

## CHAPTER 2

## (HB 287)

AN ACT relating to porcine animal assessment referendums.

*Be it enacted by the General Assembly of the Commonwealth of Kentucky:*

SECTION 1. A NEW SECTION OF KRS CHAPTER 247 IS CREATED TO READ AS FOLLOWS:

*As used in Sections 1 to 15 of this Act, unless the context otherwise requires:*

- (1) *"Association" means any commission, council, board, or other body;*
- (2) *"Producer" means every person who produces and markets porcine animals; and*
- (3) *"New producer" means a producer who was not engaged in the business of producing porcine animals at the time a referendum was conducted in accordance with the provisions of Sections 1 to 15 of this Act.*

SECTION 2. A NEW SECTION OF KRS CHAPTER 247 IS CREATED TO READ AS FOLLOWS:

*No association meeting or activity undertaken to carry out the provisions of Sections 1 to 15 of this Act and intended to benefit all of the producers, handlers, and processors of porcine animals shall be deemed or considered illegal or in restraint of trade.*

SECTION 3. A NEW SECTION OF KRS CHAPTER 247 IS CREATED TO READ AS FOLLOWS:

- (1) *Any existing association which is fairly representative of the porcine animal producers of Kentucky may at any time after the enactment of Sections 1 to 15 of this Act make application to the State Board of Agriculture on forms prescribed by the board for certification and approval for the purpose of conducting a referendum among the producers of porcine animals upon the question of levying an assessment under the provisions of Sections 1 to 15 of this Act, and for collecting and utilizing the assessment for the purpose stated in the referendum. The application forms shall include, but not be limited to, the following:*
  - (a) *Applicant's name;*
  - (b) *Applicant's address;*
  - (c) *Date;*
  - (d) *Program to be undertaken for producers;*
  - (e) *Brief statement of how the program is to be implemented;*
  - (f) *Referendum to be conducted on a statewide or areawide basis;*
  - (g) *Proposed effective date of the program;*
  - (h) *Geographic area, by counties, of producers to be affected by the program; and*
  - (i) *Signature of the applicant.*
- (2) *The Commissioner shall publish the application through the medium of the public press in the state within ten (10) days of receipt of the application.*

SECTION 4. A NEW SECTION OF KRS CHAPTER 247 IS CREATED TO READ AS FOLLOWS:

*Upon being certified by the Commissioner, the association shall be fully authorized and empowered to hold and conduct on the part of the producers of porcine animals a referendum on the question of whether or not the producers shall levy upon themselves an assessment under, and subject to, and for the purposes stated in Sections 1 to 15 of this Act. The referendum may be conducted either on a statewide or areawide basis.*

SECTION 5. A NEW SECTION OF KRS CHAPTER 247 IS CREATED TO READ AS FOLLOWS:

*Any referendum conducted under the provisions of Sections 1 to 15 of this Act may be held either on an areawide or statewide basis, as determined by the duly certified association before the referendum is called. The referendum may be participated in by all porcine animal producers, including owners of farms on which porcine animals are produced and tenants sharing in the proceeds of porcine animals. In the referendum, individuals eligible for participation shall vote upon the question of whether or not there shall be levied an assessment in the amount set forth in the call for the referendum.*

SECTION 6. A NEW SECTION OF KRS CHAPTER 247 IS CREATED TO READ AS FOLLOWS:

*The manner, conduct, and management of any referendum held under the provisions of Sections 1 to 15 of this Act shall be under the supervision and direction of the Commissioner, and all expenses in connection with the referendum shall be borne by the association conducting the referendum.*

SECTION 7. A NEW SECTION OF KRS CHAPTER 247 IS CREATED TO READ AS FOLLOWS:

- (1) With respect to any referendum conducted under the provisions of Sections 1 to 15 of this Act, the Commissioner shall, before calling and announcing the referendum, fix, determine, and publicly announce at least thirty (30) days before the date determined for the referendum, the date, hours, and polling places for voting in the referendum, the effective date of the assessment, if adopted, the amount and basis of the assessment proposed to be collected, the means by which the assessment shall be collected if authorized by the producers, and the general purposes to which any amount collected shall be applied.*
- (2) Any assessment levied by any referendum conducted under the provisions of Sections 1 to 15 of this Act shall be used for the purpose of financing or contributing towards the financing of a program of research, market development, and education to increase the domestic and foreign consumption, use, sale, and markets for porcine animals and porcine animal products.*
- (3) No assessment levied by any referendum conducted under the provisions of Sections 1 to 15 of this Act shall exceed fifty cents (\$0.50) per hundred dollars (\$100) worth of sales on porcine animals marketed in the state by any producer included in the group to which the referendum was submitted or by any person subsequently becoming a new producer in the area in which the referendum was held.*

SECTION 8. A NEW SECTION OF KRS CHAPTER 247 IS CREATED TO READ AS FOLLOWS:

- (1) *No assessment levied under Section 7 of this Act shall be effective as long as the Federal Pork Promotion, Research, and Consumer Information Act of 1985 is in effect.*
- (2) *If the federal act is terminated or suspended, any assessment levied under Section 7 of this Act shall become effective and shall be collected and utilized according to the provisions of Sections 1 to 15 of this Act.*

SECTION 9. A NEW SECTION OF KRS CHAPTER 247 IS CREATED TO READ AS FOLLOWS:

*The hours, voting places, rules and regulations, and the area within which the referendum will be conducted shall be established and determined by the Commissioner. The referendum date, area, hours, voting places, and rules and regulations with respect to the holding of the referendum shall be published by the Commissioner through the medium of the public press in the Commonwealth of Kentucky at least thirty (30) days before the holding of the referendum, and direct written notice shall also be given to each county or area agricultural extension agent in any county covered by the referendum. The notice shall also contain a statement of the amount of the assessment proposed to be levied, and shall state the method by which the assessment shall be collected and how the proceeds from the assessment shall be administered and the purposes to which the proceeds shall be applied, which purposes shall be in keeping with the provisions of Sections 1 to 15 of this Act.*

SECTION 10. A NEW SECTION OF KRS CHAPTER 247 IS CREATED TO READ AS FOLLOWS:

*The Commissioner shall prepare and distribute in advance of the referendum the question to be presented to the voters and shall arrange for the necessary poll holders for conducting the referendum. Within ten (10) days following the referendum, the Commissioner shall canvass and publicly declare the result of the referendum.*

SECTION 11. A NEW SECTION OF KRS CHAPTER 247 IS CREATED TO READ AS FOLLOWS:

*If, in the referendum called under the provisions of Sections 1 to 15 of this Act, a majority of the eligible producers in the area in which the referendum is conducted, who vote in the referendum, vote in the affirmative and in favor of levying and collecting the assessment proposed in the referendum, then the assessment shall be collected in the manner determined and announced by the association conducting the referendum.*

SECTION 12. A NEW SECTION OF KRS CHAPTER 247 IS CREATED TO READ AS FOLLOWS:

- (1) *If a majority of the eligible producers who vote in the referendum vote in favor of the assessment, then the Commissioner shall notify by certified mail every person licensed to operate a livestock market in the state, and every person who operates a meat packing or slaughter establishment which buys porcine animals directly from the producer, that on and after the date designated in the notice, which shall be not less than thirty (30) days nor more than sixty (60) days after the mailing of the notice by the Commissioner, the amount of the assessment shall be deducted by all sales markets or purchasers of porcine animals, or by their agents or representatives, from the purchase price paid the seller of porcine animals.*
- (2) *On or before the fifteenth day of each month all assessments deducted shall be remitted to the association certified by the assessment referendum, less three percent (3%) which*

*may be retained to compensate the livestock market operator, meat packer, or slaughter establishment operator for the expense of collecting and remitting the assessment.*

- (3) *The books and records of all livestock market operators, meat packers, and slaughter establishment operators shall at all times during regular business hours be open for inspection by the Commissioner or his duly authorized agents for the purpose of ascertaining the accuracy of the amounts remitted.*

SECTION 13. A NEW SECTION OF KRS CHAPTER 247 IS CREATED TO READ AS FOLLOWS:

*If the referendum is carried in the affirmative and the assessment is levied and collected as provided, any producer upon and against whom the assessment has been levied and collected under the provisions of Sections 1 to 15 of this Act, if dissatisfied with the assessment and the result of the assessment, shall have the right to demand of and receive from the treasurer of the certified association a refund of the assessment collected from the producer if the demand for refund is made in writing within thirty (30) days from the date on which the assessment is collected from the producer.*

SECTION 14. A NEW SECTION OF KRS CHAPTER 247 IS CREATED TO READ AS FOLLOWS:

- (1) *The board shall review the assessment program annually. If, at the end of each year after the first year of the assessment program, the board determines that fifty percent (50%) of the producers in the referendum area are not participating in the program, the Commissioner shall then conduct a referendum among the producers in the area. If, after holding the referendum, a majority of the producers in the area reject the program, it shall be terminated as of the end of the month in which the referendum for the area was conducted and held; otherwise, the assessment program shall continue in effect.*
- (2) *If the certified association of producers expresses in writing its desire to the Commissioner to discontinue the assessment program and terminate the program, the Commissioner shall, within fifteen (15) days following receipt of the request, convene the board to review and act on the request. The board, after reviewing the request and conducting whatever proceedings are deemed appropriate and necessary in connection with the request, may terminate the program effective at the end of the month in which the board action is taken. If the program is terminated, the Commissioner shall notify, by certified mail, all operators of a livestock market, meat packing establishment, or slaughter establishment of the termination of the program.*
- (3) *If the certified association requests the Commissioner, in writing, to hold a referendum on the question of increasing the assessment within the limits of Sections 1 to 15 of this Act, the Commissioner shall, within fifteen (15) days of the receipt of the request, convene the board to review and act on the request. The board, after reviewing the request and conducting whatever proceedings are deemed appropriate and necessary with the request, shall, if the request is approved, conduct a referendum in accordance with the provisions of Sections 1 to 15 of this Act.*

SECTION 15. A NEW SECTION OF KRS CHAPTER 247 IS CREATED TO READ AS FOLLOWS:

*If, in the judgment of the board or the duly certified association, an operator of a livestock market, meat packing establishment, or slaughter establishment has engaged in or is about to engage in any acts or practices that constitute a violation of any of the provisions of Sections 1*

*to 15 of this Act, the board or the duly certified association may make application to the Franklin Circuit Court for an order enjoining the act, or acts, or practices and obtain a restraining order and preliminary injunction against the operator.*

**Approved March 4, 2004**