WEST VIRGINIA LEGISLATURE
REGULAR SESSION, 1961

ENROLLED

HOUSE BILL No. 732

(By Mr. }

PASSED March 6th, 1961
In Effect ninety days from Passage

Filed in Office of the Secretary of State
of West Virginia March 16, 1961
JOE F. BURDETT
SECRETARY OF STATE
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, designated article sixteen-a, relating to the distribution, sale, advertisement, or transportation of adulterated or misbranded insecticides, fungicides, herbicides, rodenticides, defoliants, desiccants, plant growth regulators, nematocides, other economic poisons and devices, and regulating traffic therein; providing for registration and examination of such materials, imposing penalties, and for other purposes.

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, designated article sixteen-a, to read as follows:
Article 16-a. Pesticides.

Section 1. Title.—This article shall be known as the
"Pesticide Act of one thousand nine hundred sixty-one."

Sec. 2. Definitions—For the purpose of this article—

A. The term "economic poison" means

1. any substance or mixture of substances intended for preventing, destroying, repelling, or mitigating any undesirable insects, rodents, nematodes, fungi, weeds, and other forms of plant or animal life or viruses, except viruses on or in living man or other animals, or which the commissioner may declare to be a pest, and

2. any substance or mixture of substances intended for use as a plant regulator, defoliant, desiccant, or herbicide.

B. The term "device" means any instrument or contrivance intended for trapping, destroying, repelling, or mitigating insects or rodents or destroying, repelling, or mitigating fungi, nematodes, or such other pests as may be designated by the commissioner, but not including equipment used for the application of economic poisons when sold separately therefrom.
C. The term "insecticide" means any substance or mixture of substances intended for preventing, destroying, repelling or mitigating any insects which may be present in any environment whatsoever.

D. The term "fungicide" means any substance or mixture of substances intended for preventing, destroying, repelling, or mitigating any fungi.

E. The term "rodenticide" means any substance or mixture of substances intended for preventing, destroying, repelling, or mitigating any undesirable rodents or any other vertebrate animals or others which the commissioner may declare to be a pest.

F. The term "herbicide" means any substance or mixture of substances intended for preventing, destroying, repelling, or mitigating any weed.

G. The term "nematocide" means any substance or mixture of substances intended for preventing, destroying, repelling, or mitigating nematodes.

H. The term "plant regulator" means any substance or mixture of substances, intended through physiological action, for accelerating or retarding the rate of growth
or rate of maturation, or for otherwise altering the behavior of ornamental or crop plants or the produce thereof, but shall not include substances to the extent that they are intended as plant nutrients, trace elements, nutritional chemicals, plant inoculants, and soil amendments.

I. The term "defoliant" means any substance or mixture of substances intended for causing the leaves or foliage to drop from a plant, with or without causing abscission.

J. The term "desiccant" means any substance or mixture of substances intended for artificially accelerating the drying of plant tissues.

K. The term "nematode" means invertebrate animals of the phylum nemathelminthes, that is, unsegmented round worms with elongated, fusiform, or saclike bodies covered with cuticle, and inhabiting soil, water, animals, plants or plant parts; may also be called nemas or eel-worms.

L. The term "insect" means any of the numerous small invertebrate animals generally having the body more or
less obviously segmented, for the most part belonging to
the class insecta, comprising six-legged, either winged or
wingless forms, as, for example, bettles, bugs, bees, flies,
aphids and termites, and to other allied classes of arthro-
pods whose members are wingless and usually have more
than six legs, as, for example, spiders, mites, ticks, centi-
pedes, and wood lice.

M. The term "fungi" means all non-chlorophyll-bearing
thallophytes (this is, all non-chlorophyll-bearing plants
of a lower taxonomic rank than mosses and liverworts)
as, for example, rusts, smuts, mildews, molds, yeasts, and
bacteria, except those on or in living man or other ani-
mals.

N. The term "weed" means any plant which grows
where not wanted.

O. The term "ingredient statement" means either—
1. a statement of the name and percentage of each
active ingredient, together with the total percentage of
the inert ingredients, in the economic poison; or
2. a statement of the name of each active ingredient,
together with the name of each and total percentage of
the inert ingredients, if any there be, in the economic poison (except option one shall apply if the preparation is highly toxic to man, determined as provided in section five of this article); and, in addition to one or two in case the economic poison contains arsenic in any form, a statement of the percentages of total and water soluble arsenic, each calculated as elemental arsenic.

P. The term "active ingredient" means—

1. In the case of an economic poison other than a plant regulator, defoliant or desiccant, an ingredient which will prevent, destroy, repel, or mitigate insects, nematodes, fungi, rodents, weeds, or other pests;

2. In the case of a plant regulator, an ingredient which, though physiological action, will accelerate or retard the rate of growth or rate of maturation or otherwise alter the behavior of ornamental or crop plants or the produce thereof;

3. In the case of a defoliant, an ingredient which will cause the leaves or foliage to drop from a plant;

4. In the case of a desiccant, an ingredient which will artificially accelerate the drying of plant tissues.
Q. The term "name" as applied to the active ingredient shall be designated by an accepted chemical name and in addition the accepted common name, or by a common name promulgated by the commissioner. It is recommended that the commissioner adopt the nomenclature approved by the interdepartmental committee on pest control or the American standards committee or any national committee similarly functioning.

R. The term "inert ingredient" means an ingredient which is not an active ingredient.

S. The term "antidote" means the most practical immediate treatment in case of poisoning and includes first aid treatment.

T. The term "person" means any individual, partnership, association, corporation, or organized group of persons whether incorporated or not.

U. The term "commissioner" means the commissioner of agriculture.

V. The term "registrant" means the person registering any economic poison pursuant to the provisions of this article.
W. The term "label" means the written, printed, or graphic matter on, or attached to, the economic poison or device, or the immediate container thereof, and the outside container or wrapper of the retail package, if any there be, of the economic poison or device.

X. The term "labeling" means all labels and other written, printed, graphic matter, or advertising.

1. upon the economic poison or device or any of its containers or wrappers;

2. accompanying the economic poison or device at any time;

3. to which reference is made on the label or in literature accompanying the economic poison or device, except when accurate, non-misleading reference is made to current official publications of the United States departments of agriculture or interior, the United States public health service, state experiment stations, state agricultural colleges, or other similar federal institutions or official agencies of this state or other states authorized by law to conduct research in the field of economic poisons.

4. conveyed in any public media such as newspapers,
periodicals, radio or television, relative to the offering for
sale of any economic poison or device.

Y. The term "adulterated" shall apply to any economic
poison if its strength or purity falls below or is in excess
of the professed standard or quality as expressed on label-
ing or under which it is sold, or if any substance has been
substituted wholly or in part for the article, or if any
valuable constituent of the article has been wholly or in
part abstracted.

Z. The term "misbranded" shall apply—

1. to any economic poison or device if its labeling bears
any statement, design, or graphic representation relative
thereto or to its ingredients which is false or misleading
in any particular;

2. to any economic poison—

a. if it is an imitation of or is offered for sale under
the name of another economic poison.

b. if its labeling bears any reference to registration
under this article.

c. if the labeling accompanying it does not contain
directions for use which are necessary and, if complied
with, adequate for the protection of the public;
d. if the label does not contain a warning or caution
statement which may be necessary and, if complied with,
a adequate to prevent injury to living man and other ver-
tebrate animals, vegetation, and useful invertebrate ani-
mals;
e. if the label does not bear an ingredient statement
on that part of the immediate container and on the out-
side container or wrapper. If there be one, through which
the ingredient statement on the immediate container can-
not be clearly read, of the retail package which is pre-
sented or displayed under customary conditions of pur-
chase;
f. if any word, statement, or other information required
by or under authority of this article to appear on the
label or labeling is not prominently placed thereon with
such conspicuousness (as compared with other words,
statement, designs, or graphic matter in the labeling) and
in such terms as to render it likely to be read and under-
stood by the ordinary individual under customary conditions of purchase and use; or

g. if in the case of an insecticide, nematocide, fungicide, or herbicide when used as directed or in accordance with commonly recognized practice it shall be injurious to living man or other vertebrate animals, except weeds to which it is applied, or to the person applying such economic poison, or

h. if in the case of a plant regulator, defoliant, or desiccant when used as directed it shall be injurious to living man or other vertebrate animals, or vegetation to which it is applied, or to the person applying such economic poison:

Provided, That physical or physiological effects on plants or parts thereof shall not be deemed to be injury, when this is the purpose for which the plant regulator, defoliant, or desiccant was applied, in accordance with the label claims and recommendations.

Sec. 3. Prohibited Acts.—A. It shall be unlawful for any person to distribute, sell, or offer for sale within this state or deliver for transportation or transport in intra-
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4 state commerce or between points within this state through
5 any point outside this state any of the following:
6 1. any economic poison which has not been registered
7 pursuant to the provisions of section four of this article,
8 or any economic poison if any of the claims made for it
9 or any of the directions for its use differ in substance from
10 the representations made in connection with its regis-
11 tration, or if the composition of an economic poison differs
12 from its composition as represented in connection with
13 its registration: Provided, That, In the discretion of the
14 commissioner, a change in the labeling or formula of an
15 economic poison may be made within a registration period
16 without requiring reregistration of the product.
17 2. any economic poison unless it is in the registrant's
18 or the manufacturer's unbroken immediate container, and
19 there is affixed to such container, and to the outside con-
20 tainer or wrapper of the retail package, if there be one
21 through which the required information on the immediate
22 container cannot be clearly read, a label bearing
23 a. the name and address of the manufacturer, regis-
24 trant, or person for whom manufactured;
b. the name, brand, or trade mark under which said item is sold; and

c. the net weight or measure of the content subject, however, to such reasonable variations as the commissioner may permit.

3. any economic poison which contains any substance or substances in quantities toxic to man, determined as provided in section five of this article, unless the label shall bear, in addition to any other matter required by this article.

a. the skull and crossbones;

b. the word "poison" prominently, in red, on a background of distinctly contrasting color; and

c. a statement of an antidote for the economic poison.

4. the economic poison commonly known as standard lead arsenate, basic lead arsenate, calcium arsenate, sodium arsenite, arsenious oxide, disodium methyl arsenate, magnesium arsenate, zinc arsenate, zinc arsenite, sodium fluoride, sodium fluorsilicate, barium fluorsilicate, and any other compounds containing arsenic or fluorine, unless they have been distinctly colored or discolored as provided by regu-
lations issued in accordance with this article, or any other white powder economic poison which the commissioner, after investigation of and after public hearing on the necessity for such action for the protection of the public health and the feasibility of such coloration or discoloration, shall, by regulation, require to be distinctly colored or discolored; unless it has been so colored or discolored; Provided, that the commissioner may exempt any economic poison to the extent that it is intended for a particular use or uses from the coloring or discoloring required or authorized by this section if he determines that such coloring or discoloring for such use or uses is not necessary for the protection of the public health.

5. any economic poison which is adulterated or misbranded, or any device which is misbranded.

B. It shall be unlawful—

1. for any person to detach, alter, deface, or destroy, in whole or in part, any label or labeling provided for in this act or regulations promulgated hereunder, or to add any substance to, or take any substance from, an eco-
nomic poison in a manner that may defeat the purpose
of this article;

2. for any person to use for his own advantage or to
reveal, other than to the commissioner or proper officials
or employees of the state or to the courts of this state in
response to a subpoena, or to physicians, or in emer-
gencies to pharmacists and other qualified persons, for
use in the preparation of antidotes, any information
relative to formulas of products acquired by authority of
section four of this article.

Sec. 4. Registration.—A. Every economic poison which
is distributed, sold, or offered for sale within this state or
delivered for transportation or transported in intrastate
commerce or between points within this state through
any point outside this state shall be registered in the
office of the commissioner, and such registration shall be
renewed annually: Provided, That products which have
the same formula, are manufactured by the same person,
the labeling of which contains the same claims, and the
labels of which bear a designation identifying the product
as the same economic poison may be registered as a
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12 single economic poison; and additional names and labels
13 shall be added by supplement statements during the cur-
14 rent period of registration. The period of registration
15 shall be for one year, beginning January 1 and ending
16 December 31 of that year. The registrant shall file with
17 the commissioner a statement including
18 1. the name and address of the registrant and the name
19 and address of the person whose name will appear on
20 the label, if other than the registrant;
21 2. the name of the economic poison;
22 3. a complete copy of the labeling accompanying the
23 economic poison and a statement of all claims to be made
24 for it including directions for use; and
25 4. if requested by the commissioner a full description
26 of the tests made and the results thereof upon which the
27 claims are based, and the analytical method or methods
28 employed in determining the percentage of each active
29 ingredient listed on the label to be registered. In the case
30 of renewal of registration, a statement shall be required
31 only with respect to information which is different from
that furnished when the economic poison was registered or last registered.

B. The registrant shall pay an annual fee of $10.00 for the first twenty economic poisons registered and $5.00 for each additional label registered. Such fees to be deposited in the treasury of the state and to the credit of a special fund to be used only for carrying out the provisions of this article, and shall be expended upon order of the commissioner of agriculture.

C. The commissioner, whenever he deems it necessary in the administration of this article, may require the submission of the complete formula of any economic poison. If it appears to the commissioner that the composition of the item is such as to warrant the proposed claims for it and if the item and its labeling and other material required to be submitted to comply with the requirements of section three of this article, he shall register the item.

D. If it does appear to the commissioner that the item is such as to warrant the proposed claims for it or if the item and its labeling and other material required to be submitted do not comply with the provisions of this
article, he shall notify the registrant of the manner in which the item, labeling, or other material required to be submitted fail to comply with this article so as to afford the registrant an opportunity to make the necessary corrections. If, upon receipt of such notice, the registrant insists that such corrections are not necessary and requests in writing that the item be registered, a review of this matter may be brought before a board of review.

1. The board of review shall consist of five individual members.

a. Two of these members shall be appointed by the dean of the college of agriculture, forestry and home economics of West Virginia University.

b. One member of the board of review shall be appointed by the commissioner of agriculture.

c. One member of the board of review shall be appointed by the registrant.

d. One member of the board of review shall be appointed by the governor of the state of West Virginia and shall act as chairman.
2. This board shall have the power to subpoena witnesses and employ competent help.

3. The decision of this board of review shall be final.

4. All expenses of the board shall be paid by the commissioner, except all salaries, fees and expenses accrued by the appointee of the registrant.

E. In order to protect the public, the commissioner, on his own motion, may at any time, cancel the registration of an economic poison.

F. Notwithstanding any other provisions of this article, registration is not required in the case of an economic poison shipped from one plant within this state to another plant within this state operated by the same person.

Sec. 5. Determinations; Rules and Regulations; Uniformity.—A. The commissioner is authorized, after opportunity for a hearing,

1. to declare as a pest any form of plant or animal life or virus which is injurious or undesirable to plants, man, domestic animals, articles, or substances;

2. to determine whether economic poisons are highly toxic to man; and
3. to determine standards of coloring or discoloring for
economic poisons, and to subject economic poisons to the
requirements of section three, A, four of this article.

B. The commissioner of agriculture is hereby charged
with the enforcement of the provisions of this article, and
is empowered to prescribe and enforce rules and regula-
tions consistent with this article in carrying out its pro-
visions.

1. The commissioner is hereby authorized to fix mini-
mum and/or maximum standards or requirements cover-
ing all economic poisons and devices, and to prohibit and
to prevent the sale of such worthless, deleterious or ques-
tionable items.

2. Whenever it appears that any economic poison or
device is being offered or exposed for sale in this state
in violation of any of the provisions of this article, the
commissioner is hereby authorized to issue a written
or printed "stop sale" order or "embargo", and it shall
be unlawful for any person, firm, corporation or manu-
facturer to permit any such economic poison or device
to be moved or disposed of in any manner except upon
written order of the commissioner of agriculture or by court order. The commissioner shall cause notice of such violation to be given to the person affected thereby, and any person so notified shall be given an opportunity to be heard under such rules and regulations as the commissioner may prescribe. After such hearing if it still further appears that any of the provisions of this article have been violated, the commissioner may institute proceedings in any court of competent jurisdiction for the disposal of such economic poisons and/or devices.

3. The commissioner or his agent shall have free access to all places of business, mills, buildings and conveyances of any kind used in the transportation, importation, manufacture, sale or storage of any economic poison or device, with power and authority to open any parcel containing or supposed to contain any economic poison or device, and upon full payment of the selling price, to take therefrom samples for analyses, and to examine the books and all records pertaining to the shipment, manufacture, sale or distribution of any economic poison or device.

C. Nothing contained in this article shall prevent any
person from appealing from the commissioner's decision, and the circuit court of the county in which the alleged infraction occurred shall have jurisdiction thereof.

D. In order to avoid confusion endangering the public health, resulting from diverse requirements, particularly as to the labeling and coloring of economic poisons, and to avoid increased costs to the people of this state due to the necessity of complying with such diverse requirements in the manufacture and sale of such poisons, it is desirable that there should be uniformity between the requirements of the several states and the federal government relating to such poisons. To this end the commissioner is authorized, after due public hearing, to adopt by regulation such regulations, applicable to and in conformity with the primary standards established by this article, as have been or may be prescribed by appropriate federal agencies with respect to economic poisons.

Sec. 6. Enforcement.—A. The examination of economic poisons or devices shall be made under the direction of the commissioner for the purpose of determining whether they comply with the requirements of this article. If
it shall appear from such examination that an economic poison or device fails to comply with the provisions of this article, and the commissioner contemplates instituting criminal proceedings against any person, the commissioner shall cause appropriate notice to be given to such person. Any person so notified shall be given an opportunity to present his views, either orally or in writing, with regard to such contemplated proceedings and if thereafter in the opinion of the commissioner it shall appear that the provisions of this article have been violated by such person, then the commissioner may

1. Institute suit in a court of competent jurisdiction,

2. Provided, however, That nothing in this article shall be construed as requiring the commissioner to report for prosecution or for the institution of libel proceedings minor violations of this article whenever he believes that the public interests will be best served by a suitable notice of warning in writing.

B. The commissioner shall, by publication in such manner as he may prescribe, give notice of all judgments en-
tered in actions instituted under the authority of this article.

Sec. 7. Exemptions.—A. The penalties provided for violations of section three, A of this article shall not apply to—

1. any carrier while lawfully engaged in transporting an economic poison within this state, if such carrier shall, upon request, permit the commissioner or his designated agent to copy all records showing the transactions in and movement of the articles;

2. public officials of this state and the federal government engaged in the performance of their official duties;

3. the manufacturer or shipper of an economic poison for experimental use only
   a. by or under the supervision of an agency of this state or of the federal government authorized by law to conduct research in the field of economic poisons, or
   b. by others if the economic poison is not sold and if the container thereof is plainly and conspicuously marked "for experimental use only—not to be sold", together with the manufacturer's name and address: Provided, however,
That if a written permit has been obtained from the commission-er, economic poisons may be sold for experimental purposes subject to such restrictions and conditions as may be set forth in the permit.

B. No item shall be deemed in violation of this article when intended solely for export to a foreign country, and when prepared or packaged according to the specifications or directions of the purchaser. If not so exported, all the provisions of this article shall apply.

Sec. 8. Penalties.—A. Any person violating section three, A, one of this article shall be guilty of a misdemeanor and upon conviction shall be fined not more than one thousand dollars.

B. Any person violating any provision of this article other than section three, A, one shall be guilty of a misdemeanor and upon conviction shall be fined not more than one thousand dollars for the first offense and upon conviction for a subsequent offense shall be fined not more than two thousand dollars: Provided, That any offense committed more than five years after a previous conviction shall be considered a first offense: And provided
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13 further, That in any case where a registrant was issued
14 a warning by the commissioner pursuant to the provisions
15 of this article, such registrant shall upon conviction of
16 a violation of any provision of this article other than
17 section three, A, one be fined not more than three thou-
18 sand dollars, and the registration of the item with refer-
19 ence to which the violation occurred shall terminate auto-
20 matically. An item the registration of which has been
21 terminated may not again be registered unless the item,
22 its labeling, and other material required to be submitted
23 appear to the commissioner to comply with all the re-
24 quirements of this article.

25 C. Notwithstanding any other provisions of this section,
26 in case any person, with intent to defraud, uses or reveals
27 information relative to formulas of products acquired
28 under authority of section four of this article, he shall
29 be fined not more than five thousand dollars or imprisoned
30 for not more than one year, or both.

Sec. 9. Seizures.—A. Any economic poison or device that
2 is distributed, sold, or offered for sale within this state
3 or delivered for transportation or transported in inter-
state commerce or between points within this state through any point outside this state shall be liable to be proceeded against in any court of competent jurisdiction in any county of the state where it may be found and seized for confiscation by process of libel for condemnation:

1. In the case of an economic poison,
   a. If it is adulterated or misbranded;
   b. If it has not been registered under the provisions of section four of this article;
   c. If it fails to bear on its label the information required by this article;
   d. If it is a white powder economic poison and is not colored as required under this article.

2. In the case of a device, if it is misbranded.

B. If the item is condemned, it shall, after entry of decree, be disposed of by destruction or sale as the court may direct and the proceeds, if such item is sold, less legal costs, shall be paid to the state treasurer: Provided, That the item shall not be sold contrary to the provision of this article: And provided further, That upon payment
of costs and execution and delivery of a good and sufficient
bond conditioned that the item shall not be disposed of
unlawfully, the court may direct that said item be de-
levered to the owner thereof for relabeling or reprocessing
as the case may be.

C. When a decree of condemnation is entered against
an item, court costs and fees and storage and other proper
dnings shall be awarded against the person, if any, in-
tervening as claimant of the item.

Sec. 10. Delegation of Duties.—All authority vested in
the commissioner by virtue of the provisions of this ar-
ticle may with like force and effect be executed by such
employees of the department of agriculture as the com-
misioner may from time to time designate for said pur-
pose.

Sec. 11. Cooperation.—The commissioner is authorized
and empowered to cooperate with, and enter into agree-
ments with, any other agency of this state, the United
States department of agriculture, and any other state or
agency thereof for the purpose of carrying out the pro-
visions of this article and securing uniformity of regulations.

Sec. 12. Separability.—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 this article and the applicability thereof to other persons and circumstances shall not be affected thereby.

Sec. 13. Repeals.—Jurisdiction in all matter pertaining to the distribution, sale and transportation of economic poisons and devices is by this article vested exclusively in the commissioner, and all acts and parts of acts inconsistent with this article are hereby expressly 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 House.

Takes effect from passage.

Clerk of the Senate

Clerk of the House of Delegates

President of the Senate

Speaker House of Delegates

The within appeared this the 16th day of March, 1961.

Governor