

# WEST VIRGINIA LEGISLATURE

## 2020 REGULAR SESSION

Introduced

### Senate Bill 491

INTERIM  
BILL

BY SENATORS SYPOLT, SMITH, RUCKER, BEACH,

BALDWIN, AND JEFFRIES

[Introduced January 15, 2020; referred  
to the Committee on Agriculture and Rural  
Development; and then to the Committee on  
Government Organization]

1 A BILL to amend and reenact §19-16-1, §19-16-2, §19-16-3, §19-16-4, §19-16-5, and §19-16-6  
 2 of the Code of West Virginia, 1931, as amended; and to amend said code by adding  
 3 thereto two new sections, designated §19-16-3b and §19-16-9, all relating to the Seed  
 4 Certification Program within the Department of Agriculture; defining terms; adding flower  
 5 seed requirements; adding labeling requirements for seed; authorizing legislative rules for  
 6 penalties; requiring quarterly tonnage fees for seed; requiring record retention; authorizing  
 7 relabeling; providing labeling requirements; authorizing inspections of seed conditioning  
 8 facilities; and providing for penalties for labeling deficiencies.

*Be it enacted by the Legislature of West Virginia:*

## **ARTICLE 16. AGRICULTURAL AND FOREST SEEDS.**

### **§19-16-1. Definitions.**

1 “Advertisement” means all representations, other than those on the label, disseminated in  
 2 any manner or by any means, relating to seed within the scope of this article.

3 (a) “Agricultural seed” includes forage seeds (grasses and legumes), tobacco, soybeans,  
 4 cereal, oil, fiber, and other kinds of crop seeds commonly recognized within this state as  
 5 agricultural seeds, lawn and turf seeds and combinations of those seeds, and may include  
 6 noxious weed seeds when the commissioner determines that the seed is being used as  
 7 agricultural seed.

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

10 (c) “Brand” means ~~a word, name, symbol, number, design or device, or any combination~~  
 11 ~~thereof, identifying the seed of one person and distinguishing it from all others~~ word/words, name,  
 12 symbol, number, mark, design, unique design or any combination which identifies seed of one  
 13 entity from seed of another.

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

16           ~~(e)~~ “Certifying agency” means: (1) An agency authorized under the laws of a state, territory  
17 or possession to officially certify seed and which has standards and procedures approved by the  
18 United States Secretary of Agriculture to assure the genetic purity and identity of the seed  
19 certified; or (2) an agency of a foreign country determined by the United States Secretary of  
20 Agriculture to adhere to procedures and standards for seed certification comparable to those  
21 adhered to generally by seed certifying agencies under subdivision (1) of this subsection.

22           ~~(f)~~ “Coated” means a seed unit covered with any substance which changes the size, shape  
23 or weight of original seed. Seeds coated with ingredients, such as, but not limited to, rhizobia,  
24 dyes and pesticides, are not considered coated seeds.

25           ~~(g)~~ “Commissioner” refers to the Commissioner of Agriculture of the State of West Virginia  
26 or a duly authorized employee.

27           ~~(h)~~ “Complete record” means any and all information which relates to the origin, treatment,  
28 germination, purity, kind and variety of each lot of agricultural seed sold in this state, or which  
29 relates to the treatment, germination, kind and variety of each lot of vegetable, or tree and shrub  
30 seed sold in this state. The information shall include seed samples and records of declarations,  
31 labels, purchases, sales, conditioning, bulking, treatment, handling, storage, analyses, tests and  
32 examinations.

33           ~~(i)~~ “Conditioning” means drying, cleaning, scarifying and other operations which may  
34 change the purity or germination of the seed and require the seed lot to be retested to determine  
35 the label information.

36           ~~(j)~~ “Dealer” means any person who exclusively sells, exposes for sale, offers for sale,  
37 exchanges or barter seed for sowing purposes within this state to the ultimate consumer.

38           “Distinct” means that the variety can be differentiated by one or more identifiable  
39 morphological, physiological, or other characteristics from all other varieties of public knowledge.

40           ~~(k)~~ “Distribute” means to offer for sale, sell, expose for sale, exchange or barter seed for  
41 sowing purposes within the state.

42           ~~(f)~~ “Distributor” means any person who sells, exposes for sale, offers for sale, exchanges,  
43           barters, gives, parcels out, allots, shares, or dispenses a seed for sowing purposes within the  
44           state.

45           ~~(m)~~ “Dormant” means viable seed, excluding hard seed, which fail to germinate when  
46           provided the specified germination conditions for the kind of seed in question.

47           “Flower seeds” includes seeds of herbaceous plants grown for their blooms, ornamental  
48           foliage, or other ornamental parts, and commonly known and sold under the name of flower or  
49           wildflower seeds in this state.

50           ~~(n)~~ “Genuine growers declaration” means a statement signed by the grower which gives  
51           for each lot of seed the lot number, kind, variety (if known), origin, weight, year of production, date  
52           of shipment and to whom the shipment was made.

53           ~~(o)~~ “Germination” means the emergence and development from the seed embryo of those  
54           essential structures which, for the kind of seed in question, are indicative of the ability to produce  
55           a normal plant under favorable conditions.

56           ~~(p)~~ “Hard seeds” means seeds which remain hard at the end of the prescribed test period  
57           because they have not absorbed water due to an impermeable seed coat.

58           “Hermetically sealed” means a container that is designed and intended to be secure  
59           against the entry of microorganisms and thereby to maintain the commercial sterility of its contents  
60           after processing.

61           ~~(q)~~ “Hybrid” means the first generation seed of a cross produced by controlling the  
62           pollination and by combining: (1) Two or more inbred lines; (2) one inbred or a single cross with  
63           an open pollinated variety; or (3) two varieties or species, except open-pollinated varieties of corn  
64           (*Zea mays*). The second generation of subsequent generations from the crosses shall not be  
65           regarded as hybrids. Hybrid designations shall be treated as variety names.

66           ~~(r)~~ “Inert matter” means all matter not seed, which includes, but is not limited to, broken  
67           seeds, sterile florets, chaff, fungus bodies and stones as determined by methods defined by rule.

68 “Introduced wildflower” means kinds or the types and varieties derived from those kinds  
69 that are not indigenous to North America.

70 ~~(s)~~ “Kind” means one or more related species or subspecies which singly or collectively is  
71 known by one common name, for example, corn, oats, alfalfa, and timothy.

72 ~~(t)~~ “Label” means ~~a display of written, printed or graphic matter affixed to the container or~~  
73 ~~package in which seed is distributed; or affixed to the invoice, delivery slip, or other shipping~~  
74 ~~document which accompanies bulk lots of seed. All labels shall be legible and in English~~

75 ~~(u)~~ “Labeling” means ~~all written, printed, or graphic matter, or advertisement referencing~~  
76 ~~the seed~~ includes a tag or other device attached to or written, stamped, or printed on any container  
77 or accompanying any lot of bulk seeds purporting to set forth the information required on the seed  
78 label by this act, and it may include any other information relating to the labeled seed.

79 ~~(v)~~ “Lot” means a definite quantity of seed identified by a lot number, code number or other  
80 mark, every portion or bag of which is uniform within recognized tolerances for the factors which  
81 appear on the label.

82 ~~(w)~~ “Mixture”, “mix”, or “mixed” means seed consisting of more than one kind or variety,  
83 each present in excess of five percent by weight of the whole. A mixture of varieties of a single  
84 kind may be labeled as a blend.

85 ~~(x)~~ “Mulch” means a protective covering of any suitable substance placed with seed which  
86 acts to retain sufficient moisture to support seed germination and sustain early seedling growth  
87 and aid in the prevention of the evaporation of soil moisture, the control of weeds and the  
88 prevention of erosion.

89 “Native wildflower” means kinds or the types and varieties derived from those kinds that  
90 are indigenous to North America.

91 ~~(y)~~ “Noxious weed seeds” ~~are divided into two classes: “Prohibited noxious weed seeds”~~  
92 ~~and “restricted noxious weed seeds” as defined in subdivisions (1) and (2) of this subsection~~  
93 includes prohibited noxious weed seeds, restricted noxious weed seeds, and undesirable grass

94 seed.

95 ~~(1) The term “prohibited noxious weed seeds” are those weed seeds which are prohibited~~  
96 ~~from being present in agricultural, vegetable, tree or shrub seed. They are the seeds of weeds~~  
97 ~~which are highly destructive and difficult to control by good cultural practices and the use of~~  
98 ~~herbicides;~~

99 ~~(2) The term “restricted noxious weed seeds or undesirable grass seed” are those weed~~  
100 ~~seeds which are objectionable in agricultural crops, lawns and gardens of this State and which~~  
101 ~~can be controlled by good cultural practices or the use of herbicides~~

102 ~~(z) “Off type” means any seed or plant not a part of the variety in that it deviates in one or~~  
103 ~~more characteristics from the variety as described and may include: A seed or plant of another~~  
104 ~~variety; a seed or plant not necessarily any variety; a seed or plant resulting from cross-pollination~~  
105 ~~by another kind or variety; a seed or plant resulting from uncontrolled self pollination during~~  
106 ~~production of hybrid seed; or segregates from any of the off types set forth in this subsection.~~

107 ~~(aa) “Official sample” means any sample of seed taken by the commissioner in~~  
108 ~~accordance with the provisions of this article and rules promulgated under this article.~~

109 ~~(bb) “Origin” for an indigenous stand of trees means the area on which the trees are~~  
110 ~~growing; for a nonindigenous stand, it is the place from which the seeds or plants were originally~~  
111 ~~introduced.~~

112 ~~(cc) “Other crop seed” means seed of plants grown as crops (other than the kind or variety~~  
113 ~~included in the pure seed) as determined by methods defined by rule.~~

114 ~~(dd) “Person” means an individual, partnership, corporation, company, association,~~  
115 ~~receiver, trustee, agent, fiduciary, firm or any group of organized persons whether incorporated~~  
116 ~~or not.~~

117 “Prohibited noxious weed seeds” mean those weed seeds which are prohibited from being  
118 present in agricultural, vegetable, tree or shrub seed, and are the seeds of weeds which are highly  
119 destructive and difficult to control by good cultural practices and the use of herbicides.

120 “Pure live seed” means the product of the percent of germination plus hard or dormant  
121 seed multiplied by the percent of pure seed divided by 100, where the result is expressed as a  
122 whole number.

123 ~~(ee)~~ “Pure seed” means seed exclusive of inert matter and all other seeds not of the seed  
124 being considered as determined by methods defined by rule.

125 “Purity” means the name or names of the kind, type, or variety and the percentage or  
126 percentages thereof; the percentage of other agricultural seed or crop seed; the percentage of  
127 weed seeds, including noxious weed seeds; the percentage of inert matter; and the names of the  
128 noxious weed seeds and the rate of occurrence of each.

129 ~~(ff)~~ “Registrant” means any person who registers as a seedsman in order to distribute seed  
130 for sowing purposes within the state.

131 “Restricted noxious weed seeds” mean those weed seeds which are objectionable in  
132 agricultural crops, lawns and gardens of this state but which can be controlled by good cultural  
133 practices or the use of herbicides.

134 ~~(gg)~~ “Seed potato” refers to ~~the Irish potato (*Solanum tuberosum*)~~ vegetatively propagated  
135 tubers used or intended to be used for potato production which must grade equal to or better than  
136 the minimum requirements of U.S. No. 1, from the standpoint of physical defects, size or disease,  
137 and must be certified by an official certifying agency.

138 “Sell-by Date” means the last date that the seed may legally be sold in the state.

139 ~~(hh)~~ “Seizure” means a legal process carried out by court order against a definite amount  
140 of seed.

141 “Stable” means that the variety will remain unchanged in its essential and distinctive  
142 characteristics and its uniformity when reproduced or reconstituted as required by the different  
143 categories of varieties.

144 ~~(ii)~~ “Stop sale or embargo” means an administrative order provided by this article,  
145 restraining the sale, use, disposition and movement of a definite amount of seed.

146 “Test date” means the month and year in which the germination test was completed.

147 “Total viable” means the sum of percentage germination plus dormant plus hard seeds.

148 (jj) “Treated” means that the seed has received an application of a substance, or that it  
149 has been subjected to a process for which a claim is made. For label, shall be the commonly  
150 accepted coined, chemical (generic), biological, or abbreviated chemical name.

151 (kk) “Tree and shrub seeds” includes seeds of woody plants commonly known and sold  
152 as tree and shrub seeds in this state.

153 (ll) “Tree seed collector’s declaration” means a statement signed by a grower or person  
154 having knowledge of the place of collection giving, for a lot of seed, the lot number, common or  
155 scientific name of the species (and subspecies, if appropriate), origin, elevation, and quantity of  
156 tree and shrub seed.

157 (mm) “Type” means a group of varieties so nearly similar that the individual varieties  
158 cannot be clearly differentiated except under special conditions.

159 “Undesirable grass seeds” means seeds of grass species declared to be restricted  
160 noxious weed seed when found in lawn and turf seed.

161 “Uniform” means that the variations in essential and distinctive characteristics are  
162 describable.

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

167 (oo) “Variety” means a subdivision of a kind which is distinct, uniform and stable.

168 (1) ~~“Distinct” means that the variety can be differentiated by one or more identifiable~~  
169 ~~morphological, physiological or other characteristics from all other varieties of public knowledge.~~

170 (2) ~~“Uniform” means that the variations in essential and distinctive characteristics are~~  
171 ~~describable.~~

172 ~~(3) “Stable” means that the variety will remain unchanged in its essential and distinctive~~  
 173 ~~characteristics and its uniformity when reproduced or reconstituted as required by the different~~  
 174 ~~categories of varieties~~

175 ~~(pp)~~ “Vegetable or herb seeds” includes the seeds of those crops which are grown in  
 176 gardens or on truck farms and are generally known and sold under the name of vegetable or herb  
 177 seeds in this state.

178 ~~(qq)~~ “Weed seed” means the seeds of all plants generally recognized as weeds within this  
 179 state, as determined by methods defined by rule, and includes the categories of prohibited  
 180 noxious weed seeds and restricted noxious weed seeds.

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

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

5 ~~(a)~~ (b) For all treated agricultural, ~~or~~ vegetable, or flower seeds (for which a separate label  
 6 may be used) the label shall include the following:

- 7 (1) A word or statement indicating that the seed has been treated;
- 8 (2) The commonly accepted coined, chemical, biological, or abbreviated chemical  
 9 (generic) name of the applied substance or description of the process used;

10 (3) A caution statement, such as “do not use for food, feed or oil purposes”, if the  
 11 substance in the amount present with the seed is harmful to human or other vertebrate animals.  
 12 The caution for toxic substances shall be a poison statement or symbol or both a poison statement  
 13 and symbol; and

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

16            ~~(b)~~ (c) For agricultural seeds, except for grass seed mixtures, seed sold on a pure live  
17 seed basis or for hybrids which contain less than 95 percent hybrid seed the label shall include  
18 the following:

19            (1) The commonly accepted name of the kind and variety for each agricultural seed  
20 component present in excess of five percent of the whole and the percentage by weight of each  
21 in order of its predominance. ~~Provided, That if the variety of those kinds generally labeled as to~~  
22 ~~variety is not stated, the label shall show the name of the kind and the words, "Variety Not Stated"~~  
23 Hybrids shall be labeled as hybrids;

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

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

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

28            (5) The name and rate of occurrence per pound or ounce of each kind of restricted noxious  
29 weed seed or undesirable grass seed present. The name and approximate number of each kind  
30 of noxious weed seed: (A) Per ounce in *Agrostis* spp., *Poa* spp., Rhodes grass, Bermuda grass,  
31 timothy, orchard grass, fescues, alsike and white clover, reed canary grass, Dallas grass,  
32 ryegrass, foxtail millet, alfalfa, red clover, sweet clovers, lespedezas, smooth brome, crimson  
33 clover, *Brassica* spp., flax, *Agropyron* spp., and other agricultural seeds of similar size and weight,  
34 or mixtures within this group; and (B) per pound in sudan grass, wheat, oats, rye, barley,  
35 buckwheat, sorghums, vetches and other agricultural seeds of a size and weight similar to or  
36 greater than those within this group, or any mixtures within this group;

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

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

40            (8) For each named agricultural seed:

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

- 42 (B) The percentage of hard seed, if present;
- 43 (C) The calendar month and year the test was completed to determine the percentages;
- 44 and
- 45 (D) If the registrant chooses, the "total germination and hard seed";
- 46 (9) The name and address of the person who labeled the seed, or who distributes the
- 47 seed within this state; and
- 48 (10) The total of subdivisions (1), (4), (6), and (7) of this subsection must equal 100
- 49 percent.
- 50 ~~(e)~~ (d) For grass seed mixtures for lawn or turf purposes the label shall include the
- 51 following:
- 52 (1) The word "mixed", or "mixture", or "blend" with the name of the mixture or blend;
- 53 (2) The heading "Pure Seed" and "Germination", or "Germ" in the proper places;
- 54 (3) The commonly accepted name of kind, or kind and variety of each agricultural seed
- 55 component in excess of five percent of the whole, and the percentage by weight of pure seed in
- 56 order of its predominance and in columnar form;
- 57 (4) The percentage by weight of agricultural seed other than those required to be named
- 58 on the label (which shall be designated as "crop seed");
- 59 (5) The percentage by weight of inert matter not to exceed 10 percent by weight, except
- 60 that 15 percent inert matter is permitted in Kentucky Bluegrass labeled without a variety name.
- 61 Except for coating material, fertilizer and mulch as provided by subdivision three, subsection ~~(d)~~
- 62 (e) of this section, foreign material not common to grass seed shall not be added;
- 63 (6) The percentage by weight of all weed seeds. Maximum weed seed content may not
- 64 exceed one half of one percent by weight;
- 65 (7) Noxious weed seeds and undesirable grass seed that are required to be labeled by
- 66 rule and listed under the heading "Noxious Weed Seeds" or "Undesirable Grass Seed".
- 67 Undesirable grass seed may not exceed 0.5% by weight;

68 (8) For each agricultural seed named under ~~subdivision (3) of this subsection~~ §19-16-  
69 2(d)(3) of this code:

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

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

72 (C) The calendar month and year the test was completed to determine the percentages.

73 The most recent available chronological test date shall be used;

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

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

78 (10) The total of subdivisions (3), (4), (5), and (6) of this subsection must total 100 percent.

79 ~~(d)~~ (e) For agricultural seeds that are coated the label shall include the following:

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

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

82 (3) The percentage by weight of inert material exclusive of coating material; ~~and~~

83 (4) Percentage of germination, to be determined on 400 pellets with or without seeds; and

84 (5) In addition to the provisions of this subsection, the labeling of coated seed shall comply  
85 with the requirements of subsections §19-16-2(b), (c), and (d) of this code.

86 ~~(e)~~ (f) For vegetable seeds in packets as prepared for use in home gardens or household  
87 plantings; or in preplanted containers, mats, tapes or other planting devices the label shall include  
88 the following:

89 (1) The name of kind and variety of seed;

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

91 ~~(3) The year for which the seed was packed for sale as "Packed for " or the percentage~~  
92 ~~germination and the calendar month and year the test was completed to determine the~~  
93 ~~percentage; and~~ One of the following:

94 (A) The calendar month and year the germination test was completed and the statement  
95 “Sell by”, which date may be no more than 12 months from the date of the test, exclusive of the  
96 month of the test;

97 (B) The year for which the seed was packed for sale, noted by the statement “Packed for  
98 ” or “Sell by” which blank shall be filled by the calendar year; or

99 (C) The percentage germination and the calendar month and year the test was completed  
100 to determine such percentage provided that the germination test must have been completed  
101 within 12 months exclusive of the month of the test; and

102 (4) The name and address of the person who labeled the seed or who distributes the seed  
103 for sale within this state.

104 ~~(f)~~ (g) For seeds which germinate less than the standard as established by rule  
105 promulgated under this article the label shall include the following:

106 (1) The percentage of germination, exclusive of hard seed;

107 (2) The percentage of hard seed, if present; and

108 (3) The words “Germination Below Standard” in not less than eight-point type.

109 ~~(g)~~ (h) For seeds placed in a germination medium, mat, tape or other device in such a way  
110 as to make it difficult to determine the quantity of seed without removing the seeds from the  
111 medium, mat, tape or device, a statement to include the minimum number of seeds in the  
112 container.

113 ~~(h)~~ (i) For vegetable seeds in containers other than packets prepared for use in home  
114 gardens or household plantings and other than preplanted containers, mats, tapes or other  
115 planting devices the label shall include the following:

116 (1) The name of each kind and variety present in excess of five percent and the percentage  
117 by weight of each in order of its predominance;

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

119 (3) For each named vegetable seed:

- 120 (A) The percentage germination exclusive of hard seed;
- 121 (B) The percentage of hard seed, if present;
- 122 (C) The calendar month and year the test was completed to determine the percentages;
- 123 and
- 124 (D) If the registrant chooses, the “total germination and hard seed”;
- 125 (4) The name and address of the person who labeled the seed, or who distributes the
- 126 seed within this state.
- 127 (j) For flower seeds in packets prepared for use in home gardens or household plantings
- 128 or flower seeds in preplanted containers, mats, tapes, or other planting devices:
- 129 (1) For all kinds of flower seeds:
- 130 (A) The name of the kind and variety, or a statement of type and performance
- 131 characteristics as prescribed in the rules and regulations promulgated under the provisions of this
- 132 article;
- 133 (B) One of the following:
- 134 (i) The calendar month and year the germination test was completed and the statement
- 135 “Sell by”, which date may be no more than 12 months from the date of the test, exclusive of the
- 136 month of the test;
- 137 (ii) The year for which the seed was packed for sale, noted by the statement “Packed for”
- 138 or “Sell by”, which blank shall be filled by the calendar year; or
- 139 (iii) “The percentage germination and the calendar month and year the test was completed
- 140 to determine such percentage provided that the germination test must have been completed
- 141 within 12 months exclusive of the month of the test; and
- 142 (C) The name and address of the person who labeled said seed, or who sells, offers, or
- 143 exposes said seed for sale within this state.
- 144 (2) For seeds of those kinds for which standard testing procedures are prescribed and
- 145 which germinate less than the germination standard last established under the provisions of this

146 article:

147 (A) The percentage of germination exclusive of hard seeds;

148 (B) The percentage of hard or dormant seed, if present; and

149 (C) The words "Below Standard", in not less than 8-point type.

150 (3) For seeds placed in a germination medium, mat, tape, or other device in such a way

151 as to make it difficult to determine the quantity of seed without removing the seeds from the

152 medium, mat, tape, or device, a statement to indicate the minimum number of seeds in the

153 container.

154 (k) For flower seeds in containers other than those contained in subsection (j) of this

155 section:

156 (1) The name of the kind and variety or a statement of type and performance

157 characteristics as prescribed in rules and regulations promulgated under the provisions of this

158 article, and for wildflowers, the genus, species, and subspecies, if appropriate.

159 (2) The lot number or other lot identification.

160 (3) For wildflower seed only with a pure seed percentage of less than 90 percent:

161 (A) The percentage, by weight, of each component listed in order of their predominance;

162 (B) The percentage by weight of weed seed, if present; and

163 (C) The percentage by weight of inert matter.

164 (4) For those kinds of seed for which standard testing procedures are prescribed:

165 (A) The percentage germination exclusive of hard or dormant seed;

166 (B) The percentage of hard or dormant seed, if present; and

167 (C) The calendar month and year that the test was completed to determine such

168 percentages.

169 (5) For those kinds of seed for which standard testing procedures are not available, the

170 year of production or collection.

171 (6) The name and address of the person who labeled the seed or who sells, offers, or

172 exposes the seed for sale within this state.

173 (l) For agricultural seeds sold on a pure live seed basis in accordance with the rules  
174 promulgated pursuant to this article, each container must bear a label containing the information  
175 required by subsection (c) of this section, except that:

176 (1) The label need not show:

177 (A) The percentage by weight of each agricultural seed component, as required by  
178 subdivision (1) of subsection (c) of this section; or

179 (B) The percentage by weight of inert matter, as required by subdivision (7) of subsection  
180 (c) of this section, and

181 (2) The label must show for each named agricultural seed, instead of the information  
182 required by subdivision (8) of section (c) of this section:

183 (A) The percentage of pure live seed determined in accordance with rules; and

184 (B) The calendar month and year in which the test determining the percentage of live seed  
185 was completed.

186 ~~(j) (m)~~ For agricultural and vegetable hybrid seed which contain less than 95 percent hybrid  
187 seed the label shall include the following:

188 (1) The kind or variety which must be labeled as “hybrid”;

189 (2) The percent which is hybrid, labeled parenthetically in direct association following  
190 named variety; such as, Comet (85 percent Hybrid); and

191 (3) Varieties in which the pure seed contain less than 75 percent hybrid seed which shall  
192 not be labeled as hybrids.

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

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

195 ~~(2) The year for which the seed was packaged~~

196 ~~(k) (n)~~ For combination mulch, seed and fertilizer products the label shall include the  
197 following:

198 (1) The word "combination" followed by the words "mulch — seed — fertilizer (if  
199 appropriate)" on the upper 30 percent of the principal display panel. The word "combination" must  
200 be the largest and most conspicuous type on the container, equal to or larger than the product  
201 name. The words "mulch — seed — fertilizer" shall be no smaller than one-half the size of the  
202 word "combination" and in close proximity to the word "combination." These products shall contain  
203 a minimum of 70 percent mulch; and

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

206 (A) The product name;

207 (B) The lot number;

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

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

211 (E) The percentage by weight of inert matter which shall not be less than 70 percent;

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

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

214 (H) The percentage of germination (and hard seed if appropriate) of each kind or kind and  
215 variety named and date of test; ~~and~~

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

218 (J) The totals of subdivisions (C), (D), (E), and (F) of this subsection must total 100%.

219 ~~(K)~~ (O) The labeling requirements for agricultural, ~~and vegetable, and flower~~ seeds shall be  
220 considered to have been met if the seed is weighed from a properly labeled bulk container in the  
221 presence of the purchaser.

222 ~~(M)~~ (P) Once a dealer has broken the seal on a container of seed for any reason, the  
223 dealer is fully responsible for its contents including the guarantees for purity, germination rate and

224 anything else pertaining to the integrity of the opened seed container.

225 ~~(p)~~ (q) For combination products containing seed and granular fertilizer:

226 (1) The word “combination” followed by the words “seed-fertilizer” must appear on the  
227 upper 30 percent of the principal display panel. The word “combination” must be the largest and  
228 most conspicuous type on the container, equal to or larger than the product name. The word  
229 “seed-fertilizer” shall be no smaller than one-half the size of the word “combination” and in close  
230 proximity to the word “combination.”

231 (2) On the analysis label, the percentage by weight of the fertilizer in the container shall  
232 be listed on a separate line as a component of the inert matter.

233 ~~(n)~~ (r) Label requirements for tree and shrub seeds:

234 Each container of tree and shrub seed which is distributed or transported within this state  
235 for sowing purposes shall bear on the container or have attached on the container in a  
236 conspicuous place a plainly written or printed statement on the label or tag in the English  
237 language, giving the information required under this subsection. The statement may not be  
238 modified or denied in the labeling or on another label attached to the container — except that  
239 labeling of seed supplied under a contractual agreement may be by invoice accompanying the  
240 shipment or by an analysis tag attached to the invoice if each bag or other container is clearly  
241 identified by a lot number stenciled on the container, or if the seed is in bulk. Each bag or container  
242 that is not identified shall carry complete labeling.

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

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

246 (B) The commonly accepted coined, chemical, biological, or abbreviated chemical  
247 (generic) name of the applied substance or description of the process used;

248 (C) A caution statement, such as “Do not use for food, feed or oil purposes”, if the  
249 substance in the amount present with the seed may be harmful to human or other vertebrate

250 animals. The caution for mercurials and similarly toxic substances shall be a poison statement  
251 and symbol; and

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

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

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

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

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

258 (D) Their origin:

259 (i) For seed collected from a predominantly indigenous stand, the area of collection given  
260 by latitude and longitude, or geographic description, or political subdivision such as state or  
261 county;

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

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

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

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

269 (i) Percentage germination exclusive of hard seed;

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

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

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

274 (H) For those species for which standard germination testing procedures have not been  
275 prescribed by the commissioner, the calendar year in which the seed was collected;

276 (l) The name and address of the person who labeled the seed or who distributes the seed  
277 within this state.

278 ~~(e)~~ (s) Label requirements for seed potatoes:

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

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

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

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

285 (t) Required Labeling for Interstate Shipping

286 The full name and address of the interstate shipper shall appear upon the label. If the  
287 name and address of the interstate shipper are not shown upon the label, an AMS # identifying  
288 the interstate shipper shall be shown along with the full name and address of the consignee

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

1 (a) No person may distribute any agricultural, vegetable, tree and shrub, or flower seeds,  
2 or seed potatoes without a valid certificate of registration issued by the commissioner. Application  
3 forms shall be provided by the commissioner and the application fee shall be set forth in a  
4 legislative rule. Each certificate of registration expires on December 31 following the next date of  
5 issue. A dealer may not be required to register, if he or she can prove that the person he or she  
6 is obtaining the seed from has a valid certificate of registration.

7 (b) A person shall apply for a certificate of registration at least 15 days prior to the  
8 expiration of the current registration; or at least 15 days prior to the date that the person intends  
9 to engage in business in this state. Each application shall be accompanied by the required  
10 application fee. The commissioner shall add a penalty ~~of two dollars~~ to the fee for each  
11 registration, as set forth in legislative rules, that is not applied for or renewed within the time limit.

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

13 (d) The commissioner may refuse to grant, or may suspend or revoke a certificate of  
14 registration when it is determined that the applicant or registrant has violated the provisions of  
15 this article or any rule promulgated under this article: *Provided*, That the applicant or registrant  
16 may request a hearing prior to the denial of the application or suspension or revocation of the  
17 registration.

18 (e) Each person who holds a valid certificate of registration is required to pay a tonnage  
19 fee on seed sold in this state and shall report to the commissioner the net pounds or kilograms of  
20 seeds distributed and sold by kind or variety, except for seed potatoes, on a ~~semiannual~~ quarterly  
21 basis. Each report shall be filed under oath and is due before the ~~thirty-first~~ last day of January,  
22 April, and July, and October of each year for the preceding ~~six-month~~ three-month period. He or  
23 she shall pay the tonnage fee according to the fee schedule for agriculture, vegetable, tree, and  
24 shrub, and flower seeds as set by legislative rules. The commissioner may add a penalty, as set  
25 forth in legislative rules, to the tonnage fee for each tonnage report that is not filed on time.

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

30 (g) Persons first distributing seed potatoes into West Virginia trade channels shall report  
31 to the commissioner the net pounds or kilograms of seed potatoes distributed ~~during the first six~~  
32 ~~months of the year~~ monthly in arrears: *Provided*, That payments for the previous month shall be  
33 made not later than the 15th day of the following month, The report and appropriate fee is due by  
34 ~~the thirty-first day of July~~ as set by legislative rules.

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

38 (i) All fees and penalties collected under the provisions of this article shall be deposited

39 with the State Treasurer in a special revenue account. These moneys shall be expended by the  
 40 Commissioner of Agriculture for inspection, sampling, analysis and other expenses necessary for  
 41 the administration of this article.

**§19-16-3b. Records.**

1 Each person whose name appears on the label as handling agricultural, vegetable, tree,  
 2 shrub, or flower seeds subject to this article shall keep, for a period of two years, complete records  
 3 of each lot of agricultural, vegetable, tree, shrub, or flower seed handled, and shall keep for one  
 4 year a file sample of each lot of seed after final disposition of said lot. All such records and samples  
 5 shall be accessible for inspection by the commissioner during customary business hours.

**§19-16-4. Prohibitions.**

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

3 (1) Which have not been tested to determine germination rates as required under ~~sections~~  
 4 ~~three §19-6-3 and four §19-16-4~~ section two of this article;

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

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

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

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

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

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

16 (A) It has been determined by a seed certifying agency that the seed conformed to

17 standards of purity and identity as to kind, species (and subspecies, if appropriate), or variety,  
18 and also that tree seed was found to be of the origin and elevation claimed, in compliance with  
19 the rules of that agency pertaining to the seed; and

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

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

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

29 (1) To detach, alter, deface or destroy any label provided for in this article or the rules  
30 promulgated under this article, or to alter or substitute seed in a manner that may defeat the  
31 purpose of this article;

32 (2) To use relabeling stickers without having both the calendar month and year the  
33 germination test was completed, the sell-by date, and the lot number that matches the existing,  
34 original lot number: *Provided*, That a relabeling may not occur more than one time.

35 (3) To disseminate any false or misleading advertisement concerning seeds subject to this  
36 article in any manner or by any means;

37 ~~(3)~~ (4) To interfere with the commissioner's official duties;

38 ~~(4)~~ (5) To fail to comply with a "stop sale or embargo" order or to move or otherwise handle  
39 or dispose of any lot of seed held under a "stop sale or embargo" order or tags attached to the lot  
40 of seed, unless released by the commissioner, and for the purpose specified by the commissioner;

41 ~~(5)~~ (6) To use the word "trace" or the phrase "contains < 0.01 percent" as a substitute for  
42 any statement which is required;

43 ~~(6)~~ (7) To use the word "type" in any labeling in connection with the name of any  
 44 agricultural seed variety;

45 ~~(7)~~ (8) To distribute or knowingly use any agricultural, vegetable, ~~or tree, and shrub, or~~  
 46 flower seed that is misbranded;

47 ~~(8)~~ (9) To misbrand any agricultural, vegetable, ~~or tree, and shrub, or flower~~ seed or seed  
 48 potato. An agricultural, vegetable, flower, tree or shrub seed or seed potato is misbranded:

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

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

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

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

55 ~~(9)~~ (10) To distribute or knowingly use any agricultural, vegetable, or tree and shrub seed  
 56 or seed potato that has not had an accurate statement of poundage reported to the commissioner  
 57 in the previous reporting period;

58 ~~(10)~~ (11) To use or imply the name West Virginia Department of Agriculture, or reference  
 59 any inspection or sample findings made by the West Virginia Department of Agriculture on labels  
 60 or labeling of agricultural, vegetable, flower, or tree and shrub seed or seed potatoes; or

61 ~~(11)~~ (12) To falsify any laboratory reports regarding seed distributed within this state.

#### **§19-16-5. Exemptions.**

1 (a) The provisions of §19-16-2, §19-16-3, §19-16-4, and § 19-16-8 of this code do not  
 2 apply:

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

4 (2) To seed in storage, or seed being transported or consigned to a cleaning or ~~processing~~  
 5 conditioning establishment for cleaning or ~~processing~~ conditioning: *Provided*, That the invoice,  
 6 label or labeling accompanying any shipment of the seed bears the statement "seeds for

7 ~~processing conditioning~~"; and that any label or labeling or other representation which may be  
8 made with respect to the uncleaned or ~~unprocessed~~ unconditioned seed is subject to this article;  
9 or

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

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

21 (c) The provisions of §19-16-2 and §19-16-3 of this code do not apply to tree seed  
22 produced by the consumer.

23 (d) Label and Signage Requirements for Noncommercial Seed Sharing.

24 (1) Each container of agricultural, vegetable, and flower seeds distributed for sowing  
25 purposes in a noncommercial setting shall bear thereon or have attached thereto in a conspicuous  
26 place a plainly written or printed label or tag in the English language, conveying the following  
27 information:

28 (A) The name of the species or commonly accepted name of kind or kind and variety of  
29 each agricultural seed component present. Hybrids shall be labeled as hybrids.

30 (B) A word or statement indicating if the seed has been treated. And, if treated, must be  
31 labeled in accordance with applicable state and federal laws.

32 (C) Some form of reference identification that provides traceability. Retention of posterity

33 file samples are not required.

34 (D) Name and city or address of the noncommercial seed sharing entity.

35 (E) The calendar month and year the seed was donated.

36 (F) The seed shall be free of foreign material, other than coatings or treatments, including  
37 germination medium, mulch, fertilizer, preplanted containers, mats, tapes, or other planting  
38 devices.

39 (G) No distributed container shall hold more than eight ounces of agricultural seed or four  
40 ounces of vegetable or flower seed.

41 (H) Germination and purity analysis is not required, however if a germination or purity  
42 percentage is noted on the label, it must be noted whether or not the analysis was performed  
43 according to the AOSA rules for testing seed.

44 (2) At each location involved with non-commercial seed sharing a legible and visible sign  
45 shall state that the seeds being distributed may not meet germination or varietal purity standards  
46 prescribed by the state seed law. The sign must also state that patented seed or varieties  
47 protected by the Plant Variety Protection Act will not be accepted or distributed without permission  
48 of the certificate holder.

**§19-16-6. Duties and authority of Commissioner of Agriculture.**

1 The commissioner may:

2 (a) Establish by legislative rule germination standards for agricultural, ~~forest~~ vegetable,  
3 tree, shrub, or flower seeds;

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

10 manufacturing, distribution, sampling, testing, and sale of agricultural, vegetable, tree and shrub  
11 seeds or seed potatoes;

12 (c) Open, examine, sample and test agricultural, vegetable, ~~or tree, and shrub,~~ or flower  
13 seed, or seed potatoes, equipment, containers, transport containers, and packages used or  
14 intended to be used in the manufacture and distribution of seeds used for sowing purposes;

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

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

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

19 (g) Condemn and confiscate any agricultural, vegetable, ~~or tree, and shrub,~~ or flower seed,  
20 or seed potato that is not brought into compliance with this article;

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

22 (i) Conduct sampling in accordance with the official methods as established by ~~the~~  
23 ~~Association of Analytical Chemists,~~ the Association of American Seed Control Officials, the United  
24 States Department of Agriculture or the Association of Official Seed Analysts;

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

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

27 (l) Obtain court orders directing any person refusing to submit to inspection, sampling and  
28 auditing to submit;

29 (m) Establish and maintain seed testing facilities; establish reasonable fees for the tests;  
30 incur expenses; and conduct tests in accordance with the Association of Official Seed Analysts;

31 (n) Be guided by the analytical results of the official sample when determining whether the  
32 agricultural, vegetable, ~~or tree, and shrub,~~ or flower seed is deficient in any component;

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

35 (p) Upon request made within 30 days from the date the official sample results are

36 reported, furnish a portion of the official sample to the registrant;

37 (q) Publish and distribute annually a composite report containing: (1) The sales of  
38 agricultural, vegetable, ~~or tree, and shrub,~~ or flower seed, and seed potatoes during the preceding  
39 period; (2) the results of analysis of official samples as compared with the guarantee on the label;  
40 (3) the firms responsible for the product; and (4) such other data the commissioner considers  
41 necessary: *Provided*, That the information on production and use provided does not disclose the  
42 operations of any person;

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

46 (s) Establish fees by legislative rule;

47 (t) Propose rules for promulgation, in accordance with §29A-3-1 *et seq.* of this code; ~~and~~

48 (u) Promulgate emergency rules within 90 days of the passage of this bill into law; and

49 (v) Inspect and approve seed conditioning facilities in the state; issue permits; and  
50 establish fees.

**§19-16-9. Deficiencies.**

1 (a) If the analysis of a sample shows a deviation from the permitted analytical variation,  
2 the registrant or other responsible person shall be penalized according to legislative rule.  
3 Penalties for multiple deficiencies within a sample shall be incremental: *Provided*, That in no case  
4 shall the penalty exceed the retail value of the product.

5 (b) The penalty shall be assessed and collected from the person responsible for the  
6 labeling requirements of the seed. If seed is sampled in the hands of a consumer who purchased  
7 to plant and not to sell, the penalty shall be assessed to the seedsman or distributor, whichever  
8 is applicable. In no case shall the penalty assessed exceed the fair market value of the seed. The  
9 total amount of seed in each lot at the time of sampling shall be used to determine the penalty.

10 (c) All penalties assessed under this section shall be paid to the consumer of the lot of

- 11 regulated product represented by the sample analyzed. If the consumer cannot be found or is  
12 unknown, the amount of the penalty shall be paid to the commissioner and deposited in the  
13 Department of Agriculture's fees account.

NOTE: The purpose of this bill is to update the seed certification law under the Department of Agriculture.

NOTE: This bill is recommended by the Committee on Agriculture and Rural Development for introduction and passage during the 2020 Regular Session.

Strike-throughs indicate language that would be stricken from a heading or the present law and underscoring indicates new language that would be added.