WEST VIRGINIA CODE CHAPTER 19 ARTICLE 2F

WV Legislature

§19-2F-1. Purpose.

The purpose of this article is to promote and stimulate, through research, education, advertising and other methods, the increased and efficient production, distribution, sale and use of cattle and beef products by providing a means and procedure for financing a promotional program for the West Virginia cattle industry through activities of the West Virginia Beef Industry Council.

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§19-2F-2. Definitions.

As used in this article:

(1) "Council" means the West Virginia Beef Industry Council.

(2) "Commissioner" means the Commissioner of the West Virginia Department of Agriculture.

(3) "Person" means an individual, partnership, corporation, association, fiduciary, or other group of persons acting together whether organized or not.

(4) "Producer" means any person in the business of raising, breeding or growing cattle or calves for beef production.

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§19-2F-3. Petition for referendum; public hearing; notice.

(a) Producers may petition the Commissioner to conduct a referendum of West Virginia producers authorizing the levying of an assessment for the purposes set forth in this article: Provided, That no referendum may be held until the provisions of 7 U.S.C. §2901 et seq., the federal beef research and information program, have terminated.

(b) The Commissioner, when petitioned by no less than fifty producers, must hold a public hearing no more than forty-five days after receipt of the petition to decide whether a referendum should be held to establish an assessment on the sale of beef and dairy cattle, the amount of the assessment and the duration of the assessment. The Commissioner shall give no less than fifteen days notice of the public hearing including the date, time and place of the public hearing. If a majority of those present vote in favor of holding the referendum, including the amount and duration of the proposed assessment, the Commissioner shall notify the Council to schedule and hold a referendum on the proposed assessment.

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§19-2F-4. Conduct of referendum.

(a) The Council shall notify producers of the date, hours and polling places for voting in the referendum, along with the amount and duration of the proposed assessment, the manner of collecting the assessment and the general purposes for which the assessment will be expended. The notice must be published no less than three times in two newspapers of general circulation within this state and the Council may give notice of the referendum in other publications and at places the Council considers appropriate.

(b) The Council shall provide ballots and polling places in each county. All cattle producers who may be subject to the proposed assessment are eligible to vote in the referendum upon presentation of proof showing them to be bona fide cattle producers subject to the assessment. The referendum is decided by a majority of the votes cast.

(c) The Commissioner shall canvass, tabulate and publicly announce the results of the referendum no later than five days after the end of the election. The Commissioner must preserve all ballots for one year after the date of the referendum.

(d) All expense and costs necessary to conduct a referendum are bourne by the Council.

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§19-2F-5. Subsequent referendums.

(a) In the event that a referendum conducted pursuant to the provisions of this article fails to receive a majority of the affirmative votes cast, the Council is authorized to conduct a subsequent referendum under the provisions of section four of this article no earlier than twelve months after the date on which the last referendum was held without complying with the requirements set forth in section three of this article, so long as the amount and duration of the assessment are not increased.

(b) In the event that an assessment is in effect and set to expire, the Council is authorized to conduct a subsequent referendum under the provisions of section four of this article during the last year of the assessment without complying with the requirements set forth in section three of this article, so long as the amount and duration of the subsequent assessment are not increased.

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§19-2F-6. Beef Industry Council; appointment; terms; qualification of members; removal of members; officers; meetings; expenses.

(a) The West Virginia Beef Industry Council is hereby continued. The members of the Council in office on the date this section becomes effective shall, unless sooner removed, continue to serve until their respective terms expire and until their successors have been appointed and qualified.

(b) (1) Commencing with the Council terms beginning on July 1, 2005, the Council shall consist of nine members appointed for terms of three years by the Governor with the advice and consent of the Senate. Six members of the Council must be beef cattle producers, one member must be a dairy cattle producer, one member must be a representative of a public livestock market and one member must be a meat packer or meat processor.

(2) Each member of the Council, at the time of his or her appointment, must have been engaged in his or her representative

occupation for a period of not less than five years immediately preceding the appointment and each member must be a United States citizen and a resident of this state during the appointment term.

(3) In making appointments to the Council, the Governor shall consider proposed member recommendations made by West Virginia organizations and groups concerned with or engaged in beef production.

(4) No member may serve more than two consecutive full terms and any member having served two full terms may not be appointed for one year after completion of his or her second full term. A member continues to serve until his or her successor has been appointed and qualified.

(5) The Governor may remove any member of the Council for neglect of duty, incompetency or official misconduct.

(c) The Council elects a chair, a secretary and a treasurer from its membership each for a term of two years. The Council meets as often as necessary at the time and place designated by the chair or by call of a majority of the Council members. All Council meetings shall be held in accordance with the provisions of article nine-a, chapter six of this code. All decisions of the Council are determined by a majority of the members appointed.

(d) The Board shall reimburse each member's expenses for room, meals and mileage in the same manner and amount as state employees receive for travel. No member may receive any other salary or compensation for his or her services.

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§19-2F-7. Powers and duties of the Council; rule-making authority.

(a) The Council has the authority to:

(1) Receive and disburse funds as prescribed in this article to be used for the purposes of this article;

(2) Enter into contracts;

(3) Hire and discharge employees, prescribe their duties and fix their compensation;

(4) Accept grants, gifts and contributions for expenditure consistent with the purposes of this article;

(5) Sue and be sued as a council without individual liability of the members for acts of the Council when the Council is acting within the scope of the powers conferred by this article;

(6) Cooperate with other state or federal agencies and organizations engaged in work or activities consistent with the purposes of this article;

(7) Conduct public relations and education programs for increasing beef production and improving beef marketing practices;

(8) Conduct or contract for scientific research with any accredited college or university which will aid in implementing the purposes of this article; and,

(9) Prepare and submit an annual report of its activities and fiscal accounting to the Commissioner no later than January 15, of each year.

(b) The Council may propose rules for legislative approval in accordance with the provisions of article three, chapter twenty-nine-a of this code designed to implement the provisions of this article.

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§19-2F-8. Notice, levy and collection of assessment.

(a) Upon approval of an assessment, the Council shall notify all known livestock markets, packers, buying stations, order buyers, livestock dealers or other persons purchasing cattle, including dairy cattle, that they are required to deduct the amount of the assessment stipulated in the authorizing referendum from the sale settlement beginning on the date designated in the notice.

(b) The assessment approved by referendum is deducted by all livestock markets, packers, buying stations, order buyers, livestock dealers or other persons purchasing cattle, including dairy cattle, on each cattle purchase from the sale settlement. The purchasers remit the assessments within thirty days of the date of the sale settlement to the treasurer of the Council.

(c) The Council must keep accurate records of the amount of assessments received, the date on which they were received and the name of the person making the remittance. The records must be preserved for at least five years.

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§19-2F-9. Refunds.

Any producer against whom an assessment is made and deducted from the proceeds of sale, if dissatisfied with the assessment, has the right to demand and receive from the treasurer of the Council a refund of the total amount of assessment collected from the producer if the demand is made in writing to the Council within thirty days of the date the assessment was deducted from the sale proceeds. The demand for refund must contain the name and address of the producer, the date of purchase, the number of head sold, the amount of the assessment, the name and address of the collecting agent, the date of sale and the invoice number. The refund is made upon determination that the assessment was paid by the producer.

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§19-2F-10. Penalties.

When a person required to collect the assessment in accordance with section eight of this article fails to do so or fails to remit it to the treasurer of the Council within thirty days, the Council certifies that fact to the Commissioner. The Commissioner notifies the person in writing that he or she has fifteen days to begin the collection of the assessment, or to remit previously collected assessments to the Council's treasurer or to submit a written justification for the failure to collect or remit the assessment. If the Commissioner determines that person was required to remit the assessment and if payment is not made within the fifteen-day period, the Commissioner may revoke the person's license to engage in cattle purchasing activities in the state. Persons having their license revoked under this section are not eligible for license-reinstatement for a period of three years.

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§19-2F-11.

Repealed.

Acts, 2010 Reg. Sess., Ch. 32.

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