

## CHAPTER 8

## (HB 131)

AN ACT relating to referendums.

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

➔Section 1. KRS 247.6901 is amended to read as follows:

It is declared to be in the interest of the public welfare that Kentucky farmers who are producers of **ovine or caprine animals**~~[sheep or lambs]~~ shall be permitted and encouraged to act jointly and in cooperation with all producers, handlers, dealers, and processors of **ovine or caprine animals**~~[sheep or lambs]~~ in promoting and stimulating, by utilization research, market maintenance and expansion, and education, the increased use and sale, domestic and foreign, of **ovine and caprine animals**~~[sheep and lambs]~~; and for the prevention, modification, or elimination of trade barriers which obstruct the free flow of **ovine or caprine animals**~~[sheep and lambs]~~ to market.

➔Section 2. KRS 247.6904 is amended to read as follows:

As used in KRS 247.6901 to 247.6957, unless the context otherwise requires:

- (1) "Commissioner" means the Commissioner of Agriculture;
- (2) "Board" means the State Board of Agriculture;
- (3)~~["Sheep and lambs" means all species of the genus Ovis produced or marketed in Kentucky by any producer;~~
- (4)~~]~~ "Producer" means every person who produces and markets **ovine or caprine animals**~~[sheep or lambs]~~;
- (4)~~(5)~~ "New producer" means a producer who was not engaged in the business of producing **ovine or caprine animals**~~[sheep or lambs]~~ at the time a referendum was conducted in accordance with the provisions of KRS 247.6901 to 247.6957;
- (5)~~(6)~~ "Person" means any individual, corporation, partnership, association, cooperative, or other business entity;
- (7)~~(8)~~ "Marketing year" means from July 1 to June 30~~[of the following year]~~;
- (6)~~(8)~~ "Purchaser" means any person~~[, public or private corporation, association, or partnership]~~ buying, accepting for shipment, or otherwise acquiring the property in or to **ovine or caprine animals**~~[sheep or lambs]~~ from a producer, and shall include a mortgagee, pledgee, lienor, or other person, public or private, having a claim against the producer, when the actual or constructive possession of the **ovine or caprine animals**~~[sheep or lambs]~~ is taken as part payment or in satisfaction of a mortgage, pledge, lien, or claim;
- (7)~~(9)~~ "Marketed" means any quantities that are sold, bartered, or for which other items of value are exchanged;~~[and]~~
- (8)~~(10)~~ "Net market price" means the sales price or other value received by a producer for **ovine or caprine animals**~~[sheep or lambs]~~ after adjustments have been made for any premium or discount based on grading or quality factors;
- (9) "Association" means any commission, council, board, or other body;
- (10) "Caprine" means of, or pertaining to, goats; and
- (11) "Ovine" means of, or pertaining to, sheep.

➔Section 3. KRS 247.6907 is amended to read as follows:

No association meeting or activity undertaken **to carry out**~~[in pursuance of]~~ the provisions of KRS 247.6901 to 247.6957 and intended to benefit all of the producers, handlers, dealers, and processors of **ovine or caprine animals**~~[sheep or lambs]~~ shall be deemed or considered illegal or in restraint of trade.

➔Section 4. KRS 247.6911 is amended to read as follows:

It is declared to be in the public interest and highly advantageous to the agricultural economy of the state that producers of **ovine or caprine animals**~~[sheep or lambs]~~ shall be permitted by referendum to be held among the respective groups and subject to the provisions of KRS 247.6901 to 247.6957 to levy upon themselves an assessment on **ovine or caprine animals**~~[sheep and lambs]~~ and provide for the collection of the assessment for the purpose of

financing or contributing toward the financing of a program of research, market development, and education to increase the domestic and foreign consumption, use, sale, and markets for *ovine or caprine animals*~~[sheep and lambs]~~; and for the prevention, modification, or elimination of trade barriers which obstruct the free flow of *ovine or caprine animals*~~[sheep and lambs]~~ to market.

➔Section 5. KRS 247.6914 is amended to read as follows:

- (1) Any existing association which is fairly representative of the *ovine and caprine animal*~~[sheep or lamb]~~ producers of Kentucky~~], such as the Kentucky Sheep and Wool Producers Association,~~ may at any time after *the effective date of this Act*~~[July 15, 1992,]~~ 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 *ovine or caprine animals*~~[sheep]~~ upon the question of levying an assessment under the provisions of KRS 247.6901 to 247.6957 and 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 basis;
  - (g) Proposed effective date of the program; and
  - (h) Signature of the applicant.
- (2) ~~[Upon receipt of the application,]~~The Commissioner shall publish the application through the medium of the public press in the state within ten (10) days of receipt *of this application*.

➔Section 6. KRS 247.6917 is amended to read as follows:

Upon being certified by the Commissioner~~[of Agriculture]~~, the association shall be fully authorized~~[and empowered]~~ to hold and conduct on the part of the producers of *ovine or caprine animals*~~[sheep or lambs]~~ a referendum on the question of whether *or not* the producers shall levy upon themselves an assessment under, and subject to, and for the purpose stated in KRS 247.6901 to 247.6957. The referendum shall be conducted on a statewide basis.

➔Section 7. KRS 247.6921 is amended to read as follows:

Any referendum conducted under the provisions of KRS 247.6901 to 247.6957 shall be held on a statewide basis. The referendum may be participated in by all *ovine or caprine animal*~~[sheep or lamb]~~ producers, including owners of farms on which *ovine or caprine animals*~~[sheep or lambs]~~ are produced, and tenants and sharecroppers sharing in the proceeds of *ovine or caprine animals*~~[sheep or lambs]~~. In the referendum, individuals eligible for participation shall vote upon the question of whether *or not* there shall be levied an annual assessment in the amount set forth in the call for the referendum.

➔Section 8. KRS 247.6924 is amended to read as follows:

The manner, conduct, and management of any referendum held under the provisions of KRS 247.6901 to 247.6957 shall be under the supervision and direction of the Commissioner~~[of Agriculture]~~, and~~[any and]~~ all expenses in connection *with the referendum*~~[therewith]~~ shall be borne by the association conducting the referendum.

➔Section 9. KRS 247.6927 is amended to read as follows:

- (1) With respect to any referendum conducted under the provisions of KRS 247.6901 to 247.6957, the Commissioner~~[of Agriculture]~~ 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 the amount collected shall be applied.

- (2) No annual assessment levied under the provisions of any referendum shall exceed one percent (1%) of the net marketed price per *ovine or caprine animal* ~~[sheep or lamb]~~ marketed in the state during a marketing year by any producer included in the group to which the referendum was submitted or by any person subsequently becoming a new producer.

→ Section 10. KRS 247.6931 is amended to read as follows:

The *date*, hours, voting places, rules, and administrative regulations for the referendum shall be established and determined by the Commissioner ~~[of Agriculture]~~ and 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 *of the referendum* ~~[thereof]~~ shall *also* ~~[likewise]~~ be given to each county or area agent in any county covered by the referendum. The notice shall *also* ~~[likewise]~~ contain a statement of the amount of the assessment proposed to be levied, which assessment in any event shall not exceed one percent (1%) of the net marketed price per *ovine or caprine animal* ~~[sheep or lamb]~~, and shall *also* ~~[likewise]~~ state the method by which the assessment shall be collected and how the proceeds shall be administered and the purposes to which the proceeds shall be applied, which purposes shall be in keeping with the provisions of KRS 247.6901 to 247.6957.

→ Section 11. KRS 247.6934 is amended to read as follows:

The Commissioner ~~[of Agriculture]~~ shall prepare and distribute in advance of the referendum all necessary ballots and shall arrange for the necessary poll holders for conducting the referendum. ~~[Following the referendum and]~~ Within ten (10) days *following the referendum* ~~[thereafter]~~, the Commissioner shall canvass and publicly declare the result of the referendum.

→ Section 12. KRS 247.6937 is amended to read as follows:

If, in the referendum called under the provisions of KRS 247.6901 to 247.6957, a majority of the eligible producers, who vote *in the referendum* ~~[therein]~~, ~~[shall]~~ vote in the affirmative and in favor of ~~[the]~~ levying and *collecting* ~~[collection of]~~ the assessment proposed in the referendum, the assessment shall be collected in the manner determined and announced by the association conducting the referendum.

→ Section 13. KRS 247.6941 is amended to read as follows:

- (1) If a majority of the eligible producers in the referendum who vote *in the referendum* ~~[therein shall]~~ vote in favor of the assessment, the Commissioner shall notify, by certified mail, all persons engaged in the business of purchasing *ovine or caprine animals* ~~[sheep or lambs]~~ in this state, that on and after the date specified in the letter, the specified assessment shall be deducted from the producer's payment by the purchaser, or his agent or representative, from the net marketed price of the *ovine or caprine animals* ~~[sheep or lambs]~~.
- (2) The assessment ~~[so deducted]~~ shall, on or before the fifteenth day of the month following the end of the month in which the *ovine or caprine animals* ~~[sheep or lambs]~~ are sold to the purchaser, be remitted by the purchaser to the duly certified association which conducted the referendum.
- (3) The books and records of all the purchasers of *ovine or caprine animals* ~~[sheep or lambs]~~ shall at all times *during regular business hours* be open for inspection by the collection and compliance officer of the association which conducted the referendum, or the Commissioner, ~~[of Agriculture]~~ or his duly authorized agents ~~[during regular business hours]~~.

→ Section 14. KRS 247.6944 is amended to read as follows:

There is hereby established the Kentucky Sheep *and Goat* Council composed of four (4) members appointed by the certified *association*, ~~[organization]~~; two (2) members appointed by the Kentucky Farm Bureau Federation, Inc., and one (1) member appointed by the Commissioner. These appointments shall be for terms of two (2) calendar years and each appointing body shall promptly file with the Commissioner the names of its respective appointees.

→ Section 15. KRS 247.6947 is amended to read as follows:

The funds, including donations from individuals, concerns, corporations, and grants from the state or governmental agencies, shall be used for the purpose of promoting and stimulating, by research, market development, and education, the increased use and sale, domestic and foreign, of *ovine or caprine animals* ~~[sheep and lambs]~~; and for the prevention, modification, or elimination of trade barriers which obstruct the free flow of *ovine or caprine animals* ~~[sheep and lambs]~~ to market. None of these funds shall be used to lobby as defined in KRS 6.611. The duly

certified association receiving the assessment funds shall, upon the advice and consent of the Kentucky Sheep *and Goat* Council, use and disburse the *funds*~~[same]~~ as follows:

- (1) The association may first refund to itself~~[therefrom]~~ the costs and expenses incurred in the conduct of the referendum; *and*
- (2) The association may spend or disburse the necessary funds for administrative costs and expenses *as determined by the Kentucky Sheep and Goat Council, with the balance remaining to be used for the purposes provided in this section*~~[, but no more than fifteen percent (15%) of the funds collected in any marketing year shall be so utilized; and~~
- ~~(3) The balance remaining shall be used for the purposes provided in this section, as determined by the Kentucky Sheep Council.~~

➔Section 16. KRS 247.6951 is amended 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*~~[shall have]~~ been levied and collected under the provisions of KRS 247.6901 to 247.6957, if dissatisfied with the assessment and the result *of the assessment*~~[thereof]~~, may 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 17. KRS 247.6954 is amended to read as follows:

- (1) The board shall review the assessment program annually. If, at the end of each *marketing* year after the first *marketing* year of the assessment program, the board determines that *twenty percent (20%) of the producers assessed*~~[the producers in the referendum representing twenty percent (20%) of the production of sheep and lambs]~~ have indicated their dissatisfaction with the program by demanding a refund of the assessment collected from them, the Commissioner shall conduct a referendum among the producers. If, upon the referendum, a majority of the eligible producers, who vote *in the referendum*~~[therein]~~, reject the program, it shall be terminated at the end of the marketing year in which the referendum was conducted; otherwise, the assessment program shall continue~~[in force and effect]~~.
- ~~(2) The Commissioner shall conduct a referendum five (5) years after the date of the first referendum and each subsequent five (5) year period to determine if the assessment should be continued or terminated.~~
- ~~(3) If the duly certified association of *ovine and caprine animal*~~[sheep and lamb]~~ 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 marketing year in which the board action is taken; and, in this event, the Commissioner shall notify, by certified mail, the purchasers of *ovine and caprine animals*~~[sheep and lambs]~~ affected *by*~~[thereby of]~~ the termination of the program.~~

➔Section 18. KRS 247.6957 is amended to read as follows:

~~If, [When]~~ in the judgment of the board or the duly certified association, a purchaser has engaged in or is about to engage in any acts or practices that constitute a violation of any of the provisions of KRS 247.6901 to 247.6957, 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 purchaser.

**Signed by Governor April 7, 2008.**