

Article 50D.

Tobacco Growers Assessment Act.

**§ 106-568.40. Title.**

This Article shall be known as the "Tobacco Growers Assessment Act." (2013-311, s. 1.)

**§ 106-568.41. Purpose.**

It is in the public interest for the State to enable growers of tobacco to assess themselves in order to raise funds to promote the interests of tobacco growers. This assessment shall be in addition to the assessment authorized by Article 50C of Chapter 106 of the General Statutes to promote export sales of tobacco and the assessment authorized by Article 50A of Chapter 106 of the General Statutes for tobacco research. (2013-311, s. 1.)

**§ 106-568.42. Definitions.**

The following definitions apply in this Article:

- (1) Association. – The Tobacco Growers Association of North Carolina, Inc., a North Carolina nonprofit corporation.
- (2) Buyer. – Any person engaged in the business of buying tobacco from a producer of tobacco grown in North Carolina, including a broker, dealer, or agent of the buyer.
- (3) Department. – The North Carolina Department of Agriculture and Consumer Services.
- (4) Person. – An individual, a partnership, a firm, or a corporation.
- (5) Tobacco. – Flue-cured tobacco.
- (6) Tobacco grower. – A person who (i) is a North Carolina resident, (ii) owns, manages, or has a financial interest in tobacco production, and (iii) is actively involved in tobacco production. (2013-311, s. 1.)

**§ 106-568.43. Referendum.**

(a) The Association may conduct among tobacco growers a referendum upon the question of whether an assessment shall be levied on tobacco produced in this State.

(b) The Association shall determine the amount of the proposed assessment and the date by which the referendum ballot must be returned by mail as provided in this section.

(c) The amount of the proposed assessment shall be stated on the referendum ballot. The amount may not exceed fifteen cents (15¢) for each hundred pounds of tobacco produced in this State. If the assessment is approved in the referendum, the Association may set the assessment at an amount equal to or less than the amount stated on the ballot. If the Association sets a lower amount than the amount approved by referendum, it may increase the amount annually without a referendum by no more than one cent (1¢) for each hundred pounds of tobacco produced in this State. The increased rate may not exceed the amount approved by referendum and may not exceed the maximum allowable rate of fifteen cents (15¢) for each hundred pounds.

(d) The Association shall mail a referendum ballot to all known tobacco growers in the State for whom the Association has a current and valid mailing address at least three months prior to the date the ballot must be returned. Additionally, the Association must, for the greater of three months or 90 days before the date the ballot must be returned, (i) provide a printable referendum ballot on the Association's official Web site and (ii) make hard copies of the referendum ballot available at all county North Carolina Cooperative Extension Service offices. The ballots shall be

returned to the Commissioner of Agriculture by the date set by the Association. The Department shall be responsible for counting the votes and reporting the results of the referendum to the Association.

(e) All tobacco growers may vote in the referendum. Any dispute over eligibility to vote or any other matter relating to the referendum shall be determined by the Association. The Association shall make reasonable efforts to provide tobacco growers with notice of the referendum and an opportunity to vote. (2013-311, s. 1; 2014-115, s. 42.7(a).)

**§ 106-568.44. Payment and collection of assessment.**

(a) The assessment shall not be collected unless more than two-thirds of the votes cast in the referendum are in favor of the assessment. If more than two-thirds of the votes cast in the referendum are in favor of the assessment, then the Association shall notify the Department of the amount of the assessment and the effective date of the assessment. The Department shall notify all tobacco buyers of the assessment.

(b) Each tobacco grower shall pay the assessment on all tobacco produced in this State and sold to a buyer.

(c) A buyer shall collect the assessment when buying tobacco produced in this State by deducting the assessment from the price paid to the grower. The buyer shall remit collected assessments to the Department no later than the 10th day of the following month. The Department shall provide forms to buyers for reporting the assessment. If the total assessments collected by a buyer in a month are less than twenty-five dollars (\$25.00), the buyer may keep the assessments until the total amount due is at least twenty-five dollars (\$25.00) or the end of the calendar quarter, whichever comes first. All buyers shall file at least one report in each calendar quarter in which they purchase tobacco from a grower, regardless of the amount due.

(d) A buyer shall keep records of the amount of tobacco purchased and the date purchased. All information or records regarding purchases of tobacco by individual buyers shall be kept confidential by employees or agents of the Department and the Association and shall not be disclosed except by court order.

(e) The Association may bring an action to recover any unpaid assessments, plus the reasonable costs, including attorneys' fees, incurred in the action. (2013-311, s. 1; 2014-115, s. 42.7(b).)

**§ 106-568.45. Use of assessments; refunds; annual audit.**

(a) At least once per month, the Department shall remit all funds collected under this Article to the Association. The Association shall use the funds to promote the interests of tobacco growers. The Association shall prepare an annual report on the assessment funds collected and the use of assessment funds. The Association shall publicly post the annual report on its official Web site at least 30 days before the Association's annual meeting. Copies of the annual report shall be made available to growers at the Association's annual meeting, and a copy shall also be sent to the Commissioner of Agriculture.

(b) A tobacco grower may request a refund of the assessment collected under this Article by submitting a written request for a refund to the Association postmarked on or before December 31 of the same year. A refund request shall be accompanied by proof of payment of the assessment satisfactory to the Association. The Association shall mail a refund to the grower within 30 days of receipt of a properly documented refund request.

(c) The Association shall designate a third party to conduct an annual audit of the implementation of this Article. The Association shall also designate the time at which the audit may be conducted each year, provided that the results of the audit be available before or in conjunction with the annual report. (2013-311, s. 1.)

**§ 106-568.46. Termination of assessment.**

Upon receipt of a petition signed by at least ten percent (10%) of the tobacco growers in North Carolina known to the Association, the Department shall notify the Association, and the Association shall, within six months, conduct a referendum upon the question of continuing the assessment. If a majority of the votes cast in the referendum are against continuing the assessment, or if the Association fails to conduct a referendum within the six-month period, the assessment expires at the end of the six-month period. If a majority of the votes cast in the referendum are in favor of continuing the assessment, then no subsequent referendum shall be held for at least three years. (2013-311, s. 1.)