

**CHAPTER 40****(SB 57)**

AN ACT relating to eggs.

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

Section 1. KRS 260.540 is amended to read as follows:

As used in KRS 260.540 to 260.650, unless the context otherwise requires:

- (1) "Ambient temperature" means the atmospheric temperature surrounding or encircling shell eggs;
- (2) "Board" means the Egg Marketing Board;
- (3) "Candle" means to determine the interior quality of a shell egg based on the use of a candling light as defined in the USDA Handbook 75(7 CFR Part 56);
- (4) "Case" means a container of thirty (30) dozen shell eggs as used in commercial practice in the United States. The term "half-case" shall mean a container of fifteen (15) dozen eggs. Case also means any other quantity packaging which is considered a wholesale pack;
- (5) "Check" means an egg that has a broken shell or a crack in the shell, but whose membranes are intact and whose contents are not leaking;
- (6) "Commissioner" means the Commissioner of Agriculture;
- (7) "Consumer" means all persons purchasing eggs for consumption and not resale;
- (8) "Department" means the Department of Agriculture;
- (9) "Dealer" means a person, organization, or cooperative engaged in the business of buying eggs from producers or other persons, either on his own account or as an agent, and selling or transferring eggs by the case or other quantity to a wholesaler, processor, retailer, specialty egg processor, or other persons or consumers;
- (10) "Dirty egg" means an egg that has a shell that is unbroken and has adhering dirt or foreign material, or prominent stains covering more than one-fourth (1/4) of the shell surface;
- (11) ***"Distributor" means any person who sells, offers, or otherwise exposes shell eggs or egg products to a wholesaler, retailer, or food service facility. Distributor also means any person or producer who distributes shell eggs or egg products to his or her own retail outlet, store, or food service facility;***
- (12)~~(11)~~ "Egg product" means processed and convenience forms of eggs for home and commercial use, including hard-cooked, or specialty egg products and pasteurized liquid, pasteurized frozen, or pasteurized dried egg products;
- (13)~~(12)~~ "FDA" means the Federal Food and Drug Administration;
- (14)~~(13)~~ "Handler" means a dealer, packer, processor, wholesaler, ***distributor***, or retailer;
- (15)~~(14)~~ "Inedible" means an egg that is unfit for human food in whole or in part, addled or moldy, containing black rot, white rot, blood ring, adherent yolks, or bloody whites, incubated beyond the blood ring stage, or consisting to any extent of filthy decomposed substance. This also includes any eggs unfit for human consumption due to causes other than those listed in this subsection;

- (16)~~(15)~~ "Leaker" means an egg that has a crack or break in the shell and shell membranes to the extent that the egg contents are exposed or are exuding or free to exude through the shell;
- (17)~~(16)~~ "Loss" means an egg that is unfit for human food because it is smashed or broken so that its contents are leaking; or overheated, frozen, or contaminated; or an incubator reject; or contains a bloody white, large meat spots, a large quantity of blood, or other foreign material;
- (18)~~(17)~~ "Lot" means any given quantity of two (2) or more eggs of a named grade, billed on an invoice or inspected by the department;
- (19)~~(18)~~ "Packer" means any person who grades, sizes, candles, and packs eggs for purposes of sale;
- (20)~~(19)~~ "Person" means any individual, firm, partnership, corporation, company, association, or any other type of business entity that traffics in, handles, or sells eggs, and shall include any trustee, receiver, or similar representative;
- (21)~~(20)~~ "Producer" means any person who exercises control over the production of eggs and disposes of eggs from the output of his or her personally owned flock;
- (22)~~(21)~~ "Retailer" means any person selling or offering eggs for sale to consumers in this state;
- (23)~~(22)~~ "Sell" means to offer for sale, expose for sale, have in possession for sale, exchange, barter, or trade;
- (24)~~(23)~~ "Shell eggs" means the product of the domesticated hen and any other egg from the avian species offered for human consumption in its shell form;
- (25)~~(24)~~ "Specialty egg processor" means a person who operates a plant for the purpose of breaking eggs for freezing or drying or commercial food manufacturing, and includes a person distributing his or her products from out-of-state. A specialty egg processor may also be know as a breaker or breaking plant;
- (26)~~(25)~~ "Specialty egg products" means egg specialties processed for the food service industry including: wet-pack and dry-pack prepeeled hard-cooked eggs, either whole, wedged, sliced, chopped, or pickled; long rolls of hard-cooked eggs; frozen omelets; egg patties; quiche; quiche mix; frozen French toast; frozen scrambled egg mix in boilable pouches; frozen fried eggs; frozen precooked scrambled eggs; freeze-dried scrambled eggs; ultra-pasteurized liquid eggs; free-flowing frozen egg pellets; and specially coated shelf-stable hard-cooked eggs; or any other products using eggs;
- (27)~~(26)~~ "Wholesaler" means a handler who is engaged in the business of buying eggs from producers or other persons on the handler's own account and selling or transferring eggs to other dealers, wholesalers, processors, or retailers, or through other distribution channels;
- (28) ***"Withdraw from sale order" means an order issued by an inspector or other authorized agent of the department, permanently removing shell eggs or egg products from retail sale or distribution;***
- (29)~~(27)~~ "Candled and Graded" means candled and graded under state and federal standards and regulations;
- (30)~~(28)~~ "Ungraded and Candled" means the general run of edible eggs as they come from the producer, not sized or graded, but candled;~~and~~

- (31)~~[(29)]~~ "USDA" means the United States Department of Agriculture; **and**
- (32) ***"Stop Order" means an order issued by an inspector or other authorized agent of the department removing the shell egg or egg products from retail sale until a release or change of order has been issued by an inspector or authorized agent of the department. The term of a stop order shall not be for longer than ten (10) calendar days.***

Section 2. KRS 260.550 is amended to read as follows:

- (1) No person shall buy, sell, trade, traffic, or process eggs in Kentucky without a license issued pursuant to the egg marketing law, with the following exceptions:
- (a)~~[(1)]~~ Hatcheries purchasing eggs to be used exclusively for hatching purposes;
  - (b)~~[(2)]~~ Hotels, restaurants, and other eating places where all eggs purchased are served in the establishment;
  - (c)~~[(3)]~~ Bakeries, confectioneries, and ice cream manufacturers who use eggs in a manufactured product;
  - (d)~~[(4)]~~ Consumers buying eggs for their own consumption; or
  - (e)~~[(5)]~~ Producers who sell only directly to consumers and do not exceed a sales limit of sixty (60) dozen eggs per calendar week.
- (2) ***Any person engaged in the act of selling shell eggs or egg products under any of the following circumstances shall have all shell eggs and egg products placed under a stop order:***
- (a) ***Selling or otherwise marketing shell eggs or egg products without a license;***
  - (b) ***Failing to remit or pay fines owed to the department; or***
  - (c) ***Failing to properly label shell eggs or egg products.***
- (3) ***Any person natural or otherwise engaged in the act of selling shell eggs or egg products that has been cited by an inspector or agent of the department for a cause listed in subsection (8)(a) or (b) of Section 5 of this Act shall be placed under a withdraw from sale order until such time as the department or an authorized agent of the department rescinds the order.***

Section 3. KRS 260.570 is amended to read as follows:

- (1) There shall be an egg marketing board in the Department of Agriculture. The board shall act in an advisory capacity to the Commissioner in all matters pertaining to the administration of the egg marketing law.
- (2) The board shall be composed of the Commissioner, chairman ex officio, and six (6) members appointed by the Governor from lists of names submitted by egg producing and marketing organizations within the Commonwealth approved by the Commissioner for the purpose of submitting such lists. Appointments shall be for three (3) years, except that in the case of the members first appointed, two (2) members shall be appointed for one (1) year, two (2) members for two (2) years, and two (2) members for three (3) years. All members must be residents of the Commonwealth and not more than three (3) shall be of the same political party.
- (3) The board shall meet at least once each ***calendar year***~~[(fiscal quarter)]~~ and at such other times as the ***Commissioner, acting*** chairman, ***or a quorum of the board*** may deem necessary. The

chairman shall serve without additional compensation, but the members shall receive reimbursement for their necessary traveling expenses and the sum of **fifty dollars (\$50)**~~twenty five dollars (\$25)~~ per day for each day they attend board meetings, payable out of funds derived from administration of the egg marketing law.

Section 4. KRS 260.600 is amended to read as follows:

- (1) Any person requiring a license may obtain an application by calling the Kentucky Department of Agriculture, Division of Regulation and Inspection. A license may be renewed when accompanied by a renewal application and the required fees. ***A license for the current year shall not be issued if there are past due license fees and penalties pending for previous years.*** With regard to shell egg dealers, wholesalers, and packers, and specialty egg processors, dealers, and wholesalers, all of the previous year's assessment fees shall be current before licenses shall be renewed. Any person selling eggs without the required license will be subject to having the eggs removed from sale until a license has been acquired.
- (2) A license is required of each handler of eggs selling in the Commonwealth subject to the exceptions specified in KRS 260.550. The annual license fees are as follows, varying for dealers, ***distributors***, wholesalers, ***producers***, and packers, according to the average weekly volume of the month in which the licensee handled the most eggs during the preceding year:
  - (a) Retailers    ***\$20.00***~~[\$ 5.00]~~
  - (b) Shell egg dealers, ***distributors***, wholesalers, producers, and packers within Kentucky or out-of-state:
 

1-25 cases or 1-750 dozen .....	<b><i>\$20.00</i></b> <del>[\$10.00]</del>
26-50 cases or 751-1500 dozen .....	<b><i>\$30.00</i></b> <del>[\$20.00]</del>
Over 50 cases or over 1500 dozen .....	<b><i>\$50.00</i></b> <del>[\$40.00]</del>
  - (c) Specialty egg processors, dealers, and wholesalers within Kentucky or out-of-state ..... \$50.00.
- (3) Any egg handler engaged in more than one (1) type of activity for which a license is provided shall pay that license fee which is the highest of the licenses prescribed for each type of activity in which he is engaged.
- (4) All eggs bought or sold within the Commonwealth of Kentucky shall bear a two cent (\$0.02) assessment fee for each fifteen (15) dozen shell egg lot or portion thereof. Pasteurized liquid and pasteurized frozen egg products shall be assessed a fee of one-half (1/2) cent (\$0.005) per ten (10) pound lot. Dried, dehydrated, hard-cooked, or specialty egg products shall be assessed a fee of one cent (\$0.01) per ten (10) pound lot. ***These assessment fees shall be assessed and paid one (1) time as agreed between responsible parties as the product moves through the distribution network.*** All reports and fees are due monthly and shall be received by the department prior to the fifteenth of the month following the month of activity, unless there is an agreement with the department to report and pay these fees on a quarterly, semi-annual, or annual basis. In this event, the reports and fees shall be received prior to the fifteenth of the month following the period of activity.
- (5) All licenses shall expire on April 1 of each year. Handlers having more than one (1) place of business shall hold a license for each location. Licenses shall not be transferred.

- (6) Those that are exempt from licensing under KRS 260.550 are not exempt from inspection, with the exception of consumers. The shell eggs or egg products used by these persons are not exempt from the required assessment fee.

Section 5. KRS 260.640 is amended to read as follows:

- (1) The Commissioner may employ inspectors for the purpose of enforcing the provisions of the egg marketing law. These inspectors may examine any eggs offered or exposed for sale for human consumption at the times and places and in a manner as the Commissioner may direct.
- (2) The department shall have free access, at all reasonable hours when the business is open to the general public, to any establishment, premises, or building where eggs are processed, stored, or offered for sale, and to any vehicle used to transport or hold eggs, for the purpose of inspecting the establishment, premises, building, or vehicle or the eggs to determine compliance with the provisions of the Kentucky egg marketing law.
- (3) The department shall have free access at all reasonable hours when the business is open to the general public, to any restaurant kitchen, hotel kitchen, or kitchen of any other public eating place, including schools, hospitals, nursing homes, or other similar institutions, to determine compliance with the provisions of the Kentucky egg marketing law. If the inspector determines that inspected eggs fail to comply with the Kentucky egg marketing law or standards as established by USDA, the inspector shall take the necessary action and issue an advisory on proper procedures.
- (4) All licensees shall keep a record of all eggs handled during the license year, and any other records the department shall require. These records shall be available for examination by authorized agents of the department.
- (5) An inspector may, for the purpose of enforcing the Kentucky egg marketing law, break any form of sealing on any case or retail container. If a broken seal necessitates the repacking of the cases or containers, the original packer shall absorb all expenses involved.
- (6) A carton of eggs with any existing conditions as designated in paragraphs (a) to (d) of this subsection shall be removed from a retail display on a daily basis.
  - (a) Cracked eggs;
  - (b) Leaking eggs;
  - (c) Frozen eggs; or
  - (d) A combination of any of the above.
- (7) The retailer may not rework or repack eggs into full cartons. This process may only be done by the original packer. A retailer may, however, sell an incomplete dozen provided that the quantity labeling on the carton is changed to reflect the number of eggs in the carton.
- (8) ***The inspector shall, for the following cause, remove shell eggs or egg products from sale by issuing a withdraw from sale order:***
  - (a) ***Ambient temperature above forty-five (45) degrees Fahrenheit for a period of four (4) hours or more; or***
  - (b) ***Contamination or any condition which may render the shell eggs or egg products unfit for human consumption.***

*Shell eggs or egg products shall be released from the withdraw from sale order only under authorization or the direct supervision of the department as stated in the disposition section of the order.*

Section 6. KRS 260.990 is amended to read as follows:

- (1) Any person who knowingly violates any of the provisions of KRS 260.040 to 260.120 shall, for the first offense, be fined not less than ten dollars (\$10), nor more than twenty-five dollars (\$25), for the second offense, he shall be fined not less than twenty-five dollars (\$25), nor more than fifty dollars (\$50), and for the third and each subsequent offense, he shall be fined not less than fifty dollars (\$50), nor more than two hundred dollars (\$200). Whenever a violation is with respect to a lot or shipment consisting of fifty (50) or more closed packages, there may be imposed in addition to the above penalties twenty-five cents (\$0.25) for the first offense, fifty cents (\$0.50) for the second offense and one dollar (\$1) for each subsequent offense for each package in excess of fifty (50) with respect to which the violation is committed.
- (2) Any person who violates *a stop order in violation of subsection (2) of Section 2 of this Act shall be fined one hundred dollars (\$100) for the first offense, be fined two hundred fifty dollars (\$250) for the second offense, and have his or her license revoked or suspended or, if the person has no license, be fined one thousand dollars (\$1,000) for each subsequent offense.*
- (3) *Any person who violates a withdraw from sale order in violation of subsection (3) of Section 2 of this Act shall be guilty of a Class B misdemeanor*~~{any of the provisions of KRS 260.130 to 260.160 shall, for the first offense, be fined not more than twenty-five dollars (\$25); for the second offense, he shall be fined not more than fifty dollars (\$50), and for the third and each succeeding offense he shall be fined not more than one hundred dollars (\$100).~~
- ~~(3) Any person who violates any of the provisions of the egg marketing law shall be fined an amount not exceeding one hundred dollars (\$100) for each offense. In a violation involving sales without a required license, each day of business operation shall constitute a separate offense.~~
- ~~(4) The department shall assess a penalty of not less than twenty five dollars (\$25) nor more than one hundred dollars (\$100) for each violation of improper labeling, including omission of any of the required information as prescribed in KRS 260.630. These penalty funds shall be credited to the department for use in carrying out the provisions of the egg marketing law.~~

**Approved March 11, 2005.**