

WEST VIRGINIA LEGISLATURE

REGULAR SESSION, 1967



ENROLLED

HOUSE BILL No. 1065

(By Mr. Lohr and Mr. Edgar)



PASSED March 4, 1967

In Effect Jan Passage



FILED IN THE OFFICE
ROBERT D. BAILEY
SECRETARY OF STATE
THIS DATE 3-16-67

#1065

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House Bill No. 1065

(By MR. LOHR and MR. EDGAR)

[Passed March 4, 1967; in effect from passage.]

AN ACT to amend and reenact sections one, two, three, four, six and eight, article sixteen, chapter nineteen of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to agricultural and forest seeds.

Be it enacted by the Legislature of West Virginia:

That sections one, two, three, four, six and eight, 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:

ARTICLE 16. AGRICULTURAL AND FOREST SEEDS.

§19-16-1. Definitions.

- 1 When used in this article:
- 2 (a) "Commissioner" means the commissioner of agri-

3 culture of the state of West Virginia or his duly author-
4 ized representatives;

5 (b) The term "person" shall include any individual,
6 partnership, corporation, company, society or associa-
7 tion;

8 (c) The term "agricultural seeds" shall include the
9 seeds of grass, forage, cereal, tobacco and fiber crops
10 and any other kinds of seeds commonly recognized within
11 this state as agricultural or field seeds and mixtures of
12 such seeds. Forest seeds shall include all deciduous and
13 coniferous trees and shrubs and ornamentals;

14 (d) The term "vegetable seeds" includes the seeds
15 of those crops which are grown in gardens or on truck
16 farms and are generally known and sold under the name
17 of vegetable seeds in this state;

18 (e) The term "seed potato" shall refer to the Irish
19 potato (*Solanum tuberosum*);

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

23 (g) Noxious weed seeds shall be divided into two

24 classes, "prohibited weed seeds" and "noxious weed
25 seeds," as defined in (1) and (2) of this subsection:

26 *Provided*, That the commissioner of agriculture may,
27 through promulgation of regulations, add to or subtract
28 from the list of seeds included under either definition
29 whenever he finds that such additions or subtractions
30 are within the respective definitions;

31 (1) "Prohibited weed seeds" are the seeds of peren-
32 nial weeds such as not only reproduce by seed, but also
33 spread by underground roots or stems, and which when
34 established are highly destructive and difficult to control
35 in this state by ordinary cultural practice;

36 "Prohibited weed seeds" in this state are the seeds of
37 dodder (*Cuscuta* spp.), quack grass (*Agropyron repens*),
38 Johnson grass (*Sorghum halapense*), Canada thistle (*Car-
39 duus arvensis*), perennial sow thistle (*Sonchus arvensis*);

40 (2) "Noxious weed seeds" are the seeds of such weeds
41 as are very objectionable in fields, lawns or gardens of
42 this state, but can be controlled by good cultural prac-
43 tice. "Noxious weed seeds" in this state are the seeds
44 of wild onion (*Allium vineale*), hawk weed (*Hieracum*

45 spp.), buckhorn (*Plantago lanceolata*), English charlock
46 or wild mustard (*Brassica arvensis*), corn cockle (*Agro-*
47 *stemma gilthago*), ox-eye daisy (*Chrysanthemum leucan-*
48 *themum*), Indian mustard (*Brassica juncea*), star thistle
49 (*Centurea solstitialis*), wild carrot (*Daucus carota*), horse
50 nettle (*Solanum carolinias*), field pepper grass (*lepidium*
51 *compestre*), wild morning glory (*ipomea purpurea*), bind-
52 weed (*Convolvulus arvensis*);

53 (h) The term "labeling" includes all labels and other
54 written, printed or graphic representation, in any form
55 whatsoever, accompanying and pertaining to any seed
56 whether in bulk or in containers, and includes invoices;

57 (i) The term "advertisement" means all representa-
58 tion, other than those on the label, disseminated in any
59 manner or by any means, relative to seed within the
60 scope of this article.

§19-16-2. Label requirements.

1 Each container of agricultural, forest or vegetable seed
2 which is sold, offered for sale or exposed for sale within
3 the state for sowing purposes, shall bear thereon or have
4 attached thereto in a conspicuous place a plainly written

5 or printed label or tag in the English language, giving the
6 following information:

7 (a) For agricultural and forest seeds:

8 (1) Commonly accepted name of

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

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

18 (2) Lot number or other lot identification.

19 (3) Origin, if known, of alfalfa, red clover, forest seeds
20 and field corn (except hybrid corn). If the origin is un-
21 known that fact shall be stated.

22 (4) Percentage by weight of all weed seeds.

23 (5) The name and approximate number of each kind
24 of noxious weed seed; (a) Per ounce in *Agrostis* spp.,
25 *Poa* spp., Rhodes grass, Bermuda grass, timothy, orchard

26 grass, fescues, alsike and white clover, reed, canary grass,
27 Dallas grass, ryegrass, foxtail millet, alfalfa, red clover,
28 sweet clovers, lespedezas, smooth brome, crimson clover,
29 Brassica spp., flax, Agropyron spp., and other agricul-
30 tural seeds of similar size and weight, or mixtures within
31 this group.

32 (b) Per pound in proso, sudan grass, wheat, oats, rye,
33 barley, buckwheat, sorghums, vetches and other agri-
34 cultural seeds of a size and weight similar to or greater
35 than those within this group, or any mixtures within
36 this group.

37 All determinations of noxious weed seeds shall be sub-
38 ject to tolerances and methods of determination pre-
39 scribed in the rules and regulations under this article.

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

43 (7) Percentage by weight of inert matter.

44 (8) For each named agricultural or forest seed: (a)
45 Percentage of germination exclusive of hard seed; (b)
46 Percentage of hard seed, if present; (c) The calendar

47 month and year the test was completed to determine each
48 percentage.

49 Following (a) and (b) the "total germination and hard
50 seeds" may be stated as such, if desired.

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

54 (10) For agricultural or forest seeds which germinate
55 less than the standard last established by the commis-
56 sioner under this article, the label shall show in addition
57 to the previous requirements of this section, the words
58 "germination below standard" in not less than eight
59 point type.

60 (b) For vegetable seeds:

61 (1) Name of kind and variety;

62 (2) For seeds which germinate less than the standard
63 last established by the commissioner under this article:

64 (a) Percentage of germination, exclusive of hard seed;

65 (b) Percentage of hard seed, if present; (c) The calendar
66 month and year the test was completed to determine such

67 percentages; (d) The words "below standard" in not
68 less than eight point type; and

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

72 (c) For seed potatoes:

73 Only "certified" seed potatoes which grade from the
74 standpoint of physical defects better than the minimum
75 requirements of U. S. No. 1 may be offered for sale as
76 seed. There shall be attached to each bag or container
77 a tag showing by whom certified, the standard or con-
78 ditions under which said certification is made, and the
79 name of the official state or governmental agency making
80 the inspection upon which the certification is made.

§19-16-3. Certificate of registration; seed fees.

1 Every producer or distributor of agricultural, forest
2 or vegetable seeds or seed potatoes who shall sell, offer
3 or expose for sale or distribution in this state any seeds,
4 shall before the same is offered or exposed for sale
5 obtain from the commissioner a certificate of registration
6 showing that he has registered with the commissioner

7 to sell seeds in West Virginia. The commissioner shall
8 have full power and is hereby authorized and required
9 to cancel and withdraw any certificate upon satisfactory
10 evidence that any provisions of this article or any rules
11 and regulations covering the sale of any seed have been
12 violated. The commissioner shall not issue any certificate
13 of registration except upon filing with the commissioner
14 an application for a certificate of registration, such ap-
15 plication shall be on a form prescribed by the commis-
16 sioner which shall include a consent for the commissioner
17 or his agent to inspect and audit all sales invoices and
18 records and shall include, but not be limited to, the
19 following: The name and address of the seedsman, im-
20 porter, dealer, or agent, or other person, firm or corpo-
21 ration selling, offering or exposing for sale or distribution
22 any seeds in this state; a list of the seeds to be offered
23 for sale, and accompanied by a registration fee of one
24 dollar. Certificates so issued by the commissioner shall
25 become null and void on December thirty-first next after
26 date of issue unless sooner revoked as herein provided.

27 For the purpose of defraying the cost of inspection and

28 analysis of seeds and the enforcement of this article, every
29 producer or distributor of agricultural, forest or vegetable
30 seeds or seed potatoes who shall sell, offer or expose for
31 sale or distribution in this state any such seed shall pay
32 to the commisioner, a state seed fee as provided in the
33 following schedule:

34 (a) For forest, tobacco, alfalfa, clovers and all grass
35 or mixtures of any of these, and all vegetable seeds ex-
36 cept those contained in samples or display units, the
37 following rates: Ten cents for each one hundred pounds;
38 eight cents for each seventy-five pounds; five cents for
39 each fifty pounds and three cents for each twenty-five
40 pounds.

41 (b) For all other agricultural seeds the following
42 rates: Five cents for each one hundred pounds; four
43 cents for each seventy-five pounds; three cents for each
44 fifty pounds and two cents for each twenty-five pounds.

45 (1) Payment of the fee levied by paragraphs (a) and
46 (b) shall be based on a statement under oath in due
47 form of law which shall be filed with the commissioner
48 on or before the fifteenth day of July and January which

49 shall set forth the number of pounds of seed sold or
50 distributed in the state during the preceding six months
51 period.

52 (c) For seed potatoes: Two cents per one hundred
53 pounds.

54 (1) Payment of the fee levied in paragraph (c) shall
55 be based on a statement under oath in due form of law
56 which shall be filed with the commissioner on or before
57 the fifteenth day of each month for the preceding month
58 in which seed potatoes were bought or distributed, sold
59 or offered for sale.

60 (d) For vegetable seeds in primary consumer pack-
61 ages containing not more than eight ounces net: One
62 dollar per sampler unit.

63 (1) Payment of the fee levied in paragraph (d) shall
64 be through the purchase of seed stamps from the com-
65 missioner which seed stamps shall be attached to each
66 and every display unit in a conspicuous place.

67 (e) For seeds not otherwise specified in primary con-
68 sumer packages of ten pounds or less, the rate shall be
69 as follows: For five pounds up to and including ten

70 pounds, three cents; for less than five pounds, two cents.

71 (1) Payment of the fee levied in paragraph (e) shall
72 be through the purchase of seed stamps from the com-
73 missioner which stamps shall be attached to the primary
74 consumer container before such seed is offered or exposed
75 for sale or distribution.

76 (f) A dealer shall not be required to register or pay
77 the seed fee on any agricultural, forest, vegetable seed,
78 or seed potato on which he can prove such seed was
79 registered and fees paid by a person entitled so to do
80 and such registration is then in effect.

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

§19-16-4. Prohibitions.

1 (a) It shall be unlawful for any person to sell, offer or
2 expose for sale any agricultural, forest or vegetable
3 seed within this state:

4 (1) Unless the test to determine the percentage of
5 germination required by section two shall have been

6 completed within a nine month period, exclusive of the
7 calendar month in which the test was completed, im-
8 mediately prior to sale, exposure for sale or offering for
9 sale or transportation;

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

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

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

17 (5) Containing more than two per cent by weight of
18 weed seeds.

19 (b) It shall be unlawful for any person within this
20 state:

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

25 (2) To disseminate any false or misleading advertise-

26 ment concerning agriculture, forest, vegetable or potato
27 seed in any manner or by any means;

28 (3) To hinder or obstruct in any way any authorized
29 person in the performance of his duties under this article;

30 (4) To fail to comply with a "stop sale" order.

§19-16-6. Duties and authority of commissioner of agriculture.

1 (a) The duty of enforcing this article and carrying
2 out its provisions and requirements shall be vested in
3 the commissioner of agriculture. It shall be his duty:

4 (1) To establish germination standards for agricul-
5 tural, forest and vegetable seeds;

6 (2) To sample, inspect, make analysis of, and test
7 agricultural, forest, vegetable and potato seeds trans-
8 ported, sold or offered or exposed for sale within this
9 state for seeding purposes, at such time and place and
10 to such extent as he may deem necessary to determine
11 whether such seeds are in compliance with the provisions
12 of this article, and to notify promptly the person who
13 transported, sold, offered or exposed the seed for sale,
14 of any violation;

15 (3) To prescribe and adopt rules and regulations gov-

16 urning the methods of sampling, inspecting, analysis, tests
17 and examination of agricultural, forest and vegetable
18 seed, and the tolerances to be followed in the adminis-
19 tration of this article, which shall be in general accord
20 with officially prescribed practice in interstate commerce,
21 and such other rules and regulations as may be neces-
22 sary to secure the efficient enforcement of this article;

23 (b) Further for the purpose of carrying out the pro-
24 visions of this article the commissioner, individually or
25 through his authorized agents, is authorized:

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

30 (2) To issue and enforce a written or printed "stop
31 sale" order to the owner or custodian of any lot of seed
32 which the commissioner finds is in violation of any pro-
33 visions of this article, which order shall prohibit further
34 sale or movement of such seed until the commissioner
35 has released the same;

36 (3) To establish and maintain or make provisions for

37 seed testing facilities, to employ qualified persons, and
38 to incur such expenses as may be necessary to comply
39 with these provisions;

40 (4) To make or provide for making purity and ger-
41 mination tests of seeds for farmers and dealers on re-
42 quest; to prescribe rules and regulations governing such
43 testing; and to fix and collect charges for the tests made.
44 Such fees shall be deposited with the state treasurer in
45 a special revenue fund and may be expended on order
46 of the commissioner;

47 (5) To cooperate with the United States department
48 of agriculture in seed law enforcement;

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

§19-16-8. Violations and prosecutions.

1 Any person violating any of the provisions of this article
2 shall be deemed guilty of a misdemeanor, and, upon con-
3 viction thereof, shall be fined not less than twenty-five
4 dollars nor more than two hundred fifty dollars for the
5 first offense, and not less than two hundred dollars nor
6 more than five hundred dollars for each subsequent offense.

7 When the commissioner shall find that any person has
8 violated any of the provisions of this article, he or his
9 duly authorized agent or agents may institute proceed-
10 ings in a court of competent jurisdiction: *Provided, how-*
11 *ever,* That no prosecution under this article shall be in-
12 stituted without the defendant first having been given
13 an opportunity to appear before the commissioner or his
14 duly authorized agent to introduce evidence, either in
15 person or by agent or attorney, at a hearing. If, after
16 such hearing, or without such hearing in case the de-
17 fendant or his agent or attorney fails or refuses to ap-
18 pear, the commissioner is of the opinion that the evi-
19 dence warrants prosecution, he shall proceed according
20 to law.

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

William Tompos
Chairman Senate Committee

Clayton Davidson
Chairman House Committee

Originated in the House.

Takes effect from passage.

Howard Keyes
Clerk of the Senate

C. Blankenship
Clerk of the House of Delegates

Howard W. Carson
President of the Senate

H. Rabau White
Speaker House of Delegates

The within *approved* this the *16*

day of *March*, 1967.

Hullett C. Smith
Governor



PRESENTED TO THE
GOVERNOR

Date 3/13/67

Time 12:50 p.m.