

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

AS PASSED

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 Commodity
3 Commission for Equines; to define certain terms; to provide for supervision; to provide for
4 the commission and its members; to provide for officers and quorums; to provide for funds
5 of the commission; to provide certain immunity; to provide for cooperation; to provide for
6 hearings; to provide for marketing orders; to provide for amendments; to provide for
7 administration of funds; to provide an exception; to provide for related matters; to provide
8 a contingent effective date; to provide for contingent automatic repeal; to repeal conflicting
9 laws; and for other purposes.

10 BE IT ENACTED BY THE GENERAL ASSEMBLY OF GEORGIA:

11 **SECTION 1.**

12 Chapter 8 of Title 2 of the Official Code of Georgia Annotated, relating to agricultural
13 commodities promotion, is amended by striking Code Section 2-8-10, relating to
14 nonapplicability of Article 2 of said chapter, and inserting in lieu thereof the following:

15 "2-8-10.

16 This article shall not apply to the Agricultural Commodity Commission for Peanuts
17 provided for in Article 3 of this chapter, except as provided in Code Section 2-8-13; nor
18 shall this article apply to the Agricultural Commodity Commission for Equines provided
19 for in Article 4 of this chapter."

20 **SECTION 2.**

21 Said chapter is further amended by adding a new article to read as follows:

"ARTICLE 5

1

2 2-8-120.

3 This article shall apply only to the Agricultural Commodities Commission for Equines.

4 2-8-121.

5 As used in this article, the term:

6 (1) 'Advertising and sales promotion' means, in addition to the ordinarily accepted
7 meaning thereof, trade promotion and activities for the prevention, modification, or
8 removal of trade barriers which restrict the normal flow of equines to market and may
9 include the presentation of facts to and negotiations with state, federal, or foreign
10 governmental agencies on matters which affect the marketing of any equines.

11 (2) 'Commission' means the Agricultural Commodity Commission for Equines created
12 under this article.

13 (3) 'Equine' means any member of the Equidae family, including horses, mules, hinnies,
14 and asses.

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

18 (5) 'Producer' means any person who owns one or more equines or is engaged within this
19 state in the business of buying, selling, boarding, holding, training, breeding, riding,
20 pulling vehicles with, or otherwise utilizing equines for similar purposes.

21 2-8-122.

22 The Commissioner shall be authorized to exercise supervisory jurisdiction over the
23 administration and enforcement of this article. In the performance of this duty, the
24 Commissioner is authorized to utilize the personnel and facilities of the department.

25 2-8-123.

26 There is created the Agricultural Commodity Commission for Equines.

27 2-8-124.

28 (a) The commission shall be composed of:

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

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

1 (3) One member elected by the Senate Agriculture and Consumer Affairs Committee
2 with a quorum present and a majority of those present concurring, who shall be a
3 producer and shall not be a member of the General Assembly;

4 (4) One member elected by the House of Representatives Committee on Agriculture and
5 Consumer Affairs with a quorum present and a majority of those present concurring, who
6 shall be a producer and shall not be a member of the General Assembly; and

7 (5) Five additional members, all of whom shall be appointed by the members of the
8 commission specified in paragraphs (1) through (4) of this subsection. At least four of
9 such appointees shall be producers.

10 (b) The initial two members elected by the agriculture and consumer affairs committees
11 of the General Assembly shall be elected and qualification to take office for a term
12 beginning on January 1, 2007, and ending upon the election of their successors during the
13 regular 2009 session of the General Assembly. Their successors shall be elected during the
14 2009 regular session of the General Assembly; and thereafter future successors shall be
15 elected during each regular session of the General Assembly convening in odd-numbered
16 years. Such members shall be selected so that one member is from the northern part of
17 Georgia and one member is from the southern part. For purposes of this selection the
18 northern part of Georgia shall be that area north of and including Richmond, McDuffie,
19 Warren, Hancock, Baldwin, Jones, Bibb, Crawford, Upson, Talbot, and Muscogee
20 counties; and the southern part shall be that area south of such counties. The chairpersons
21 of the Senate and House committees shall by agreement determine which committee will
22 choose the member from the northern part and which committee will choose the member
23 from the southern part. Such members shall serve from the date of their election until their
24 successors are elected and qualified.

25 (c) For purposes of the appointment of additional members of the commission as provided
26 in this Code section, a list of nominees shall be requested from producers of equines.
27 Initial appointments shall be made for three members for a term of three years each from
28 the effective date of their appointment and until their successors are appointed and
29 qualified and two members for a term of two years each from the effective date of their
30 appointment and until their successors are appointed and qualified. Thereafter, successors
31 shall be appointed for a term of three years each from the effective date of their
32 appointment and until their successors are appointed and qualified. Vacancies shall be
33 filled by appointment in like manner, for the unexpired term, except that vacancies in the
34 office of a member elected by a legislative committee shall be filled for the unexpired term
35 by the legislative committee which made the previous appointment. Any appointive
36 member shall be eligible for reappointment.

1 (d)(1) The members who are state officers shall be compensated as provided by law.
2 Each such member shall be reimbursed by his or her respective department or from the
3 funds of the commission for actual and necessary expenses incurred in the performance
4 of his or her duties. Each such member who is a state officer may designate a
5 representative of his or her department to act for the officer in performing any duties
6 under this article.

7 (2) The two members elected by the agriculture and consumer affairs committees of the
8 General Assembly, as provided by subsection (a) of this Code section, shall be entitled
9 to receive, for attending meetings of the commission, the same expenses and travel
10 allowances which members of the General Assembly receive for attending meetings of
11 legislative interim committees. Such expenses and allowances shall be paid from funds
12 appropriated or otherwise available to the legislative branch of state government.

13 (3) The appointive members of the commission shall receive compensation and
14 reimbursement of expenses as shall be provided by the commission, and such funds shall
15 be payable from the funds of the commission.

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

18 (f) The commission is authorized to appoint advisory boards, special committees, and
19 individuals, including technical and clerical personnel, to advise, aid, and assist the
20 commission in the performance of its duties. Compensation for such services shall be fixed
21 by the commission and may be paid from the funds of the commission. The Attorney
22 General shall represent the commission in legal matters and shall be the attorney for the
23 commission. If the Attorney General determines that outside legal counsel is necessary or
24 desirable in connection with any legal matter of the commission, he or she shall so inform
25 the commission and, upon approval of the commission, shall employ such outside counsel.
26 Compensation for such outside counsel shall be agreed upon between such counsel and the
27 Attorney General, subject to the approval of the commission. Such compensation shall be
28 paid from the funds of the commission. Neither Code Section 16-10-9 nor any other law
29 shall prohibit or be applicable to the employment of such counsel.

30 (g) Any other provision of this article to the contrary notwithstanding, a member of any
31 federation or organization of producers shall be eligible to be appointed as a member of the
32 commission with respect to any equine produced by such federation or organization or
33 handled by it for its members who produce it.

34 (h) The commission is authorized to accept donations, gifts, grants, revenue derived from
35 the sale of special license plates as may be otherwise provided by law, and other funds or
36 property and to use the same for commission purposes. The commission may exercise the
37 powers and authority conferred by law upon corporations.

1 (i) The two members elected by the agriculture and consumer affairs committees of the
2 General Assembly, as provided by subsection (a) of this Code section, as members of the
3 commission shall be entitled to vote on matters pertaining to the organization of the
4 commission and upon the selection and nomination of the appointive members of the
5 commission. Such two members shall not be entitled to vote upon any matter pertaining
6 to the policy provisions of the commission nor shall they be entitled to vote upon the
7 expenditure of any funds of the commission.

8 (j) The commission shall continue as a public corporation and instrumentality of the State
9 of Georgia until abolished by law.

10 2-8-125.

11 The commission, with its name annexed thereto, shall be a public corporation and an
12 instrumentality of the State of Georgia. By that name, style, and title, the commission may
13 contract and be contracted with, implead and be impleaded, and complain and defend in
14 all courts. The commission shall name its chairperson and determine a quorum for the
15 transaction of business. The commission shall assume the duties and exercise the authority
16 provided in this article without further formality than that provided in this article. Each
17 member of each the commission shall be a public officer and shall take an oath of office
18 faithfully to perform his or her duties. Such oath shall be administered by the
19 Commissioner or some other person qualified to administer oaths. The fact of a member's
20 appointment shall be certified to the Secretary of State, who shall issue the appropriate
21 commission under the seal of his or her office.

22 2-8-126.

23 The Commissioner is authorized and it shall be his or her duty to receive, collect, and
24 disburse the funds of the commission qualifying and operating under this article. The
25 Commissionoiner shall disburse funds of the commission only upon the written authorization
26 of the commission.

27 2-8-127.

28 Funds received by the Commissioner under this article shall be held in trust for the
29 commission. Such funds shall be deposited, accounted for, and disbursed in the same
30 manner as the funds of this state but shall not be required to be deposited in the state
31 treasury and appropriated therefrom as are other state funds. It is the express intent and
32 purpose of this article to authorize the receipt, collection, and disbursement by the
33 Commissioner of such funds as trust funds of the commission without complying with the
34 requirement applicable to funds collected for the use and benefit of the state.

1 2-8-128.

2 Any person who handles funds under this article shall be bonded with good and sufficient
3 surety in an amount determined by the Commissioner for the accounting of any and all
4 funds coming into his or her hands.

5 2-8-129.

6 The members and employees of the commission and the Commissioner shall not be held
7 responsible individually in any way whatsoever to any producer, distributor, or other
8 person for errors in judgment, mistakes, or other acts, either of commission or omission,
9 as principal, agent, person, or employee, except for their own individual acts of dishonesty
10 or crime. No such person or employee shall be held responsible individually for any act
11 or omission of any other member of the commission. The liability of the members of the
12 commission shall be several and not joint and no member shall be liable for the default of
13 any other member.

14 2-8-130.

15 The Commissioner and the commission are authorized to confer with and to make any
16 information obtained pursuant to this article available to the duly constituted governmental
17 authorities of this state, of other states, of political subdivisions of this state or other states,
18 and of the United States who, by reason of their duties, have legitimate concern with the
19 subject and to cooperate with all such authorities for the purpose of obtaining
20 administrative uniformity and achieving the objectives of this article.

21 2-8-131.

22 (a) The Commissioner, upon the approval and request of the commission, is authorized to
23 issue, administer, and enforce the provisions of marketing orders.

24 (b)(1) Whenever the Commissioner has reason to believe that the issuance of a marketing
25 order or amendments to an existing marketing order will tend to effectuate the declared
26 policy of this article with respect to any equines, he or she shall, either upon his or her
27 own motion, upon the motion of the commission, or upon the application of any
28 producer, or any organization of such persons, give due notice of and an opportunity for
29 a public hearing upon a proposed marketing order or amendments to an existing
30 marketing order.

31 (2) Notice of any hearing called for such purpose shall be given by the Commissioner
32 or the commission by publishing a notice of such hearing for a period of not less than five
33 days in a newspaper of general circulation published in the capital of the state and in such
34 other newspapers as the Commissioner may prescribe. No such public hearing shall be

1 held prior to five days after the last day of such period of publication. Such notice of
2 hearing shall in all respects comply with the requirements of Chapter 13 of Title 50, the
3 'Georgia Administrative Procedure Act.'

4 (3) The hearing shall be public and all testimony shall be received under oath. A full and
5 complete record of the proceedings at such hearing shall be made and maintained on file
6 in the office of the Commissioner or the commission. The hearing shall, in all respects,
7 be conducted in accordance with Chapter 13 of Title 50, the 'Georgia Administrative
8 Procedure Act.' The hearing may be conducted by the commission, by a member of the
9 commission, or by the Commissioner, as may be designated by the commission in each
10 instance, but no decision shall be made based on hearings conducted other than by the
11 commission itself, at which a majority of the members thereof are present, until the
12 members of the commission have been afforded an opportunity to review the hearing
13 record. Where the commission conducts hearings, its recommendation shall be based on
14 the findings reached after a review of the record of the hearing.

15 2-8-132.

16 If, upon the basis of the record of testimony and documentary evidence received at the
17 hearing provided for in Code Section 2-8-131 and the facts officially noticed therein, the
18 commission determines that the issuance of a marketing order or an amendment will tend
19 to effectuate the intent and purpose of this article, it may recommend the promulgation of
20 a marketing order containing any one or more of the following provisions, but no others:

21 (1) Provisions for the establishment of plans for advertising and sales promotion to
22 maintain present markets or to create new or larger markets for equine grown in this state
23 or for the prevention, modification, or removal of trade barriers which obstruct the
24 normal flow of equines to market. The commission is authorized to prepare, issue,
25 administer, and enforce plans for promoting the sale of equines, provided that any such
26 plan shall be directed toward promoting and increasing the sale, use, and utilization of
27 equines without reference to a particular producer or breed; and provided, further, that
28 no advertising or sales promotion program shall be issued by the Commissioner or the
29 commission which makes use of false or unwarranted claims on behalf of any equines or
30 disparages the quality, value, sale, or use of any other agricultural commodity;

31 (2) Provisions for carrying on research studies in promoting the production, marketing,
32 sale, use and utilization, and improvement of equines or any combination thereof and for
33 the expenditure of moneys for such purposes. In any research carried on under this
34 paragraph, the Commissioner and the commission shall cooperate in selecting the
35 research project or projects to be carried on from time to time. Such projects shall be

1 carried out by postsecondary educational institutions or private organizations selected by
2 the commission;

3 (3) Provisions establishing or providing authority for establishing an educational
4 program designed to acquaint producers or the general public about the equine industry
5 and its associated issues.

6 2-8-133.

7 (a)(1) Upon the recommendation of not less than three of the appointive members of the
8 commission, the Commissioner or the commission may make effective minor
9 amendments to a marketing order. The Commissioner or the commission may require
10 a public hearing upon minor amendments if in the Commissioner's or the commission's
11 opinion the substance of such minor amendments so warrants.

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

18 (A) Authority for the establishment of plans for advertising and sales promotion of
19 equines; or

20 (B) Authority for carrying out research studies in the production or distribution of
21 equines.

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

26 (b) Upon the issuance of any order making effective a marketing order or any suspension,
27 amendment, or termination thereof, a notice thereof shall be posted on a public bulletin
28 board maintained at the Department of Agriculture; and a copy of such notice shall be
29 published as the Commissioner or the commission may prescribe. No marketing order nor
30 any suspension, amendment, or termination thereof shall become effective until the
31 termination of a period of five days from the date of such posting and publication.

32 (c) The Commissioner or the commission shall have the power, consistent with this article
33 and in accordance with marketing orders and agreements made effective under this article,
34 to establish such general rules and regulations for uniform application to all marketing
35 orders issued pursuant to this article as may be necessary to facilitate the administration
36 and enforcement of such marketing orders. The provisions of subsection (b) of this Code

1 section relative to posting, publication, and time of taking effect shall be applicable to any
2 such general rule or regulation established pursuant to this subsection and applicable to
3 marketing orders generally. Such notice shall be furnished by the Commissioner or the
4 commission for each marketing order in active operation.

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

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

16 2-8-134.

17 Marketing orders issued by the commission may be limited in their application by
18 prescribing the marketing areas or portions of the state in which a particular order shall be
19 effective, provided that no marketing order shall be issued by the commission unless it
20 embraces all persons of a like class.

21 2-8-135.

22 (a) 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 funds due to the commission as otherwise
27 provided by law and applicable to such respective provisions.

28 (b) 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 any funds due to the commission as otherwise provided by law, the
31 Commissioner is authorized to receive and disburse for such purposes contributions made
32 by producers or distributors. Neither the commission nor the Commissioner shall be held
33 responsible for the repayment of such contributions, provided that whenever collections
34 from the payment of any funds due to the commission and credited to the respective

1 marketing order accounts are sufficient so to warrant, the commission shall recommend and
2 the Commissioner shall repay contributions.

3 (c) Any moneys collected by the commission or the Commissioner pursuant to this article
4 shall be deposited in a bank or other depository approved by the commission and shall be
5 disbursed by the Commissioner only for the necessary expenses incurred by the
6 commission and the Commissioner, as approved by the commission. Funds so collected
7 shall be deposited and disbursed in conformity with appropriate rules and regulations
8 prescribed by the Commissioner. All such expenditures by the Commissioner shall be
9 audited at least annually by the state auditor and a copy of such audit shall be delivered
10 within 30 days after the completion thereof to the Governor, the Commissioner, and the
11 commission. If ever the commission is abolished by law, any funds remaining in its hands
12 at such time shall be used to pay the existing obligations of the commission and the
13 expenses incurred in winding up the affairs of the commission. Any excess remaining shall
14 escheat to the state and shall be paid by the Commissioner into the state treasury as
15 unclaimed trust funds.

16 (d) Moneys deposited by the Commissioner pursuant to this Code section which the
17 commission determines are available for investment may be invested or reinvested by the
18 Commissioner as provided for funds of this state or of any retirement system created by
19 law, provided that all moneys invested shall be invested in those areas of production that
20 will provide a return at the highest bank interest rate available. It shall be the duty of the
21 commission annually to review these investments and determine that such investments
22 comply with this Code section."

23 SECTION 3.

24 (a) This Act shall become effective on January 1, 2007, except as otherwise provided in
25 subsection (b) of this section.

26 (b) If an amendment to the Constitution of the State of Georgia authorizing the dedication
27 of revenue from sales of special license plates to agencies, funds, or nonprofit corporations
28 designated by the General Assembly is not ratified at the general election in 2006, this Act
29 shall be repealed in its entirety on January 1, 2007.

30 SECTION 4.

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