

Senate Bill 380

By: Senators Kemp of the 46th, Hudgens of the 47th, Bulloch of the 11th, Tolleson of the 20th, Cagle of the 49th and others

A BILL TO BE ENTITLED
AN ACT

1 To amend Article 2 of Chapter 8 of Title 2 of the Official Code of Georgia Annotated,
2 relating to agricultural commodity commissions generally, so as to make certain provisions
3 for an agricultural commodity commission for equines; to change certain provisions relating
4 to definitions relative to said article; to change certain provisions relating to composition,
5 appointments, terms of office, and compensation of commodity commission members,
6 certification of membership to the Secretary of State, advisory boards, special committees,
7 personnel, legal representation, eligibility of federation or organization members, acceptance
8 of donations, voting, and termination; to change certain provisions relating to authorization
9 for issuance of marketing orders, notice, public hearing, record, reports from handlers,
10 compilation of lists of producers and handlers, and use of information in reports; to change
11 certain provisions relating to assessments to defray expenses, borrowing in anticipation of
12 collections, use and repayment of contributions in lieu of advance deposits, collection and
13 enforcement of assessments generally, disposition and investment of proceeds, and audits;
14 to repeal conflicting laws; and for other purposes.

15 BE IT ENACTED BY THE GENERAL ASSEMBLY OF GEORGIA:

16 **SECTION 1.**

17 Article 2 of Chapter 8 of Title 2 of the Official Code of Georgia Annotated, relating to
18 agricultural commodity commissions generally, is amended by striking Code Section 2-8-11,
19 relating to definitions relative to such article, and inserting in lieu thereof the following:

20 "2-8-11.

21 As used in this article, the term:

22 (1) 'Advertising and sales promotion' means, in addition to the ordinarily accepted
23 meaning thereof, trade promotion and activities for the prevention, modification, or
24 removal of trade barriers which restrict the normal flow of agricultural commodities to
25 market and may include the presentation of facts to and negotiations with state, federal,

1 or foreign governmental agencies on matters which affect the marketing of any
2 commodity or commodities included in any marketing order made effective pursuant to
3 this article.

4 (2) 'Agricultural commodity' means any and all agricultural, horticultural, floricultural,
5 and vegetable products produced in this state or any class, variety, or utilization thereof,
6 either in their natural state or as processed by a producer for the purpose of marketing
7 such product or by a processor as defined in this Code section, and shall include any one,
8 any combination thereof, or all of the agricultural products, livestock and livestock
9 products, poultry and poultry products, timber and timber products, fish and seafood, and
10 the products of the farms and forests of this state. For the purpose of this article, the term
11 'agricultural commodity' shall not mean or include peanuts.

12 (3) 'Commission' means each and every agricultural commodity commission created
13 under this article.

14 (4) 'Distributor' means any person who engages in the operation of selling, marketing,
15 or distributing an agricultural commodity other than equines, which he or she has
16 produced or has purchased or acquired from a producer or which he or she is marketing
17 on behalf of a producer, whether as owner, agent, employee, broker, or otherwise, but
18 shall not include a retailer as defined in this Code section, except a retailer who purchases
19 or acquires from, or handles on behalf of, any producer, an agricultural commodity not
20 theretofore subjected to regulation by the marketing order covering such commodity.

21 (5) 'Handler' means any person engaged within this state as a distributor in the business
22 of distributing an agricultural commodity other than equines or any person engaged as
23 a processor in the business of processing an agricultural commodity other than equines.

24 (6) 'Marketing order' means an order issued pursuant to this article prescribing rules and
25 regulations governing the processing, distributing, or handling in any manner of any
26 agricultural commodity within this state or establishing an assessment for financing the
27 programs established under this article.

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

31 (8) 'Processor' means any person engaged within this state in the operation of receiving,
32 grading, packing, canning, fermenting, distilling, extracting, preserving, grinding,
33 crushing, or changing the form of an agricultural commodity other than equines for the
34 purpose of preparing such agricultural commodity for market or of marketing such
35 commodity or engaged in any other activities performed for the purpose of preparing
36 such commodity for market or of marketing such commodity but shall not include a
37 person engaged in manufacturing another and different product from an agricultural

1 commodity, so changed in form. The term 'processor' shall not include an agent of the
 2 processor nor any person who receives an agricultural commodity for or on the account
 3 of another person.

4 (9) 'Producer' means ~~any~~:

5 (A) Any person engaged within this state in the business of producing or causing to be
 6 produced for market any agricultural commodity as defined in this Code section other
 7 than equines; or

8 (B) When the affected agricultural commodity is equines, any person who owns,
 9 breeds, or trains equines.

10 (10) 'Producer marketing' or 'marketed by producers' means any or all operations
 11 performed by any producer in preparing for market and includes selling, delivering, or
 12 disposing of, for commercial purposes, any agricultural commodity which he or she has
 13 produced to any handler as defined in this Code section.

14 (11) 'Retailer' means any person who purchases or acquires any agricultural commodity
 15 for resale at retail to the general public for consumption off the premises; however, such
 16 person shall also be included within the definition of 'distributor,' as set forth in this Code
 17 section, to the extent that he or she engages in the business of a distributor as defined in
 18 this Code section.

19 (12) 'Seasonal marketing regulations' means marketing regulations, applicable to a
 20 particular marketing order, made effective as prescribed in this article for the purpose of
 21 carrying into effect, by administrative order, the marketing regulatory authorizations and
 22 the provisions of such marketing order, as such authorizations or provisions may be
 23 applicable to or required by changing economic or marketing conditions and
 24 requirements from time to time during each marketing season in which such marketing
 25 order may operate. Such seasonal marketing regulations shall not extend beyond the
 26 marketing order concerned; nor shall they modify or change the language of such
 27 marketing order.

28 (13) 'To distribute' means to engage in the business of a distributor as defined in this
 29 Code section.

30 (14) 'To handle' means to engage in the business of a handler as defined in this Code
 31 section.

32 (15) 'To process' means to engage in the business of a processor as defined in this Code
 33 section."

34 SECTION 2.

35 Said article is further amended by striking subsection (a) of Code Section 2-8-14, relating to
 36 composition, appointments, terms of office, and compensation of commodity commission

1 members, certification of membership to the Secretary of State, advisory boards, special
 2 committees, personnel, legal representation, eligibility of federation or organization
 3 members, acceptance of donations, voting, and termination, and inserting in lieu thereof the
 4 following:

5 "(a) Each commission shall be composed of:

6 (1) The Commissioner of Agriculture, ex officio;

7 (2) The president of the Georgia Farm Bureau Federation, ex officio;

8 (3) One member, to serve as an ex officio member of all commissions, elected by the
 9 ~~Agriculture Committee of the Senate~~ Senate Agriculture and Consumer Affairs
 10 Committee with a quorum present and a majority of those present concurring, who shall
 11 be a producer of an affected agricultural commodity and shall not be a member of the
 12 General Assembly;

13 (4) One member, to serve as an ex officio member of all commissions, elected by the
 14 House Committee on Agriculture and Consumer Affairs ~~Committee of the House of~~
 15 ~~Representatives~~ with a quorum present and a majority of those present concurring, who
 16 shall be a producer of an affected agricultural commodity and shall not be a member of
 17 the General Assembly; and

18 (5) Five additional members, who shall be producers of the affected agricultural
 19 commodity, to be appointed by the ex officio members of the commission; for the
 20 purposes of the appointment of such five additional members, the two members elected
 21 by each of the agriculture committees of the General Assembly, who shall serve as
 22 members of each commission, shall be deemed to be ex officio members."

23 SECTION 3.

24 Said article is further amended by striking subsection (c) of Code Section 2-8-21, relating to
 25 authorization for issuance of marketing orders, notice, public hearing, record, reports from
 26 handlers, compilation of lists of producers and handlers, and use of information in reports,
 27 and inserting in lieu thereof the following:

28 "(c)(1)(A) In order to provide the Commissioner or the commission with accurate and
 29 reliable information with respect to the persons who may be directly affected by any
 30 proposed marketing order for any agricultural commodity other than equines when such
 31 information is not then on file in the department, the Commissioner or the commission
 32 is authorized and directed, whenever the Commissioner or the commission has reason
 33 to believe that the issuance of a marketing order will tend to effectuate the declared
 34 policy of this article or upon receipt of a written application for a hearing pursuant to
 35 subsection (b) of this Code section, to notify all handlers of such agricultural
 36 commodity, by publication of a notice as required in paragraph (2) of this subsection,

1 to file with the Commissioner or the commission within ten days from the last date of
 2 such publication a report, properly certified, showing:

3 ~~(A)~~(i) The correct name and address of such handler;

4 ~~(B)~~(ii) The quantities of the agricultural commodity affected by the proposed
 5 marketing order handled by such handler in the marketing season next preceding the
 6 filing of such report;

7 ~~(C)~~(iii) The correct names and addresses of all producers of such agricultural
 8 commodity who may be directly affected by such proposed marketing order, from
 9 whom such handler received such agricultural commodity in the marketing season
 10 next preceding the filing of such report; and

11 ~~(D)~~(iv) The quantities of such agricultural commodity received by such handler from
 12 each such producer in the marketing season next preceding the filing of such report.

13 (B) In order to provide the Commissioner or the commission with accurate and reliable
 14 information with respect to the persons who may be directly affected by any proposed
 15 marketing order for equines when such information is not then on file in the
 16 department, the Commissioner or the commission is authorized and directed, whenever
 17 the Commissioner or the commission has reason to believe that the issuance of a
 18 marketing order will tend to effectuate the declared policy of this article or upon receipt
 19 of a written application for a hearing pursuant to subsection (b) of this Code section, to
 20 notify all producers of such agricultural commodity, by publication of a notice as
 21 required in paragraph (2) of this subsection, to file with the Commissioner or the
 22 commission within ten days from the last date of such publication a report, properly
 23 certified, showing:

24 (i) The correct name and address of such producer;

25 (ii) The quantities of equines owned, bred, or trained by such producer in the
 26 marketing season next preceding the filing of such report; and

27 (iii) The quantities of equine feed purchased by such producer in the marketing
 28 season next preceding the filing of such report.

29 (2) The notice to handlers or equine producers requiring them to file a report shall be
 30 published by the Commissioner or the commission for a period of not less than five days
 31 in a newspaper of general circulation published in the capital of the state and in such
 32 other newspaper or newspapers as the Commissioner or the commission may prescribe.
 33 The Commissioner or the commission shall also mail a copy of such notice to all handlers
 34 of such agricultural commodity or equine producers whose names and addresses appear
 35 upon the lists on file in the department who may be directly affected by such proposed
 36 marketing order.

1 (3) Each handler of an agricultural commodity or equine producer directly affected by
 2 a proposed marketing order shall file his or her verified report with the Commissioner or
 3 the commission within the time specified in paragraph (1) of this subsection. Failure or
 4 refusal of any handler or equine producer to file such report shall not invalidate any
 5 proceeding taken or marketing order issued. The Commissioner or the commission is
 6 authorized and directed to proceed upon the basis of such information and reports as may
 7 otherwise be available.

8 (4) From the reports so filed and the information so received or from information
 9 otherwise available to the Commissioner or the commission, including any proper
 10 corrections, the Commissioner or the commission shall prepare a list of the names and
 11 addresses of ~~such~~ affected producers of and the volume of such commodity produced or
 12 marketed by all such producers and, in the case of an agricultural commodity other than
 13 equines, a list of the names and addresses of such handlers and the volume of such
 14 commodity handled by all such handlers, directly affected by such proposed marketing
 15 order or amendments thereto, in the preceding marketing season. Such lists shall
 16 constitute complete and conclusive lists for use in any finding made by the Commissioner
 17 or the commission pursuant to subsection (a) of Code Section 2-8-23 and such findings
 18 shall be conclusive.

19 (5) The information contained in the individual reports ~~of handlers~~ filed with the
 20 Commissioner or the commission pursuant to this Code section shall not be made public
 21 in such form. The information contained in such reports may be prepared in combined
 22 form for use by the Commissioner or the commission, their agents, or other interested
 23 persons in the formulation, administration, and enforcement of a marketing order or may
 24 be made available pursuant to court order. Such information shall not be made available
 25 to anyone for private purposes."

26 SECTION 4.

27 Said article is further amended by striking Code Section 2-8-27, relating to assessments to
 28 defray expenses, borrowing in anticipation of collections, use and repayment of contributions
 29 in lieu of advance deposits, collection and enforcement of assessments generally, disposition
 30 and investment of proceeds, and audits, and inserting in lieu thereof the following:

31 "2-8-27.

32 (a)(1) For the purpose of providing funds to defray the necessary expenses incurred by
 33 the Commissioner or the commission in the formulation, issuance, administration, and
 34 enforcement of each marketing order issued under this article, each such marketing order
 35 shall provide for the levying and collection of assessments in sufficient amounts to defray
 36 such expenses. Each marketing order shall indicate the maximum rate of any such

1 assessment which may be collected and the proportion, if any, payable by each producer
 2 and handler directly regulated or affected by such marketing order. In administering such
 3 marketing order, the commission shall adopt, from time to time, budgets to cover
 4 necessary expenses and the assessment rate necessary to provide sufficient funds. If the
 5 commission finds that each such budget and assessment rate are proper and equitable and
 6 will provide sufficient moneys to defray the necessary expenses, it may approve such
 7 budget and rate of assessment and order that each producer and handler so assessed shall
 8 pay to the Commissioner or the commission, at such times and in such installments as the
 9 commission may prescribe, an assessment;

10 (2)(A) In the case of an agricultural commodity other than equines, the assessment
 11 under this subsection shall be based upon the units in which such agricultural
 12 commodity is marketed or upon any other uniform basis which the commission
 13 determines to be reasonable and equitable, but in amounts which (1) in the case of
 14 producers will not exceed 2 1/2 percent of the gross dollar volume of sales of the
 15 commodity affected by all such producers regulated by such marketing order, or (2) in
 16 the case of processors, distributors, or other handlers will not exceed 2 1/2 percent of
 17 the gross dollar volume of purchases of the commodity affected by the marketing order
 18 from producers or of the gross dollar volume of sales of the commodity affected by the
 19 marketing order and handled by all such processors, distributors, or other handlers
 20 regulated by such marketing order during the marketing season or seasons during which
 21 such marketing order is effective.

22 (B) In the case of equines:

23 (i) The assessment under this subsection shall be based upon the amount of equine
 24 feed sold to a producer during the preceding calendar year, and the marketing order
 25 shall specify the means of collection of the assessment; and

26 (ii) The marketing order shall establish a voluntary contribution program for
 27 producers who grow equine feed for their own operations and do not pay an
 28 assessment but who wish to financially support the formulation, issuance,
 29 administration, and enforcement of the marketing order.

30 (b)(1) Each marketing order which authorizes the carrying out of advertising and sales
 31 promotion plans shall provide for the levying and collection of assessments in sufficient
 32 amounts to defray the expenses of such activities. Each such marketing order shall
 33 indicate the maximum rate of any such assessment and the proportion, if any, payable by
 34 each producer and handler directly regulated or affected by such marketing order. The
 35 commission shall adopt budgets to cover such expenses and establish the assessment rate
 36 necessary to provide sufficient funds. If the commission finds that each such budget and
 37 assessment rate are proper and equitable and will provide sufficient moneys to defray

1 such expenses, they may approve such budget and approve and levy such assessment.

2 ~~Any assessments so established~~

3 (2)(A) In the case of an agricultural commodity other than equines, the assessment
 4 under this subsection shall be based upon the units in which such agricultural
 5 commodity is marketed or upon any other uniform basis which the commission
 6 determines to be proper and equitable. ~~Any assessment rates established under this~~
 7 ~~subsection shall be,~~ but in amounts not to exceed 4 percent of the gross dollar volume
 8 of sales by all producers or by all processors, distributors, or other handlers of such
 9 agricultural commodity regulated by such marketing order during the marketing season
 10 or seasons during which such marketing order is effective.

11 (B) In the case of equines:

12 (i) The assessment under this subsection shall be based upon the amount of equine
 13 feed sold to a producer during the preceding calendar year, and the marketing order
 14 shall specify the means of collection of the assessment; and

15 (ii) The marketing order shall establish a voluntary contribution program for
 16 producers who grow equine feed for their own operations and do not pay an
 17 assessment but who wish to financially support the advertising and sales promotion
 18 plans.

19 (c)(1) In lieu of the assessments to defray the costs of formulation, issuance,
 20 administration, and enforcement of the marketing order and of advertising or sales
 21 promotion provided for in subsections (a) and (b) of this Code section, if the marketing
 22 order contains provisions for advertising or sales promotion as authorized in this article,
 23 the commission may approve and fix one assessment ~~not exceeding.~~

24 (2)(A) In the case of an agricultural commodity other than equines, an assessment
 25 under this subsection shall be based upon the units in which such agricultural
 26 commodity is marketed or upon any other uniform basis which the commission
 27 determines to be reasonable and equitable but shall not exceed 6 1/2 percent of the
 28 gross dollar volume of sales of such commodity by all producers or by all processors,
 29 distributors, or other handlers of such agricultural commodity regulated by such
 30 marketing order during the marketing season or seasons during which such marketing
 31 order is effective.

32 (B) In the case of equines:

33 (i) The assessment under this subsection shall be based upon the amount of equine
 34 feed sold to a producer during the preceding calendar year, and the marketing order
 35 shall specify the means of collection of the assessment; and

36 (ii) The marketing order shall establish a voluntary contribution program for
 37 producers who grow equine feed for their own operations and do not pay an

1 assessment but who wish to financially support the formulation, issuance,
2 administration, and enforcement of the marketing order and the advertising and
3 sales promotion plans.

4 (3) The method and manner of assessment and collection thereof and the limitations
5 and restrictions applicable thereupon shall conform in all respects with subsection (b)
6 of this Code section, except as to the maximum amount of such assessment. In such
7 case, the commission shall approve the proportions of such assessments which may be
8 expended to defray the costs of formulation, issuance, administration, and enforcement
9 of the marketing order and of such advertising or sales promotion program, provided
10 that the proportion of such assessments which may be allocated in such manner to
11 defray the cost of such administrative activities for such marketing order shall in no
12 case exceed the maximum amount authorized in subsection (a) of this Code section.

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

19 (e) In lieu of requiring advance deposits for defraying administrative or advertising and
20 sales promotion expenses until such time as sufficient moneys are collected for such
21 purposes from the payment of assessments established pursuant to this Code section, the
22 Commissioner is authorized to receive and disburse for such purposes contributions made
23 by producers, processors, distributors, or other handlers. Neither the commission nor the
24 Commissioner shall be held responsible for the repayment of such contributions, provided
25 that whenever collections from the payment of established assessments credited to the
26 respective marketing order accounts are sufficient so to warrant, the commission shall
27 recommend and the Commissioner shall repay contributions or shall authorize the
28 application of such contributions to the assessment obligations of the persons who made
29 such contributions.

30 (f) Each and every handler of the agricultural commodities other than equines for which
31 an assessment has been established by or pursuant to this article shall, at the time of
32 purchase of any such commodity from the producer thereof, collect from such producer the
33 assessment established by or in accordance with this article and remit the same to the
34 Commissioner for the use of the commission for which the same was levied. The liability
35 of such handler under this article shall not be discharged except upon receipt of such sums
36 by the Commissioner. For the purpose of this subsection, to ensure compliance with this
37 Code section, and for the administrative convenience of the Commissioner in enforcing

1 payment and collection of such assessments, delivery by a producer to a handler for
2 processing of any agricultural commodity other than equines upon which an assessment has
3 been established shall be deemed a sale of such commodity within the meaning of this
4 Code section; and the assessment shall thereupon attach and become due, regardless of
5 whether such handler actually purchases such agricultural commodity for himself or herself
6 or only processes same for a consideration payable by the producer or another person and
7 such agricultural commodity is thereafter sold to another person, provided that upon
8 collection of such assessment by the handler to whom such agricultural commodity is so
9 delivered for processing only, no further or additional assessment shall attach or become
10 due by reason of the subsequent sale by such producer of such processed agricultural
11 commodity to another person or handler.

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

28 (h) Any moneys collected by the Commissioner or the commission pursuant to this article
29 shall be deposited in a bank or other depository approved by the commission and shall be
30 disbursed by the Commissioner only for the necessary expenses incurred by the
31 commission and the Commissioner, as approved by the commission. Funds so collected
32 shall be deposited and disbursed in conformity with appropriate rules and regulations
33 prescribed by the Commissioner. All such expenditures by the Commissioner shall be
34 audited at least annually by the state auditor and a copy of such audit shall be delivered
35 within 30 days after the completion thereof to the Governor, the Commissioner, and the
36 affected commission. If any such commission is abolished, any funds remaining in its
37 hands at such time shall be used to pay the existing obligations of such commission and the

1 expenses incurred in winding up the affairs of such commission. Any excess remaining
2 shall escheat to the state and shall be paid by the Commissioner into the state treasury as
3 unclaimed trust funds.

4 (i) Moneys deposited by the Commissioner pursuant to this Code section which the
5 commission determines are available for investment may be invested or reinvested by the
6 Commissioner as provided for funds of this state or of any retirement system created by
7 law, provided that all moneys invested shall be invested in those areas of production that
8 will provide a return at the highest bank interest rate available. It shall be the duty of the
9 commission annually to review these investments and determine that this Code section is
10 complied with."

11 **SECTION 5.**

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