

AN ACT

ENTITLED, An Act to establish a refundable checkoff program for swine.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF SOUTH DAKOTA:

Section 1. Terms used in this Act mean:

- (1) "Assessment," a per head fee collected on the sale of all varieties of swine in South Dakota;
- (2) "Commission," the South Dakota Pork Commission;
- (3) "Participating seller," any person who owns or operates an agricultural producing or growing facility for swine and shares in the profits and risks of loss from such operation, and who produces swine in South Dakota during the current or preceding marketing year, and has not requested a refund from the payment of assessments on swine production under this Act for the past twelve months;
- (4) "Purchaser," any person who buys, accepts for shipment, accepts for consignment, brokers, order buys, or otherwise acquires swine from a producer;
- (5) "Secretary," the secretary of the Department of Agriculture.

Section 2. There is hereby established the South Dakota Pork Commission. The commission shall be composed of five members who:

- (1) Are landowning residents of South Dakota;
- (2) Are at least twenty-five years of age and residents of South Dakota;
- (3) Have been actually engaged in raising swine in this state for a period of at least five years;
- (4) Derive a substantial portion of their income from raising swine; and
- (5) Are participating sellers.

Section 3. The initial members shall be appointed by the secretary from a list of recommendations submitted to the secretary by the pork producers of the state. The terms of members are three years;

the initial appointments shall be for staggered terms. The secretary is an ex officio, nonvoting member of the commission.

Section 4. Each successor to the initial members shall be elected by the pork producers of the state under rules promulgated by the secretary pursuant to chapter 1-26. No member may serve for more than two consecutive elected terms.

Section 5. If a member of the commission ceases to be a participating seller or resigns from office before the expiration of the member's term, the secretary shall appoint a successor for the balance of the term of office vacated.

Section 6. The commission shall annually elect a chair and a vice chair. A majority of voting members constitutes a quorum. All meetings of the commission shall be called by the chair except that special meetings may be called by three members of the commission. The commission shall adopt procedures for the calling of special meetings.

Section 7. The commission may:

- (1) For purposes related to the swine industry, enter into contracts, including loans and grants, and cooperate with any person, any local, state, or national organization, whether public or private, or with any governmental department or agency for the discovery, promotion, development, and expansion of domestic and export markets and industries and for research, protection, education, transportation, and health issues;
- (2) Expend the funds collected pursuant to this Act and appropriated for its administration;
- (3) Appoint, employ, discharge, fix compensation for, and prescribe the duties of such personnel as it deems necessary;
- (4) Accept donations of funds, property, services, or other assistance from public or private sources for the purpose of furthering the objectives of the commission;
- (5) Lease, purchase, own, maintain, operate, and dispose of equipment and supplies necessary

to carry out the provisions of this Act.

Section 8. The commission shall promulgate rules pursuant to chapter 1-26 concerning:

- (1) The procedures for obtaining a declaratory ruling;
- (2) The procedures for collecting assessments for swine sold to a purchaser and the amount of the assessment in accordance with section 9 of this Act;
- (3) The procedures for obtaining a refund of the assessment;
- (4) The procedures for collecting delinquent assessments and assessing penalties;
- (5) The record-keeping and reporting requirements of purchasers.

Section 9. An assessment not to exceed 0.45 percent of the market value of each swine when sold is imposed by the commission upon all swine sold in the state by a South Dakota resident. However the commission may enter into reciprocal agreements with other states that also have a swine checkoff fee to remit the assessment to the state where the swine were grown.

Section 10. Any purchaser of swine shall collect the assessment imposed by this Act by deducting the assessment from the purchase prices of all swine subject to the assessment.

Section 11. Moneys collected from checkoff fees shall be deposited in a special revolving fund created in the state treasury and are continuously appropriated to the commission.

Section 12. Each purchaser shall keep a permanent record for three years of all purchases of swine, which may be examined by the commission at any reasonable time. Each purchaser shall report to the commission stating the seller and quantity of swine. The report and remittance of the assessment shall be made at the times and in the manner prescribed by the commission pursuant to rules promulgated by the commission pursuant to chapter 1-26.

Section 13. If a purchaser disputes an assessment made under this Act, the purchaser may appeal to the commission, which shall conduct a hearing and resolve the matter pursuant to the contested case provisions of chapter 1-26. If a purchaser fails to remit the assessment provided in this Act, the

commission may enforce collection in any appropriate court within this state.

Section 14. Within ninety days following the assessment, any seller subject to the assessment provided in this Act may apply to the commission for a refund of the assessment. The refund application shall be accompanied by a copy of the record of the assessment on the sale. The commission shall refund the amount of the assessment collected within sixty days of receiving a valid refund application.

Section 15. The commission, to inform the seller, shall develop and disseminate information and instructions relating to the purpose of the swine assessment and manner in which refunds may be claimed, and to this extent shall cooperate with government agencies, state and federal, and private businesses engaged in the purchase of swine.

Section 16. If any national promotion, research, or consumer information program that uses an assessment mechanism on the sale of swine and is under the supervision of an agency of the federal government is resumed or established, the collection of assessments under this Act is suspended beginning sixty days after the collection of assessments under the national program begins. If the collection of assessments under this Act remains suspended for more than two years, the commission is dissolved and the assets and liabilities of the commission shall be managed as the Legislature shall determine. If, after the commission has been dissolved, the collection of assessments by the national program ceases for a period of sixty days, new members of the commission shall be appointed and subsequent commission members elected as provided in this Act, and the activities of the commission shall resume.

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I certify that the attached Act
originated in the

SENATE as Bill No. 210

Secretary of the Senate

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President of the Senate

Attest:

Secretary of the Senate

Speaker of the House

Attest:

Chief Clerk

Senate Bill No. 210

File No. _____

Chapter No. _____

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Received at this Executive Office
this _____ day of _____ ,

20____ at _____ M.

By _____
for the Governor

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The attached Act is hereby
approved this _____ day of
_____, A.D., 20____

Governor

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STATE OF SOUTH DAKOTA,
ss.
Office of the Secretary of State

Filed _____, 20____
at _____ o'clock __ M.

Secretary of State

By _____
Asst. Secretary of State