WEST VIRGINIA LEGISLATURE
REGULAR SESSION, 1947

ENROLLED

SENATE BILL No. 212

(By Mr. Bowling)

PASSED March 3, 1947

In Effect Ninety days from Passage
ENROLLED
Senate Bill No. 212
(By Mr. Bowling)

(Passed March 3, 1947; in effect ninety days from passage.)

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

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

(d) The term "seed potato" shall refer to the Irish potato (Solanum tuberosum);

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

(f) Noxious weed seeds shall be divided into two classes, "prohibited weed seeds" and "noxious weed seeds," as defined in (1) and (2) of this subsection: Provided, That the commissioner of agriculture may, through promulgation of regulations, add to or subtract from the list of seeds included under either definition whenever he finds that such additions or subtractions are within the respective definitions;

(1) "Prohibited weed seeds" are the seeds of perennial weeds such as not only reproduced by seed, but also spread by underground roots or stems, and which when estab-
lished are highly destructive and difficult to control in this state by ordinary cultural practice;

"Prohibited weed seeds" in this state are the seeds of dodder (Cuscuta spp.), Wild onion (Allium vineale), quack grass (Agropyrons repens), Johnson grass (Sorghum halapense), Canada Thistle (Carduus arvensis), perennial sow thistle (Sonchus arvensis);

(2) "Noxious weed seeds" are the seeds of such weeds as are very objectionable in fields, lawns or gardens of this state, but can be controlled by good cultural practice. "Noxious weed seeds" in this state are the seeds of hawkweed (Heiracium spp.), buckhorn (Plantago lanceolata), English charlock or wild mustard (Brassica arvensis), corn cockle (Agrostemma githago), ox-eye daisy (Chrysanthemum leucanthemum), Indian mustard (Brassica juncea), star thistle (Centurea solstitialis), wild carrot (Daucus carota), horse nettle (Solanum carolinias), field pepper grass (Lepidium compestre), wild morning glory (Ipomoea purpurea), bindweed (Convolvulus arvensis);

(g) The term "labeling" includes all labels and other written, printed or graphic representation, in any form
whatever, accompanying and pertaining to any seed whether in bulk or in containers, and includes invoices;

(h) The term "advertisement" means all representations, other than those on the label, disseminated in any manner or by any means, relating to seed within the scope of this article.

Sec. 2. Label Requirements.—Each container of agricultural or vegetable seed which is sold, offered for sale, or exposed for sale within this state for sowing purposes, shall bear thereon or have attached thereto in a conspicuous place a plainly written or printed label or tag in the English language, giving the following information:

(a) For agricultural seeds—

(1) Commonly accepted name of

(a) Kind and variety of each agricultural seed component in excess of five per cent of the whole, and the percentage by weight of each in the order of its predominance. Where more than one component is required to be named, the word "mixture" or the word "mixed" shall be shown conspicuously on the label.

(b) If the variety is unknown, that fact shall be stated
for each agricultural seed component in excess of five per
cent of the whole.

(2) Lot number or other lot identification

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

(4) Percentage by weight of all weed seeds.

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

(b) Per pound in proso, sudan grass, wheat, oats, rye, barley, buckwheat, sorghums, vetches, and other agricultural seeds of a size and weight similar to or greater than those within this group, or any mixtures within this group.
All determinations of noxious weed seeds shall be subject to tolerances and methods of determination prescribed in the rules and regulations under this article.

(6) Percentage by weight of agricultural seeds (which may be designated as "crop seeds"), other than those required to be named on the label.

(7) Percentage by weight of inert matter.

(8) For each named agriculture seed: (a) Percentage of germination exclusive of hard seed; (b) Percentage of hard seed, if present; (c) The calendar month and year the test was completed to determine such percentages. Following (a) and (b) the "total germination and hard seeds" may be stated as such, if desired.

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

(10) For agricultural seeds which germinate less than the standard last established by the commissioner of agriculture under this article, the label shall show in addition to the previous requirements of this section, the
(b) For vegetable seeds—

(1) Name of kind and variety;

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

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

(c) For “seed potatoes”—

Only “certified” seed potatoes which grade from the standpoint of physical defects better than the minimum requirements of U. S. No. 1 may be offered for sale as seed. There shall be attached to each bag or container a tag showing by whom certified, the standard or conditions under which said certification is made, and the name of
the official state or governmental agency making the inspection upon which the certification is made.

Sec. 3. **Certificate of Registration; Fee Stamps.**—Every producer or distributor of agricultural or vegetable seeds or seed potatoes who shall sell, offer or expose for sale or distribution in this state any seeds, shall before the same is offered or exposed for sale obtain from the commissioner of agriculture a certificate of registration showing that he has registered with the commissioner of agriculture to sell seeds in West Virginia. The commissioner of agriculture shall have full power and is hereby authorized and required to cancel and withdraw any certificate upon satisfactory evidence that any provisions of this article or any rules and regulations covering the sale of any seed have been violated. The commissioner shall not issue any certificate of registration except upon filing with the commissioner of agriculture a statement of the name and address of the seedsman, importer, dealer, or agent, or other person, firm or corporation, selling, offering or exposing for sale or distribution any seeds in this state; a list of the seeds to be offered
for sale, and accompanied by a registration fee of one
dollar. Certificates so issued by the commissioner shall
become null and void on December thirty-first next after
date of issue unless sooner revoked as herein provided.
For the purpose of defraying the cost of inspection
and analyses of seeds and the enforcement of this article,
every producer or distributor of agricultural or vege-
table seeds or seed potatoes who shall sell, offer or ex-
pose for sale or distribution in this state any such seed
shall, before the same is offered or exposed for sale or
distribution, obtain from the commissioner of agriculture
fee stamps to be attached to each package or container of
seeds at the following rates:
(a) For alfalfa, sweet clover and all grass and clover
seeds or mixtures of any of these, and all vegetable seeds
except those contained in sampler or display units, the
following rates: Eight cents for each one hundred pounds;
six cents for each seventy-five pounds; four cents for
each fifty pounds; two cents for each twenty-five pounds.
(b) For all other agricultural seeds the following rates:
Four cents for each one hundred pounds; three cents
Enr. S. B. No. 212] 10

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

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

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

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

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

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

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

(1) Unless the test to determine the percentage of
germination required by section two shall have been completed within a nine month period, exclusive of the calendar month in which the test was completed, immediately prior to sale, exposure for sale or offering for sale or transportation;

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

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

(4) Containing prohibited weed seeds, subject to tolerances and methods of determination prescribed in the rules and regulations under this article;

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

(1) To detach, alter, deface or destroy any label provided for in this article or the rules and regulations made and promulgated thereunder, or to alter or substitute seed in a manner that may defeat the purposes of this article;

(2) To disseminate any false or misleading adver-
...
invoice or grower’s declaration giving kind, or kind and
variety, or kind and type, and origin, if required, and to
take such other precautions as may be necessary to in-
sure the identity to be that stated.

Sec. 6. *Duties and Authority of Commissioner of Agriculture.*—(a) The duty of enforcing this article and
carrying out its provisions and requirements shall be
vested in the commissioner of agriculture. It shall be his
duty:

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

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

3. (3) To prescribe and adopt rules and regulations gov-
erning the methods of sampling, inspecting, analysis, tests and examination of agricultural and vegetable seed, and the tolerances to be followed in the administration of this article, which shall be in general accord with officially prescribed practice in interstate commerce, and such other rules and regulations as may be necessary to secure the efficient enforcement of this article;

(b) Further for the purpose of carrying out the provisions of this article the commissioner of agriculture, individually or through his authorized agents, is authorized;

(1) To enter upon any public or private premises during regular business hours in order to have access to seeds subject to this article and the rules and regulations thereunder;

(2) To issue and enforce a written or printed "stop-sale" order to the owner or custodian of any lot of seed which the commissioner of agriculture finds is in violation of any provisions of this article, which order shall prohibit further sale or movement of such seed until the commissioner has released the same;
(3) To establish and maintain or make provisions for seed testing facilities, to employ qualified persons, and to incur such expenses as may be necessary to comply with these provisions;

(4) To make or provide for making purity and germination tests of seeds for farmers and dealers on request; to prescribe rules and regulations governing such testing; and to fix and collect charges for the tests made. Such fees shall be deposited with the state treasurer in a special revenue fund and may be expended on order of the commissioner of agriculture.

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

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

Sec. 7. Seizure.—Any lot of seed not in compliance with the provisions of this article shall be subject to seizure on complaint of the commissioner of agriculture to a court of competent jurisdiction. In the event that the court finds the seed to be in violation of this article and orders the condemnation of said seed, it shall be dena-
enr. s. b. no. 212]

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-
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-
sioner of agriculture or his duly authorized agent to in-
16 troduce evidence, either in person or by agent or at-
torney, at a hearing. if, after such hearing, or without
18 such hearing in case the defendant or his agent or at-
torney fails or refuses to appear, the commissioner of
agriculture is of the opinion that the evidence warrants prosecution, he shall proceed according to law.

Sec. 9.—If any provision of this article is declared unconstitutional, or the applicability thereof to any person or circumstance is held invalid, the constitutionality of the remainder of the article and the applicability thereof to other persons and circumstances shall not be affected thereby.

Sec. 10.—Any acts or parts of acts inconsistent with this act are hereby repealed.
The Joint Committee on Enrolled Bills hereby certifies that the foregoing bill is correctly enrolled.

Chairman Senate Committee

Chairman House Committee

Originated in the Senate

Takes effect ninety days from passage.

Clerk of the Senate

Clerk of the House of Delegates

President of the Senate

Speaker House of Delegates

The within approved this the 7th day of March, 1947.

Governor.

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

W. S. C. 1947

Secretary of State