

710: 1003

RECEIVED
FEB 28 1 19 PM '84
OFFICE OF THE GOVERNOR

WEST VIRGINIA LEGISLATURE

REGULAR SESSION, 1984



ENROLLED

Com. Sub. for
HOUSE BILL No. 1003

(By ~~the~~ *Delegate Steptoe*)



Passed *February 23,* 1984

In Effect *Ninety Days From* Passage



ENROLLED
COMMITTEE SUBSTITUTE
FOR

H. B. 1003

(By MR. STEPTOE)

(Originating in the House Committee on Agriculture.)

[Passed February 23, 1984: 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 two-g, relating to providing a short title for the article and declaring its purpose; defining certain terms; providing for authorization of the tree fruit industry self-improvement assessment board by referendum; providing for conducting the referendum and announcing the results; providing for termination of the program by referendum; creating the tree fruit industry self-improvement assessment board to administer the program; requiring the board to annually report on its activities to the Legislature; authorizing the board to promulgate necessary rules and regulations; providing for assessments on tree fruit sales and for refunds of assessments to producers who demand them in writing; providing penalties for failure to collect or remit assessments; providing for the severability of provisions of this article; and providing for termination of the program if it is not reviewed and continued by the Legislature.

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 two-g, all to read as follows:

ARTICLE 2G. TREE FRUIT INDUSTRY SELF-IMPROVEMENT ASSESSMENT PROGRAM.

§19-2G-1. Short Title.

1 This article shall be known and may be cited as the Tree
2 Fruit Industry Self-Improvement Act of 1984.

§19-2G-2. Purpose.

1 The purpose of this article is to enhance and promote sales
2 of tree fruits in the state and thereby enhance the profit po-
3 tential of the state's tree fruit industry. This article furthers
4 that purpose by providing support for efforts to solve prob-
5 lems in tree fruit crop health, production and marketing; by
6 providing support for research and education activities related
7 to the production and marketing of tree fruits and by inform-
8 ing and educating the public concerning the value and bene-
9 fits of tree fruits or products made from tree fruits.

§19-2G-3. Definitions.

1 As used in this article the following terms shall have these
2 meanings, unless the text clearly specifies otherwise:

3 (a) "Tree fruit industry self-improvement assessment
4 board" or "board" means those persons appointed by the
5 governor in the manner provided for in section six of this
6 article;

OK
DLK
E.N.

7 (b) "Commissioner" means the commissioner of agricul-
8 ture of the state of West Virginia and his duly authorized agent
9 or agents;

10 (c) "Person" means any individual, partnership, corpora-
11 tion, association, fiduciary or other group of persons whether
12 organized or not; ~~and~~

OK
DLK
E.N.

13 (d) "Producer" means any person in the business of pro-
14 ducing tree fruits for direct sale to consumers or for sale
15 to processors for ultimate sale as tree fruit products; ~~and~~

OK
DLK
E.N.

16 (e) "Tree fruit industry self-improvement assessment pro-
 17 gram" or "program" means those activities of the board de-
 18 signed to promote the state's tree fruit industry including, but
 19 not limited to, receiving and disbursing assessment funds, ac-
 20 cepting gifts and grants from any private source, supporting
 21 tree fruit research, developing production and marketing
 22 practices, and sponsoring industry and public education efforts.

§19-2G-4. Authorization of program by referendum.

1 (a) The provisions of sections six, seven, eight, nine and ten
 2 of this article shall not be implemented until sixty days after
 3 passage of a referendum creating a board. A referendum shall
 4 be passed when voted for by a majority of the tree fruit pro-
 5 ducers participating in the referendum. If any such referendum
 6 is proposed and defeated, no subsequent referendum may be
 7 held for at least two years following the date the initial refer-
 8 endum was defeated.

9 (b) Upon receipt of a petition signed by not less than fifty
 10 producers, the commissioner shall call a public hearing in ac-
 11 cordance with the provisions of chapter twenty-nine-a of this
 12 code. The subject of this hearing shall be whether a referendum
 13 should be held and the amount of the proposed assessment. If
 14 a majority of those producers present at the hearing are in favor
 15 of the referendum and agree on a proposed assessment, the
 16 commissioner shall notify producers of the date of the pending
 17 referendum by publishing a notice on not less than three differ-
 18 ent days in not less than two newspapers of general circulation
 19 in the state. The commissioner shall also publish notice of the
 20 pending referendum in such other places and in such other
 21 manner as he considers necessary.

22 (c) Producers shall vote at polling places designated by
 23 the commissioner and ^{provided} ~~provided~~ in each county for that pur-
 24 pose on ballots designed and furnished by the commissioner.
 25 Ballots shall be furnished to producers for voting upon their
 26 presentation of proof, such as tax assessment records, sales
 27 receipts or income tax records, demonstrating that they are
 28 bona fide producers as defined in section three of this article.
 29 Records, receipts or other proof presented may be no more
 30 than one year old. The commissioner shall announce the re-

OK
 e.k.

31 sults of the referendum in not less than two newspapers of
32 general circulation in the state within seventy-two hours after
33 the polling places for the referendum are closed and shall
34 preserve all ballots for a period of one year after the referen-
35 dum is held.

§19-2G-5. Termination of program by referendum.

1 The commissioner shall provide for a referendum on con-
2 tinuation or cessation of the board within sixty days after
3 receiving a petition in writing signed by not less than thirty
4 producers requesting that the board be terminated. The
5 commissioner shall notify producers of the date of the pend-
6 ing referendum by publishing a notice on not less than three
7 different days in not less than two newspapers of general cir-
8 culation in the state. The commissioner shall also publish
9 notice of the pending referendum in such other places and in
10 such other manner as he considers necessary. Any referendum
11 held pursuant to this section five shall be conducted by the
12 commissioner as set forth in section (c) of this article. If
13 a majority of producers voting in the referendum vote for
14 continuation of the board the board shall be continued.
15 If less than a majority of the producers voting in the referen-
16 dum vote for continuation of the board the board shall
17 be terminated ninety days after the date of the referendum.
18 If such referendum is held and if as a result of that referen-
19 dum the program is continued, no subsequent referendum may
20 be held within two years after the referendum. Unencumbered
21 money left in the fund upon termination of the program shall
22 be deposited in the general fund of the state of West Virginia.

**§19-2G-6. Tree Fruit industry self-improvement assessment board;
administration of program; report to Legislature; rules
and regulations.**

1 (a) There is hereby created a West Virginia tree fruit
2 improvement assessment board consisting of nine persons who
3 are residents of the state and citizens of the United States and
4 who are and have been actually engaged in the industry of
5 producing tree fruits for the preceding five years. The nine

6 persons who shall serve as members of the board shall be
7 appointed by the governor for terms of three years and may
8 serve successive terms: *Provided*, That the initial appoint-
9 ments of members of the board shall be three members to
10 serve for terms of one year each, three members to serve
11 for terms of two years each and three members to serve for
12 terms of three years each.

13 The governor shall make appointments to fill any vacancies
14 which may occur on the board and these appointments shall
15 be only for the unexpired term of the position on the board.
16 In making appointments to the board, the governor shall
17 consider the recommendations made by organizations and
18 groups in West Virginia which are concerned with or engaged
19 in the production of tree fruits for the purpose of marketing
20 tree fruits to consumers or processors. If the governor fails
21 to make an appointment within ninety days after the expiration
22 of any term or within ninety days after a vacancy occurs, the
23 board shall, with the concurrence of a majority of the mem-
24 bers still serving, make the necessary appointment. Each
25 member shall hold office until the expiration of his term until
26 a successor is duly appointed and qualified.

27 The board shall elect a chairman, a secretary and a treasurer
28 from its membership and shall meet at such times and places
29 as designated by call of the chairman or by a majority of the
30 board. All board meetings shall be held in accordance with
31 the state open meetings law. A stipend shall be paid to each
32 member from board collections not to exceed thirty-five dol-
33 lars per meeting for each meeting actually attended, and each
34 member shall be reimbursed for his actual expenses incurred
35 with respect to each meeting for room, meals and mileage in
36 the same amount as is provided for by the rules and regula-
37 tions promulgated by the governor for reimbursing state of-
38 ficials and employees of the state. No board member may
39 receive any other salary or compensation for his services.

40 The board may contract for services, employ and discharge
41 employees, provide for such facilities and equipment as are
42 necessary for the employees to perform their duties and may

43 cooperate with other state or federal agencies or other organ-
44 izations whose activities may be beneficial to the purposes
45 of this article. The board may not expend funds to influence
46 legislation or for any political campaign.

47 (b) The board shall administer the tree fruit self-improve-
48 ment assessment program. All such activity shall be directed
49 toward increasing the sale of tree fruits produced in the state
50 without reference to any particular firm, individual, brand
51 or trade name.

52 (c) The board shall submit a report, including a complete
53 fiscal accounting of its activities, to the Legislature not later
54 than the fifteenth day of January of each year.

55 (d) The board may promulgate such rules and regulations
56 as the board considers necessary to carry out the purposes
57 of this article after a public hearing following due notice to
58 all interested persons and compliance with the provisions of
59 the state administrative procedures set forth in chapter twenty-
60 nine-a of this code.

§19-2G-7. Assessment on sales; reimbursement for collecting.

1 (a) All tree fruit markets, packers, processors, wholesalers,
2 dealers and other persons, excluding persons purchasing tree
3 fruits for their personal consumption or use, purchasing tree
4 fruits, including direct shipments from producers, shall deduct
5 the assessments stipulated in the authorizing referendum, pro-
6 vided for in section four of this article, from the settlement for
7 such tree fruit and to forward it within thirty days to the
8 treasurer of the board. Five percent of the funds so collected
9 shall be retained by the person remitting the funds as reim-
10 bursement for additional problems and costs.

11 (b) The board shall keep accurate records of the amounts
12 of assessments and the dates on which they are received, and
13 of the expenditures of funds and the dates on which they are
14 made. These records shall be preserved for at least five years.

§19-2G-8. Refunds.

1 (a) Any producer of tree fruits from whom an assessment
2 has been collected may demand and receive a refund of the

3 total amount of the assessment. The demand for a refund
4 must be made in writing to the board within thirty days of
5 the assessment and shall contain the name and address of
6 the producer, the amount of the assessment, the name and
7 address of the collecting agent, the date of sale and the invoice
8 number. The board, or its administrative staff, upon deter-
9 mining that the assessment was paid by the producer, shall
10 make the refund.

§19-2G-9. Penalties.

1 (a) When a person who should collect the assessment as
2 provided in section seven of this article fails to do so or
3 fails to forward it to the treasurer of the board within thirty
4 days, the board shall certify that fact to the commissioner.
5 The commissioner shall write to the person informing him that
6 he has fifteen days to begin the collection or forwarding of
7 the assessment. The person may submit to the board a written
8 justification for nonpayment and upon receiving the justifica-
9 tion, the board may extend the allowable payment period. If
10 payment is not made within the fifteen day period or any
11 extension thereof approved by the board, the commissioner
12 shall revoke any license or permit the person may have to
13 engage in the purchase or sale of agricultural products for
14 resale in the state. Any person whose license or permit is
15 revoked as provided for under this section shall not be eligible
16 for relicensing or for reissuance of his permit for a period
17 of three years.

§19-2G-10. Termination of program by law.

1 This program shall be terminated on the first day of July,
2 one thousand nine hundred eighty-nine, unless a review of
3 the program's functions is undertaken, pursuant to sections
4 nine, ten and eleven, article ten, chapter four of this code.

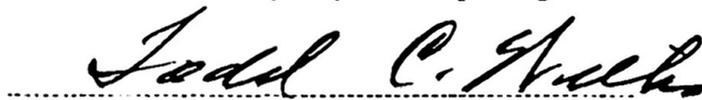
The Joint Committee on Enrolled Bills hereby certifies that the foregoing bill is correctly enrolled.

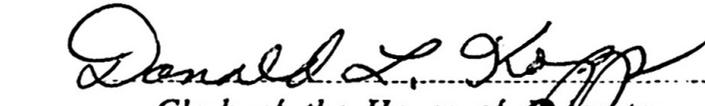

Chairman Senate Committee

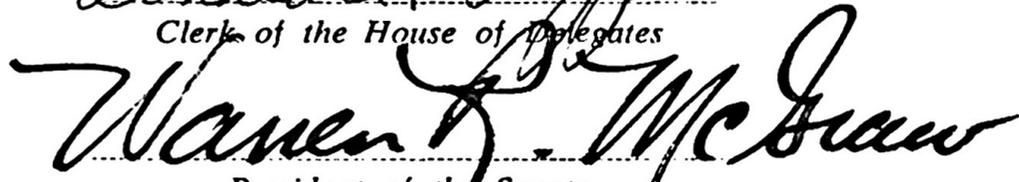

Chairman House Committee

Originating in the House.

Takes effect ninety days from passage.


Clerk of the Senate


Clerk of the House of Delegates


President of the Senate


Speaker House of Delegates

The within inapposed this the 3
day of Feb March, 1984.


Governor

RECEIVED

84 MAR 12 P 2: 54

OFFICE
SECY. OF STATE