

House Bill 298 (AS PASSED HOUSE AND SENATE)

By: Representatives Dickey of the 140th, Harden of the 148th, Watson of the 172nd, Epps of the 144th, Shaw of the 176th, and others

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 Georgia Grown Products; to provide for the operation and function of the
4 commodity commission; to increase the membership for the Agricultural Commodity
5 Commission for Cotton; to exclude the Agricultural Commodity Commission for Georgia
6 Grown Products from general provisions relating to agricultural commodities promotion; to
7 repeal conflicting laws; and for other purposes.

8 BE IT ENACTED BY THE GENERAL ASSEMBLY OF GEORGIA:

9 **SECTION 1.**

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

12 "ARTICLE 4

13 2-8-90.

14 As used in this article, the term:

15 (1) 'Advertising and sales promotion' means, in addition to the ordinarily accepted
16 meaning thereof, trade promotion and activities for the prevention, modification, or
17 removal of trade barriers which restrict the normal flow of Georgia grown products to
18 market and may include the presentation of facts to and negotiations with state, federal,
19 or foreign governmental agencies on matters which affect the marketing of Georgia
20 grown products.

21 (2) 'Commission' means the Agricultural Commodity Commission for Georgia Grown
22 Products created under this article.

23 (3) 'Georgia grown products' means any agricultural, horticultural, floricultural,
24 silvicultural, or vegetable products commercially produced in this state.

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

28 (5) 'Producer' means any person engaged within this state in the business of producing
 29 or causing to be produced for market Georgia grown products.

30 (6) 'Processor' means any person engaged within this state in the operation of receiving,
 31 grading, packing, canning, extracting, preserving, grinding, crushing, milling, or
 32 changing the form of a Georgia grown product for the purpose of preparing for market
 33 or marketing such product or engaged in any other activities performed for the purpose
 34 of preparing for market or marketing such product.

35 2-8-91.

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

39 2-8-92.

40 There is created the Agricultural Commodity Commission for Georgia Grown Products.

41 2-8-93.

42 (a) The commission shall be composed of:

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

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

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

48 (4) One member elected by the House of Representatives Committee on Agriculture and
 49 Consumer Affairs who shall be a producer or processor and shall not be a member of the
 50 General Assembly; and

51 (5) Five additional members, all of whom shall be appointed by the members of the
 52 commission specified in paragraphs (1) through (4) of this subsection.

53 (b) The initial two members elected by the agriculture and consumer affairs committees
 54 of the General Assembly shall be elected and qualified to take office for a term ending
 55 upon the election of their successors during the regular 2016 session of the General
 56 Assembly. Their successors shall be elected during the 2016 regular session of the General
 57 Assembly; and thereafter future successors shall be elected during each regular session of
 58 the General Assembly convening in even-numbered years. Such members shall serve from

59 the date of their election until their successors are elected and qualified. Such members
60 shall be entitled to vote on matters pertaining to the organization of the commission and
61 upon the selection and nomination of the appointive members of the commission, but shall
62 not be entitled to vote upon any matter pertaining to the policy provisions of the
63 commission, nor shall they be entitled to vote upon the expenditure of any funds of the
64 commission.

65 (c) For purposes of the appointment of additional members of the commission as provided
66 in this Code section, a list of nominees shall be requested from producers and processors.
67 Initial appointments shall be made for three members for a term of three years each from
68 the effective date of their appointment and until their successors are appointed and
69 qualified and two members for a term of two years each from the effective date of their
70 appointment and until their successors are appointed and qualified. Thereafter, successors
71 shall be appointed for a term of three years each from the effective date of their
72 appointment and until their successors are appointed and qualified. Vacancies shall be
73 filled by appointment in like manner, for the unexpired term, except that vacancies in the
74 office of a member elected by a legislative committee shall be filled for the unexpired term
75 by the legislative committee which made the previous appointment. Any appointive
76 member shall be eligible for reappointment.

77 (d)(1) The members who are state officers shall be compensated as provided by law.
78 Each such member shall be reimbursed by his or her respective department or from the
79 funds of the commission for actual and necessary expenses incurred in the performance
80 of his or her duties.

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

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

90 (e) Each member of the commission shall be a public officer and shall take an oath of
91 office faithfully to perform his or her duties. The fact of a member's appointment shall be
92 certified to the Secretary of State, who shall issue the appropriate commission under the
93 seal of his or her office.

94 2-8-94.

95 The commission, with its name annexed thereto, shall be a public corporation and an
96 instrumentality of the State of Georgia. By that name, style, and title, the commission may
97 contract and be contracted with, implead and be impleaded, and complain and defend in
98 all courts.

99 2-8-95.

100 (a) The commission is authorized to accept donations, gifts, grants, and other funds or
101 property and to use the same for commission purposes. The commission may exercise the
102 powers and authority conferred by law upon corporations.

103 (b) Funds received by the Commissioner under this article shall be held in trust for the
104 commission. Such funds shall be deposited, accounted for, and disbursed in the same
105 manner as the funds of this state but shall not be required to be deposited in the state
106 treasury and appropriated therefrom as are other state funds. It is the express intent and
107 purpose of this article to authorize the receipt, collection, and disbursement by the
108 Commissioner of such funds as trust funds of the commission without complying with the
109 requirement applicable to funds collected for the use and benefit of the state.

110 (c) The Commissioner is authorized and it shall be his or her duty to receive, collect, and
111 disburse the funds of the commission qualifying and operating under this article. The
112 Commissioner shall disburse funds of the commission only upon the written authorization
113 of the commission.

114 (d) Any person who handles funds under this article shall be bonded with good and
115 sufficient surety in an amount determined by the Commissioner for the accounting of any
116 and all funds coming into his or her hands.

117 2-8-96.

118 The members and employees of the commission and the Commissioner shall be immune
119 from liability to the same extent as the state and state officers and employees under Article
120 2 of Chapter 21 of Title 50, 'The Georgia Tort Claims Act.'

121 2-8-97.

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

124 (b)(1) Whenever the Commissioner has reason to believe that the issuance of a marketing
125 order or amendments to an existing marketing order will tend to effectuate the declared
126 policy of this article with respect to any Georgia grown product, he or she shall, either
127 upon his or her own motion, upon the motion of the commission, upon the application of

128 any producer, or any organization of such persons, give due notice of and an opportunity
129 for a public hearing upon a proposed marketing order or amendments to an existing
130 marketing order.

131 (2) Notice of any hearing called for such purpose shall be given by the Commissioner
132 or the commission by publishing a notice of such hearing for a period of not less than five
133 days in a newspaper of general circulation published in the capital of this state and in
134 such other newspapers as the Commissioner may prescribe. No such public hearing shall
135 be held prior to five days after the last day of such period of publication. Such notice of
136 hearing shall in all respects comply with the requirements of Chapter 13 of Title 50, the
137 'Georgia Administrative Procedure Act.'

138 (3) The hearing shall be public and all testimony shall be received under oath. A full and
139 complete record of the proceedings at such hearing shall be made and maintained. The
140 hearing shall, in all respects, be conducted in accordance with Chapter 13 of Title 50, the
141 'Georgia Administrative Procedure Act.' The hearing may be conducted by the
142 commission, by a member of the commission, or by the Commissioner, as may be
143 designated by the commission in each instance, but no decision shall be made based on
144 hearings conducted other than by the commission itself, at which a majority of the
145 members thereof are present, until the members of the commission have been afforded
146 an opportunity to review the hearing record. Where the commission conducts hearings,
147 its recommendation shall be based on the findings reached after a review of the record
148 of the hearing.

149 2-8-98.

150 If, upon the basis of the record of testimony and evidence received at the hearing provided
151 for in Code Section 2-8-97, the commission determines that the issuance of a marketing
152 order or amendment will tend to effectuate the intent and purpose of this article, it may
153 recommend the promulgation of a marketing order containing any one or more of the
154 following provisions, but no others:

155 (1) Provisions for the establishment of plans for advertising and sales promotion to
156 maintain present markets or to create new or larger markets for Georgia grown products
157 in this state or for the prevention, modification, or removal of trade barriers which
158 obstruct the normal flow of Georgia grown products to market. The commission is
159 authorized to prepare, issue, administer, and enforce plans for promoting the sale of
160 Georgia grown products, provided that any such plan shall be directed toward promoting
161 and increasing the sale, use, and utilization of Georgia grown products only, without
162 reference to any other brand or trade name; provided, further, that no advertising or sales
163 promotion program shall be issued by the commission which makes use of false or

164 unwarranted claims on behalf of or disparages the quality, value, sale, or use of any other
 165 commodity;

166 (2) Provisions for carrying on research studies in promoting the production, marketing,
 167 sale, use and utilization, and improvement of Georgia grown products or any combination
 168 thereof and for the expenditure of moneys for such purposes; and

169 (3) Provisions establishing or providing authority for establishing an educational
 170 program designed to acquaint producers or the general public about Georgia grown
 171 products.

172 2-8-99.

173 (a)(1) Upon the recommendation of not fewer than three of the appointive members of
 174 the commission, the Commissioner or the commission may make effective minor
 175 amendments to a marketing order. The Commissioner or the commission may require
 176 a public hearing upon minor amendments if in the Commissioner's or the commission's
 177 opinion the substance of such minor amendments so warrants.

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

184 (A) Authority for the establishment of plans for advertising and sales promotion of
 185 Georgia grown products;

186 (B) Authority to increase an assessment rate beyond the maximum rate authorized by
 187 the marketing order in effect;

188 (C) Extension of the termination date of any marketing order; or

189 (D) Authority for carrying out research studies in the production or distribution of
 190 Georgia grown products.

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

195 (b) Upon the issuance of any order making effective a marketing order or any suspension,
 196 amendment, or termination thereof, a notice thereof shall be posted on a public bulletin
 197 board maintained at the Department of Agriculture; and a copy of such notice shall be
 198 published as the Commissioner or the commission may prescribe. No marketing order nor

199 any suspension, amendment, or termination thereof shall become effective until the
200 termination of a period of five days from the date of such posting and publication.

201 (c) The Commissioner or the commission shall have the power, consistent with this article
202 and in accordance with marketing orders and amendments made effective under this article,
203 to establish such general rules and regulations for uniform application to all marketing
204 orders issued pursuant to this article as may be necessary to facilitate the administration
205 and enforcement of such marketing orders. The provisions of subsection (b) of this Code
206 section relative to posting, publication, and time of taking effect shall be applicable to any
207 such general rule or regulation established pursuant to this subsection and applicable to
208 marketing orders generally. Such notice shall be furnished by the Commissioner or the
209 commission for each marketing order in active operation.

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

216 (e) Unless extended as provided in this article, all marketing orders issued under the
217 authority of this article shall terminate at the expiration of one year from the date of the
218 issuance of the original marketing order or, if such marketing order has been extended, at
219 the expiration of one year after the date of any such extension.

220 2-8-100.

221 (a) For the purpose of providing funds to defray the necessary expenses incurred by the
222 commission in the formulation, issuance, administration, and enforcement of any marketing
223 order which authorizes the carrying out of advertising and sales promotion plans, such
224 order shall provide for the levying of assessments upon producers or processors utilizing
225 the Georgia grown trademark. Such orders shall be in sufficient amounts to defray the
226 expenses of such activities. Each such order shall indicate the maximum rate of any such
227 assessment. The commission shall adopt budgets to cover such expenses and establish the
228 assessment rate necessary to provide sufficient funds. If the commission finds that each
229 such budget and assessment rate is proper and equitable and will provide sufficient moneys
230 to defray such expenses, they may approve such budget and approve and levy such
231 assessment.

232 (b) The commission may prescribe such rules as may be necessary and reasonable for the
233 orderly collection of assessments and may take all legal action necessary to enforce
234 payment of such assessments.

235 2-8-101.

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

240 2-8-102.

241 (a) Any moneys collected by the commission or the Commissioner pursuant to this article
242 shall be deposited in a bank or other depository approved by the commission and shall be
243 disbursed by the Commissioner only for the necessary expenses incurred by the
244 commission and the Commissioner, as approved by the commission. Funds so collected
245 shall be deposited and disbursed in conformity with appropriate rules and regulations
246 prescribed by the Commissioner. All such expenditures by the Commissioner shall be
247 audited at least annually by the state auditor and a copy of such audit shall be delivered
248 within 30 days after the completion thereof to the Governor, the Commissioner, and the
249 commission. If ever the commission is abolished by law, any funds remaining in its hands
250 at such time shall be used to pay the existing obligations of the commission and the
251 expenses incurred in winding up the affairs of the commission. Any excess remaining shall
252 escheat to the state and shall be paid by the Commissioner into the state treasury as
253 unclaimed trust funds.

254 (b) Moneys deposited by the Commissioner pursuant to this Code section which the
255 commission determines are available for investment may be invested or reinvested by the
256 Commissioner as provided for funds of this state or of any retirement system created by
257 law, provided that all moneys invested shall be invested in those areas of production that
258 will provide a return at the highest bank interest rate available. It shall be the duty of the
259 commission to annually review these investments and determine that such investments
260 comply with this Code section.

261 2-8-103.

262 (a) The Attorney General of this state shall represent the commission in legal matters and
263 shall be the attorney for the commission.

264 (b) The Attorney General shall, upon complaint by the commission, bring an action in the
265 superior court in the name of the commission for civil penalties or for injunctive relief,
266 including specific performance of any obligation imposed by a marketing order or any rule
267 or regulation issued under this article, or both, against any person violating any provisions
268 of this article or of any marketing order or any rule or regulation duly issued by the

269 commission under this article. It shall not be necessary in such event to allege or prove
 270 lack of an adequate remedy at law.

271 2-8-104.

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

274 2-8-105.

275 The commission is empowered to make all necessary rules and regulations for the purpose
 276 of carrying out the purposes of this article. The promulgation, adoption, and amendment
 277 of rules and regulations by the commission shall be subject to the requirements of Chapter
 278 13 of Title 50, the 'Georgia Administrative Procedure Act.'

279 **SECTION 2.**

280 Said chapter is further amended by revising Code Section 2-8-10, relating to nonapplicability
 281 of Article 2 of Chapter 8 of Title 2, as follows:

282 "2-8-10.

283 This article shall not apply to the Agricultural Commodity Commission for Peanuts
 284 provided for in Article 3 of this chapter, except as provided in Code Section 2-8-13; nor
 285 shall this article apply to the Agricultural Commodity Commission for Equines provided
 286 for in Article 4 ~~5~~ of this chapter; nor shall this article apply to the Agricultural Commodity
 287 Commission for Georgia Grown Products provided for in Article 4 of this chapter."

288 **SECTION 3.**

289 Said chapter is further amended in Code Section 2-8-14, relating to the composition and
 290 membership of agricultural commodity commissions, by revising paragraph (5) of subsection
 291 (a) as follows:

292 "(5) Five additional members, who shall be producers of the affected agricultural
 293 commodity, to be appointed by the ex officio members of the commission; provided,
 294 however, that for the Agricultural Commodity Commission for Cotton, the number of
 295 additional members appointed pursuant to this paragraph shall be seven. for the For
 296 purposes of the appointment of such ~~five~~ additional members, the two members elected
 297 by each of the agriculture committees of the General Assembly, who shall serve as
 298 members of each commission, shall be deemed to be ex officio members."

299 **SECTION 4.**

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