

WEST VIRGINIA LEGISLATURE

REGULAR SESSION, 1947



ENROLLED

SENATE BILL No. 85

(By Mr. Beeler & Mr. Bean)
by request.



PASSED February 24 1947

In Effect From Passage

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(By MR. BEELER and MR. BEAN) (By request)

[Passed February 24, 1947; in effect from passage.]

AN ACT to amend chapter nineteen of the code of West Virginia, one thousand nine hundred thirty-one, as amended, by adding thereto a new article to be numbered article twelve-a, relating to apples; to create the West Virginia State Apple Commission and to prescribe its powers and duties; to promote the sale and consumption of West Virginia apples by providing for campaigns of education, advertising, publicity, sales promotion and research; to levy an excise tax on apples entering the channels of commerce, to provide for its collection, and to appropriate the revenue derived from it; and to provide penalties for violations of this act."

Be it enacted by the Legislature of West Virginia:

That chapter nineteen of the code of West Virginia, one

thousand nine hundred thirty-one, as amended, be amended by adding thereto a new article numbered twelve-a, to read as follows:

Section 1. *Definitions.*—For the purpose of this article:

2 (a) The word “commission” shall mean the West Vir-
3 ginia State Apple Commission; (b) The word “grower”
4 shall mean any person who first sells commercial apples
5 as defined herein, and shall include individuals, corpora-
6 tions, partnerships, trusts, associations, cooperatives and
7 any and all other business units, devices and arrange-
8 ments; (c) The word “bushel” shall mean the bushel as
9 commonly used in the apple industry, the amount of
10 apples that can be contained in not less than two thou-
11 sand one hundred and forty cubic inches and not more
12 than two thousand five hundred cubic inches, or, by
13 weight, fifty pounds more or less; (d) “commercial apples”
14 shall mean fresh apples meeting the specifications of U. S.
15 one canner grade or better grades.

Sec. 2. *West Virginia State Apple Commission.*—There
2 is hereby created within the department of agriculture,
3 an agency to be known as the West Virginia State Apple

4 Commission, consisting of seven members representing as
5 nearly as possible the commercial apple producing sec-
6 tions of the state. Such commission shall be appointed by
7 the governor, by and with the advice and consent of the
8 Senate, from a list of two eligible growers for each mem-
9 ber to be appointed, which list shall be supplied the gov-
10 ernor by the West Virginia State Horticultural Society.
11 Members of this commission shall hold office until their
12 successors are installed.

13 Each member must be a citizen of, and engaged in pro-
14 ducing apples in West Virginia. The members of the
15 commission shall serve for a term of four years, except
16 that beginning with the first appointments, one member
17 shall be appointed for one year, two members for two
18 years, two members for three years and two members for
19 four years. The commission shall elect one of its members
20 as chairman. The members of the commission shall be
21 reimbursed for actual expenses incurred and shall be paid
22 each the sum of ten dollars per diem from the apple mer-
23 chandising fund when attending meetings of the com-
24 mission.

Sec. 3. *Powers and Duties of the Commission.*---(a) All
2 funds levied and collected under this act shall be ad-
3 ministered by the commission; (b) It shall be the duty
4 of the commission to plan and conduct campaigns of edu-
5 cation, advertising, publicity, sales promotion, and con-
6 sumption of West Virginia apples, and the commission
7 may make contracts, expend moneys of the apple mer-
8 chandising fund and do whatever else may be necessary
9 to effectuate the purposes of this act; (c) The commission
10 shall have authority to cooperate with other state, re-
11 gional and national agricultural and horticultural organi-
12 zations and state and federal agencies in research on pro-
13 duction, packaging and marketing, advertising, publicity,
14 education and other means of promoting the sale and use
15 of apples and to expend moneys of the apple merchan-
16 dising fund for such purposes; (d) The commission shall
17 have authority to appoint a secretary and such other em-
18 ployees as may be necessary, at salaries to be fixed by the
19 commission. All employees handling money under this
20 act shall be required to furnish corporate surety bonds in

21 such amounts as may be fixed by the commission and in
22 form to be approved by the attorney general.

Sec. 4. *Excise Tax Levied.*—There is hereby levied on
2 all commercial apples grown in West Virginia and moved
3 into the channels of commerce, beginning with the har-
4 vest of one thousand nine hundred forty-seven, an excise
5 tax of one cent per bushel. Such excise tax shall be paid
6 by the grower of such apples at the time and in the
7 manner hereinafter provided. The first five hundred
8 bushels of apples sold by any person in any one crop sea-
9 son shall be exempt from the provisions of this section.

Sec. 5. *Report of Apples Sold.*—Every grower of com-
2 mercial apples shall submit to the commission not later
3 than fourteen days after December thirty-first of each
4 year, a signed statement of all apples sold by him be-
5 tween July first and December thirty-first of said year.
6 Such reports shall be made on forms prescribed and fur-
7 nished by the commission. Any grower who sells apples
8 of the preceding year's production after December thirty-
9 first shall file a signed statement with the commission not

10 later than June thirtieth, showing such apples so sold by
11 him and the tax paid thereon.

Sec. 6. *Time and Manner of Payment of Excise Tax.*—

2 The excise tax levied by this act shall be due and payable
3 as follows: Fifty per cent not later than December thirty-
4 first of each year and the balance not later than June
5 thirtieth of the following year. Any commercial apples of
6 a crop season which are sold after June thirtieth of the
7 following year shall be reported to the commission and the
8 excise tax paid thereon within twenty days after the end
9 of the month in which such sale was made. Such excise
10 tax shall be paid to the West Virginia Apple Commission
11 and the commission shall promptly pay said moneys to
12 the state treasurer, who shall promptly pay them into the
13 state treasury to the credit of the apple merchandising
14 fund.

Sec. 7. *Records.*—The grower shall keep a complete rec-
2 ord of apples sold by him and shall preserve such record
3 for a period of not less than two years from the time such
4 apples are sold. Such record shall be open to the inspec-
5 tion of the commission and its duly authorized agents.

Sec. 8. *How Unpaid Excise Tax and Interest Thereon*

2 *Shall Be Collected.*—The tax imposed by this act and un-
3 paid on the date on which such tax was due and payable
4 shall bear interest at the rate of one per cent per month
5 from and after such due date until payment. If any grower
6 defaults in any payment of the tax or interest thereon,
7 the amount shall be collected by civil action in the name
8 of the state of West Virginia at the relation of the com-
9 mission, and the person adjudged in default shall pay the
10 cost of such action. The attorney-general, at the request
11 of the commission, shall forthwith institute action in the
12 proper court for the collection of the amount of any tax
13 past due under this act, including interest thereon.

Sec. 9. *Apple Merchandising Fund Created; How Ad-*

2 *ministered.*—All moneys levied and collected under the
3 provisions of this act shall be credited on the state treas-
4 urer's books to a fund to be known as the "Apple Mer-
5 chandising Fund," which is hereby created. All moneys
6 credited to the apple merchandising fund shall be appro-
7 priated by the legislature for the purposes herein set
8 forth, and shall be used exclusively for the administra-

9 tion and enforcement of this act, including the collection
10 of taxes, the payment for personal services and expenses
11 of employees and agents of the commission and the pay-
12 ment of rent, service, materials and supplies necessary
13 to effectuate the purposes and objects of this act. The
14 unexpended balance of the apple merchandising fund
15 at the end of each biennium shall not be transferred to
16 the general fund of the state treasury.

Sec. 10. *How Moneys to Be Expended.*—All moneys
2 collected under this act shall be expended by the West
3 Virginia apple commission by warrants on the state treas-
4 urer issued on vouchers signed by the duly authorized
5 officer of the commission.

Sec. 11. *Penalty for Violating Act.*—It shall be a mis-
2 demeanor for any grower knowingly to report falsely
3 to the commission the quantity of apples sold by him
4 during any period, or to falsify the records of the apples
5 sold by him during any period; and upon conviction
6 thereof shall pay a fine of not more than one hundred
7 dollars.

Sec. 12. *Enforcement of Act; State and County Offi-*

2 *cers Shall Assist.*—It shall be the duty of all state and
3 county law-enforcing officers to assist in the enforcement
4 of this act.

Sec. 13. *Invalidity of Part of Act Not to Affect Re-*
2 *mainder.*—If any clause, sentence or section of this act
3 shall for any reason be adjudged by a court of competent
4 jurisdiction to be invalid, such adjudication shall not
5 affect, impair or invalidate the remainder thereof, but
6 shall be confined in its operation to the clause, sentence
7 or section of this act directly involved in the con-
8 troversy in which said adjudication shall have taken
9 place.

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

Lowell L. M. Chas
Chairman Senate Committee

R. M. Matthews
Chairman House Committee

Originated in the Senate

Takes effect from passage.

Howard Meyer
Clerk of the Senate

J. R. Shipp
Clerk of the House of Delegates

Amel M. Tickers
President of the Senate

John E. Amos
Speaker House of Delegates

The within Approved this the 26th
day of Feb., 1947.

Samuel R. Hunter
Governor.



Filed in the Office of the Secretary of State
of West Virginia **FEB 26 1947**
WM. S. O'BRIEN,
SECRETARY OF STATE