

STATE OF OKLAHOMA

2nd Session of the 49th Legislature (2004)

COMMITTEE SUBSTITUTE
FOR
HOUSE BILL NO. 2620

By: Covey

COMMITTEE SUBSTITUTE

An Act relating to agriculture; creating the Oklahoma Beef Improvement and Market Development Act; providing for legislative intent; creating Oklahoma Beef Council; establishing duties of Council; defining terms; providing for appointment of Board members; defining purpose of Council; providing for authority of Council; authorizing acceptance of certain funds; providing for payments; authorizing assessment; establishing collection of assessment; providing for penalties; creating exemption from assessment; providing for refund of assessment; providing for adoption of bylaws; providing for deposit of funds; providing for codification; and providing an effective date.

BE IT ENACTED BY THE PEOPLE OF THE STATE OF OKLAHOMA:

SECTION 1. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 18-30 of Title 2, unless there is created a duplication in numbering, reads as follows:

This act shall be known and may be cited as the "Oklahoma Beef Improvement and Market Development Act".

SECTION 2. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 18-31 of Title 2, unless there is created a duplication in numbering, reads as follows:

A. It is the intent of the Legislature to:

1. Create the Oklahoma Beef Council;
2. Promote the growth of the cattle industry in Oklahoma;
3. Assure an adequate and wholesome food supply;
4. Provide for the general economic welfare of producers and

consumers of beef; and

5. Provide the beef cattle industry with the authority to establish a self-financed, self-governed program to develop, maintain, and expand the state, national, and foreign markets for beef and beef products produced, processed, or manufactured in this state.

B. The promotion, marketing, research, and educational efforts concerning beef and beef products, pursuant to the Oklahoma Beef Improvement and Market Development Act, shall utilize existing cattle industry infrastructure to the extent possible.

SECTION 3. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 18-32 of Title 2, unless there is created a duplication in numbering, reads as follows:

As used in the Oklahoma Beef Improvement and Market Development Act:

1. "Beef" and "beef products" mean the meat intended for human consumption from any cattle, including, but not limited to, veal;

2. "Cattle" means all bovine animals, regardless of age;

3. "Council" means the Oklahoma Beef Council established under the Oklahoma Beef Improvement and Market Development Act to administer and govern the program;

4. "Market agent" means any person or entity who sells, offers for sale, markets, distributes, trades, or processes cattle purchased or acquired from a producer, or marketed on behalf of a producer, and includes, but is not limited to, cattle feeders and meatpacking firms and their agents that purchase or consign to purchase cattle;

5. "Person" includes individuals, partnerships, firms, corporations, associations, trusts, estates, limited liability companies and any other legal entities recognized to do business in Oklahoma; and

6. "Producer" means a person that owned or sold cattle in the previous calendar year or presently owns cattle.

SECTION 4. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 18-33 of Title 2, unless there is created a duplication in numbering, reads as follows:

A. The Board of the Oklahoma Beef Council shall consist of nine (9) members and shall be composed as follows:

1. The Governor shall appoint three members as follows:

- a. one member representing a general farm organization which represents more than 150,000 members in the state,
- b. one member representing the dairy producers in the state, and
- c. one member of an Oklahoma association representing livestock auction markets and livestock dealers in which the member's primary responsibility is the collection and remittance of assessment funds;

2. The President Pro Tempore of the Senate shall appoint three members as follows:

- a. one member from a women's auxiliary group of a general farm organization representing more than 150,000 members in the state,
- b. one member of a statewide women's beef cattle association, incorporated in Oklahoma, whose primary purpose is beef product promotion and education, and
- c. one member representing a general farm organization which represents more than 100,000 members in the state;

3. The Speaker of the House of Representatives shall appoint three members as follows:

- a. one member of an Oklahoma association representing livestock auction markets and livestock dealers,
- b. one member of a statewide beef cattle producer-owned association, incorporated in Oklahoma, comprised of

more than 5,000 Oklahoma-based producer members organization representing cattle producers in the state, and

- c. one member from an women's auxiliary group of a general farm organization representing more than 100,000 members in the state;

B. The initial appointments for each gubernatorial and legislative member shall be for progressive terms of one (1) through three (3) years; subsequent appointments shall be for three-year terms. Members shall continue to serve until their successors are appointed. Any vacancy shall be filled in the same manner as the original appointments. No member shall serve more than two consecutive terms.

SECTION 5. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 18-34 of Title 2, unless there is created a duplication in numbering, reads as follows:

A. There is hereby created, to continue until July 1, 2010, in accordance with the provisions of the Oklahoma Sunset Law, the Oklahoma Beef Council.

B. The Oklahoma Beef Council shall:

1. Promote the sale and use of beef and beef products, support national beef promotion, research, education, and other consumer marketing activities related to beef and cattle production, and otherwise support consumer market development and promotion efforts on a national and international scale;

2. Develop new uses and markets for beef and beef products;

3. Develop and improve methods of distributing beef and beef products to the consumer;

4. Develop methods of improving the quality and safety of beef and beef products for consumer benefit;

5. Inform and educate the public of the nutritive, safety, and economic values of beef and beef products;

6. Function in a liaison capacity with the beef and other food industries of the state and elsewhere in matters that would increase efficiencies ultimately benefiting the consumer and the industry;

7. Receive and disburse funds for use in administering and implementing the provisions and intent of the Oklahoma Beef Improvement and Market Development Act;

8. Annually elect a chairperson from among its members who may be reelected for not more than one one-year term;

9. Meet regularly, but in no case shall meet less than one time per calendar quarter, at any other times as called by the Chair, or upon request by three or more members of the Council;

10. Maintain a permanent record of all business proceedings;

11. Maintain a permanent and detailed record of all financial dealings;

12. Prepare periodic reports and an annual report of all activities for each fiscal year, for review by the beef cattle industry of the state. The annual report shall be filed with the Chair of the Senate Agriculture and Rural Development Committee or successor committee, the Chair of the House Agriculture Committee or successor committee, the Commissioner of the Oklahoma Department of Agriculture, Food, and Forestry, and the Governor;

13. Prepare periodic reports and an annual accounting for each fiscal year of all receipts and expenditures for review of the beef cattle industry of the state and provide for annual audits conducted by a certified public accounting firm;

14. Adopt and promulgate rules pursuant to the Administrative Procedures Act, with the assistance of the Oklahoma Department of Agriculture, Food, and Forestry if requested by the Council, for implementation of the Oklahoma Beef Improvement and Market Development Act;

15. Appoint a licensed banking institution as the depository for program funds and disbursements as authorized by the State Treasurer;

16. Maintain an office at a specific location in Oklahoma that is accessible to beef producers and conducive to operating the programs of the Council; and

17. Have such other powers and duties to implement the Oklahoma Beef Improvement and Market Development Act.

C. The Council may:

1. Conduct or contract for scientific research with any accredited university, college, or similar institution and enter into other contracts or agreements that aid in carrying out the purposes of the Oklahoma Beef Improvement and Market Development Act, including but not limited to contracts for the purchase or acquisition of facilities, advertising, or equipment;

2. Disseminate reliable information benefiting consumers and the beef cattle industry on subjects including, but not limited to, purchase, identification, care, storage, handling, cookery, preparation, serving size or portion, and nutritional value of beef and beef products;

3. Provide information to various governmental bodies, upon request, on subjects of concern to the beef industry and act jointly or in cooperation with the state or federal government, and agencies thereof, in the development or administration of programs deemed by the Council as consistent with the objectives of the Oklahoma Beef Improvement and Market Development Act;

4. Cause any civil action to be filed to enforce the provisions of the Oklahoma Beef Improvement and Market Development Act;

5. Appoint advisory groups composed of representatives from organizations, institutions, governments, or business related to or interested in the welfare of the beef industry and the consuming public;

6. Employ an Executive Director and employees of the Council and prescribe their duties and fix their compensation and terms of employment;

7. Cooperate with any local, state, regional or nationwide organization or agency engaged in work or activities consistent with the objectives of the Oklahoma Beef Improvement and Market Development Act; and

8. Cause any duly authorized agent or representative of the Council to enter upon the premises of any market agent with proper warrants and examine or require examination of only those books, papers, and records associated in any way with payments of assessments or enforcement of the Oklahoma Beef Improvement and Market Development Act. It shall be incumbent upon the Council to make appropriate arrangements with the persons being examined to ensure that an orderly examination is made that does not impede on the person's normal course of business.

D. Members of the Council shall not be individually liable for acts of the Council when acting within the scope of the Council's powers and in the manner prescribed by the laws of the state;

SECTION 6. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 18-35 of Title 2, unless there is created a duplication in numbering, reads as follows:

The members of the Oklahoma Beef Council shall:

1. Be actively engaged in beef production during the year prior to appointment and continuing throughout the term;

2. Have not been found in violation of the Oklahoma Beef Improvement and Market Development Act pursuant to an administrative hearing or court proceeding; and

3. Have not requested a refund within the preceding three (3) years of being appointed.

SECTION 7. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 18-36 of Title 2, unless there is created a duplication in numbering, reads as follows:

A. The Oklahoma Beef Council may levy on each producer selling cattle within or from this state an assessment of up to One Dollar (\$1.00) per head on cattle sold. The state assessment shall be determined by the Council through the promulgation of rules established pursuant to the Administrative Procedures Act. In no event shall the combined federal and state beef assessment exceed One Dollar (\$1.00).

B. The fee shall be assessed and imposed as follows:

1. Upon the cattle producer at the time of a sale by the producer. Except for a sale through a market agent, the assessment shall be collected and remitted by the producers to the Council; or

2. Every market agent doing business in the State of Oklahoma shall deduct from the gross receipts of the producer at the time of sale the assessment on all cattle sold in the state for the producer.

C. 1. The Council shall establish, by rule, the procedures for the collection and remittance of the assessment.

2. The amount of the assessment collected shall be clearly shown on the sales invoice or other document evidencing the transaction.

3. The producer and marketing agent shall forward all assessments collected by the producer or market agent, as appropriate, to the Council by the fifteenth of the month following the month of collection. The Council shall provide appropriate forms for the remittance of the assessment.

D. The Council shall maintain within its financial records a separate accounting of all monies received pursuant to the provisions of this section.

E. All monies deducted under the provisions of this section shall be considered as bona fide business expenses for the producer as provided for under the tax laws of this state.

F. The Council may adopt reciprocal agreements with other beef councils or similar organizations on monies collected by Oklahoma market agents on cattle from other states and on Oklahoma cattle sold at other states' markets.

G. A person may be exempted from payment of the assessment if that person:

1. Certifies that the person's only share in the proceeds of a sale of cattle is a sales commission, handling fee, or other service fee; or

2. Certifies that:

- a. the person acquired ownership of cattle only to facilitate the transfer of ownership of the cattle from the producer to a third party,
- b. the cattle were resold no later than ten (10) days from the date the person acquired ownership, and
- c. the assessment, if applicable, was levied upon the previous owner and collected and remitted, or will be remitted pursuant to the provisions of the Oklahoma Beef Improvement and Market Development Act.

SECTION 8. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 18-37 of Title 2, unless there is created a duplication in numbering, reads as follows:

A. The Council may institute any action necessary to enforce compliance with any provision of the Oklahoma Beef Improvement and Market Development Act and rules promulgated pursuant to the Oklahoma Beef Improvement and Market Development Act. In addition to any other remedy provided by law, the Council may petition for injunctive relief.

B. 1. Any due and payable assessment required under the Oklahoma Beef Improvement and Market Development Act constitutes a personal debt of the person or marketing agent assessed.

2. In the event of failure of a person or marketing agent to remit any properly due assessment or sum, the Council in order to collect an assessment may bring an administrative action and may bring a civil action in district court against that person. If an action is brought in the district court, such action will be brought in the district court of any county in which the sale is conducted.

3. In addition to collection of the assessment, the Council may also collect a ten-percent-penalty assessment, the costs of enforcing the collection of the assessment, and any court costs.

4. The civil action in district court shall be tried and judgment rendered as in any other cause of action for debts due and payable. Any administrative hearing shall be conducted pursuant to the Administrative Procedures Act.

5. All assessments, penalty assessments, and enforcement costs recovered are due and payable to the Council.

SECTION 9. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 18-38 of Title 2, unless there is created a duplication in numbering, reads as follows:

A. Any producer who has paid the assessment under the provisions of the Oklahoma Beef Improvement and Market Development Act shall be entitled to a refund upon a valid request to the Council.

B. The Council shall make available to all producers and marketing agents forms for refund requests.

C. Refund claims shall be submitted by the producer within forty-five (45) days of the payment of the assessment and shall include a signature, date of sale, place of sale, number of cattle, amount of assessment deducted, and proof of the payment of the deducted assessment.

D. 1. Upon verification of a valid refund request, the Council shall remit a refund to the producer within forty-five (45) days of the valid request.

2. In the event the Council fails to remit the valid requested refund as required by this subsection, the producer may bring a civil action against the Council in the district court of the county in which the office of the Council is located for collection of the refund, a ten-percent-penalty assessment, and all court costs.

3. The civil action shall be tried and judgment rendered as in any other cause of action for debts due and payable.

4. All assessments, penalty assessments, and enforcement costs recovered are due and payable to the producer.

E. If the Council has reasonable doubt that a refund claim is valid, it may withhold payment and take action as deemed necessary to determine its validity.

F. All requests for refunds shall only be initiated by the producer.

SECTION 10. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 18-39 of Title 2, unless there is created a duplication in numbering, reads as follows:

Within ninety (90) days of the effective date of this act, the Oklahoma Beef Council shall promulgate the necessary rules for the Council to carry out the intent and purposes of the Oklahoma Beef Improvement and Market Development Act.

SECTION 11. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 18-40 of Title 2, unless there is created a duplication in numbering, reads as follows:

The Oklahoma Beef Council shall not be subject to the laws of this state dealing with the:

1. Office of Personnel Management; or
2. Competitive Bidding Act administered by the Department of Central Services.

SECTION 12. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 18-41 of Title 2, unless there is created a duplication in numbering, reads as follows:

The Oklahoma Beef Improvement and Market Development Act shall become effective only upon the cessation or part thereof of the federal Beef Promotion and Research Act of 1985, 7 U.S.C., Sections 2901 through 2911, upon certification by the Oklahoma Commissioner of Agriculture.

SECTION 13. This act shall become effective November 1, 2004.

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