

WEST VIRGINIA LEGISLATURE

2020 REGULAR SESSION

Enrolled

Committee Substitute

for

Committee Substitute

for

Senate Bill 491

SENATORS SYPOLT, SMITH, RUCKER, BEACH, BALDWIN,

JEFFRIES, AND PITSENBARGER, *original sponsors*

[Passed March 5, 2020; in effect 90 days from passage]

1 AN ACT 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 three new sections, designated §19-16-3b, §19-16-5a, and §19-16-9, all relating
4 to the Seed Certification Program within the Department of Agriculture; defining terms;
5 adding flower seed requirements; adding labeling requirements for seed; adding labeling
6 requirements for interstate shipping; authorizing legislative rules for penalties; updating
7 certificate of registration requirements; requiring quarterly tonnage fees and reports for
8 seed; requiring monthly reports for seed potatoes; requiring record retention; updating
9 prohibitions for labeling; setting forth label, signage, and other requirements for
10 noncommercial seed sharing; updating duties and authority of commissioner; authorizing
11 inspections of seed conditioning facilities, issuance of permits, and establishment of fees;
12 and providing for penalties for labeling deficiencies.

Be it enacted by the Legislature of West Virginia:

ARTICLE 16. WEST VIRGINIA SEED LAW.

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

10 “Brand” means word/words, name, symbol, number, mark, design, unique design, or any
11 combination which identifies seed of one entity from seed of another.

12 “Bulk” means seed when loose in vehicles of transportation or in storage, or in retail
13 displays and not in seed bags or other containers.

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

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

23 “Commissioner” refers to the Commissioner of Agriculture of the State of West Virginia or
24 a duly authorized employee.

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

31 “Conditioning” means drying, cleaning, scarifying, and other operations which may change
32 the purity or germination of the seed and require the seed lot to be retested to determine the label
33 information.

34 “Dealer” means any person who exclusively sells, exposes for sale, offers for sale,
35 exchanges, or barter seed for sowing purposes within this state to the ultimate consumer.

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

38 “Distribute” means to offer for sale, sell, expose for sale, exchange, or barter seed for
39 sowing purposes within the state.

40 “Distributor” means any person who sells, exposes for sale, offers for sale, exchanges,
41 barters, gives, parcels out, allots, shares, or dispenses a seed for sowing purposes within the
42 state.

43 “Dormant” means viable seed, excluding hard seed, which fails to germinate when
44 provided the specified germination conditions for the kind of seed in question.

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

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

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

54 “Hard seeds” means seeds which remain hard at the end of the prescribed test period
55 because they have not absorbed water due to an impermeable seed coat.

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

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

64 “Inert matter” means all matter not seed, which includes, but is not limited to, broken
65 seeds, sterile florets, chaff, fungus bodies, and stones, as determined by methods defined by rule.

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

68 “Kind” means one or more related species or subspecies which singly or collectively is
69 known by one common name, for example, corn, oats, alfalfa, and timothy.

70 “Labeling” includes a tag or other device attached to or written, stamped, or printed on any
71 container or accompanying any lot of bulk seeds purporting to set forth the information required
72 on the seed label by this act, and it may include any other information relating to the labeled seed.

73 “Lot” means a definite quantity of seed identified by a lot number, code number, or other
74 mark, every portion or bag of which is uniform within recognized tolerances for the factors which
75 appear on the label.

76 “Mixture”, “mix”, or “mixed” means seed consisting of more than one kind or variety, each
77 present in excess of five percent by weight of the whole. A mixture of varieties of a single kind
78 may be labeled as a blend.

79 “Mulch” means a protective covering of any suitable substance placed with seed which
80 acts to retain sufficient moisture to support seed germination and sustain early seedling growth,
81 and aid in the prevention of the evaporation of soil moisture, the control of weeds, and the
82 prevention of erosion.

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

85 “Noxious weed seeds” includes prohibited noxious weed seeds, restricted noxious weed
86 seeds, and undesirable grass seed.

87 “Off type” means any seed or plant not a part of the variety in that it deviates in one or
88 more characteristics from the variety as described and may include: A seed or plant of another
89 variety; a seed or plant not necessarily any variety; a seed or plant resulting from cross-pollination

90 by another kind or variety; a seed or plant resulting from uncontrolled self-pollination during
91 production of hybrid seed; or segregates from any of the off types set forth in this subsection.

92 “Official sample” means any sample of seed taken by the commissioner in accordance
93 with the provisions of this article and rules promulgated under this article.

94 “Origin”, for an indigenous stand of trees, means the area on which the trees are growing;
95 for a nonindigenous stand, it is the place from which the seeds or plants were originally introduced.

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

98 “Person” means an individual, partnership, corporation, company, association, receiver,
99 trustee, agent, fiduciary, firm, or any group of organized persons, whether incorporated or not.

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

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

106 “Pure seed” means seed exclusive of inert matter and all other seeds not of the seed being
107 considered as determined by methods defined by rule.

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

112 “Registrant” means any person who registers as a seedsman in order to distribute seed
113 for sowing purposes within the state.

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

117 “Seed potato” refers to vegetatively propagated tubers used or intended to be used for
118 potato production which must grade equal to or better than the minimum requirements of U.S.
119 No. 1, from the standpoint of physical defects, size, or disease, and must be certified by an official
120 certifying agency.

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

122 “Seizure” means a legal process carried out by court order against a definite amount of
123 seed.

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

127 “Stop sale or embargo” means an administrative order, provided by this article, restraining
128 the sale, use, disposition, and movement of a definite amount of seed.

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

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

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

134 “Tree and shrub seeds” includes seeds of woody plants commonly known and sold as tree
135 and shrub seeds in this state.

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

140 “Type” means a group of varieties so nearly similar that the individual varieties cannot be
141 clearly differentiated, except under special conditions.

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

144 “Uniform” means that the variations in essential and distinctive characteristics are
145 describable.

146 “Variant” means any seed or plant which: (1) Is distinct within the variety but occurs
147 naturally in the variety; (2) is stable and predictable with a degree of reliability comparable to other
148 varieties of the same kind, within recognized tolerances, when the variety is reproduced or
149 reconstituted; and (3) was originally a part of the variety as released. A variant is not an off-type.

150 “Variety” means a subdivision of a kind which is distinct, uniform, and stable.

151 “Vegetable or herb seeds” includes the seeds of those crops which are grown in gardens
152 or on truck farms and are generally known and sold under the name of vegetable or herb seeds
153 in this state.

154 “Weed seed” means the seeds of all plants generally recognized as weeds within this
155 state, as determined by methods defined by rule, and includes the categories of prohibited
156 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, 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 (b) For all treated agricultural, vegetable, or flower seeds (for which a separate label may
6 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 humans or other vertebrate animals.
12 The caution for toxic substances shall be a poison statement or symbol, or both a poison
13 statement 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 (c) For agricultural seeds, except for grass seed mixtures, seed sold on a pure live seed
17 basis, or for hybrids which contain less than 95 percent hybrid seed, the label shall include the
18 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. Hybrids shall be labeled as hybrids;

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

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

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

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

33 buckwheat, sorghums, vetches, and other agricultural seeds of a size and weight similar to or
34 greater than those within this group, or any mixtures within this group;

35 (6) The percentage by weight of agricultural seeds (which may be designated as “crop
36 seeds”) other than those required to be named on the label;

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

38 (8) For each named agricultural seed:

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

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

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

42 and

43 (D) If the registrant chooses, the “total germination and hard seed”;

44 (9) The name and address of the person who labeled the seed, or who distributes the
45 seed within this state; and

46 (10) The total of subdivisions (1), (4), (6), and (7) of this subsection must equal 100
47 percent.

48 (d) For grass seed mixtures for lawn or turf purposes the label shall include the following:

49 (1) The word “mixed”, “mixture”, or “blend” with the name of the mixture or blend;

50 (2) The heading “Pure Seed” and “Germination”, or “Germ” in the proper places;

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

54 (4) The percentage by weight of agricultural seed other than those required to be named
55 on the label (which shall be designated as “crop seed”);

56 (5) The percentage by weight of inert matter not to exceed 10 percent by weight, except
57 that 15 percent inert matter is permitted in Kentucky Bluegrass labeled without a variety name.

58 Except for coating material, fertilizer, and mulch, as provided by subdivision three, subsection (e)
59 of this section, foreign material not common to grass seed shall not be added;

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

62 (7) Noxious weed seeds and undesirable grass seed that are required to be labeled by
63 rule and listed under the heading "Noxious Weed Seeds" or "Undesirable Grass Seed".
64 Undesirable grass seed may not exceed 0.5 percent by weight;

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

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

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

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

69 The most recent available chronological test date shall be used; and

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

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

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

75 (e) For agricultural seeds that are coated, the label shall include the following:

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

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

78 (3) The percentage by weight of inert material exclusive of coating material;

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

80 (5) In addition to the provisions of this subsection, the labeling of coated seed shall comply
81 with the requirements of subsections (b), (c), and (d) of this section.

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

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

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

87 (3) One of the following:

88 (A) The calendar month and year the germination test was completed and the statement
89 "Sell by", which date may be no more than 12 months from the date of the test, exclusive of the
90 month of the test;

91 (B) The year for which the seed was packed for sale, noted by the statement "Packed for"
92 or "Sell by" which blank shall be filled by the calendar year; or

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

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

98 (g) For seeds which germinate less than the standard as established by rule promulgated
99 under this article, the label shall include the following:

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

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

102 (3) The words "Germination Below Standard" in not less than eight-point type.

103 (h) For seeds placed in a germination medium, mat, tape, or other device in such a way
104 as to make it difficult to determine the quantity of seed without removing the seeds from the
105 medium, mat, tape, or device, a statement to include the minimum number of seeds in the
106 container.

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

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

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

113 (3) For each named vegetable seed:

114 (A) The percentage germination exclusive of hard seed;

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

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

117 and

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

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

121 (j) For flower seeds in packets prepared for use in home gardens or household plantings
122 or flower seeds in preplanted containers, mats, tapes, or other planting devices:

123 (1) For all kinds of flower seeds:

124 (A) The name of the kind and variety, or a statement of type and performance
125 characteristics as prescribed in the rules and regulations promulgated under the provisions of this
126 article;

127 (B) One of the following:

128 (i) The calendar month and year the germination test was completed and the statement
129 "Sell by", which date may be no more than 12 months from the date of the test, exclusive of the
130 month of the test;

131 (ii) The year for which the seed was packed for sale, noted by the statement "Packed for"
132 or "Sell by", which blank shall be filled by the calendar year; or

133 (iii) The percentage germination and the calendar month and year the test was completed
134 to determine such percentage, provided that the germination test must have been completed
135 within 12 months exclusive of the month of the test; and

136 (C) The name and address of the person who labeled said seed, or who sells, offers, or
137 exposes said seed for sale within this state.

138 (2) For seeds of those kinds for which standard testing procedures are prescribed and
139 which germinate less than the germination standard last established under the provisions of this
140 article:

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

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

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

144 (3) For seeds placed in a germination medium, mat, tape, or other device in such a way
145 as to make it difficult to determine the quantity of seed without removing the seeds from the
146 medium, mat, tape, or device, a statement to indicate the minimum number of seeds in the
147 container.

148 (k) For flower seeds in containers other than those contained in subsection (j) of this
149 section:

150 (1) The name of the kind and variety or a statement of type and performance
151 characteristics as prescribed in rules and regulations promulgated under the provisions of this
152 article, and for wildflowers, the genus, species, and subspecies, if appropriate.

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

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

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

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

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

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

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

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

161 (C) The calendar month and year that the test was completed to determine such
162 percentages.

163 (5) For those kinds of seed for which standard testing procedures are not available, the
164 year of production or collection.

165 (6) The name and address of the person who labeled the seed or who sells, offers, or
166 exposes the seed for sale within this state.

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

170 (1) The label need not show:

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

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

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

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

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

180 (m) For agricultural and vegetable hybrid seed which contain less than 95 percent hybrid
181 seed, the label shall include the following:

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

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

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

187 (n) For combination mulch, seed, and fertilizer products the label shall include the
188 following:

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

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

197 (A) The product name;

198 (B) The lot number;

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

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

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

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

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

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

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

209 (J) The totals of paragraphs (C), (D), (E), and (F) of this subdivision must total 100 percent.

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

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

216 (q) For combination products containing seed and granular fertilizer:

217 (1) The word "combination" followed by the words "seed-fertilizer" must appear on the
218 upper 30 percent of the principal display panel. The word "combination" must be the largest and
219 most conspicuous type on the container, equal to or larger than the product name. The word
220 "seed-fertilizer" shall be no smaller than one-half the size of the word "combination" and in close
221 proximity to the word "combination".

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

224 (r) Label requirements for tree and shrub seeds:

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

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

- 236 (A) A word or statement indicating that the seed has been treated;
- 237 (B) The commonly accepted coined, chemical, biological, or abbreviated chemical
238 (generic) name of the applied substance or description of the process used;
- 239 (C) A caution statement, such as “Do not use for food, feed or oil purposes”, if the
240 substance in the amount present with the seed may be harmful to humans or other vertebrate
241 animals. The caution for mercurials and similarly toxic substances shall be a poison statement
242 and symbol; and
- 243 (D) The date beyond which the inoculant is not to be considered effective (date of
244 expiration), if the seed has been treated with an inoculant;
- 245 (2) For all tree and shrub seeds subject to the article:
- 246 (A) The common name of the species of seed (and subspecies, if appropriate);
- 247 (B) The scientific name of the genus and species (and subspecies, if appropriate);
- 248 (C) The lot number or other lot identification; and
- 249 (D) Their origin:
- 250 (i) For seed collected from a predominantly indigenous stand, the area of collection given
251 by latitude and longitude, or geographic description, or political subdivision such as state or
252 county;
- 253 (ii) For seed collected from other than a predominantly indigenous stand, the area of
254 collection and the origin of the stand or the statement “Origin not Indigenous”;
- 255 (E) The elevation or the upper and lower limits of elevations within which the seed was
256 collected;
- 257 (F) The purity as a percentage of pure seed by weight;
- 258 (G) For those species for which standard germination testing procedures are prescribed
259 by the commissioner, the following:
- 260 (i) Percentage germination exclusive of hard seed;
- 261 (ii) Percentage of hard seed, if present;

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

263 (iv) In lieu of subparagraphs (i), (ii), and (iii) of this paragraph, the seed may be labeled

264 “Test is in process, results will be supplied upon request”;

265 (H) For those species for which standard germination testing procedures have not been

266 prescribed by the commissioner, the calendar year in which the seed was collected;

267 (I) The name and address of the person who labeled the seed or who distributes the seed

268 within this state.

269 (s) Label requirements for seed potatoes:

270 The following information shall appear on each label attached to a bag or container of

271 certified seed potato:

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

273 (B) The name of the official state or governmental agency making the inspection upon

274 which the certification is made; and

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

276 (t) *Required labeling for interstate shipping.* – The full name and address of the interstate

277 shipper shall appear upon the label. If the name and address of the interstate shipper are not

278 shown upon the label, an AMS number identifying the interstate shipper shall be shown, along

279 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 to the fee for each registration, as set forth
11 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 quarterly basis. Each
21 report shall be filed under oath and is due before the last day of January, April, July, and October
22 of each year for the preceding three-month period. He or she shall pay the tonnage fee according
23 to the fee schedule for agriculture, vegetable, tree and shrub, and flower seeds as set by
24 legislative rules. The commissioner may add a penalty, as set forth in legislative rules, to the
25 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 monthly in arrears:

32 *Provided*, That payments for the previous month shall be made not later than the 15th day of the
33 following month, as set by legislative rules.

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

37 (i) All fees and penalties collected under the provisions of this article shall be deposited
38 with the State Treasurer in a special revenue account. These moneys shall be expended by the
39 Commissioner of Agriculture for inspection, sampling, analysis, and other expenses necessary
40 for the administration of this article.

§19-16-3b. Records.

1 Each person whose name appears on the label as handling agricultural, vegetable, tree
2 and shrub, or flower seeds subject to this article shall keep, for a period of two years, complete
3 records of each lot of agricultural, vegetable, tree and shrub, or flower seeds handled, and shall
4 keep for one year a file sample of each lot of seed after final disposition of said lot. All such records
5 and samples shall be accessible for inspection by the commissioner during customary business
6 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 §19-16-
4 2 of this code;

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

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

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

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

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

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

61 (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
5 conditioning establishment for cleaning or conditioning: *Provided*, That the invoice, label or
6 labeling accompanying any shipment of the seed bears the statement “seeds for conditioning”;
7 and that any label or labeling or other representation which may be made with respect to the
8 uncleaned or unconditioned seed is subject to this article; or

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

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

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

§19-16-5a. Label, signage, and other requirements for noncommercial seed sharing.

1 (a) Each container of agricultural, vegetable, and flower seeds distributed for sowing
2 purposes in a noncommercial setting shall bear thereon or have attached thereto in a conspicuous

3 place a plainly written or printed label or tag in the English language, conveying the following
4 information:

5 (1) The name of the species or commonly accepted name of kind, or kind and variety of
6 each agricultural seed component present. Hybrids shall be labeled as hybrids;

7 (2) A word or statement indicating if the seed has been treated and, if treated, must be
8 labeled in accordance with applicable state and federal laws;

9 (3) Some form of reference identification that provides traceability. Retention of posterity
10 file samples are not required;

11 (4) Name and city or address of the noncommercial seed sharing entity; and

12 (5) The calendar month and year the seed was donated.

13 (b) The seed shall be free of foreign material, other than coatings or treatments, including
14 germination medium, mulch, fertilizer, preplanted containers, mats, tapes, or other planting
15 devices.

16 (c) No distributed container shall hold more than eight ounces of agricultural seed or four
17 ounces of vegetable or flower seed.

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

21 (e) At each location involved with noncommercial seed sharing a legible and visible sign
22 shall state that the seeds being distributed may not meet germination or varietal purity standards
23 prescribed by the state seed law. The sign must also state that patented seed or varieties
24 protected by the Plant Variety Protection Act will not be accepted or distributed without permission
25 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, vegetable, tree and
3 shrub, or flower seeds;

4 (b) Enter and inspect, during reasonable hours, any location where agricultural, vegetable,
5 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, 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, 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 American Seed Control Officials, the United States Department of Agriculture, or
24 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, 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, 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;

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.

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

.....
Chairman, Senate Committee

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Chairman, House Committee

Originated in the Senate.

In effect 90 days from passage.

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Clerk of the Senate

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Clerk of the House of Delegates

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President of the Senate

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Speaker of the House of Delegates

The within this the.....
Day of, 2020.

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Governor