of legal proceedings thereupon or, if the
29 commission deems it necessary or advisable, immediately call an administrative hearing,
30 pursuant to the provisions of Chapter 13 of Title 50, the 'Georgia Administrative Procedure
31 Act,' governing contested cases, to consider the charges set forth in such verified
32 complaint.

33 (b) In case the matter is referred directly by the commission to the Attorney General or any
34 prosecuting attorney, it shall be the duty of such officer, if after examination of the
35 complaint and the evidence he or she believes that a violation has occurred, to bring an
36 appropriate action or actions in a court or courts of competent jurisdiction in this state.

1 (c) After an administrative hearing, if the commission finds that a violation has occurred,
2 it shall enter its findings and notify the parties to such complaint. In its discretion, the
3 commission shall either refer the matter to the Attorney General for the institution of legal
4 proceedings or notify such parties to cease and desist from further violation. Upon the
5 refusal or failure of such parties to comply or if the commission finds that the facts or
6 circumstances warrant immediate prosecution, the commission shall file a complaint with
7 the Attorney General or with any prosecuting attorney of this state requesting that such
8 officer commence any or all actions authorized in this article against such respondent or
9 respondents in a court of competent jurisdiction.

10 2-8-110.

11 (a) Any person who willfully renders or furnishes a false or fraudulent report, statement,
12 or record required pursuant to this article or any marketing order effective under this article
13 shall be guilty of a misdemeanor.

14 (b) Any market agent or other person engaged in the handling or processing of cattle or
15 beef or in the wholesale or retail trade thereof who fails or refuses to furnish, upon request,
16 information concerning the name and address of the person from whom he or she has
17 received cattle or beef regulated by a marketing order issued and in effect under this article
18 and the quantity of such cattle or beef received shall be guilty of a misdemeanor.

19 2-8-111.

20 Any person who violates any provision of this article or any provision of any marketing
21 order duly issued by the commission under this article shall be guilty of a misdemeanor.

22 2-8-112.

23 The penalties and remedies prescribed in this article with respect to any violation
24 mentioned shall be concurrent and alternative. Neither singly nor combined shall such
25 penalties and remedies be exclusive; rather, either singly or combined, such penalties and
26 remedies shall be cumulative with any and all other civil, criminal, or alternative rights,
27 remedies, forfeitures, or penalties provided or allowed by law with respect to any such
28 violation.

29 2-8-113.

30 This article shall not be applicable to any retailer of beef except to the extent that any
31 retailer is included within the definition of 'market agent' pursuant to paragraph (11) of
32 Code Section 2-8-91.

1 2-8-114.

2 The promulgation, adoption, and amendment of rules and regulations by the commission
3 shall be subject to the requirements of Chapter 13 of Title 50, the 'Georgia Administrative
4 Procedure Act.'"

5 **SECTION 2.**

6 This Act shall become effective if and when the decision of the United States Court of
7 Appeals for the Eighth Circuit in the case of *Livestock Marketing Association v. United*
8 *States Department of Agriculture*, Nos. 02-2769/2832, slip. op. (8th Cir. July 8, 2003),
9 holding the collection of mandatory assessments to pay for generic advertising of beef and
10 beef products under the federal Beef Promotion and Research Act of 1985, 7 U.S.C. Section
11 2901, et seq., unconstitutional as a violation of the First Amendment to the Constitution of
12 the United States, is affirmed by the United States Supreme Court; provided, however, that
13 if a petition for writ of certiorari is denied in such case or such petition is granted but the
14 decision of the United States Court of Appeals for the Eighth Circuit is not affirmed prior to
15 July 1, 2006, this Act shall not become effective and shall stand repealed on July 1, 2006.

16 **SECTION 3.**

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