
WEST VIRGINIA CODE CHAPTER 19

ARTICLE 1

WV Legislature

§19-1-1. Department of agriculture.

There shall be a Department of Agriculture under the control and supervision of a commissioner of agriculture.

WV Legislature

§19-1-2. Commissioner of Agriculture.

The commissioner of agriculture shall be elected by the qualified voters of the state at the same time and in the same manner as other state officers are elected, and shall hold office for a term of four years and until his or her successor is elected and qualified.

WV Legislature

§19-1-3. Employees; itemized statement of expenditures; monthly statement and payment of moneys received by commissioner.

The commissioner shall organize his or her department and may employ a general counsel and other such legal, business, science, and technical professionals, para-professionals, and experts, and employees as may be necessary to perform the duties of the office. He or she shall fix their compensation and may require them to give bond for the faithful performance of their duties.

The commissioner shall certify to the State Auditor, from time to time, an itemized account of all expenditures made by him or her for employee hire and other purposes, whereupon the Auditor shall draw his or her warrant on the State Treasurer for the payment thereof out of the funds appropriated by the Legislature for that purpose, but in no case to exceed such appropriation.

The commissioner shall, within 10 days after the expiration of each month, submit to the Auditor and Treasurer an itemized statement of all moneys received by him or her during that month, and at the same time pay such money into the State Treasury.

§19-1-3a. Marketing and economic development duties.

(a) The department shall establish marketing, promotional, and economic development programs to advance West Virginia agriculture in the domestic and international markets; provide grading, inspection, and market news services to the various elements of the West Virginia agricultural industry; and regulate and license individuals involved in the marketing of agricultural products. Upon request of the commissioner, the Department of Economic Development may coordinate with the Department of Agriculture in the development of such programs.

(b) Any documentary material, data, or other writing made or received by the department in furtherance of its economic development duties and for the purpose of furnishing assistance to a new or existing business shall be exempt from the provisions of §29B-1-1 *et seq.* of this code.

§19-1-3b. Background checks as condition of employment.

(a) The commissioner may, as a condition of employment, require an applicant for a position to submit to a state and national criminal history record check. This requirement is found not to be against public policy.

(b) The criminal history record check shall be based on fingerprints submitted to the West Virginia State Police or its assigned agent for forwarding to the Federal Bureau of Investigation. The applicant shall meet all requirements necessary to accomplish the state and national criminal history record check, including:

(1) Submitting fingerprints for the purposes set forth in this subsection; and

(2) Authorizing the board, the West Virginia State Police and the Federal Bureau of Investigation to use all records submitted and produced for the purpose of screening the applicant for employment.

(c) The results of the state and national criminal history record check may not be released to or by a private entity except:

(1) To the individual who is the subject of the criminal history record check;

(2) With the written authorization of the individual who is the subject of the criminal history record check; or

(3) Pursuant to a court order.

(d) The criminal history record check and related records are not public records for the purposes of chapter 29B of this code.

(e) The commissioner may not disqualify an applicant for employment because of a prior criminal conviction that has not been reversed unless that conviction is for a crime that bears a rational nexus to the employment category.

(f) The commissioner may not use crimes involving moral turpitude in making employment determinations.

(g) If an applicant is disqualified for employment because of a criminal conviction that has not been reversed, the commissioner shall afford the applicant the opportunity to reapply for employment after the expiration of five years from the date of conviction or date of release from the penalty that was imposed, whichever is later, if the individual has not been convicted of any other crime during that period of time: Provided, That convictions for violent or sexual offenses or offenses shall subject an individual to a longer period of disqualification, to be determined by the commissioner by rule.

(h) An individual with a criminal record who has not previously applied for employment may

petition the commissioner at any time for a determination of whether the individual's criminal record will disqualify the individual from obtaining employment. This petition shall include sufficient details about the individual's criminal record to enable the commissioner to identify the jurisdiction where the conviction occurred, the date of the conviction and the specific nature of the conviction. The commissioner shall inform the individual of his or her standing within 60 days of receiving the petition from the applicant.

(i) The commissioner shall propose rules or amendments to existing rules for legislative approval to comply with the provisions of this section. These rules or amendments to rules shall be proposed pursuant to the provisions of §29A-3-1 et seq. of this code within the applicable time limit to be considered by the Legislature during its regular session in the year 2020.

§19-1-4. Duties of commissioner.

The Commissioner of Agriculture shall perform the following duties:

- (a) Devise means of advancing the agricultural interests of the state and, in the performance of such duty, he or she shall have authority to call upon any state department, or officer of the state or county, to cooperate in promoting the agricultural interests of the state. It shall be the duty of any such department, or officer, upon request of the commissioner to render the assistance desired;
- (b) Promote and encourage the organization of such societies and associations as have for their object the improvement and development of the state's agricultural, horticultural and kindred interests, especially in production, processing for market, and distribution;
- (c) Conduct cooperative work with the United States Department of Agriculture in inspecting and determining the grade and condition of farm produce at collecting centers, receiving centers, and shipping points;
- (d) Induce the investment of capital in, and immigration into, this state by the dissemination of information relative to the soil, climate, health, natural resources, market opportunities, and advantages of the state;
- (e) Investigate and report upon the kinds, conditions, and extent of the mineral products of the state and their value;
- (f) Take charge of the museum of the Department of Agriculture, collect, preserve, and exhibit therein specimens of agricultural, horticultural, and kindred products, products of the forests, minerals, flora, and fauna of the state;
- (g) Publish and distribute, from time to time, such reports and bulletins concerning agriculture, horticulture, and kindred subjects as may be of value to the farmers of the state and, as conditions may demand, publish a handbook giving the resources of the several counties of the state, the varieties of soil and products, both mineral and vegetable, and the adaptability of the different sections of the state to the different branches of agriculture, horticulture, and kindred interests;
- (h) Submit a biennial report to the Governor and Legislature containing such information as to the operations of the department as may be helpful to the agricultural interests of the state, together with an itemized statement of all receipts and disbursements during the biennial period covered thereby and giving the name of every person employed during such period, the time employed, and the amount paid each employee;
- (i) Perform such other duties and exercise such other powers as are provided in this chapter and by general law;
- (j) Enter into an agreement with the Secretary of the Department of Veterans' Assistance to

transfer without consideration all or part of the approximately 17 acres of Department of Agriculture property in Beckley, West Virginia, located adjacent to the Jackie Withrow Hospital which was formerly known as Pinecrest Hospital, for construction of a veterans skilled nursing facility;

(k) Propose rules, including regulatory standards, for legislative approval in accordance with the provisions of §29A-3-1 *et seq.* of this code for the purpose of carrying out the requirements of this chapter;

(l) Cooperate with the State Resiliency Office to the fullest extent practicable to assist that office in fulfilling its duties;

(m) Notwithstanding any provision of this code to the contrary, transfer to the Village of Barboursville, without consideration, all the approximately 250 acres of land known as the Huntington State Hospital institutional farm, located at Barboursville, Cabell County, for the purpose of providing public services; and

(n) Notwithstanding any provision of this code to the contrary, transfer to the City of Ellenboro, without consideration, all the lots owned by the Department of Agriculture located in the City of Ellenboro, for public services.

§19-1-4a. Commissioner authorized to accept gifts, etc., and enter into cooperative agreements.

Notwithstanding any provision of this code to the contrary, the Commissioner of Agriculture is hereby empowered and he or she shall have authority to accept and receive donations, gifts, contributions, grants, and appropriations of money, services, materials, real estate, or other things of value from the United States Department of Agriculture, the United States Food and Drug Administration, the United States Environmental Protection Agency, any other agency of the United States government, or any of their divisions or bureaus, and he or she shall have authority to use, utilize, develop, or expend such money, services, material, or other contributions in conformity with the conditions and provisions set forth in such grants, appropriations, or donations.

The commissioner may accept and receive donations, gifts, contributions, and grants of money, services, materials, real estate, and other things of value from individuals, partnerships, associations, or corporations, and he or she shall have authority to utilize such contributions to encourage, promote, and develop the agricultural interests or industries of the state.

The commissioner is hereby empowered, and he or she shall have authority to enter into agreements with any department of state government for the purpose of carrying out any regulatory laws where or when any related functions or duties exist. He or she shall also have authority to enter into agreements with any city council or county commission of the State of West Virginia, for carrying out the provisions of the agricultural laws over which he or she has enforcement authority.

§19-1-4b. Authority of commissioner to increase certain fees by rules or regulations.

The commissioner is hereby authorized to promulgate and adopt rules in accordance with the provisions of chapter twenty-nine-a of this code, fixing dues for permits, licenses, certificates, registrations and laboratory tests when, in the opinion of the commissioner, it becomes necessary to increase these fees in order to cover the costs of providing the services involved or issuing the permits, licenses, certificates or registrations applicable.

WV Legislature

§19-1-4c. Agriculture fees fund.

There is hereby created a special revenue account within the state Treasury to be known as "Agricultural Fees Fund". Expenditures from the fund shall be used exclusively by the commissioner of agriculture for the purpose of enforcement and administration of this chapter. Moneys paid into the account shall be from all moneys collected under this chapter, except those designated in article one-a; article two-g; article twenty-one; article twenty-one-a; article twenty-one-b; article twenty-three; article twenty-five; article twenty-six; article twenty-seven; and section twenty-three, article sixteen-a.

§19-1-4d. Farmland preservation fees fund.

There is hereby created a special revenue account within the state Treasury to be known as "Farmland Preservation Fees Fund". Expenditures from the fund shall be used exclusively by the commissioner of agriculture for the purpose of funding farmland preservation boards in any county which has adopted and implemented a farmland protection program pursuant to the farmland preservation act as enacted beginning with section seventy-two, article twenty-four, chapter eight of this code.

WV Legislature

§19-1-4e. Department of Agriculture Capital Improvements Fund.

There is hereby created in the State Treasury a special revenue account to be known as the Department of Agriculture Capital Improvements Fund. The fund shall be administered by the Department of Agriculture. The fund shall consist of all moneys transferred into the fund pursuant to §19-12A-6a of this code, any moneys that may be appropriated and designated for the fund by the Legislature, and all interest or other return earned from investment of the fund.

Expenditures from the fund shall be for the purpose of funding construction and capital improvements to facilities owned or occupied by the Department of Agriculture and are not authorized from collections, but are to be made only in accordance with appropriation by the Legislature and in accordance with the provisions of §12-3-1 et seq. of this code and upon the fulfillment of the provisions set forth in §11B-2-1 et seq. of this code. Any balance, including accrued interest and other returns, remaining in the fund at the end of each fiscal year shall not revert to the General Revenue Fund, but shall remain in the fund and be expended as provided by this section.

§19-1-5. Cooperative statistical work.

The commissioner of agriculture is hereby authorized to conduct cooperative work with the United States Department of Agriculture in gathering and disseminating information concerning agriculture, and it shall be the duty of the commissioner of agriculture and the Tax Commissioner to prepare and supply to the several assessors of the state printed forms, books, blanks, papers and reports, which are hereby required to be printed by the state printer out of the printing fund of the state, to be used in the gathering of such agricultural and other statistics as the commissioner of agriculture may require.

§19-1-6. Duty of assessor to gather statistics.

Commencing on July 1, of each year, the assessors shall proceed to gather such statistics as the commissioner of agriculture and the Tax Commissioner may require, and the printed books, forms, blanks, papers and reports when so completed shall be returned to the commissioner of agriculture, on or before March 1 next ensuing.

WV Legislature

§19-1-7. Sale of raw milk.

(a) For purposes of this section, “raw milk” means milk that has not been pasteurized as specified in 21 C.F.R. §1240.61.

(b) Notwithstanding any other provision of this code to the contrary, raw milk may be sold by a seller in West Virginia to a consumer in West Virginia: *Provided*, That any container of raw milk sold pursuant to this article shall be clearly labeled as “unpasteurized raw milk”, and shall include the name and physical address of the seller, the date of production, and the following warning: “Consuming unpasteurized raw milk may increase your risk of foodborne illness, especially for children, elderly, immunocompromised individuals, and persons with certain medical conditions”.

(c) The Commissioner of Agriculture, in consultation with the Department of Health, may propose rules for promulgation in accordance with the provisions of §29A-3-1 *et seq.* of this code in compliance with raw milk dairy industry standards.

§19-1-8. Penalty for failure of assessor to perform duties.

Any assessor failing to perform any of the duties required of him in this article shall be guilty of a misdemeanor, and, upon conviction thereof, fined not more than \$100.

WV Legislature

§19-1-9. Agriculture advisory board.

There shall be a state agriculture advisory board to consist of the Governor, the commissioner of agriculture and the director of the cooperative extension service of West Virginia University, ex officio. It shall be the duty of the members of such board to meet together at the seat of government at least four times each year at regular intervals to consider the conditions and needs of the agricultural interests of the state, and how and in what manner the functions, powers and duties assigned by law to each Department of Agriculture may be most efficiently and economically administered for the benefit of the state so that there may be neither overlapping, duplication nor interference of, by or with the work of the one department with that of the other, and that the department best calculated to exercise and discharge certain powers, duties or functions be thereunto appointed and authorized, and that the other department shall desist from further activities in that behalf.

The decision of any two members of such board shall be final, and the department against which such decision shall be shall cease all activities not in conformity with such decision, and the other department shall proceed to carry on the work in conformity therewith.

§19-1-10. Requirement for social security number on applications.

[Repealed.]

WV Legislature

§19-1-11. Rural Rehabilitation Loan Program.

(a) The Rural Rehabilitation Loan Program is an important tool for the Department of Agriculture to promote investment in the agricultural industry in the state. Rules are needed for the loan program to remain viable.

(b) The commissioner shall propose emergency and legislative rules for approval in accordance with §29A-3-1 *et seq.* of this code. The rules shall, at a minimum:

- (1) Establish minimum requirements and qualifications for the loan committee, including the addition of public members who have agricultural or business loan experience;
- (2) Prohibit department employees and loan committee members, and their immediate family members, from receiving program loans;
- (3) Establish minimum financial requirements for receiving a program loan;
- (4) Require loans to be used for agricultural or related purposes;
- (5) Require collateral sufficient to secure the loan;
- (6) Establish policies for the application, applicable interest rates, delinquencies, refinancing, collection proceedings, collateral requirements, and other aspects of the loan program;
- (7) Require the department to advertise the loan program to the public, including information on the department's website and in the department's market bulletin; and
- (8) Transfer the servicing of the program loans to a financial institution via competitive bid or to the State Treasurer's office or other governmental entity.

(c) The commissioner shall not be required to utilize the services of the state agency for surplus property for the disposition of items purchased by participants in the loan program and subsequently repossessed by the committee to be sold in order to satisfy the balance of an outstanding loan.

§19-1-12. Veterans and Heroes to Agriculture Program and fund.*(a) Legislative findings. —*

West Virginians have a longstanding tradition of service in the armed forces of the United States. Many veterans suffer from physical and emotional afflictions and are often unable to find gainful employment upon returning from combat. Exploring opportunities to engage West Virginia's veterans in agriculture is beneficial to the health and welfare of veterans, as well as to the future of West Virginia's agricultural economy.

(b) Veterans and Heroes to Agriculture Program. —

The Department of Agriculture shall develop a Veterans and Heroes to Agriculture Program to integrate veterans into the field of agriculture, and support veterans currently working in agriculture. These programs may include, but are not limited to, using post-mine land for agricultural development, promoting high tunnel crops and production, expanding the apiary industry, developing cottage industries, exploring niche crops, raising more livestock, increasing the aquaculture industry and helping veterans promote their agricultural products through farmers markets and cooperatives. The department may call on the Department of Veterans' Assistance and the state's Adjutant General for assistance to recruit and train eligible veterans, and develop and support the program.

*(c) Veterans and Heroes to Agriculture Fund. —*The Veterans and Warriors to Agriculture Fund is continued, but is renamed the Veterans and Heroes to Agriculture Fund. The fund shall consist of income from leasing the department's property for the program, surplus funds which may be transferred from the fund created by §19-12A-6a, gifts, grants and donations, and legislative appropriations which may be made to support the program. Expenditures from the fund shall be used exclusively, in accordance with appropriations by the Legislature, to pay costs, fees and expenses necessary to administer the Veterans and Heroes to Agriculture Program.

(d) Notwithstanding any provision in this code to the contrary, should the Department of Agriculture deem it necessary to provide land for activities within this program, it is exempt from the purchasing requirements as they relate to the competitive leasing of state property.

(e) The commissioner may propose emergency or legislative rules for approval in accordance with the provisions of §29A-3-1 et seq. to effectuate the provisions of this section.

(f) Expansion of Veterans and Heroes to Agriculture Program. — The Legislature finds that West Virginians also proudly answers the call to serve domestically in emergency response and law enforcement roles, including as police officers, sheriffs, firefighters, emergency medical technicians, and first responders. The Legislature further finds that farming, including growing corn, is a process that involves more than digging a hole, putting a seed in with dirt on top, and adding water. To that end, the commissioner is hereby authorized to expand the scope of the Veterans and Heroes to Agriculture Program to provide agriculture

assistance and training to additional West Virginia heroes that will allow these brave individuals to continue to answer the call of duty by producing and providing fresh, healthy, and local food to their fellow West Virginians.

WV Legislature

§19-1-13. Annual reporting to the Legislature.

On or before January 31 of each year, the commissioner shall file a report with the President of the State Senate, the Speaker of the House, and the Joint Committee on Government and Finance detailing the activities of the department, including all boards and commissions under the commissioner's authority, during the preceding fiscal year. The report shall include all donations, gifts, contributions, grants, and appropriations of money, services, materials, real estate, or other things of value accepted and received by the department. A copy of the commissioner's annual report shall also be provided to the Division of Archives and History to be kept as a permanent record of the state.