

WEST VIRGINIA LEGISLATURE

REGULAR SESSION, 1967



ENROLLED

HOUSE BILL No. 792

(By Mr. Stephens and Mr. Corkman)



PASSED February 20, 1967

In Effect from Passage



FILED IN THE OFFICE
ROBERT D. BAILEY
SECRETARY OF STATE
THIS DATE 3-2-67

792

ENROLLED

House Bill No. 792

(By MR. STEPTOE and MR. COOKMAN)

[Passed February 20, 1967; in effect from passage.]

AN ACT to amend chapter nineteen of the code of West Virginia, one thousand nine hundred thirty-one, as amended, by adding thereto a new article, designated article five-a, relating to controlled atmosphere storage of certain fruits and vegetables; providing for licenses; enforcement; oxygen content; warehouse numbers; conditions; standards; air component determinations; hearings; subpoenas; injunctions; denials; suspension and revocation of licenses and providing remedies and penalties.

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 five-a, to read as follows:

**ARTICLE 5A. CONTROLLED ATMOSPHERE STORAGE
OF CERTAIN FRUITS AND VEGETABLES;
INSPECTION AND LICENSING OF CON-
TROLLED ATMOSPHERE STORAGE
WAREHOUSES.**

§19-5A-1. Purpose and construction.

1 The purpose of this article is to regulate controlled
2 atmosphere storage warehouses, for controlling the condi-
3 tion and maturity of fresh fruits and vegetables, so that
4 upon removal therefrom they may be designated as CA
5 stored.

§19-5A-2. Definitions.

1 (a) "Department" means the department of agricul-
2 ture of the state of West Virginia.

3 (b) "Commissioner" means the commissioner of agri-
4 culture of the state of West Virginia or his duly author-
5 ized representatives.

6 (c) "Controlled atmosphere storage" or "CA" means
7 any storage warehouse consisting of one or more rooms

8 in any one facility in which atmospheric gases are con-
9 trolled in their amount and in degrees of temperature for
10 the purpose of controlling the condition and maturity of
11 any fresh fruits and vegetables in order that upon re-
12 moval therefrom they may be designated as having been
13 exposed to controlled atmosphere.

14 (d) "Person" means an individual, firm, partnership,
15 corporation, cooperative, company, society or association
16 and each officer, agent or employee thereof and shall
17 import either the singular or plural as the case may be.

**§19-5A-3. Commissioner to enforce article; rules and regula-
tions.**

1 (a) The commissioner shall administer and enforce
2 the provisions of this article and for this purpose he is
3 hereby authorized and empowered to promulgate rules
4 and regulations and to employ or contract with such
5 persons as may be appropriate.

6 (b) The commissioner is hereby authorized and em-
7 powered to cooperate with the federal government and
8 any agencies, departments, and instrumentalities thereof,
9 the state of West Virginia and any agencies, departments

10 or political subdivisions thereof, and any other state or
11 commonwealth and any agencies, departments or political
12 subdivisions thereof, in order to carry out the effective
13 administration of this article.

**§19-5A-4. License required for controlled atmosphere storage;
application for such licenses; fees; revocation or
suspension; CA storage warehouse number or
numbers.**

1 No person shall engage in the business of operating a
2 controlled atmosphere storage warehouse unless he shall
3 have first obtained a license from the commissioner so
4 to do, which license remains unsuspended and unrevoked.
5 Application for such license shall be made on forms pre-
6 scribed by the commissioner and shall be accompanied
7 by a fee required in this section. When a person operates
8 two or more CA storage warehouses not on the same
9 premises in this state, a separate license shall be re-
10 quired for each such storage warehouse. Each license
11 shall expire on the thirtieth day of June next following
12 its issuance, and the annual fee for each such license
13 shall be twenty-five dollars. Before issuing any license
14 required by the provisions of this section, the commis-

15 sioner shall inspect the applicant's CA storage ware-
16 house and if the commissioner is satisfied that the ware-
17 house is properly equipped and is in conformity with the
18 provisions of this article and any rules and regulations
19 promulgated by the commissioner, he shall issue the
20 license. Each applicant for a license shall specify the
21 name of the person applying for the license, the principal
22 business address, name of the person domiciled in this
23 state authorized to receive and accept service and legal
24 notices of all kinds, the storage capacity of the controlled
25 atmosphere storage warehouse by cubic capacity or
26 volume, kind of fruits or vegetables for which the ap-
27 plicant intends to provide controlled atmosphere storage,
28 and any other information prescribed by the commis-
29 sioner as necessary in carrying out the provisions of this
30 article.

31 The commissioner may refuse to grant a license or may
32 suspend or revoke a license issued under the provisions
33 of this section whenever he finds that the applicant's or
34 licensee's CA storage warehouse, as the case may be,
35 is not properly equipped, or is not in conformity with the

36 provisions of this article or any rules and regulations
37 promulgated by the commissioner.

38 No such revocation or suspension of a license shall be
39 effective until the licensee has received notice thereof,
40 which notice shall specify the grounds for such revocation
41 or suspension.

**§19-5A-5. Access to controlled atmosphere storage warehouses,
records, etc.**

1 The commissioner shall have access to and is em-
2 powered to enter and make inspections during business
3 hours of all controlled atmosphere storage warehouses
4 licensed by this state. The licensee shall make available
5 on demand to the commissioner all records pertaining
6 to the conduct of said controlled atmosphere storage
7 warehouses.

§19-5A-6. CA warehouse numbers; issuance and use.

1 The commissioner when issuing a license shall assign
2 a warehouse number which shall be preceded by the
3 letters WV-CA.

4 No person in this state shall place, stamp, mark or
5 cause to be placed, stamped or marked the letters "CA"

6 or a similar designation in conjunction with a number or
7 numbers upon any container or subcontainer of any fruits
8 or vegetables, or imply that such fruits and vegetables
9 have been subjected to controlled atmosphere conditions
10 unless the commissioner has inspected such fruits and
11 vegetables and issued a state lot number in conjunction
12 with a certificate stating their quality and condition, that
13 they were stored in a warehouse licensed under the pro-
14 visions of this article and met the requirements of the
15 article and regulations promulgated thereunder: *Pro-*
16 *vided*, That if such fruits and vegetables are not allowed
17 to enter the channels of commerce within two weeks of
18 such inspection or subsequent similar inspection by the
19 commissioner the letters "CA" and the state lot number
20 shall be eradicated by the licensee.

**§19-5A-7. Oxygen content, time and temperature require-
ments for classification of fruits or vegetables as
controlled atmosphere stored.**

1 The Commissioner shall adopt regulations:

2 (a) Prescribing the maximum amount of oxygen that
3 may be retained in a sealed controlled atmosphere ware-
4 house.

5 (b) Prescribing the maximum period of time in which
6 the oxygen content shall be reduced to the amount pre-
7 scribed under sub-section a of this section.

8 (c) Prescribing the length of time and degree of
9 temperature at which any fruits or vegetables shall be
10 retained in a controlled atmosphere storage warehouse
11 before they may be classed as having been stored in a
12 CA storage.

**§19-5A-8. Air component determinations; records; forms;
contents.**

1 The licensee shall make air component determinations
2 as to the percentage of carbon dioxide, oxygen and tem-
3 perature at least once each day. A record of such deter-
4 minations shall be kept on a form prescribed by the
5 commissioner for a period of at least one year and shall
6 include the following:

- 7 (a) Full name and address of licensee.
- 8 (b) Number and storage capacity of the warehouse.
- 9 (c) Date of sealing of the warehouse.
- 10 (d) Date of opening of the warehouse.
- 11 (e) A daily record of the date and time of tests in-

12 cluding the percentage of carbon dioxide, oxygen and the
13 temperature.

14 (f) Any records required by the commissioner to ful-
15 fill the provisions of this article.

§19-5A-9. Minimum condition and maturity standards.

1 The commissioner shall establish minimum condition
2 and maturity standards for fruits and vegetables which
3 are to be designated as "CA" stored.

§19-5A-10. Subpoenas; injunction certificates as evidence.

1 The commissioner shall have subpoena power to com-
2 pel the attendance of witnesses and/or the production of
3 books, records or documents anywhere in the State in a
4 hearing affecting the authority or privilege granted by a
5 license issued under the provisions of this article and
6 may bring an action to enjoin the violation or threatened
7 violation of any provision of this article or of any regu-
8 lation adopted pursuant to this article in a court of record
9 in the county in which violation occurs or is about to
10 occur, notwithstanding the existence of any other remedy
11 of law. Official inspection certificates issued by the com-
12 missioner shall be received in all courts of this state as

13 prima facie evidence as statements of facts contained
14 therein.

§19-5A-11. Unlawful acts; penalties.

1 It shall be unlawful for any person to sell, offer for
2 sale, hold or transport for sale any fruits or vegetables
3 represented as having been exposed to controlled atmo-
4 sphere storage or to use any terms or form of words or
5 symbols of similar import unless such fruits and vege-
6 tables have been stored in a controlled atmosphere storage
7 which meets the requirements of this article and the
8 regulations adopted hereunder. Any person violating the
9 provisions of this article or the regulations adopted here-
10 under shall be guilty of a misdemeanor and upon con-
11 viction thereof, shall for the first offense be fined not less
12 than fifty dollars nor more than two hundred fifty dollars
13 and upon conviction of each subsequent offense shall be
14 fined not less than two hundred fifty dollars nor more
15 than five hundred dollars.

§19-5A-12. Article cumulative and nonexclusive; severability.

1 The provisions of this article shall be cumulative and
2 nonexclusive and shall not affect any other remedy. If

3 any section or provision of this article shall be adjudged
4 invalid or unconstitutional, such adjudication shall not
5 affect the validity of the article as a whole or any sec-
6 tion, provision or part thereof not adjudged invalid or
7 unconstitutional.

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

William Tompoe
Chairman Senate Committee

Clayton C. Davidson
Chairman House Committee

Originated in the House.

Takes effect from passage.

John H. Meyer
Clerk of the Senate

C. A. Blankenship
Clerk of the House of Delegates

Howard E. Carlson
President of the Senate

H. Leban White
Speaker House of Delegates

The within approved this the 1st
day of March, 1968.

Hubert C. Smith
Governor



PRESENTED TO THE
GOVERNOR

Date 2-24-67

Time 1:45 P.M.