WEST VIRGINIA LEGISLATURE
REGULAR SESSION, 1967

ENROLLED

HOUSE BILL No. 1065

(By Mr. John and Mr. Edgar)

PASSED March 4, 1967

In Effect Passage

FILED IN THE OFFICE OF
ROBERT D. DOYLE
SECRETARY OF STATE
THIS DATE 3-16-67.
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-
(b) The term “person” shall include any individual, partnership, corporation, company, society or association;

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

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

(e) The term “seed potato” shall refer to the Irish potato (Solanum tuberosum);

(f) The term “weed seeds” shall include the seeds of all plants generally recognized as weeds within this state;

(g) Noxious weed seeds shall be divided into two
classes, "prohibited weed seeds" and "noxious weed seeds," as defined in (1) and (2) of this subsection:

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

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

"Prohibited weed seeds" in this state are the seeds of dodder (Cuscuta spp.), quack grass (Agropyrons repens), Johnson grass (Sorghum halapense), Canada thistle (Carduus arvensis), perennial sow thistle (Sonchus arvensis);

(2) "Noxious weed seeds" are the seeds of such weeds as are very objectionable in fields, lawns or gardens of this state, but can be controlled by good cultural practice. "Noxious weed seeds" in this state are the seeds of wild onion (Allium vineale), hawk weed (Hieracum
spp.), buckhorn (Plantago lanceolata), English charlock
or wild mustard (Brassica arvensis), corn cockle (Agro-
stemma gilthago), ox-eye daisy (Chrysanthemum leucan-
themum), Indian mustard (Brassica juncea), star thistle
(Centurea solstitialis), wild carrot (Daucus carota), horse
nettle (Solanum carolinanis), field pepper grass (lepidium
compestre), wild morning glory (ipomea purpurea), bind-
weed (Convolvulus arvensis);
(h) The term "labeling" includes all labels and other
written, printed or graphic representation, in any form
whatsoever, accompanying and pertaining to any seed
whether in bulk or in containers, and includes invoices;
(i) The term "advertisement" means all representa-
tion, other than those on the label, disseminated in any
manner or by any means, relative to seed within the
scope of this article.
§19-16-2. Label requirements.
1 Each container of agricultural, forest or vegetable seed
which is sold, offered for sale or exposed for sale within
the state for sowing purposes, shall bear thereon or have
attached thereto in a conspicuous place a plainly written
or printed label or tag in the English language, giving the following information:

(a) For agricultural and forest seeds:

(1) Commonly accepted name of kind and variety of each agricultural or forest seed component in excess of five per cent of the whole, and the percentage by weight of each in order of its predominance. Where more than one component is required to be named, the word “mixture” or the word “mixed” shall be shown conspicuously on the label.

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

(2) Lot number or other lot identification.

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

(4) Percentage by weight of all weed seeds.

(5) The name and approximate number of each kind of noxious weed seed; (a) Per ounce in Agrostis spp., Poa spp., Rhodes grass, Bermuda grass, timothy, orchard
grass, fescues, alsike and white clover, reed, canary grass,

Dallas grass, ryegrass, foxtail millet, alfalfa, red clover,
sweet clovers, lespedezas, smooth brome, crimson clover,
Brassica spp., flax, Agropyron spp., and other agricultural seeds of similar size and weight, or mixtures within this group.

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

All determinations of noxious weed seeds shall be subject to tolerances and methods of determination prescribed in the rules and regulations under this article.

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

(7) Percentage by weight of inert matter.

(8) For each named agricultural or forest seed: (a) Percentage of germination exclusive of hard seed; (b) Percentage of hard seed, if present; (c) The calendar
month and year the test was completed to determine each percentage.

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

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

(10) For agricultural or forest seeds which germinate less than the standard last established by the commissioner under this article, the label shall show in addition to the previous requirements of this section, the words “germination below standard” in not less than eight point type.

(b) For vegetable seeds:

(1) Name of kind and variety;

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

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

(b) Percentage of hard seed, if present; (c) The calendar month and year the test was completed to determine such
percentages; (d) The words “below standard” in not less than eight point type; and
(3) Name and address of the person who labeled said seed, or who sells, offers or exposes said seed for sale within the state.
(c) For seed potatoes:
Only “certified” seed potatoes which grade from the standpoint of physical defects better than the minimum requirements of U. S. No. 1 may be offered for sale as seed. There shall be attached to each bag or container a tag showing by whom certified, the standard or conditions under which said certification is made, and the name of the official state or governmental agency making the inspection upon which the certification is made.
§19-16-3. Certificate of registration; seed fees.
Every producer or distributor of agricultural, forest or vegetable seeds or seed potatoes who shall sell, offer or expose for sale or distribution in this state any seeds, shall before the same is offered or exposed for sale obtain from the commissioner a certificate of registration showing that he has registered with the commissioner
to sell seeds in West Virginia. The commissioner shall have full power and is hereby authorized and required to cancel and withdraw any certificate upon satisfactory evidence that any provisions of this article or any rules and regulations covering the sale of any seed have been violated. The commissioner shall not issue any certificate of registration except upon filing with the commissioner an application for a certificate of registration, such application shall be on a form prescribed by the commissioner which shall include a consent for the commissioner or his agent to inspect and audit all sales invoices and records and shall include, but not be limited to, the following: The name and address of the seedsman, importer, dealer, or agent, or other person, firm or corporation selling, offering or exposing for sale or distribution any seeds in this state; a list of the seeds to be offered for sale, and accompanied by a registration fee of one dollar. Certificates so issued by the commissioner shall become null and void on December thirty-first next after date of issue unless sooner revoked as herein provided.

For the purpose of defraying the cost of inspection and
analysis of seeds and the enforcement of this article, every producer or distributor of agricultural, forest or vegetable seeds or seed potatoes who shall sell, offer or expose for sale or distribution in this state any such seed shall pay to the commissioner, a state seed fee as provided in the following schedule:

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

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

(1) Payment of the fee levied by paragraphs (a) and (b) shall be based on a statement under oath in due form of law which shall be filed with the commissioner on or before the fifteenth day of July and January which
shall set forth the number of pounds of seed sold or
distributed in the state during the preceding six months
period.

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

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

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

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

(e) For seeds not otherwise specified in primary con-
sumer packages of ten pounds or less, the rate shall be
as follows: For five pounds up to and including ten
pounds, three cents; for less than five pounds, two cents.

(1) Payment of the fee levied in paragraph (e) shall be through the purchase of seed stamps from the commissioner which stamps shall be attached to the primary consumer container before such seed is offered or exposed for sale or distribution.

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

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

§19-16-4. Prohibitions.

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

(1) Unless the test to determine the percentage of germination required by section two shall have been
completed within a nine month period, exclusive of the
calendar month in which the test was completed, im-
mediately prior to sale, exposure for sale or offering for
sale or transportation;

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

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

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

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

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

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

(2) To disseminate any false or misleading advertise-
ment concerning agriculture, forest, vegetable or potato seed in any manner or by any means;

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

(4) To fail to comply with a “stop sale” order.

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

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

(1) To establish germination standards for agricultural, forest and vegetable seeds;

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

(3) To prescribe and adopt rules and regulations gov-
erning the methods of sampling, inspecting, analysis, tests
and examination of agricultural, forest and vegetable
seed, and the tolerances to be followed in the adminis-
tration of this article, which shall be in general accord
with officially prescribed practice in interstate commerce,
and such other rules and regulations as may be neces-
sary to secure the efficient enforcement of this article;
(b) Further for the purpose of carrying out the pro-
visions of this article the commissioner, individually or
through his authorized agents, is authorized:
(1) To enter upon any public or private premises
during regular business hours in order to have access to
seeds subject to this article and the rules and regulations
thereunder;
(2) To issue and enforce a written or printed "stop
sale" order to the owner or custodian of any lot of seed
which the commissioner finds is in violation of any pro-
visions of this article, which order shall prohibit further
sale or movement of such seed until the commissioner
has released the same;
(3) To establish and maintain or make provisions for
seed testing facilities, to employ qualified persons, and to incur such expenses as may be necessary to comply with these provisions;

(4) To make or provide for making purity and germination tests of seeds for farmers and dealers on request; to prescribe rules and regulations governing such testing; and to fix and collect charges for the tests made. Such fees shall be deposited with the state treasurer in a special revenue fund and may be expended on order of the commissioner;

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

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

§19-16-8. Violations and prosecutions.

Any person violating any of the provisions of this article shall be deemed guilty of a misdemeanor, and, upon conviction thereof, shall be fined not less than twenty-five dollars nor more than two hundred fifty dollars for the first offense, and not less than two hundred dollars nor 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.
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The Joint Committee on Enrolled Bills hereby certifies that the foregoing bill is correctly enrolled.

William Tempo
Chairman Senate Committee

Clayton D. Davidson
Chairman House Committee

Originated in the House.

Takes effect from passage.

J. Howard Ayers
Clerk of the Senate

J. Blankenship
Clerk of the House of Delegates

Howard E. Carson
President of the Senate

H. Babe White
Speaker House of Delegates

The within approved this the 16

day of March, 1967.

Hulet C. Smith
Governor
PRESENTED TO THE GOVERNOR

Date 3/13/61

Time 12:50 p.m.