WEST VIRGINIA LEGISLATURE

REGULAR SESSION, 1984

ENROLLED

Com. sub. for
HOUSE BILL No. 1003

(By Delegate Stetson)

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.
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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.

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


The purpose of this article is to enhance and promote sales of tree fruits in the state and thereby enhance the profit potential of the state’s tree fruit industry. This article furthers that purpose by providing support for efforts to solve problems in tree fruit crop health, production and marketing; by providing support for research and education activities related to the production and marketing of tree fruits and by informing and educating the public concerning the value and benefits of tree fruits or products made from tree fruits.


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

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

(b) “Commissioner” means the commissioner of agriculture of the state of West Virginia and his duly authorized agent or agents;

(c) “Person” means any individual, partnership, corporation, association, fiduciary or other group of persons whether organized or not; and

(d) “Producer” means any person in the business of producing tree fruits for direct sale to consumers or for sale to processors for ultimate sale as tree fruit products.
(e) "Tree fruit industry self-improvement assessment program" or "program" means those activities of the board designed to promote the state's tree fruit industry including, but not limited to, receiving and disbursing assessment funds, accepting gifts and grants from any private source, supporting tree fruit research, developing production and marketing practices, and sponsoring industry and public education efforts.


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

(b) Upon receipt of a petition signed by not less than fifty producers, the commissioner shall call a public hearing in accordance with the provisions of chapter twenty-nine-a of this code. The subject of this hearing shall be whether a referendum should be held and the amount of the proposed assessment. If a majority of those producers present at the hearing are in favor of the referendum and agree on a proposed assessment, the commissioner shall notify producers of the date of the pending referendum by publishing a notice on not less than three different days in not less than two newspapers of general circulation in the state. The commissioner shall also publish notice of the pending referendum in such other places and in such other manner as he considers necessary.

(c) Producers shall vote at polling places designated by the commissioner in each county for that purpose on ballots designed and furnished by the commissioner. Ballots shall be furnished to producers for voting upon their presentation of proof, such as tax assessment records, sales receipts or income tax records, demonstrating that they are bona fide producers as defined in section three of this article. Records, receipts or other proof presented may be no more than one year old. The commissioner shall announce the re-
suits of the referendum in not less than two newspapers of
general circulation in the state within seventy-two hours after
the polling places for the referendum are closed and shall
preserve all ballots for a period of one year after the referen-
dum is held.

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

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

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

(a) There is hereby created a West Virginia tree fruit
improvement assessment board consisting of nine persons who
are residents of the state and citizens of the United States and
who are and have been actually engaged in the industry of
producing tree fruits for the preceding five years. The nine
persons who shall serve as members of the board shall be appointed by the governor for terms of three years and may serve successive terms: Provided, That the initial appointments of members of the board shall be three members to serve for terms of one year each, three members to serve for terms of two years each and three members to serve for terms of three years each.

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

The board shall elect a chairman, a secretary and a treasurer from its membership and shall meet at such times and places as designated by call of the chairman or by a majority of the board. All board meetings shall be held in accordance with the state open meetings law. A stipend shall be paid to each member from board collections not to exceed thirty-five dollars per meeting for each meeting actually attended, and each member shall be reimbursed for his actual expenses incurred with respect to each meeting for room, meals and mileage in the same amount as is provided for by the rules and regulations promulgated by the governor for reimbursing state officials and employees of the state. No board member may receive any other salary or compensation for his services.

The board may contract for services, employ and discharge employees, provide for such facilities and equipment as are necessary for the employees to perform their duties and may
cooperate with other state or federal agencies or other organizations whose activities may be beneficial to the purposes of this article. The board may not expend funds to influence legislation or for any political campaign.

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

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

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

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

(a) All tree fruit markets, packers, processors, wholesalers, dealers and other persons, excluding persons purchasing tree fruits for their personal consumption or use, purchasing tree fruits, including direct shipments from producers, shall deduct the assessments stipulated in the authorizing referendum, provided for in section four of this article, from the settlement for such tree fruit and to forward it within thirty days to the treasurer of the board. Five percent of the funds so collected shall be retained by the person remitting the funds as reimbursement for additional problems and costs.

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


(a) Any producer of tree fruits from whom an assessment has been collected may demand and receive a refund of the
total amount of the assessment. The demand for a refund must be made in writing to the board within thirty days of the assessment and shall contain the name and address of the producer, the amount of the assessment, the name and address of the collecting agent, the date of sale and the invoice number. The board, or its administrative staff, upon determining that the assessment was paid by the producer, shall make the refund.


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

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

This program shall be terminated on the first day of July, one thousand nine hundred eighty-nine, unless a review of the program's functions is undertaken, pursuant to sections 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.

James L. Davis
Chairman Senate Committee

Chairman House Committee

Originating in the House.

Takes effect ninety days from passage.

J. C. Smith
Clerk of the Senate

Donald L. Kopp
Clerk of the House of Delegates

Walter F. McDaniel
President of the Senate

Hyde M. See Jr.
Speaker House of Delegates

The within __________ approved this the __________ day of __________, 1984.

Gov. David L. Reagan
Governor