WEST VIRGINIA LEGISLATURE
REGULAR SESSION, 1947

ENROLLED

SENATE BILL No. 85

(By Mr. Beeley and Mr. Bean)

PASSED February 24, 1947

In Effect From Passage
ENROLLED

Senate Bill No. 85
(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
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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:

(a) The word “commission” shall mean the West Virginia State Apple Commission; (b) The word “grower” shall mean any person who first sells commercial apples as defined herein, and shall include individuals, corporations, partnerships, trusts, associations, cooperatives and any and all other business units, devices and arrangements; (c) The word “bushel” shall mean the bushel as commonly used in the apple industry, the amount of apples that can be contained in not less than two thousand one hundred and forty cubic inches and not more than two thousand five hundred cubic inches, or, by weight, fifty pounds more or less; (d) “commercial apples” shall mean fresh apples meeting the specifications of U. S. one canner grade or better grades.

Sec. 2. West Virginia State Apple Commission.—There is hereby created within the department of agriculture, an agency to be known as the West Virginia State Apple
Commission, consisting of seven members representing as nearly as possible the commercial apple producing sections of the state. Such commission shall be appointed by the governor, by and with the advice and consent of the Senate, from a list of two eligible growers for each member to be appointed, which list shall be supplied the governor by the West Virginia State Horticultural Society.

Members of this commission shall hold office until their successors are installed.

Each member must be a citizen of, and engaged in producing apples in West Virginia. The members of the commission shall serve for a term of four years, except that beginning with the first appointments, one member shall be appointed for one year, two members for two years, two members for three years and two members for four years. The commission shall elect one of its members as chairman. The members of the commission shall be reimbursed for actual expenses incurred and shall be paid each the sum of ten dollars per diem from the apple merchandising fund when attending meetings of the commission.
Sec. 3. Powers and Duties of the Commission.-- (a) All funds levied and collected under this act shall be administered by the commission; (b) It shall be the duty of the commission to plan and conduct campaigns of education, advertising, publicity, sales promotion, and consumption of West Virginia apples, and the commission may make contracts, expend moneys of the apple merchandising fund and do whatever else may be necessary to effectuate the purposes of this act; (c) The commission shall have authority to cooperate with other state, regional and national agricultural and horticultural organizations and state and federal agencies in research on production, packaging and marketing, advertising, publicity, education and other means of promoting the sale and use of apples and to expend moneys of the apple merchandising fund for such purposes; (d) The commission shall have authority to appoint a secretary and such other employees as may be necessary, at salaries to be fixed by the commission. All employees handling money under this act shall be required to furnish corporate surety bonds in
such amounts as may be fixed by the commission and in
form to be approved by the attorney general.

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

Sec. 5. Report of Apples Sold.—Every grower of com-
mmercial apples shall submit to the commission not later
than fourteen days after December thirty-first of each
year, a signed statement of all apples sold by him be-
tween July first and December thirty-first of said year.
Such reports shall be made on forms prescribed and fur-
nished by the commission. Any grower who sells apples
of the preceding year’s production after December thirty-
first shall file a signed statement with the commission not
later than June thirtieth, showing such apples so sold by him and the tax paid thereon.

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

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

Sec. 7. *Records.*—The grower shall keep a complete record of apples sold by him and shall preserve such record for a period of not less than two years from the time such apples are sold. Such record shall be open to the inspection of the commission and its duly authorized agents.
Sec. 8. *How Unpaid Excise Tax and Interest Thereon Shall Be Collected.*—The tax imposed by this act and unpaid on the date on which such tax was due and payable shall bear interest at the rate of one per cent per month from and after such due date until payment. If any grower defaults in any payment of the tax or interest thereon, the amount shall be collected by civil action in the name of the state of West Virginia at the relation of the commission, and the person adjudged in default shall pay the cost of such action. The attorney-general, at the request of the commission, shall forthwith institute action in the proper court for the collection of the amount of any tax past due under this act, including interest thereon.

Sec. 9. *Apple Merchandising Fund Created; How Administered.*—All moneys levied and collected under the provisions of this act shall be credited on the state treasurer's books to a fund to be known as the "Apple Merchandising Fund," which is hereby created. All moneys credited to the apple merchandising fund shall be appropriated by the legislature for the purposes herein set forth, and shall be used exclusively for the administra-
tion and enforcement of this act, including the collection of taxes, the payment for personal services and expenses of employees and agents of the commission and the payment of rent, service, materials and supplies necessary to effectuate the purposes and objects of this act. The unexpended balance of the apple merchandising fund at the end of each biennium shall not be transferred to the general fund of the state treasury.

Sec. 10. How Moneys to Be Expended.—All moneys collected under this act shall be expended by the West Virginia apple commission by warrants on the state treasurer issued on vouchers signed by the duly authorized officer of the commission.

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

Sec. 12. Enforcement of Act; State and County Offi-
cers Shall Assist.—It shall be the duty of all state and county law-enforcing officers to assist in the enforcement of this act.

Sec. 13. *Invalidity of Part of Act Not to Affect Remainder.*—If any clause, sentence or section of this act shall for any reason be adjudged by a court of competent jurisdiction to be invalid, such adjudication shall not affect, impair or invalidate the remainder thereof, but shall be confined in its operation to the clause, sentence or section of this act directly involved in the controversy in which said adjudication shall have taken place.
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 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 26th day of Feb., 1947.

Governor.

Filed in the Office of the Secretary of State of West Virginia on FEB 26, 1947. 

WM. S. O'BRIEN, 
SECRETARY OF STATE