

WEST VIRGINIA LEGISLATURE

SECOND REGULAR SESSION, 1998



ENROLLED

House Bill No. 4332

(By Delegates Beach and Williams)



Passed March 12, 1998

In Effect Ninety Days from Passage

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H. B. 4332

(BY DELEGATES BEACH AND WILLIAMS)

[Passed March 12, 1998; in effect ninety days from passage.]

AN ACT to amend and reenact article sixteen, chapter nineteen of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to rewriting the agricultural and forest seed law and designating the article as the West Virginia seed law; providing definitions; labeling requirements for agricultural, vegetable, tree and shrub seeds and seed potatoes; certificates of registration requirements, seed fees and use of the fees by the commissioner of agriculture; prohibiting distributions or transportations of certain seeds and other acts; exemptions; power and authority of the commissioner of agriculture; right of embargo and seizure by commissioner; and providing civil and criminal penalties.

Be it enacted by the Legislature of West Virginia:

That 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. WEST VIRGINIA SEED LAW.

§19-16-1. Definitions.

- 1 (a) "Agricultural seed" includes forage seeds (grasses
- 2 and legumes), tobacco, soybeans, cereal, oil, fiber, and
- 3 other kinds of crop seeds commonly recognized within
- 4 this state as agricultural seeds, lawn and turf seeds and

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5 combinations of those seeds, and may include noxious
6 weed seeds when the commissioner determines that the
7 seed is being used as agricultural seed.

8 (b) "Blend" means seed consisting of more than one
9 variety of a kind, each in excess of five percent by weight
10 of the whole.

11 (c) "Brand" means a word, name, symbol, number,
12 design or device, or any combination thereof, identifying
13 the seed of one person and distinguishing it from all
14 others.

15 (d) "Bulk" means seed when loose in vehicles of
16 transportation or in storage, or in retail displays and not in
17 seed bags or other containers.

18 (e) "Certifying agency" means: (1) An agency
19 authorized under the laws of a state, territory or possession
20 to officially certify seed and which has standards and
21 procedures approved by the United States secretary of
22 agriculture to assure the genetic purity and identity of the
23 seed certified; or (2) an agency of a foreign country
24 determined by the United States secretary of agriculture to
25 adhere to procedures and standards for seed certification
26 comparable to those adhered to generally by seed
27 certifying agencies under subdivision (1) of this
28 subsection.

29 (f) "Coated" means a seed unit covered with any
30 substance which changes the size, shape or weight of
31 original seed. Seeds coated with ingredients, such as, but
32 not limited to, rhizobia, dyes and pesticides, are not
33 considered coated seeds.

34 (g) "Commissioner" refers to the commissioner of
35 agriculture of the state of West Virginia or a duly
36 authorized employee.

37 (h) "Complete record" means any and all information
38 which relates to the origin, treatment, germination, purity,
39 kind and variety of each lot of agricultural seed sold in
40 this state, or which relates to the treatment, germination,
41 kind and variety of each lot of vegetable, or tree and shrub
42 seed sold in this state. The information shall include seed

43 samples and records of declarations, labels, purchases,
44 sales, conditioning, bulking, treatment, handling, storage,
45 analyses, tests and examinations.

46 (i) "Conditioning" means drying, cleaning, scarifying
47 and other operations which may change the purity or
48 germination of the seed and require the seed lot to be
49 retested to determine the label information.

50 (j) "Dealer" means any person who exclusively sells,
51 exposes for sale, offers for sale, exchanges or barter seed
52 for sowing purposes within this state to the ultimate
53 consumer.

54 (k) "Distribute" means to offer for sale, sell, expose for
55 sale, exchange or barter seed for sowing purposes within
56 the state.

57 (l) "Distributor" means any person who sells, exposes
58 for sale, offers for sale, exchanges, barter, gives, parcels
59 out, allots, shares or dispenses a seed for sowing purposes
60 within the state.

61 (m) "Dormant" means viable seed, excluding hard
62 seed, which fail to germinate when provided the specified
63 germination conditions for the kind of seed in question.

64 (n) "Genuine growers declaration" means a statement
65 signed by the grower which gives for each lot of seed the
66 lot number, kind, variety (if known), origin, weight, year
67 of production, date of shipment and to whom the
68 shipment was made.

69 (o) "Germination" means the emergence and
70 development from the seed embryo of those essential
71 structures which, for the kind of seed in question, are
72 indicative of the ability to produce a normal plant under
73 favorable conditions.

74 (p) "Hard seeds" means seeds which remain hard at the
75 end of the prescribed test period because they have not
76 absorbed water due to an impermeable seed coat.

77 (q) "Hybrid" means the first generation seed of a cross
78 produced by controlling the pollination and by
79 combining: (1) Two or more inbred lines; (2) one inbred

80 or a single cross with an open pollinated variety; or (3)
81 two varieties or species, except open-pollinated varieties of
82 corn (*Zea mays*). The second generation of subsequent
83 generations from the crosses shall not be regarded as
84 hybrids. Hybrid designations shall be treated as variety
85 names.

86 (r) "Inert matter" means all matter not seed, which
87 includes, but is not limited to, broken seeds, sterile florets,
88 chaff, fungus bodies and stones as determined by methods
89 defined by rule.

90 (s) "Kind" means one or more related species or
91 subspecies which singly or collectively is known by one
92 common name, for example, corn, oats, alfalfa and
93 timothy.

94 (t) "Label" means a display of written, printed or
95 graphic matter affixed to the container or package in
96 which seed is distributed; or affixed to the invoice,
97 delivery slip or other shipping document which
98 accompanies bulk lots of seed. All labels shall be legible
99 and in English.

100 (u) "Labeling" means all written, printed, or graphic
101 matter or advertisement referencing the seed.

102 (v) "Lot" means a definite quantity of seed identified
103 by a lot number, code number or other mark, every
104 portion or bag of which is uniform within recognized
105 tolerances for the factors which appear on the label.

106 (w) "Mixture", "mix", or "mixed" means seed
107 consisting of more than one kind, each in excess of five
108 percent by weight of the whole.

109 (x) "Mulch" means a protective covering of any
110 suitable substance placed with seed which acts to retain
111 sufficient moisture to support seed germination and
112 sustain early seedling growth and aid in the prevention of
113 the evaporation of soil moisture, the control of weeds and
114 the prevention of erosion.

115 (y) Noxious weed seeds are divided into two classes:
116 "Prohibited noxious weed seeds" and "restricted noxious

117 weed seeds" as defined in subdivisions (1) and (2) of this
118 subsection:

119 (1) The term "prohibited noxious weed seeds" are
120 those weed seeds which are prohibited from being present
121 in agricultural, vegetable, tree or shrub seed. They are the
122 seeds of weeds which are highly destructive and difficult
123 to control by good cultural practices and the use of
124 herbicides;

125 (2) The term "restricted noxious weed seeds or
126 undesirable grass seed" are those weed seeds which are
127 objectionable in agricultural crops, lawns and gardens of
128 this state and which can be controlled by good cultural
129 practices or the use of herbicides;

130 (z) "Off type" means any seed or plant not a part of
131 the variety in that it deviates in one or more characteristics
132 from the variety as described and may include: A seed or
133 plant of another variety; a seed or plant not necessarily
134 any variety; a seed or plant resulting from cross-
135 pollination by another kind or variety; a seed or plant
136 resulting from uncontrolled self pollination during
137 production of hybrid seed; or segregates from any of the
138 off types set forth in this subsection.

139 (aa) "Official sample" means any sample of seed taken
140 by the commissioner in accordance with the provisions of
141 this article and rules promulgated under this article.

142 (bb) "Origin" for an indigenous stand of trees means
143 the area on which the trees are growing; for a
144 nonindigenous stand, it is the place from which the seeds
145 or plants were originally introduced.

146 (cc) "Other crop seed" means seed of plants grown as
147 crops (other than the kind or variety included in the pure
148 seed) as determined by methods defined by rule.

149 (dd) "Person" means an individual, partnership,
150 corporation, company, association, receiver, trustee, agent,
151 fiduciary, firm or any group of organized persons whether
152 incorporated or not.

153 (ee) "Pure seed" means seed exclusive of inert matter

154 and all other seeds not of the seed being considered as
155 determined by methods defined by rule.

156 (ff) "Registrant" means any person who registers as a
157 seedsman in order to distribute seed for sowing purposes
158 within the state.

159 (gg) "Seed potato" refers to the Irish potato (*Solanum*
160 *tuberosum*) which must grade equal to or better than the
161 minimum requirements of U.S. No. 1, from the standpoint
162 of physical defects, size or disease, and must be certified
163 by an official certifying agency.

164 (hh) "Seizure" means a legal process carried out by
165 court order against a definite amount of seed.

166 (ii) "Stop sale or embargo" means an administrative
167 order provided by this article, restraining the sale, use,
168 disposition and movement of a definite amount of seed.

169 (jj) "Treated" means that the seed has received an
170 application of a substance, or that it has been subjected to
171 a process for which a claim is made.

172 (kk) "Tree and shrub seeds" includes seeds of woody
173 plants commonly known and sold as tree and shrub seeds
174 in this state.

175 (ll) "Tree seed collector's declaration" means a
176 statement signed by a grower or person having knowledge
177 of the place of collection giving, for a lot of seed, the lot
178 number, common or scientific name of the species (and
179 subspecies, if appropriate), origin, elevation, and quantity
180 of tree and shrub seed.

181 (mm) "Type" means a group of varieties so nearly
182 similar that the individual varieties cannot be clearly
183 differentiated except under special conditions.

184 (nn) "Variant" means any seed or plant which: (A) Is
185 distinct within the variety but occurs naturally in the
186 variety; (B) is stable and predictable with a degree of
187 reliability comparable to other varieties of the same kind,
188 within recognized tolerances, when the variety is
189 reproduced or reconstituted; and (C) was originally a part
190 of the variety as released. A variant is not an off-type.

191 (oo) "Variety" means a subdivision of a kind which is
192 distinct, uniform and stable.

193 (1) "Distinct" means that the variety can be
194 differentiated by one or more identifiable morphological,
195 physiological or other characteristics from all other
196 varieties of public knowledge.

197 (2) "Uniform" means that the variations in essential
198 and distinctive characteristics are describable.

199 (3) "Stable" means that the variety will remain
200 unchanged in its essential and distinctive characteristics
201 and its uniformity when reproduced or reconstituted as
202 required by the different categories of varieties.

203 (pp) "Vegetable or herb seeds" includes the seeds of
204 those crops which are grown in gardens or on truck farms
205 and are generally known and sold under the name of
206 vegetable or herb seeds in this state.

207 (qq) "Weed seed" means the seeds of all plants
208 generally recognized as weeds within this state, as
209 determined by methods defined by rule, and includes the
210 categories of prohibited noxious weed seeds and restricted
211 noxious weed seeds.

**§19-16-2. Label requirements for agricultural crops, lawn and
turf, vegetable, tree and shrub seeds and seed
potatoes.**

1 Each container of agricultural or vegetable seeds
2 which is distributed or transported within this state for
3 sowing purposes shall bear on the container or have
4 attached to the container in a conspicuous place a plainly
5 written or printed label or tag in the English language.

6 (a) For all treated agricultural and vegetable seeds (for
7 which a separate label may be used) the label shall include
8 the following:

9 (1) A word or statement indicating that the seed has
10 been treated;

11 (2) The commonly accepted coined, chemical or
12 abbreviated chemical (generic) name of the applied
13 substance or description of the process used;

14 (3) A caution statement, such as "do not use for food,
15 feed or oil purposes", if the substance in the amount
16 present with the seed is harmful to human or other
17 vertebrate animals. The caution for toxic substances shall
18 be a poison statement or symbol or both a poison
19 statement and symbol; and

20 (4) The date beyond which the inoculant is not to be
21 considered effective (date of expiration), if the seed is
22 treated with an inoculant.

23 (b) For agricultural seeds, except for grass seed
24 mixtures, seed sold on a pure live seed basis or for hybrids
25 which contain less than ninety-five percent hybrid seed the
26 label shall include the following:

27 (1) The commonly accepted name of the kind and
28 variety for each agricultural seed component present in
29 excess of five percent of the whole and the percentage by
30 weight of each in order of its predominance: *Provided*,
31 That if the variety of those kinds generally labeled as to
32 variety is not stated, the label shall show the name of the
33 kind and the words, "Variety Not Stated." Hybrids shall be
34 labeled as hybrids;

35 (2) The lot number or other lot identification;

36 (3) The origin (state or foreign country), if known, of
37 alfalfa, red clover and field corn (except hybrid corn). If
38 the origin is unknown, that fact shall be stated;

39 (4) The percentage by weight of all weed seeds;

40 (5) The name and rate of occurrence per pound or
41 ounce of each kind of restricted noxious weed seed or
42 undesirable grass seed present. The name and
43 approximate number of each kind of noxious weed seed:
44 (A) Per ounce in *Agrostis* spp., *Poa* spp., Rhodes grass,
45 Bermuda grass, timothy, orchard grass, fescues, alsike and
46 white clover, reed canary grass, Dallas grass, ryegrass,
47 foxtail millet, alfalfa, red clover, sweet clovers, lespedezas,
48 smooth brome, crimson clover, *Brassica* spp., flax,
49 *Agropyron* spp., and other agricultural seeds of similar
50 size and weight, or mixtures within this group; and (B) per
51 pound in sudan grass, wheat, oats, rye, barley, buckwheat,

52 sorghums, vetches and other agricultural seeds of a size
53 and weight similar to or greater than those within this
54 group, or any mixtures within this group;

55 (6) The percentage by weight of agricultural seeds
56 (which may be designated as "crop seeds") other than
57 those required to be named on the label;

58 (7) The percentage by weight of inert matter;

59 (8) For each named agricultural seed:

60 (A) The percentage of germination, exclusive of hard
61 seed;

62 (B) The percentage of hard seed, if present;

63 (C) The calendar month and year the test was
64 completed to determine the percentages; and

65 (D) If the registrant chooses, the "total germination
66 and hard seed";

67 (9) The name and address of the person who labeled
68 the seed, or who distributes the seed within this state.

69 (c) For grass seed mixtures for lawn or turf purposes
70 the label shall include the following:

71 (1) The word "mixed" or "mixture" with the name of
72 the mixture;

73 (2) The heading "Pure Seed" and "Germination" or
74 "Germ" in the proper places;

75 (3) The commonly accepted name of kind or kind
76 and variety of each agricultural seed component in excess
77 of five percent of the whole, and the percentage by weight
78 of pure seed in order of its predominance and in
79 columnar form;

80 (4) The percentage by weight of agricultural seed
81 other than those required to be named on the label (which
82 shall be designated as "crop seed");

83 (5) The percentage by weight of inert matter not to
84 exceed ten percent by weight. Except for coating
85 material, fertilizer and mulch as provided by subsection

86 (d), section three of this article, foreign material not
87 common to grass seed shall not be added;

88 (6) The percentage by weight of all weed seeds.
89 Maximum weed seed content may not exceed one half of
90 one percent by weight;

91 (7) Noxious weed seeds that are required to be labeled
92 by rule and listed under the heading "Noxious Weed
93 Seeds";

94 (8) For each agricultural seed named under
95 subdivision (3) of this subsection:

96 (A) The percentage of germination, exclusive of hard
97 seed;

98 (B) The percentage of hard seed, if present;

99 (C) The calendar month and year the test was
100 completed to determine the percentages. The most recent
101 available chronological test date shall be used;

102 (D) When only one test date is listed for the entire
103 mixture, the listed test date shall be the oldest
104 chronological test date of the components; and

105 (9) The name and address of the person who labeled
106 the seed, or who distributes the seed within the state.

107 (d) For agricultural seeds that are coated the label shall
108 include the following:

109 (1) The percentage by weight of pure seeds with
110 coating material removed;

111 (2) The percentage by weight of coating material;

112 (3) The percentage by weight of inert material
113 exclusive of coating material; and

114 (4) Percentage of germination, to be determined on
115 400 pellets with or without seeds.

116 (e) For vegetable seeds in packets as prepared for use
117 in home gardens or household plantings; or in preplanted
118 containers, mats, tapes or other planting devices the label
119 shall include the following:

- 120 (1) The name of kind and variety of seed;
- 121 (2) The lot number or other lot identification;
- 122 (3) The year for which the seed was packed for sale as
123 "Packed for _____" or the percentage
124 germination and the calendar month and year the test was
125 completed to determine the percentage; and
- 126 (4) The name and address of the person who labeled
127 the seed or who distributes the seed for sale within this
128 state.
- 129 (f) For seeds which germinate less than the standard as
130 established by rule promulgated under this article the label
131 shall include the following:
- 132 (1) The percentage of germination, exclusive of hard
133 seed;
- 134 (2) The percentage of hard seed, if present; and
- 135 (3) The words "Germination Below Standard" in not
136 less than eight-point type.
- 137 (g) For seeds placed in a germination medium, mat,
138 tape or other device in such a way as to make it difficult to
139 determine the quantity of seed without removing the seeds
140 from the medium, mat, tape or device, a statement to
141 include the minimum number of seeds in the container.
- 142 (h) For vegetable seeds in containers other than
143 packets prepared for use in home gardens or household
144 plantings and other than preplanted containers, mats, tapes
145 or other planting devices the label shall include the
146 following:
- 147 (1) The name of each kind and variety present in
148 excess of five percent and the percentage by weight of
149 each in order of its predominance;
- 150 (2) The lot number or other lot identification;
- 151 (3) For each named vegetable seed:
- 152 (A) The percentage germination exclusive of hard
153 seed;

154 (B) The percentage of hard seed, if present;

155 (C) The calendar month and year the test was
156 completed to determine the percentages; and

157 (D) If the registrant chooses, the "total germination
158 and hard seed";

159 (4) The name and address of the person who labeled
160 the seed, or who distributes the seed within this state.

161 (i) For agricultural and vegetable hybrid seed which
162 contain less than ninety-five percent hybrid seed the label
163 shall include the following:

164 (1) The kind or variety which must be labeled as
165 "hybrid";

166 (2) The percent which is hybrid, labeled
167 parenthetically in direct association following named
168 variety; such as, Comet (eighty-five percent Hybrid); and

169 (3) Varieties in which the pure seed contain less than
170 seventy-five percent hybrid seed which shall not be
171 labeled as hybrids.

172 (j) For agricultural and vegetable seeds, the label may
173 show an expiration date in lieu of:

174 (1) The calendar month and year of a germination test
175 or pure live seed test; and

176 (2) The year for which the seed was packaged;

177 (k) For combination mulch, seed and fertilizer
178 products the label shall include the following:

179 (1) The word "combination" followed by the words
180 "mulch - seed - fertilizer (if appropriate)" on the upper
181 thirty percent of the principal display panel. The word
182 "combination" must be the largest and most conspicuous
183 type on the container, equal to or larger than the product
184 name. The words "mulch - seed - fertilizer" shall be no
185 smaller than one-half the size of the word "combination"
186 and in close proximity to the word "combination." These
187 products shall contain a minimum of seventy percent
188 mulch; and

189 (2) For agricultural, lawn and turf seeds placed in a
190 germination medium, mat, tape or other device or mixed
191 with mulch:

192 (A) The product name;

193 (B) The lot number;

194 (C) The percentage by weight of pure seed of each
195 kind and variety named which may be less than five
196 percent of the whole;

197 (D) The percentage by weight of other crop seeds;

198 (E) The percentage by weight of inert matter which
199 shall not be less than seventy percent;

200 (F) The percentage by weight of weed seeds;

201 (G) The name and number of noxious weed seeds per
202 pound or ounce, if present;

203 (H) The percentage of germination (and hard seed if
204 appropriate) of each kind or kind and variety named and
205 date of test; and

206 (I) The name and address of the person who labeled
207 the seed, or who distributes the seed within this state;

208 (l) The labeling requirements for agricultural, and
209 vegetable seeds shall be considered to have been met if the
210 seed is weighed from a properly labeled bulk container in
211 the presence of the purchaser.

212 (m) Once a dealer has broken the seal on a container
213 of seed for any reason, the dealer is fully responsible for
214 its contents including the guarantees for purity,
215 germination rate and anything else pertaining to the
216 integrity of the opened seed container.

217 (n) Label requirements for tree and shrub seeds:

218 Each container of tree and shrub seed which is
219 distributed or transported within this state for sowing
220 purposes shall bear on the container or have attached on
221 the container in a conspicuous place a plainly written or
222 printed statement on the label or tag in the English

223 language, giving the information required under this
224 subsection. The statement may not be modified or denied
225 in the labeling or on another label attached to the
226 container — except that labeling of seed supplied under a
227 contractual agreement may be by invoice accompanying
228 the shipment or by an analysis tag attached to the invoice
229 if each bag or other container is clearly identified by a lot
230 number stenciled on the container, or if the seed is in
231 bulk. Each bag or container that is not identified shall
232 carry complete labeling.

233 (1) For all treated tree and shrub seeds as defined in
234 this article (for which a separate label may be used):

235 (A) A word or statement indicating that the seed has
236 been treated;

237 (B) The commonly accepted coined, chemical or
238 abbreviated chemical (generic) name of the applied
239 substance or description of the process used;

240 (C) A caution statement, such as "Do not use for food,
241 feed or oil purposes", if the substance in the amount
242 present with the seed may be harmful to human or other
243 vertebrate animals. The caution for mercurials and
244 similarly toxic substances shall be a poison statement and
245 symbol; and

246 (D) The date beyond which the inoculant is not to be
247 considered effective (date of expiration), if the seed has
248 been treated with an inoculant;

249 (2) For all tree and shrub seeds subject to the article:

250 (A) The common name of the species of seed (and
251 subspecies, if appropriate);

252 (B) The scientific name of the genus and species (and
253 subspecies, if appropriate);

254 (C) The lot number or other lot identification; and

255 (D) Their origin:

256 (i) For seed collected from a predominantly
257 indigenous stand, the area of collection given by latitude

258 and longitude, or geographic description, or political
259 subdivision such as state or county.

260 (ii) For seed collected from other than a
261 predominantly indigenous stand, the area of collection
262 and the origin of the stand or the statement "Origin not
263 Indigenous."

264 (E) The elevation or the upper and lower limits of
265 elevations within which the seed was collected.

266 (F) The purity as a percentage of pure seed by weight.

267 (G) For those species for which standard germination
268 testing procedures are prescribed by the commissioner, the
269 following:

270 (i) Percentage germination exclusive of hard seed;

271 (ii) Percentage of hard seed, if present;

272 (iii) The calendar month and year test was completed
273 to determine such percentages; or

274 (iv) In lieu of paragraphs (i), (ii) and (iii) of this
275 subparagraph, the seed may be labeled "Test is in process,
276 results will be supplied upon request."

277 (H) For those species for which standard germination
278 testing procedures have not been prescribed by the
279 commissioner, the calendar year in which the seed was
280 collected.

281 (I) The name and address of the person who labeled
282 the seed or who distributes the seed within this state.

283 (o) Label requirements for seed potatoes:

284 The following information shall appear on each label
285 attached to a bag or container of certified seed potato:

286 (A) The name of the person or agency certifying such
287 seed potato;

288 (B) The name of the official state or governmental
289 agency making the inspection upon which the certification
290 is made; and

291 (C) The name and address or identification number of
292 the grower of such seed potatoes.

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

1 (a) No person may distribute any agricultural,
2 vegetable, tree and shrub seeds or seed potatoes without a
3 valid certificate of registration issued by the
4 commissioner. Application forms shall be provided by
5 the commissioner and the application fee shall be set forth
6 in a legislative rule. Each certificate of registration expires
7 on the thirty-first day of December following the next
8 date of issue. A dealer may not be required to register, if
9 he or she can prove that the person he or she is obtaining
10 the seed from has a valid certificate of registration.

11 (b) A person shall apply for a certificate of
12 registration at least fifteen days prior to the expiration of
13 the current registration; or at least fifteen days prior to the
14 date that the person intends to engage in business in this
15 state. Each application shall be accompanied by the
16 required application fee. The commissioner shall add a
17 penalty of two dollars to the fee for each registration that
18 is not applied for or renewed within the time limit.

19 (c) Certificates of registration are not transferable with
20 respect to persons or locations.

21 (d) The commissioner may refuse to grant, or may
22 suspend or revoke a certificate of registration when it is
23 determined that the applicant or registrant has violated the
24 provisions of this article or any rule promulgated under
25 this article: *Provided*, That the applicant or registrant may
26 request a hearing prior to the denial of the application or
27 suspension or revocation of the registration.

28 (e) Each person who holds a valid certificate of
29 registration is required to pay a tonnage fee on seed sold
30 in this state and shall report to the commissioner the net
31 pounds or kilograms of seeds distributed and sold by kind
32 or variety, except for seed potatoes, on a semiannual basis.
33 Each report shall be filed under oath and is due before the
34 thirty-first day of January and July of each year for the

35 preceding six-month period. He or she shall pay the
36 tonnage fee according to the fee schedule for agriculture,
37 vegetable, tree and shrub seeds as set by legislative rules.

38 (f) Persons distributing vegetable seeds packaged in
39 containers of eight ounces or 226.8 grams or less and sold
40 from display units are exempt from reporting poundage
41 and paying a poundage fee: *Provided*, That a seed stamp
42 be purchased from the commissioner, at the rate set by
43 legislative rules, and placed in a conspicuous place on
44 each display unit.

45 (g) Persons first distributing seed potatoes into West
46 Virginia trade channels shall report to the commissioner
47 the net pounds or kilograms of seed potatoes distributed
48 during the first six months of the year. The report and
49 appropriate fee is due by the thirty-first day of July as set
50 by legislative rules.

51 (h) A person who holds a valid certificate of
52 registration shall keep accurate records, as may be
53 necessary or required by the commissioner, to indicate the
54 pounds of agricultural, vegetable, or tree and shrub seeds
55 or seed potatoes distributed in this state.

56 (i) All fees and penalties collected under the
57 provisions of this article shall be deposited with the state
58 treasurer in a special revenue account. These moneys
59 shall be expended by the commissioner of agriculture for
60 inspection, sampling, analysis and other expenses
61 necessary for the administration of this article.

§19-16-4. Prohibitions.

1 (a) It is unlawful for any person to distribute or
2 transport for sale any agricultural, vegetable, tree and
3 shrub seeds or seed potatoes within this state:

4 (1) Which have not been tested to determine
5 germination rates as required under sections three and
6 four of this article;

7 (2) Which is not labeled in accordance with the
8 provisions of this article or has false or misleading
9 labeling;

10 (3) Which has been the subject of false or misleading
11 advertisement;

12 (4) Which consists of or contains prohibited noxious
13 weed seeds, subject to tolerances and methods of
14 determination as prescribed by rules promulgated under
15 this article;

16 (5) Which consists of or contains restricted noxious
17 weed seeds per pound or ounce in excess of the number
18 prescribed by rules promulgated under this article, or in
19 excess of the number declared on the label attached to the
20 container of the seed or associated with seed;

21 (6) Which contains more than two and one-half
22 percent by weight of all weed seeds;

23 (7) If any labeling, advertising or other representation
24 subject to this article represents the seed to be certified
25 seed or any class thereof unless:

26 (A) It has been determined by a seed certifying
27 agency that the seed conformed to standards of purity and
28 identity as to kind, species (and subspecies, if appropriate),
29 or variety, and also that tree seed was found to be of the
30 origin and elevation claimed, in compliance with the rules
31 and regulations of that agency pertaining to the seed; and

32 (B) That the seed bears an official label issued for that
33 seed by a seed certifying agency certifying that the seed is
34 of a specified class and a specified kind, species (and
35 subspecies, if appropriate) or variety;

36 (8) Labeled with a variety name but not certified by an
37 official seed certifying agency when it is a variety for
38 which a U. S. certificate of plant variety protection under
39 the Plant Variety Protection Act specifies sale only as a
40 class of certified seed: *Provided*, That seed from a
41 certified lot may be labeled as to variety name when used
42 in a mixture by, or with the approval of, the owner of the
43 variety.

44 (b) It is unlawful for any person within this state:

45 (1) To detach, alter, deface or destroy any label
46 provided for in this article or the rules promulgated under

47 this article, or to alter or substitute seed in a manner that
48 may defeat the purpose of this article;

49 (2) To disseminate any false or misleading
50 advertisement concerning seeds subject to this article in
51 any manner or by any means;

52 (3) To interfere with the commissioner's official
53 duties;

54 (4) To fail to comply with a "stop sale or embargo"
55 order or to move or otherwise handle or dispose of any lot
56 of seed held under a "stop sale or embargo" order or tags
57 attached to the lot of seed, unless released by the
58 commissioner, and for the purpose specified by the
59 commissioner;

60 (5) To use the word "trace" as a substitute for any
61 statement which is required;

62 (6) To use the word "type" in any labeling in
63 connection with the name of any agricultural seed variety;

64 (7) To distribute or knowingly use any agricultural,
65 vegetable or tree and shrub seed that is misbranded;

66 (8) To misbrand any agricultural, vegetable, or tree
67 and shrub seed or seed potato. An agricultural, vegetable,
68 tree or shrub seed or seed potato is misbranded:

69 (A) If its label or labeling is false or misleading;

70 (B) If it is not labeled as required by this article;

71 (C) If any word, statement or other information
72 required by this article to appear on the label is not
73 prominently and conspicuously placed so that it can be
74 read and understood by the ordinary individual under
75 customary conditions of purchase and use; and

76 (D) If any damage or inferiority has been concealed;

77 (9) To distribute or knowingly use any agricultural,
78 vegetable, or tree and shrub seed or seed potato that has
79 not had an accurate statement of poundage reported to the
80 commissioner in the previous reporting period;

81 (10) To use or imply the name West Virginia
82 department of agriculture, or reference any inspection or
83 sample findings made by the West Virginia department of
84 agriculture on labels or labeling of agricultural, vegetable,
85 or tree and shrub seed or seed potatoes; or

86 (11) To falsify any laboratory reports regarding seed
87 distributed within this state.

§19-16-5. Exemptions.

1 (a) The provisions of sections two, three, four and
2 eight of this article do not apply:

3 (1) To seed or grain not intended for sowing
4 purposes.

5 (2) To seed in storage, or seed being transported or
6 consigned to a cleaning or processing establishment for
7 cleaning or processing: *Provided*, That the invoice, label
8 or labeling accompanying any shipment of the seed bears
9 the statement "seeds for processing"; and that any label or
10 labeling or other representation which may be made with
11 respect to the uncleaned or unprocessed seed is subject to
12 this article; or

13 (3) To any carrier in respect to any seed transported
14 or delivered for transportation in the ordinary course of its
15 business as a carrier: *Provided*, That the carrier is not
16 engaged in producing, processing or marketing seeds
17 subject to the provisions of this article.

18 (b) No person is subject to the penalties of this article
19 for having sold or offered for sale seeds subject to
20 provisions of this article which were incorrectly labeled or
21 represented as to kind, species (and subspecies, if
22 appropriate), variety, type, or origin, elevation and year of
23 collection (if required), which cannot be identified by
24 examination, unless he or she has failed to obtain an
25 invoice, genuine grower's or tree seed collector's
26 declaration or other labeling information and to take such
27 other precautions as may be reasonable to insure the
28 identity to be that which is stated. A genuine grower's
29 declaration of variety shall affirm that the grower holds
30 records of proof concerning parent seed, such as invoice
31 and labels.

32 (c) The provisions of sections two and three of this
33 article do not apply to tree seed produced by the
34 consumer.

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

1 The commissioner may:

2 (a) Establish by legislative rule germination standards
3 for agricultural, forest, vegetable seeds;

4 (b) Enter and inspect, during reasonable hours, any
5 location where agricultural, vegetable, tree and shrub seeds
6 or seed potatoes for sowing purposes are manufactured,
7 distributed, transported or used, and where records relating
8 to the manufacture, distribution, shipment, labeling or sale
9 of seed are kept. This inspection shall include, but is not
10 limited to, examining, photographing, verifying, copying
11 and auditing records as is necessary to determine
12 compliance with this article, labels, consumer complaints,
13 and papers relating to the manufacturing, distribution,
14 sampling, testing and sale of agricultural, vegetable, tree
15 and shrub seeds or seed potatoes;

16 (c) Open, examine, sample and test agricultural,
17 vegetable, or tree and shrub seeds or seed potatoes,
18 equipment, containers, transport containers and packages
19 used or intended to be used in the manufacture and
20 distribution of seeds used for sowing purposes;

21 (d) Issue certificates of registration pursuant to this
22 article;

23 (e) Refuse applications for registration; or suspend or
24 revoke registrations as provided in this article;

25 (f) Issue "stop sale or embargo" orders as provided in
26 this article;

27 (g) Condemn and confiscate any agricultural,
28 vegetable, or tree and shrub seed or seed potato that is not
29 brought into compliance with this article;

30 (h) Collect fees and penalties and expend moneys
31 under the terms of this article;

32 (i) Conduct sampling in accordance with the official
33 methods as established by the association of analytical
34 chemists, the association of American seed control
35 officials, the United States department of agriculture or the
36 association of official seed analysts;

37 (j) Conduct hearings as provided by this article;

38 (k) Assess civil penalties and refer violations to a court
39 of competent jurisdiction;

40 (l) Obtain court orders directing any person refusing
41 to submit to inspection, sampling and auditing to submit.

42 (m) Establish and maintain seed testing facilities;
43 establish reasonable fees for the tests; incur expenses; and
44 conduct tests in accordance with the association of official
45 seed analysts;

46 (n) Be guided by the analytical results of the official
47 sample when determining whether the agricultural,
48 vegetable, or tree and shrub seed is deficient in any
49 component;

50 (o) Report the analytical results on all official deficient
51 samples to the registrant, dealer, purchaser if known and
52 or the distributor;

53 (p) Upon request made within thirty days from the
54 date the official sample results are reported, furnish a
55 portion of the official sample to the registrant;

56 (q) Publish and distribute annually a composite report
57 containing: (1) The sales of agricultural, vegetable, tree
58 and shrub seeds and seed potatoes during the preceding
59 period; (2) the results of analysis of official samples as
60 compared with the guarantee on the label; (3) the firms
61 responsible for the product; and (4) such other data the
62 commissioner considers necessary: *Provided*, That the
63 information on production and use provided does not
64 disclose the operations of any person;

65 (r) Cooperate with and enter into agreements with
66 governmental agencies of this state and other states,
67 agencies of the federal government and foreign
68 governments, and private associations in order to carry out
69 the purpose and provisions of this article;

70 (s) Establish fees by legislative rule;

71 (t) Propose rules for promulgation, in accordance with
72 article three, chapter twenty-nine-a of this code; and

73 (u) Promulgate emergency rules within ninety days of
74 the passage of this bill into law.

§19-16-7. Stop sale orders or embargo; seizure.

1 (a) Stop sale orders or embargos: When the
2 commissioner has reasonable cause to believe any lot of
3 seed or seed potato is being distributed or used in this state
4 in violation of the provisions of this article or any rule
5 promulgated under this article, then he or she may issue
6 and enforce a written stop sale order or embargo, warning
7 the custodian of the seed not to distribute, use, remove or
8 dispose of the seed in any manner until the stop sale order
9 or embargo is released by the commissioner or by court
10 order:

11 (1) When the stop sale or embargo order is issued, the
12 commissioner shall affix a tag or other marking to the
13 seed warning that the seed is under a stop sale order and
14 notify the custodian that he or she has a right to request an
15 immediate hearing.

16 (2) The commissioner shall release the stop sale or
17 embargo order when the seed has been brought into
18 compliance with this article and its rules.

19 (3) The commissioner has the authority to issue a stop
20 sale or embargo order against a perishable product, even if
21 the result is the involuntary disposal of the product.

22 (4) The commissioner may take action to seize any
23 seed not brought into compliance with this article and the
24 rules issued under this article, within ninety days of the
25 notice to the custodian.

26 (b) Seizure: Any lot of seed or seed potato not in
27 compliance with the provisions of this article is subject to
28 seizure on complaint of the commissioner to a court of
29 competent jurisdiction in the locality in which the seed or
30 seed potato is located. In the event the court finds the

31 seed to be in violation of this article and orders the
32 condemnation of the seed or seed potato, it shall be
33 denatured, processed, destroyed, relabeled or otherwise
34 disposed of in compliance with the laws of this state:
35 *Provided*, That in no instance may the court order the
36 disposition of the seed without first having given the
37 registrant an opportunity to apply to the court for the
38 release of the seed or seed potato or permission to process
39 or relabel it into compliance with this article.

§19-16-8. Penalties and prosecutions.

1 (a) *Criminal penalties.* — Any person violating any of
2 the provisions of this article is guilty of a misdemeanor
3 and, upon conviction thereof, shall be fined not less than
4 one hundred dollars nor more than five hundred dollars
5 for the first offense, and for each subsequent offense, shall
6 be fined not less than five hundred nor more than one
7 thousand dollars, or imprisoned in the county jail not
8 more than six months, or both fined and imprisoned.
9 Magistrates have concurrent jurisdiction with circuit courts
10 to enforce the provisions of this article.

11 (b) *Civil penalties.* —

12 (1) Any person violating any of the provisions of this
13 article or the rules adopted under this article may be
14 assessed a civil penalty by the commissioner. In
15 determining the amount of any civil penalty, the
16 commissioner shall give due consideration to the history
17 of previous violations of any person; the seriousness of the
18 violation, including any irreparable harm to the
19 environment, and the demonstrated good faith of any
20 person charged in attempting to achieve compliance with
21 this article after written notification of the violation.

22 (2) The commissioner may assess a penalty of not
23 more than five hundred dollars for the first offense or
24 nonserious violation, as determined by the commissioner
25 in accordance with the rules promulgated in accordance
26 with the provisions of article three, chapter twenty-nine-a
27 of this code, and not more than one thousand dollars for a
28 serious, repeat or intentional violation, as determined by
29 the commissioner in accordance with the promulgated
30 rules.


31 (3) The civil penalty is payable to the state of West
32 Virginia and is collectible in any manner now or hereafter
33 provided for collection of a debt. Any person liable to
34 pay the civil penalty and neglecting or refusing to pay the
35 civil penalty, shall be assessed interest at ten percent per
36 annum from the date the penalty was assessed. The
37 penalty and interest constitute a lien in favor of the state of
38 West Virginia and shall attach on the person's property
39 when the lien is properly recorded in the county where the
40 property is located. There may be no cost as a condition
41 precedent to recording.

42 (c) Notwithstanding any other provision of law to the
43 contrary, the commissioner may propose for
44 promulgation and adopt rules which permit consent
45 agreements or negotiated settlements for the civil penalties
46 assessed as a result of a violation of the provisions of this
47 article.

48 (d) Nothing in this article may be construed as to
49 require the commissioner to report minor violations of this
50 article when the commissioner believes that the public
51 interest will be best served by a written notice.

52 (e) No state court may allow the recovery of damages
53 for administrative action taken if the court finds that there
54 was probable cause for the action.

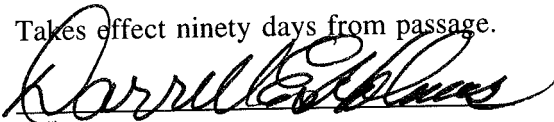
The Joint Committee on Enrolled Bills hereby certifies that the foregoing bill is correctly enrolled.



Chairman Senate Committee

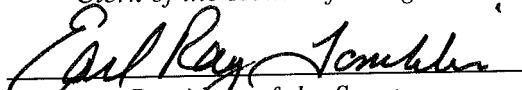

Chairman House Committee

Originating in the House.

Takes effect ninety days from passage.

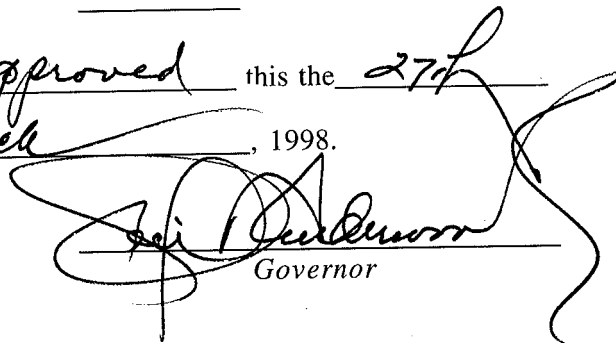

Clerk of the Senate


Clerk of the House of Delegates


President of the Senate


Speaker of the House of Delegates

The within approved this the 27th
day of March, 1998.


Governor

PRESENTED TO THE

GOVERNOR,

Date 3/23/98

Time 3:02 pm