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WEST VIRGINIA LEGISLATURE

SECOND REGULAR SESSION, 1998



ENROLLED

House Bill No. 4454

(By Delegates Beach, Williams and Evans)



Passed March 12, 1998

In Effect Ninety Days from Passage

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H. B. 4454

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AN ACT to amend and reenact article ten-a, chapter nineteen of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to creating the West Virginia egg marketing law of 1998; providing a purpose; definitions; requiring permits and registration; exemptions; container requirements; standards, grades and weight classes; acts which are prohibited; requiring certain labels and furnishing of invoices; advertising required for certain quality eggs; powers and duties of the commissioner of agriculture; requirements of egg handling facilities; authorizing entry of facilities by commissioner; providing civil and criminal penalties for violations; requiring commissioner to cooperate with other entities; and prohibiting commissioner from divulging trade secrets.

Be it enacted by the Legislature of West Virginia:

That article ten-a, 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 10A. THE WEST VIRGINIA EGG MARKETING LAW OF 1998.

§19-10A-1. Purpose; and short title.

- 1 (a) The intent of this article is to protect and promote
- 2 the public health and general welfare and to prevent fraud

3 and deception in the production, processing, sale and
4 distribution of eggs. This article provides for the
5 registration of business houses engaged in selling, trading
6 or traffic of eggs; establishes standards for the grading,
7 classification and marketing of eggs; provides a penalty
8 for the failure to comply with the provisions of this article;
9 and provides for other purposes. This article shall be
10 known as "The West Virginia Egg Marketing Law of
11 1998". All provisions of this code in conflict with this
12 article are repealed.

13 (b) Except where otherwise indicated, it is the intent of
14 the Legislature that this article substantially conform with
15 the federal laws and regulations promulgated under the
16 auspices of the United States secretary of agriculture and
17 the United States secretary of health and human services in
18 order to provide movement of eggs in intrastate and
19 interstate commerce with a minimum of economic
20 barriers.

§19-10A-2. Definitions.

1 (a) "Ambient temperature" means the atmospheric
2 temperature surrounding or encircling shell eggs.

3 (b) "Candle" means to determine the interior quality
4 based on the use of a candling light as defined in federal
5 standards adopted in section ten of this article.

6 (c) "Case" means a container that is not a carton and
7 that is used to pack eggs for distribution or sale to the
8 consumer. A case may contain either loose or cartoned
9 eggs.

10 (d) "Commissioner" means the commissioner of
11 agriculture for the state of West Virginia or his or her duly
12 authorized agent.

13 (e) "Container" means any carton, basket, case, cart,
14 pallet or other receptacle.

15 (f) "Consumer" means any person using eggs for
16 food and shall include restaurants, hotels, cafeterias,
17 hospitals, state institutions and any other establishment
18 serving food to be consumed or produced on the

19 premises, but shall not include the armed forces or any
20 other federal agency or institution.

21 (g) "Denatured" means rendering unfit for human
22 food by treatment or the addition of a foreign substance
23 as approved by the United States department of
24 agriculture (USDA), agriculture marketing service (AMS),
25 administrator.

26 (h) "Distributor" means a person or firm engaged in
27 the business of buying eggs from producers or other
28 persons on his or her own account and selling or
29 transferring eggs to other distributors or retailers. A
30 distributor further means a person or firm engaged in
31 producing eggs from his or her own flock and marketing
32 of any portion of this production on a graded basis.

33 (i) "Egg" means the product of the domesticated
34 chicken hen or any other eggs offered for sale for human
35 consumption.

36 (j) "Embargo" means a written stop sale order issued
37 by the commissioner of agriculture prohibiting the sale,
38 use of or transportation of eggs in any manner until the
39 embargo is released by the commissioner.

40 (k) "General embargo" means a statewide written
41 stop sale order issued by the commissioner of agriculture
42 prohibiting the sale, use of or transportation of eggs in
43 any manner until the embargo is released by the
44 commissioner.

45 (l) "Graded egg" means an egg which is classified in
46 accordance with the standards established by the United
47 States department of agriculture.

48 (m) "Inedible" and "unfit for human food" means
49 eggs described as black rots, yellow rots, white rots, mixed
50 rots (addled eggs), sour eggs, eggs with green whites, eggs
51 with stuck yolks, moldy eggs, musty eggs, eggs showing
52 blood rings, eggs containing embryo chicks (at or beyond
53 the blood ring state), and any eggs that are adulterated as
54 that term is defined in the federal food, drug and cosmetic
55 act.

56 (n) "Packer" means any person who grades, sizes,
57 candles or packs eggs for the purpose of resale.

58 (o) "Person" means any partnership, association,
59 business trust, corporation or any organized group of
60 persons, whether incorporated or not.

61 (p) "Possession" means the fact of possession by any
62 person engaged in the sale of a commodity is prima facie
63 evidence that the commodity is for sale.

64 (q) "Processor" means a person who operates a plant
65 for the purpose of breaking eggs for freezing, drying or
66 commercial food manufacturing.

67 (r) "Producer" means any person owning laying hens
68 who markets eggs.

69 (s) "Repacker" means any person who packs
70 previously graded and packed shell eggs for resale.

71 (t) "Retailer" means any person who sells eggs
72 directly to the consumer.

73 (u) "Sell" means to offer for sale, expose for sale,
74 have in possession for sale, exchange, barter or trade.

§19-10A-3. Permits and registration.

1 (a) The commissioner shall issue an "Egg Distributor
2 Permit" to every person distributing eggs in West
3 Virginia. Each egg distributor shall apply to the
4 commissioner of agriculture for this permit on forms
5 provided by the commissioner at least thirty days prior to
6 distributing eggs in West Virginia and shall renew his or
7 her permit annually at least thirty days prior to the
8 expiration of his or her current permit.

9 (b) For the purposes of financing the administration
10 and enforcement of this article, the state of West Virginia,
11 through the West Virginia department of agriculture shall
12 collect an inspection and permit fee from the distributor
13 first introducing the eggs into West Virginia trade
14 channels.

15 (c) The commissioner shall set an inspection fee and

16 annual permit fee by legislative rule for the distribution of
17 all shell eggs processed or sold in the state of West
18 Virginia.

19 (d) All fees, interest, penalties or other moneys
20 collected by the commissioner under the provisions of this
21 article shall be paid into a special account and be
22 expended upon the order of the commissioner for the
23 purpose of the enforcement and administration of this
24 article.

25 (e) An egg distributor shall conspicuously post his or
26 her permit in the place of business to which it applies.
27 The permit year is twelve months or any fraction thereof
28 beginning the first day of July and ending the thirtieth
29 day of June of each year.

30 (f) No permit is transferable. Each physical location
31 where eggs are stored for distribution shall have a separate
32 egg distributor permit.

33 (g) Producers exempted by the commissioner by
34 legislative rule shall register with the West Virginia
35 department of agriculture but are exempt from paying the
36 permit or inspection fee pursuant to the provisions of
37 section four of this article.

38 (h) The provisions of this article are applicable to all
39 retailers, wholesalers, packers and distributors of eggs.

40 (i) The commissioner has the power to revoke or
41 suspend the certificate for failure to comply with the
42 provisions of this article and refuse to issue a certificate to
43 willful violators.

§19-10A-4. Exemptions.

1 Any person marketing eggs which he or she has
2 produced is exempt from the provisions of section eight
3 of this article except that carton labeling shall be
4 according to legislative rule, cartons shall be clean and
5 free of debris and eggs shall be held under refrigeration
6 according to legislative rule. The commissioner may
7 exempt small producers from portions of this article by
8 legislative rule.

§19-10A-5. Container requirements.

1 No distributor may market eggs unless there is clearly
2 designated on the container the consumer grade and size
3 or weight class established in accordance with the
4 provisions of this article and the eggs shall conform to the
5 designated grade and size or weight class, except when
6 sold on contract to an agency of the United States
7 government.

§19-10A-6. Prohibited acts.

1 (a) If an authorized representative of the West Virginia
2 department of agriculture determines, after an inspection,
3 that any lot of eggs is in violation of this article, the
4 representative may issue an embargo under the provisions
5 of section ten of this article. An embargo shall specify the
6 reason for its issuance and prohibit the sale, use of or
7 transportation of eggs in any manner until the embargo is
8 released by the commissioner.

9 The commissioner shall determines and assess
10 violations of this article to the packer, repacker, distributor
11 or retailer.

12 (b) No person, firm or corporation may sell, traffic in
13 or deliver to the retail or consuming trade, any eggs that
14 are:

15 (1) Loss, inedible, denatured or leaker eggs;

16 (2) Not refrigerated; or

17 (3) Mislabeled or deceptively advertised.

18 (c) No person may sell eggs for resale to consumers
19 below "U.S. Consumer Grade B".

20 (d) No person may prepare, pack, place, deliver for
21 shipment, deliver for sale, load, ship, transport, offer for
22 sale in bulk containers or advertise by sign, placard or
23 otherwise any eggs for human consumption which are
24 mislabeled or deceptive.

25 (e) No person or retailer may repack eggs in cartons
26 which were previously used and labeled by a packer;

27 except, as outlined in legislative rule.

28 (f) No person may distribute eggs without a valid egg
29 distributor's permit.

30 (g) No person may store or transport eggs unless held
31 under refrigeration as outlined in legislative rule.

32 (h) No person may offer for sale or expose for sale
33 shell eggs that are in containers that are dirty, broken and
34 or not free from foreign order.

§19-10A-7. Labeling.

1 (a) Any container or subcontainer in which eggs are
2 marketed to consumers shall bear on the exterior of the
3 container the following:

4 (1) The identity of the packer by registry of USDA
5 plant number or by state permit number or name and
6 address of the packer, distributor, retailer or repacker;

7 (2) The correct grade and size or weight classification;

8 (3) The term "EGGS";

9 (4) The quantity of eggs per retail unit (i.e. one dozen,
10 eighteen count, etc.) or dozens per case when packing
11 loose eggs for institutional use or an accurate statement of
12 the quantity of the contents in terms of numerical count;

13 (5) The words "keep refrigerated" in a plain and
14 conspicuous manner on each container or consumer
15 receptacle of shell eggs;

16 (6) Use by or expiration date; and

17 (7) Additional labeling according to legislative rule.

18 (b) Loose eggs shall be labeled according to legislative
19 rule.

§19-10A-8. Invoice requirements.

1 (a) Every person, firm or corporation selling eggs to a
2 retailer or manufacturer shall furnish an invoice showing
3 the size and quality of the eggs according to the standards
4 prescribed by this article together with the name and

5 address of the person by whom the eggs were sold and
6 date of the sale. This invoice shall be retained for one
7 year.

8 (b) The commissioner of agriculture is authorized to
9 examine the invoices and such other records needed to
10 determine the cause and place of any violation of this
11 article.

§19-10A-9. Advertising.

1 (a) All eggs offered for sale at retail shall be plainly
2 marked as to grade and size with letters not less than three-
3 eighths inch in height.

4 (b) All eggs advertised or displayed for sale for
5 human food at a given price shall be advertised or
6 displayed in the manner adopted by legislative rule.

7 (c) Restaurants, hotels, delicatessens and other eating
8 places using eggs below "A" quality shall advertise this
9 fact to the public according to legislative rule.

§19-10A-10. Powers and duties of the commissioner.

1 (a) The commissioner shall by legislative rule establish
2 standards for the grading, classification and marketing of
3 shell eggs bought and sold by any person, firm or
4 corporation in the state of West Virginia. These standards
5 shall conform to, on date of the sale to the consumer, the
6 minimum standards promulgated by the U. S. department
7 of agriculture as defined in the "United States Standards,
8 Grades and Weight Classes for Shell Eggs", authorized
9 under Section 205, 60 Stat. 1091, Public Law 135, 82nd
10 Congress; 7 U.S.C. 1624, effective July 11, 1952, as
11 amended.

12 (b) All duties and functions required to be performed
13 by the West Virginia department of agriculture under the
14 provisions of this article shall be performed by the
15 commissioner of agriculture.

16 (c) The commissioner of agriculture shall enforce the
17 provisions of this article and may make and propose those
18 rules for promulgation as may be necessary for the
19 enforcement of this article.

20 (d) The commissioner has the power to issue an
21 embargo or general embargo for any product which is or
22 is believed to be adulterated, mislabeled or is not in
23 compliance with this article and to cause the distributing
24 of that product to cease. Nothing in this article may be
25 construed as to requiring the commissioner to issue
26 embargoes for minor violations of this article when the
27 commissioner believes that a written notice of violation
28 will serve the public interest.

29 (e) Audits:

30 (1) The West Virginia department of agriculture may
31 conduct annual audits of all permit holders, including out-
32 of-state permit holders to insure proper reporting of egg
33 inspection fees.

34 (2) Out-of-state permit holders shall reimburse the
35 department for travel expenses incurred in conducting
36 out-of-state audits. The state of West Virginia's out-of-
37 state daily allowance for meals and lodging is the
38 maximum amount reimbursable, plus travel expenses to
39 and from locations of permit holders.

§19-10A-11. Egg handling facilities, temperature and humidity, sanitation and cleaning.

1 (a) Any packer or distributor engaged in the
2 assembling, marketing or the processing of eggs for
3 marketing shall maintain egg handling facilities in a
4 manner commensurate with laws governing food
5 establishments.

6 (b) All eggs shall be stored or transported under
7 refrigeration as required by legislative rule.

8 (c) The commissioner shall set standards for egg
9 handling facilities, humidity, sanitation and the cleaning of
10 eggs by legislative rule.

§19-10A-12. Access to premises.

1 (a) The commissioner of agriculture may enter any
2 store, vehicle, market or any other business or place where
3 eggs are bought, stored, processed, packed or offered for

4 sale and to make inspections as needed to determine
5 compliance with this article and rules adopted under the
6 authority of this article. During an inspection the
7 commissioner of agriculture may also candle and weigh
8 eggs to determine if the grades and sizes of the eggs
9 conform to grades and sizes labeled on the exterior of the
10 container.

11 (b) All eggs are considered the property of the person
12 in whose possession they are found except those in the
13 custody of common carriers or public warehouses where
14 the owner is identified by record.

§10-10A-13. Penalties.

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

12 (b) *Civil penalties.* — Any person violating a
13 provision of this article or any rules adopted under the
14 authority of this article may be assessed a civil penalty by
15 the commissioner of agriculture. In determining the
16 amount of any civil penalty, the commissioner shall give
17 due consideration to the history of previous violations of
18 any person, the seriousness of the violation, including any
19 irreparable harm to the environment, any hazards to the
20 health and safety of the public, any economic damages to
21 the public and the demonstrated good faith of any person
22 charged to achieve compliance with this article before and
23 after written notification of the violation:

24 (1) The commissioner may assess a civil penalty of up
25 to one thousand dollars for a violation;

26 (2) The civil penalty is payable to the state of West

27 Virginia and is collectible in any manner now or hereafter
28 provided for collection of debt. If any person liable to
29 pay a civil penalty neglects or refuses to pay the civil
30 penalty, the amount of the civil penalty, together with
31 interest at ten percent, is a lien in favor of the state of West
32 Virginia upon the property, both real and personal, of that
33 person after the lien has been entered and docketed to
34 record in the county where the property is situated. The
35 clerk of the county, upon receipt of the certified copy of
36 the lien, shall enter it to record without requiring the
37 payment of costs as a condition precedent to recording;

38 (c) Notwithstanding any other provision of law to the
39 contrary, the commissioner may propose for
40 promulgation and adopt rules which permit consent
41 agreement or negotiated settlements for the civil penalties
42 assessed as a result of violation of the provision of this
43 article.

44 (d) Upon application by the commissioner for an
45 injunction, the circuit court of the county in which the
46 violation is occurring, has occurred or is about to occur, as
47 the case may be, may grant a temporary or permanent
48 injunction restraining any person from violating or
49 continuing to violate any provision of this article or any
50 rule promulgated under this article, notwithstanding the
51 existence of other remedies of law. Any such injunction
52 shall be issued without bond.

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

56 (f) It is the duty of the prosecuting attorney of the
57 county in which the violation occurred to represent the
58 department of agriculture, to institute proceedings and to
59 prosecute the person charged with that violation.

60 (g) *Hearings and appeals.* —

61 (1) Any person aggrieved by any action taken under
62 this article shall be afforded the opportunity for a hearing
63 before the commissioner under the rules promulgated by
64 the commissioner;

65 (2) Hearings shall be conducted in accordance with
66 procedures set forth by rule;

67 (3) All the testimony and evidence at a hearing shall
68 be recorded by mechanical means, which may include the
69 use of tape recordings. The mechanical record shall be
70 maintained for ninety days from the date of the hearing
71 and a transcript shall be made available to the aggrieved
72 party;

73 (4) Any person who feels aggrieved of the suspension,
74 revocation or denial order may appeal within sixty days to
75 the circuit court of the county in which the person has
76 located its principal place of business.

§19-10A-14. Persons punishable as principals.

1 (a) Whoever commits any act prohibited by any
2 section of this article or aids, abets, induces or procures its
3 commission, is punishable as a principal.

4 (b) Any person who causes an act to be done which if
5 directly performed by him or her or another would be a
6 violation of the provisions of this article, is punishable as a
7 principal.

§19-10A-15. Cooperation with other entities.

1 The commissioner may cooperate with and enter into
2 agreements with governmental agencies of this state, other
3 states, agencies of the federal government, agencies of
4 foreign governments and private associations in order to
5 carry out the purpose and provisions of this article.

§19-10A-16. Confidentiality of trade secrets.

1 The commissioner may not make public information
2 which contains or relates to trade secrets, commercial or
3 financial information obtained from a person or
4 privileged or confidential information: *Provided*, That
5 when the information is needed to carry out the provisions
6 of this article, this information may be revealed, subject to
7 a protective order, to any federal, state or local agency
8 consultant or may be revealed, subject to a protective
9 order, at a closed hearing or in findings of fact issued by
10 the commissioner.

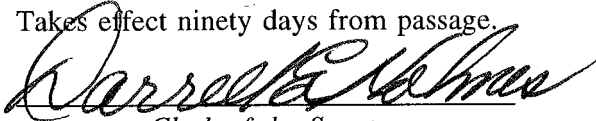
The Joint Committee on Enrolled Bills hereby certifies that the foregoing bill is correctly enrolled.



Chairman Senate Committee



Chairman House Committee

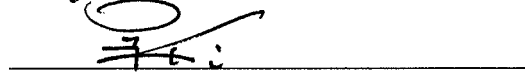
Originating in the House.

Takes effect ninety days from passage.

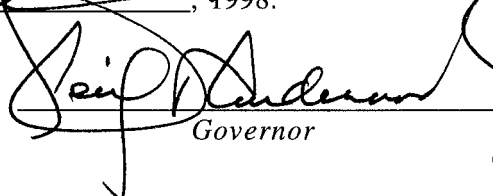

Clerk of the Senate


Clerk of the House of Delegates


President of the Senate


Speaker of the House of Delegates

The within approved this the 25th
day of March, 1998.


Governor

PRESENTED TO THE

GOVERNOR

Date 3/20/98

Time 4:16pm