

WEST VIRGINIA LEGISLATURE

REGULAR SESSION, 1961



ENROLLED

HOUSE BILL No. *232*

(By Mr. *Stonover* & *Mr. Kelley*)

*232*



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

ENROLLED

# House Bill No. 232

(By MR. SLONAKER and MR. KELLEY)

---

[Passed March 6, 1961; in effect ninety days 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, designated article sixteen-a, relating to the distribution, sale, advertisement, or transportation of adulterated or misbranded insecticides, fungicides, herbicides, rodenticides, defoliant, 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  
2 “Pesticide Act of one thousand nine hundred sixty-one.”

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

2 A. The term “economic poison” means

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

9 2. any substance or mixture of substances intended for  
10 use as a plant regulator, defoliant, desiccant, or herbi-  
11 cide.

12 B. The term “device” means any instrument or con-  
13 trivance intended for trapping, destroying, repelling, or  
14 mitigating insects or rodents or destroying, repelling, or  
15 mitigating fungi, nematodes, or such other pests as may  
16 be designated by the commissioner, but not including  
17 equipment used for the application of economic poisons  
18 when sold separately therefrom.

19 C. The term "Insecticide" means any substance or mix-  
20 ture of substances intended for preventing, destroying,  
21 repelling or mitigating any insects which may be present  
22 in any environment whatsoever.

23 D. The term "fungicide" means any substance or mix-  
24 ture of substances intended for preventing, destroying,  
25 repelling, or mitigating any fungi.

26 E. The term "rodenticide" means any substance or mix-  
27 ture of substances intended for preventing, destroying,  
28 repelling, or mitigating any undesirable rodents or any  
29 other vertebrate animals or others which the commis-  
30 sioner may declare to be a pest.

31 F. The term "herbicide" means any substance or mix-  
32 ture of substances intended for preventing, destroying,  
33 repelling, or mitigating any weed.

34 G. The term "nematocide" means any substance or mix-  
35 ture of substances intended for preventing, destroying,  
36 repelling, or mitigating nematodes.

37 H. The term "plant regulator" means any substance  
38 or mixture of substances, intended through physiological  
39 action, for accelerating or retarding the rate of growth

40 or rate of maturation, or for otherwise altering the be-  
41 havior of ornamental or crop plants or the produce there-  
42 of, but shall not include substances to the extent that  
43 they are intended as plant nutrients, trace elements, nu-  
44 tritional chemicals, plant inoculants, and soil amend-  
45 ments.

46 I. The term "defoliant" means any substance or mix-  
47 ture of substances intended for causing the leaves or  
48 foliage to drop from a plant, with or without causing  
49 abscission.

50 J. The term "desiccant" means any substance or mix-  
51 ture of substances intended for artificially accelerating the  
52 drying of plant tissues.

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

59 L. The term "insect" means any of the numerous small  
60 invertebrate animals generally having the body more or

61 less obviously segmented, for the most part belonging to  
62 the class insecta, comprising six-legged, either winged or  
63 wingless forms, as, for example, beetles, bugs, bees, flies,  
64 aphids and termites, and to other allied classes of arthro-  
65 pods whose members are wingless and usually have more  
66 than six legs, as, for example, spiders, mites, ticks, centi-  
67 pedes, and wood lice.

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

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

76 O. The term "ingredient statement" means either—

77 1. a statement of the name and percentage of each  
78 active ingredient, together with the total percentage of  
79 the inert ingredients, in the economic poison; or

80 2. a statement of the name of each active ingredient,  
81 together with the name of each and total percentage of

82 the inert ingredients, if any there be, in the economic  
83 poison (except option one shall apply if the preparation  
84 is highly toxic to man, determined as provided in section  
85 five of this article); and, in addition to one or two in case  
86 the economic poison contains arsenic in any form, a state-  
87 ment of the percentages of total and water soluble arsenic,  
88 each calculated as elemental arsenic.

89 P. The term "active ingredient" means—

- 90 1. In the case of an economic poison other than a plant  
91 regulator, defoliant or desiccant, an ingredient which will  
92 prevent, destroy, repel, or mitigate insects, nematodes,  
93 fungi, rodents, weeds, or other pests;
- 94 2. In the case of a plant regulator, an ingredient which,  
95 though physiological action, will accelerate or retard the  
96 rate of growth or rate of maturation or otherwise alter  
97 the behavior of ornamental or crop plants or the produce  
98 thereof;
- 99 3. In the case of a defoliant, an ingredient which will  
100 cause the leaves or foliage to drop from a plant;
- 101 4. In the case of a desiccant, an ingredient which will  
102 artificially accelerate the drying of plant tissues.

103 Q. The term "name" as applied to the active ingredient  
104 shall be designated by an accepted chemical name and in  
105 addition the accepted common name, or by a common name  
106 promulgated by the commissioner. It is recommended  
107 that the commissioner adopt the nomenclature approved  
108 by the interdepartmental committee on pest control or the  
109 American standards committee or any national committee  
110 similarly functioning.

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

113 S. The term "antidote" means the most practical im-  
114 mediate treatment in case of poisoning and includes first  
115 aid treatment.

116 T. The term "person" means any individual, partner-  
117 ship, association, corporation, or organized group of per-  
118 sons whether incorporated or not.

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

121 V. The term "registrant" means the person registering  
122 any economic poison pursuant to the provisions of this  
123 article.

124 W. The term "label" means the written, printed, or  
125 graphic matter on, or attached to, the economic poison or  
126 device, or the immediate container thereof, and the out-  
127 side container or wrapper of the retail package, if any  
128 there be, of the economic poison or device.

129 X. The term "labeling" means all labels and other writ-  
130 ten, printed, graphic matter, or advertising.

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

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

135 3. to which reference is made on the label or in litera-  
136 ture accompanying the economic poison or device, except  
137 when accurate, non-misleading reference is made to cur-  
138 rent official publications of the United States departments  
139 of agriculture or interior, the United States public health  
140 service, state experiment stations, state agricultural col-  
141 leges, or other similar federal institutions or official  
142 agencies of this state or other states authorized by law  
143 to conduct research in the field of economic poisons.

144 4. conveyed in any public media such as newspapers,

145 periodicals, radio or television, relative to the offering for  
146 sale of any economic poison or device.

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

154 Z. The term "misbranded" shall apply—

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

159 2. to any economic poison—

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

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

164 c. if the labeling accompanying it does not contain

165 directions for use which are necessary and, if complied  
166 with, adequate for the protection of the public;

167 d. if the label does not contain a warning or caution  
168 statement which may be necessary and, if complied with,  
169 adequate to prevent injury to living man and other ver-  
170 tebrate animals, vegetation, and useful invertebrate ani-  
171 mals;

172 e. if the label does not bear an ingredient statement  
173 on that part of the immediate container and on the out-  
174 side container or wrapper. If there be one, through which  
175 the ingredient statement on the immediate container can-  
176 not be clearly read, of the retail package which is pre-  
177 sented or displayed under customary conditions of pur-  
178 chase;

179 f. if any word, statement, or other information required  
180 by or under authority of this article to appear on the  
181 label or labeling is not prominently placed thereon with  
182 such conspicuousness (as compared with other words,  
183 statement, designs, or graphic matter in the labeling) and  
184 in such terms as to render it likely to be read and under-

185 stood by the ordinary individual under customary condi-  
186 tions of purchase and use; or

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

193 h. if in the case of a plant regulator, defoliant, or desic-  
194 cant when used as directed it shall be injurious to living  
195 man or other vertebrate animals, or vegetation to which it  
196 is applied, or to the person applying such economic poison:  
197 *Provided*, That physical or physiological effects on plants  
198 or parts thereof shall not be deemed to be injury, when  
199 this is the purpose for which the plant regulator, defoliant,  
200 or desiccant was applied, in accordance with the label  
201 claims and recommendations.

Sec. 3. *Prohibited Acts.*—A. It shall be unlawful for  
2 any person to distribute, sell, or offer for sale within this  
3 state or deliver for transportation or transport in intra-

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;

25 b. the name, brand, or trade mark under which said  
26 item is sold; and

27 c. the net weight or measure of the content subject,  
28 however, to such reasonable variations as the commis-  
29 sioner may permit.

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

35 a. the skull and crossbones;

36 b. the word "poison" prominently, in red, on a back-  
37 ground of distinctly contrasting color; and

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

39 4. the economic poison commonly known as standard lead  
40 arsenate, basic lead arsenate, calcium arsenate, sodium ar-  
41 senite, arsenious oxide, disodium methyl arsenate, magnes-  
42 ium arsenate, zinc arsenate, zinc arsenite, sodium flouride,  
43 sodium fluorsilicate, barium fluorsilicate, and any other  
44 compounds containing arsenic or fluorine, unless they have  
45 been distinctly colored or discolored as provided by regu-

46 lations issued in accordance with this article, or any other  
47 white powder economic poison which the commissioner,  
48 after investigation of and after public hearing on the  
49 necessity for such action for the protection of the public  
50 health and the feasibility of such coloration or discolora-  
51 tion, shall, by regulation, require to be distinctly colored  
52 or discolored; unless it has been so colored or discolored;  
53 *Provided*, that the commissioner may exempt any eco-  
54 nomic poison to the extent that it is intended for a par-  
55 ticular use or uses from the coloring or discoloring re-  
56 quired or authorized by this section if he determines that  
57 such coloring or discoloring for such use or uses is not  
58 necessary for the protection of the public health.

59 5. any economic poison which is adulterated or mis-  
60 branded, or any device which is misbranded.

61 B. It shall be unlawful—

62 1. for any person to detach, alter, deface, or destroy,  
63 in whole or in part, any label or labeling provided for in  
64 this act or regulations promulgated hereunder, or to add  
65 any substance to, or take any substance from, an eco-

66 nomic poison in a manner that may defeat the purpose  
67 of this article;

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

Sec. 4. *Registration.*—A. Every economic poison which  
2 is distributed, sold, or offered for sale within this state or  
3 delivered for transportation or transported in intrastate  
4 commerce or between points within this state through  
5 any point outside this state shall be registered in the  
6 office of the commissioner, and such registration shall be  
7 renewed annually: *Provided*, That products which have  
8 the same formula, are manufactured by the same person,  
9 the labeling of which contains the same claims, and the  
10 labels of which bear a designation identifying the product  
11 as the same economic poison may be registered as a

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

32 that furnished when the economic poison was registered  
33 or last registered.

34 B. The registrant shall pay an annual fee of \$10.00 for  
35 the first twenty economic poisons registered and \$5.00  
36 for each additional label registered. Such fees to be de-  
37 posited in the treasury of the state and to the credit of  
38 a special fund to be used only for carrying out the pro-  
39 visions of this article, and shall be expended upon order  
40 of the commissioner of agriculture.

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

49 D. If it does appear to the commissioner that the item  
50 is such as to warrant the proposed claims for it or if the  
51 item and its labeling and other material required to be  
52 submitted do not comply with the provisions of this

53 article, he shall notify the registrant of the manner in  
54 which the item, labeling, or other material required to  
55 be submitted fail to comply with this article so as to  
56 afford the registrant an opportunity to make the neces-  
57 sary corrections. If, upon receipt of such notice, the  
58 registrant insists that such corrections are not necessary  
59 and requests in writing that the item be registered, a  
60 review of this matter may be brought before a board of  
61 review.

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

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

67 b. One member of the board of review shall be ap-  
68 pointed by the commissioner of agriculture.

69 c. One member of the board of review shall be ap-  
70 pointed by the registrant.

71 d. One member of the board of review shall be ap-  
72 pointed by the governor of the state of West Virginia and  
73 shall act as chairman.

74 2. This board shall have the power to subpoena wit-  
75 nesses and employ competent help.

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

77 4. All expenses of the board shall be paid by the com-  
78 missioner, except all salaries, fees and expenses accrued  
79 by the appointee of the registrant.

80 E. In order to protect the public, the commissioner,  
81 on his own motion, may at any time, cancel the registra-  
82 tion of an economic poison.

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

*Sec. 5. Determinations; Rules and Regulations; Uni-*

2 *formity.*—A. The commissioner is authorized, after op-  
3 portunity for a hearing,

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

7 2. to determine whether economic poisons are highly  
8 toxic to man; and

9     3. to determine standards of coloring or discoloring for  
10 economic poisons, and to subject economic poisons to the  
11 requirements of section three, A, four of this article.

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

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

22     2. Whenever it appears that any economic poison or  
23 device is being offered or exposed for sale in this state  
24 in violation of any of the provisions of this article, the  
25 commissioner is hereby authorized to issue a written  
26 or printed "stop sale" order or "embargo", and it shall  
27 be unlawful for any person, firm, corporation or manu-  
28 facturer to permit any such economic poison or device  
29 to be moved or disposed of in any manner except upon

30 written order of the commissioner of agriculture or by  
31 court order. The commissioner shall cause notice of such  
32 violation to be given to the person affected thereby, and  
33 any person so notified shall be given an opportunity to be  
34 heard under such rules and regulations as the commis-  
35 sioner may prescribe. After such hearing if it still fur-  
36 ther appears that any of the provisions of this article  
37 have been violated, the commissioner may institute pro-  
38 ceedings in any court of competent jurisdiction for the  
39 disposal of such economic poisons and/or devices.

40 3. The commissioner or his agent shall have free access  
41 to all places of business, mills, buildings and conveyances  
42 of any kind used in the transportation, importation, manu-  
43 facture, sale or storage of any economic poison or device,  
44 with power and authority to open any parcel containing  
45 or supposed to contain any economic poison or device,  
46 and upon full payment of the selling price, to take there-  
47 from samples for analyses, and to examine the books and  
48 all records pertaining to the shipment, manufacture, sale  
49 or distribution of any economic poison or device.

50 C. Nothing contained in this article shall prevent any

51 person from appealing from the commissioner's decision,  
52 and the circuit court of the county in which the alleged  
53 infraction occurred shall have jurisdiction thereof.

54 D. In order to avoid confusion endangering the public  
55 health, resulting from diverse requirements, particularly  
56 as to the labeling and coloring of economic poisons, and  
57 to avoid increased costs to the people of this state due to  
58 the necessity of complying with such diverse require-  
59 ments in the manufacture and sale of such poisons, it  
60 is desirable that there should be uniformity between the  
61 requirements of the several states and the federal gov-  
62 ernment relating to such poisons. To this end the com-  
63 missioner is authorized, after due public hearing, to adopt  
64 by regulation such regulations, applicable to and in con-  
65 formity with the primary standards established by this  
66 article, as have been or may be prescribed by appropriate  
67 federal agencies with respect to economic poisons.

Sec. 6. *Enforcement.*—A. The examination of economic  
2 poisons or devices shall be made under the direction of  
3 the commissioner for the purpose of determining whether  
4 they comply with the requirements of this article. If

5 it shall appear from such examination that an economic  
6 poison or device fails to comply with the provisions of  
7 this article, and the commissioner contemplates institut-  
8 ing criminal proceedings against any person, the com-  
9 missioner shall cause appropriate notice to be given to  
10 such person. Any person so notified shall be given an op-  
11 portunity to present his views, either orally or in writing,  
12 with regard to such contemplated proceedings and if  
13 thereafter in the opinion of the commissioner it shall  
14 appear that the provisions of this article have been vio-  
15 lated by such person, then the commissioner may

16 1. Institute suit in a court of competent jurisdiction,

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

23 B. The commissioner shall, by publication in such man-  
24 ner as he may prescribe, give notice of all judgments en-

25 tered in actions instituted under the authority of this  
26 article.

Sec. 7. *Exemptions.*—A. The penalties provided for vio-  
2 lations of section three, A of this article shall not apply  
3 to—

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

9 2. public officials of this state and the federal govern-  
10 ment engaged in the performance of their official duties;

11 3. the manufacturer or shipper of an economic poison  
12 for experimental use only

13 a. by or under the supervision of an agency of this  
14 state or of the federal government authorized by law  
15 to conduct research in the field of economic poisons, or

16 b. by others if the economic poison is not sold and if  
17 the container thereof is plainly and conspicuously marked  
18 “for experimental use only—not to be sold”, together with  
19 the manufacturer’s name and address: *Provided, however,*

20 That if a written permit has been obtained from the com-  
21 missioner, economic poisons may be sold for experimental  
22 purposes subject to such restrictions and conditions as  
23 may be set forth in the permit.

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

Sec. 8. *Penalties.*—A. Any person violating section  
2 three, A, one of this article shall be guilty of a misde-  
3 meanor and upon conviction shall be fined not more than  
4 one thousand dollars.

5 B. Any person violating any provision of this article  
6 other than section three, A, one shall be guilty of a mis-  
7 demeanor and upon conviction shall be fined not more  
8 than one thousand dollars for the first offense and upon  
9 conviction for a subsequent offense shall be fined not more  
10 than two thousand dollars: *Provided*, That any offense  
11 committed more than five years after a previous convic-  
12 tion shall be considered a first offense: *And provided*

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-

4 state commerce or between points within this state  
5 through any point outside this state shall be liable to be  
6 proceeded against in any court of competent jurisdiction  
7 in any county of the state where it may be found and  
8 seized for confiscation by process of libel for condemna-  
9 tion:

10 1. In the case of an economic poison,

11 a. If it is adulterated or misbranded;

12 b. If it has not been registered under the provisions  
13 of section four of this article;

14 c. If it fails to bear on its label the information required  
15 by this article;

16 d. If it is a white powder economic poison and is not  
17 colored as required under this article.

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

19 B. If the item is condemned, it shall, after entry of  
20 decree, be disposed of by destruction or sale as the court  
21 may direct and the proceeds, if such item is sold, less  
22 legal costs, shall be paid to the state treasurer: *Provided,*  
23 That the item shall not be sold contrary to the provision  
24 of this article: *And provided further,* That upon payment

25 of costs and execution and delivery of a good and sufficient  
26 bond conditioned that the item shall not be disposed of  
27 unlawfully, the court may direct that said item be de-  
28 livered to the owner thereof for relabeling or reprocessing  
29 as the case may be.

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

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

Sec. 11. *Cooperation.*—The commissioner is authorized  
2 and empowered to cooperate with, and enter into agree-  
3 ments with, any other agency of this state, the United  
4 States department of agriculture, and any other state or  
5 agency thereof for the purpose of carrying out the pro-

6 visions of this article and securing uniformity of regula-  
7 tions.

Sec. 12. *Separability*.—If any provision of this article  
2 is declared unconstitutional, or the applicability thereof  
3 to any person or circumstance is held invalid, the consti-  
4 tutionality of the remainder of this article and the appli-  
5 cability thereof to other persons and circumstances shall  
6 not be affected thereby.

Sec. 13. *Repeals*.—Jurisdiction in all matter pertaining  
2 to the distribution, sale and transportation of economic  
3 poisons and devices is by this article vested exclusively  
4 in the commissioner, and all acts and parts of acts incon-  
5 sistent with this article are hereby expressly repealed.

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

*James Baird, Jr.*  
\_\_\_\_\_  
Chairman Senate Committee

*Mrs. M. W. Withrow*  
\_\_\_\_\_  
Chairman House Committee

Originated in the House.

Takes effect *immediately from* passage.

*Howard Myles*  
\_\_\_\_\_  
Clerk of the Senate

*E. A. Blankenship*  
\_\_\_\_\_  
Clerk of the House of Delegates

*Howard W. Carson*  
\_\_\_\_\_  
President of the Senate

*Julius W. Singletary Sr.*  
\_\_\_\_\_  
Speaker House of Delegates

The within *Approved* this the *16<sup>th</sup>*  
day of *March*, 1961.

*W. W. Barron*  
\_\_\_\_\_  
Governor

