

# WEST VIRGINIA LEGISLATURE

REGULAR SESSION, 1947



## ENROLLED

SENATE BILL No. 212

(By Mr. Bowling)



PASSED March 3, 1947

In Effect Ninety days from Passage



212

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AN ACT to amend and reenact article sixteen, chapter nineteen, of the code of West Virginia, one thousand nine hundred thirty-one, as amended, pertaining to the sale and distribution of agricultural and vegetable seeds in the state of West Virginia.

*Be it enacted by the Legislature of West Virginia:*

That article sixteen, chapter nineteen of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be amended and reenacted to read as follows:

Section 1. *Definitions.*—When used in this article, (a)

2 The term “person” shall include any individual, partner-  
3 ship, corporation, company, society or association;

4 (b) The term “agricultural seeds” shall include the  
5 seeds of grass, forage, cereal and fiber crops and any other

6 kinds of seeds commonly recognized within this state as  
7 agricultural or field seeds and mixtures of such seeds;

8 (c) The term "vegetable seeds" shall include the seeds  
9 of those crops which are grown in gardens or on truck  
10 farms, and are generally known and sold under the name  
11 of vegetable seeds in this state;

12 (d) The term "seed potato" shall refer to the Irish po-  
13 tato (*Solanum tuberosum*);

14 (e) The term "weed seeds" shall include the seeds of  
15 all plants generally recognized as weeds within this state;

16 (f) Noxious weed seeds shall be divided into two clas-  
17 ses, "prohibited weed seeds" and "noxious weed seeds,"  
18 as defined in (1) and (2) of this subsection: *Provided*,  
19 That the commissioner of agriculture may, through pro-  
20 mulgation of regulations, add to or subtract from the list  
21 of seeds included under either definition whenever he  
22 finds that such additions or subtractions are within the  
23 respective definitions;

24 (1) "Prohibited weed seeds" are the seeds of perennial  
25 weeds such as not only reproduced by seed, but also spread  
26 by underground roots or stems, and which when estab-

27 lished are highly destructive and difficult to control in  
28 this state by ordinary cultural practice;

29 "Prohibited weed seeds" in this state are the seeds of  
30 dodder (*Cuscuta* spp.), Wild onion (*Allium vineale*),  
31 quack grass (*Agropyron repens*), Johnson grass (*Sorg-  
32 hum halapense*), Canada Thistle (*Carduus arvensis*), per-  
33 ennial sow thistle (*Sonchus arvensis*);

34 (2) "Noxious weed seeds" are the seeds of such weeds  
35 as are very objectionable in fields, lawns or gardens of  
36 this state, but can be controlled by good cultural practice.

37 "Noxious weed seeds" in this state are the seeds of hawk  
38 weed (*Heiracium* spp.), buckhorn (*Plantago lanceolata*),  
39 English charlock or wild mustard (*Brassica arvensis*),  
40 corn cockle (*Agrostemma githago*), ox-eye daisy (*Chry-  
41 santhemum leucanthemum*), Indian mustard (*Brassica  
42 juncea*), star thistle (*Centurea solstitialis*), wild carrot  
43 (*Daucus carota*), horse nettle (*Solanum carolinan*), field  
44 pepper grass (*lepidium compestre*), wild morning glory  
45 (*Ipomea purpurea*), bindweed (*Convolvulus arvensis*);

46 (g) The term "labeling" includes all labels and other  
47 written, printed or graphic representation, in any form

48 whatsoever, accompanying and pertaining to any seed  
49 whether in bulk or in containers, and includes invoices;

50 (h) The term "advertisement" means all representa-  
51 tions, other than those on the label, disseminated in any  
52 manner or by any means, relating to seed within the scope  
53 of this article.

Sec. 2. *Label Requirements.*—Each container of agri-  
2 cultural or vegetable seed which is sold, offered for sale,  
3 or exposed for sale within this state for sowing purposes,  
4 shall bear thereon or have attached thereto in a conspic-  
5 uous place a plainly written or printed label or tag in  
6 the English language, giving the following information:

7 (a) For agricultural seeds—

8 (1) Commonly accepted name of

9 (a) Kind and variety of each agricultural seed com-  
10 ponent in excess of five per cent of the whole, and the  
11 percentage by weight of each in the order of its predom-  
12 inance. Where more than one component is required to be  
13 named, the word "mixture" or the word "mixed" shall  
14 be shown conspicuously on the label.

15 (b) If the variety is unknown, that fact shall be stated

16 for each agricultural seed component in excess of five per  
17 cent of the whole.

18 (2) Lot number or other lot identification

19 (3) Origin, if known, of alfalfa, red clover and field  
20 corn (except hybrid corn). If the origin is unknown that  
21 fact shall be stated.

22 (4) Percentage by weight of all weed seeds.

23 (5) The name and approximate number of each kind  
24 of noxious weed seed: (a) Per ounce in *Agrostis* spp., *Poa*  
25 spp., Rhodes grass, Bermuda grass, timothy, orchard  
26 grass, fescues, alsike and white clover, reed canary grass,  
27 Dallis grass, ryegrass, foxtail millet, alfalfa, red clover,  
28 sweet clovers, lespedezas, smooth brome, crimson clover,  
29 *Brassica* spp., flax, *Agropyron* spp., and other agricultural  
30 seeds of similar size and weight, or mixtures within this  
31 group.

32 (b) Per pound in proso, sudan grass, wheat, oats, rye,  
33 barley, buckwheat, sorghums, vetches, and other agricul-  
34 tural seeds of a size and weight similar to or greater than  
35 those within this group, or any mixtures within this  
36 group.

37 All determinations of noxious weed seeds shall be sub-  
38 ject to tolerances and methods of determination prescribed  
39 in the rules and regulations under this article.

40

41 (6) Percentage by weight of agricultural seeds (which  
42 may be designated as "crop seeds"), other than those re-  
43 quired to be named on the label.

44 (7) Percentage by weight of inert matter.

45 (8) For each named agriculture seed: (a) Percentage  
46 of germination exclusive of hard seed; (b) Percentage of  
47 hard seed, if present; (c) The calendar month and year  
48 the test was completed to determine such percentages.

49 Following (a) and (b) the "total germination and  
50 hard seeds" may be stated as such, if desired.

51 (9) Name and address of the person who labeled said  
52 seed, or who sells, offers, or exposes said seed for sale  
53 within this state.

54 (10) For agricultural seeds which germinate less than  
55 the standard last established by the commissioner of ag-  
56 riculture under this article, the label shall show in addi-  
57 tion to the previous requirements of this section, the

58 words "germination below standard" in not less than  
59 eight point type.

60 (b) For vegetable seeds—

61 (1) Name of kind and variety;

62 (2) For seeds which germinate less than the standard  
63 last established by the commissioner of agriculture under  
64 this article: (a) Percentage of germination, exclusive of  
65 hard seed; (b) Percentage of hard seed, if present; (c)  
66 The calendar month and year the test was completed to  
67 determine such percentages; (d) The words "below stan-  
68 dard" in not less than eight point type; and

69 (3) Name and address of the person who labeled said  
70 seed, or who sells, offers or exposes said seed for sale  
71 within this state.

72 (c) For "seed potatoes"—

73 Only "certified" seed potatoes which grade from the  
74 standpoint of physical defects better than the minimum  
75 requirements of U. S. No. 1 may be offered for sale as  
76 seed. There shall be attached to each bag or container a  
77 tag showing by whom certified, the standard or conditions  
78 under which said certification is made, and the name of



79 the official state or governmental agency making the in-  
80 spection upon which the certification is made.

Sec. 3. *Certificate of Registration; Fee Stamps.*—Every  
2 producer or distributor of agricultural or vegetable seeds  
3 or seed potatoes who shall sell, offer or expose for sale  
4 or distribution in this state any seeds, shall before the  
5 same is offered or exposed for sale obtain from the com-  
6 missioner of agriculture a certificate of registration show-  
7 ing that he has registered with the commissioner of  
8 agriculture to sell seeds in West Virginia. The commis-  
9 sioner of agriculture shall have full power and is hereby  
10 authorized and required to cancel and withdraw any  
11 certificate upon satisfactory evidence that any provi-  
12 sions of this article or any rules and regulations covering  
13 the sale of any seed have been violated. The commis-  
14 sioner shall not issue any certificate of registration ex-  
15 cept upon filing with the commissioner of agriculture a  
16 statement of the name and address of the seedsman,  
17 importer, dealer, or agent, or other person, firm or cor-  
18 poration, selling, offering or exposing for sale or distribu-  
19 tion any seeds in this state; a list of the seeds to be offered

20 for sale, and accompanied by a registration fee of one  
21 dollar. Certificates so issued by the commissioner shall  
22 become null and void on December thirty-first next after  
23 date of issue unless sooner revoked as herein provided.

24 For the purpose of defraying the cost of inspection  
25 and analyses of seeds and the enforcement of this article,  
26 every producer or distributor of agricultural or vege-  
27 table seeds or seed potatoes who shall sell, offer or ex-  
28 pose for sale or distribution in this state any such seed  
29 shall, before the same is offered or exposed for sale or  
30 distribution, obtain from the commissioner of agriculture  
31 fee stamps to be attached to each package or container of  
32 seeds at the following rates:

33 (a) For alfalfa, sweet clover and all grass and clover  
34 seeds or mixtures of any of these, and all vegetable seeds  
35 except those contained in sampler or display units, the  
36 following rates: Eight cents for each one hundred pounds;  
37 six cents for each seventy-five pounds; four cents for  
38 each fifty pounds; two cents for each twenty-five pounds.

39 (b) For all other agricultural seeds the following rates:  
40 Four cents for each one hundred pounds; three cents

41 for each seventy-five pounds; two cents for each fifty  
42 pounds; one cent for each twenty-five pounds.

43 (c) For vegetable seeds packed in primary consumer  
44 containers: Fifty cents for each sampler or unit display.

45 (d) For seed potatoes: One cent for each container.

46 (e) For all seeds not otherwise specified in packages  
47 of ten pounds or less: One cent for each container.

48 The distributor of any agricultural or vegetable seed  
49 or seed potato shall not be required to register or place  
50 fee stamps on the containers of seeds if the seed has al-  
51 ready been registered and properly stamped under this  
52 article by a person entitled to do so, and such registra-  
53 tion is then in effect.

54 All moneys collected in the enforcement of this article  
55 shall be deposited in a special revenue fund with the  
56 state treasurer, and shall be expended on order of the  
57 commissioner of agriculture.

Sec. 4. *Prohibitions.*—(a) It shall be unlawful for  
2 any person to sell, offer or expose for sale any agricul-  
3 tural or vegetable seed within this state:

4 (1) Unless the test to determine the percentage of

5 germination required by section two shall have been  
6 completed within a nine month period, exclusive of the  
7 calendar month in which the test was completed, immedi-  
8 ately prior to sale, exposure for sale or offering for sale  
9 or transportation;

10 (2) Not labeled in accordance with the provisions of  
11 this article or having a false or misleading labeling;

12 (3) Pertaining to which there has been a false or  
13 misleading advertisement;

14 (4) Containing prohibited weed seeds, subject to tol-  
15 erances and methods of determination prescribed in the  
16 rules and regulations under this article;

17 (5) Containing more than two per cent by weight of  
18 weed seeds; (b) It shall be unlawful for any person  
19 within this state:

20 (1) To detach, alter, deface or destroy any label pro-  
21 vided for in this article or the rules and regulations made  
22 and promulgated thereunder, or to alter or substitute  
23 seed in a manner that may defeat the purposes of this  
24 article;

25 (2) To disseminate any false or misleading adver-

26 tisement concerning agricultural, vegetable or potato seed  
27 in any manner or by any means;

28 (3) To hinder or obstruct in any way any author-  
29 ized person in the performance of his duties under this  
30 article;

31 (4) To fail to comply with a "stop-sale" order.

Sec. 5. *Exemptions.*---(a) The provisions of sections  
2 two and three shall not apply:

3 (1) To grain or potatoes not intended for seeding  
4 purposes;

5 (2) To seed in storage in or consigned to a seed clean-  
6 ing or processing establishment for cleaning or process-  
7 ing: *Provided*, that any labeling or other representation  
8 which may be made with respect to the uncleaned or  
9 unprocessed seed shall be subject to this article;

10 (b) No person shall be subject to the penalties of this  
11 article for having sold or offered or exposed for sale in  
12 this state any agricultural, vegetable or potato seeds  
13 which were incorrectly labeled or represented as to kind,  
14 variety, type, or origin which seeds cannot be identified  
15 by examination thereof, unless he has failed to obtain an

16 invoice or grower's declaration giving kind, or kind and  
17 variety, or kind and type, and origin, if required, and to  
18 take such other precautions as may be necessary to in-  
19 sure the identity to be that stated.

Sec. 6. *Duties and Authority of Commissioner of Agri-*

2 *culture.*—(a) The duty of enforcing this article and  
3 carrying out its provisions and requirements shall be  
4 vested in the commissioner of agriculture. It shall be his  
5 duty:

6 (1) To establish germination standards for agricul-  
7 tural and vegetable seeds;

8 (2) To sample, inspect, make analysis of, and test  
9 agricultural, vegetable and potato seeds transported, sold  
10 or offered or exposed for sale within this state for seed-  
11 ing purposes, at such time and place and to such extent  
12 as he may deem necessary to determine whether such  
13 seeds are in compliance with the provisions of this ar-  
14 ticle, and to notify promptly the person who transported,  
15 sold, offered or exposed the seed for sale, of any viola-  
16 tion;

17 (3) To prescribe and adopt rules and regulations gov-

18 ernen the methods of sampling, inspecting, analysis,  
19 tests and examination of agricultural and vegetable seed,  
20 and the tolerances to be followed in the administration  
21 of this article, which shall be in general accord with offi-  
22 cially prescribed practice in interstate commerce, and  
23 such other rules and regulations as may be necessary to  
24 secure the efficient enforcement of this article;

25 (b) Further for the purpose of carrying out the pro-  
26 visions of this article the commissioner of agriculture,  
27 individually or through his authorized agents, is author-  
28 ized;

29 (1) To enter upon any public or private premises  
30 during regular business hours in order to have access  
31 to seeds subject to this article and the rules and regula-  
32 tions thereunder;

33 (2) To issue and enforce a written or printed "stop-  
34 sale" order to the owner or custodian of any lot of seed  
35 which the commissioner of agriculture finds is in viola-  
36 tion of any provisions of this article, which order shall  
37 prohibit further sale or movement of such seed until the  
38 commissioner has released the same;

39     (3) To establish and maintain or make provisions for  
40 seed testing facilities, to employ qualified persons, and to  
41 incur such expenses as may be necessary to comply with  
42 these provisions;

43     (4) To make or provide for making purity and ger-  
44 mination tests of seeds for farmers and dealers on re-  
45 quest; to prescribe rules and regulations governing such  
46 testing; and to fix and collect charges for the tests made.  
47 Such fees shall be deposited with the state treasurer in  
48 a special revenue fund and may be expended on order of  
49 the commissioner of agriculture.

50     (5) To cooperate with the United States Department  
51 of Agriculture in seed law enforcement;

52     (6) To establish a certifying agency for seed grown  
53 in this state.

Sec. 7. *Seizure.*—Any lot of seed not in compliance  
2 with the provisions of this article shall be subject to  
3 seizure on complaint of the commissioner of agriculture  
4 to a court of competent jurisdiction. In the event that the  
5 court finds the seed to be in violation of this article and  
6 orders the condemnation of said seed, it shall be dena-



7 tured, processed, destroyed, relabeled, or otherwise dis-  
8 posed of in compliance with the laws of this state.

Sec. 8. *Violations and Prosecutions.*—Any person vio-  
2 lating any of the provisions of this article shall be deemed  
3 guilty of a misdemeanor, and upon conviction thereof  
4 shall be fined not less than one hundred dollars nor more  
5 than two hundred fifty dollars for the first offense, and not  
6 less than two hundred dollars nor more than five hun-  
7 dred dollars for each subsequent offense.

8 When the commissioner of agriculture shall find that  
9 any person has violated any of the provisions of this ar-  
10 ticle, he or his duly authorized agent or agents may insti-  
11 tute proceedings in a court of competent jurisdiction:  
12 *Provided, however,* that no prosecution under this article  
13 shall be instituted without the defendant first having  
14 been given an opportunity to appear before the commis-  
15 sioner of agriculture or his duly authorized agent to in-  
16 troduce evidence, either in person or by agent or at-  
17 torney, at a hearing. If, after such hearing, or without  
18 such hearing in case the defendant or his agent or at-  
19 torney fails or refuses to appear, the commissioner of

20 agriculture is of the opinion that the evidence warrants  
21 prosecution, he shall proceed according to law.

Sec. 9.—If any provision of this article is declared un-  
2 constitutional, or the applicability thereof to any person  
3 or circumstance is held invalid, the constitutionality of  
4 the remainder of the article and the applicability thereof  
5 to other persons and circumstances shall not be affected  
6 thereby.

Sec. 10.—Any acts or parts of acts inconsistent with  
2 this act are hereby repealed.

The Joint Committee on Enrolled Bills hereby certifies that the foregoing bill is correctly enrolled.

Forest L. McKeer

Chairman Senate Committee

W. L. Matthews

Chairman House Committee

Originated in the

Senate

Takes effect

ninety days from

passage.

Howard Myers

Clerk of the Senate

J. R. H. H.  
Clerk of the House of Delegates

Donald J. M. Tickers  
President of the Senate

John E. Amos  
Speaker House of Delegates

The within

Approved

this the

7<sup>th</sup>

day of

March

, 1947.

Clarence Meadows

Governor.



Filed in the Office of the Secretary of State  
of West Virginia

**MAR 8 1947**  
Wm. S. C. B. 17  
SECRETARY OF STATE