

# WEST VIRGINIA LEGISLATURE

## 2022 REGULAR SESSION

Introduced

### Senate Bill 424

INTERIM  
BILL

FISCAL  
NOTE

BY SENATORS SYPOLT, BALDWIN, KARNES, PHILLIPS,  
SMITH, WOODRUM, HAMILTON, MARTIN, LINDSAY,  
JEFFRIES, ROMANO, CLEMENTS, MARONEY, AND RUCKER

[Introduced January 18, 2022; referred  
to the Committee on Agriculture and Rural  
Development; and then to the Committee on Finance]

1 A BILL to repeal §19-1-10 and §19-15-11 of the Code of West Virginia, 1931, as amended; to  
2 amend and reenact §11-13DD-3 of said code; to amend and reenact §19-1-4a and §19-  
3 1-11 of said code; to amend said code by adding thereto two new sections, designated  
4 §19-1-13 and §19-1-14; to amend and reenact §19-2C-1, §19-2C-6a, and §19-2C-10 of  
5 said code; to amend and reenact §19-9-7a of said code; to amend and reenact §19-12E-  
6 4 and §19-12E-5 of said code; to amend said code by adding thereto a new article,  
7 designated §19-14A-1, §19-14A-2, §19-14A-3, §19-14A-4, §19-14A-5, §19-14A-6, §19-  
8 14A-7, §19-14A-8, §19-14A-9, §19-14A-10, §19-14A-11, §19-14A-12, §19-14A-13, §19-  
9 14A-14, and §19-14A-15 of said code; to amend and reenact §19-15A-4 of said code; to  
10 amend and reenact §19-16-6 of said code; to amend and reenact §19-16A-21 of said  
11 code; to amend and reenact §19-20C-3 of said code; and to amend and reenact §19-36-  
12 2 and §19-36-5 of said code, all relating generally to the 2022 Farm Bill; raising the West  
13 Virginia Farm-to-Food bank tax credit from \$2,500 to \$5,000; allowing for retroactive  
14 application of the tax credit; allowing the Commissioner of Agriculture to accept funds  
15 from various federal agencies; repealing requirement for Social Security numbers to be  
16 included on applications; removing reporting requirement to Joint Committee; requiring  
17 commissioner to report to the Legislature; authorizing commissioner to add interest to  
18 debts owed the department; authorizing department to file liens against persons who owe  
19 debts; modifying definitions; revising requirements for membership on the board of review;  
20 providing compensation for board members; clarifying advertising requirements; changing  
21 the National Animal Identification System to the Animal Disease Traceability Program;  
22 requiring license from state to produce industrial hemp; allowing commissioner to  
23 recognize hemp license issued by the USDA; creating the West Virginia Animal Remedy  
24 law; defining terms; establishing powers and duties of commissioner; providing  
25 exemptions; requiring registration of animal remedy products; providing commissioner  
26 authority to refuse, suspend, or revoke the registration of animal remedies; providing the

27 right to hearing or appeal of decisions to suspend, refuse, or revoke applications;  
 28 establishing labeling requirements; establishing when an animal remedy is adulterated;  
 29 establishing when an item is misbranded; allowing commissioner to issue and enforce  
 30 embargo orders, confiscate product, condemn, and seek injunction against violators;  
 31 requiring commissioner keep trade secrets confidential; establishing prohibited acts;  
 32 establishing criminal and civil penalties for violations; providing penalty for deviation in  
 33 product; repealing publication requirement for West Virginia fertilizer law; removing  
 34 requirement that commissioner published a report on the West Virginia seed law; allowing  
 35 commissioner to deny, suspend, or modify license if applicant has violated, convicted, or  
 36 assessed penalty under the federal insecticide, fungicide, and rodenticide act; removing  
 37 outdated reporting requirement provision; defining agritourism; and establishing that  
 38 agritourism does not affect the zoning law.

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

## **CHAPTER 11. TAXATION.**

### **ARTICLE 13DD. WEST VIRGINIA FARM-TO-FOOD BANK TAX CREDIT.**

#### **§11-13DD-3. Amount of credit; limitation of credit.**

1 (a) There is allowed to farming taxpayers who make donations of edible agricultural  
 2 products to one or more nonprofit food programs in this state, a credit against taxes imposed by  
 3 §11-21-1 *et seq.* and §11-24-1 *et seq.* of this code in the amount set forth in this section.

4 (b) The amount of the credit is equal to 30 percent of the value of the donated edible  
 5 agricultural products, but not to exceed ~~\$2,500~~ \$5,000 during a taxable year or the total amount  
 6 of tax imposed by §11-21-1 *et seq.* or §11-24-1 *et seq.* of this code, whichever is less, in the year  
 7 of donations.

8 (c) If the amount of the credit exceeds the taxpayer's tax liability for the taxable year, the  
 9 amount which exceeds the tax liability may be carried over and applied as a credit against the tax

10 liability of the taxpayer pursuant to §11-21-1 *et seq.* or §11-24-1 *et seq.* of this code to each of  
11 the next four taxable years unless sooner used.

12 (d) No more than \$200,000 of tax credits may be allocated by the department in any fiscal  
13 year. The department shall allocate the tax credits in the order the donation forms are received.

14 (e) It is the intent of the Legislature in enacting the amendments to this section during the  
15 2022 regular session of the Legislature that the amendments be applied retroactively to apply to  
16 any donations of qualifying edible agricultural products to one or more nonprofit food programs in  
17 this state made on or after January 1, 2022.

## CHAPTER 19. AGRICULTURE.

### ARTICLE 1. DEPARTMENT OF AGRICULTURE.

#### §19-1-4a. Commissioner authorized to accept gifts, etc., and enter into cooperative agreements.

1 Notwithstanding any provision of this code to the contrary, The the Commissioner of  
2 Agriculture is hereby empowered and he or she shall have authority to accept and receive  
3 donations, gifts, contributions, grants, and appropriations of money, services, materials, real  
4 estate or other things of value from the United States Department of Agriculture, the United States  
5 Food and Drug Administration, or the United States Environmental Protection Agency, or any  
6 other agency of the United States government, or any of its their divisions or bureaus, and he or  
7 she shall have authority to use, utilize, develop, or expend such money, services, material, or  
8 other contributions in conformity with the conditions and provisions set forth in such grants,  
9 appropriations, or donations.

10 ~~By and with the approval of the Governor, the~~ The commissioner may accept and receive  
11 donations, gifts, contributions, and grants of money, services, materials, real estate, and other  
12 things of value from individuals, partnerships, associations, or corporations, and he or she shall  
13 have authority to utilize such contributions to encourage, promote and develop the agricultural

14 interests or industries of the state.

15 The commissioner is hereby empowered, and he or she shall have authority, to enter into  
16 agreements with any department of state government for the purpose of carrying out any  
17 regulatory laws where or when any related functions or duties exist. He or she shall also have  
18 authority to enter into agreements with any city council or county ~~court~~ commission of the State  
19 of West Virginia, for carrying out the provisions of the agricultural laws over which he or she has  
20 enforcement authority.

**§19-1-10. Requirement for social security number on applications.**

1 [Repealed.]

**§19-1-11. Rural Rehabilitation Loan Program.**

1 (a) The Rural Rehabilitation Loan Program is an important tool for the Commissioner of  
2 Agriculture to promote investment in the agricultural industry in the state. Rules are needed for  
3 the loan program to remain viable.

4 (b) The commissioner shall propose emergency and legislative rules for approval in  
5 accordance with §29A-3-1 *et seq.* of this code. The rules shall, at a minimum:

6 (1) Establish minimum requirements and qualifications for the loan committee, including  
7 the addition of public members who have agricultural or business loan experience;

8 (2) Prohibit department employees and loan committee members, and their immediate  
9 family members, from receiving program loans;

10 (3) Establish minimum financial requirements for receiving a program loan;

11 (4) Require loans to be used for agricultural or related purposes;

12 (5) Require collateral sufficient to secure the loan;

13 (6) Establish policies for the application, applicable interest rates, delinquencies,  
14 refinancing, collection proceedings, collateral requirements, and other aspects of the loan  
15 program;

16 (7) Require the department to advertise the loan program to the public, including

17 information on the department's website and in the department's market bulletin; and

18 (8) Transfer the servicing of the program loans to a financial institution via competitive bid  
19 or to the State Treasurer's office or other governmental entity.

20 (c) ~~The commissioner shall file an annual report to the Joint Committee on Government  
21 and Finance regarding the loan program, including information about the loans awarded, loans  
22 repaid, loans outstanding, interest rates, delinquency and collections, and other pertinent data~~

23 ~~(d) The commissioner shall not be required to utilize the services of the State Agency for  
24 Surplus Property for the disposition of items purchased by participants in the loan program and  
25 subsequently repossessed by the committee to be sold in order to satisfy the balance of an  
26 outstanding loan.~~

**§19-1-13. Annual reporting to the Legislature.**

1 On or before January 31 of each year, the commissioner shall file a report with the Speaker  
2 of the House, the President of the State Senate, and the Joint Committee on Government and  
3 Finance detailing the activities of the department, including all boards and commissions under the  
4 commissioner's authority, during the preceding fiscal year. A copy of the commissioner's annual  
5 report shall also be provided to the Division of Archives and History to be kept as a permanent  
6 record of the state.

**§19-1-14. Penalties and payments.**

1 (a) If any amount is owed to the department for services rendered, payments due, or any  
2 other reason permissible by law and within the authority of the commissioner, the commissioner  
3 may authorize the accrual of interest payments on those amounts if payment is not received within  
4 30 days of being due.

5 (b) If any person liable to pay a civil penalty assessed by the commissioner pursuant to  
6 this chapter neglects or refuses to pay the same, the amount of the civil penalty, together with  
7 interest at 10 percent, is a lien in favor of the State of West Virginia upon the property, both real  
8 and personal, of such a person after the same has been entered and docketed to record in the

9 county where such property is situated. The clerk of the county, upon receipt of the certified copy  
 10 of such, shall enter same to record without requiring the payment of costs as a condition precedent  
 11 to recording.

## **ARTICLE 2C. AUCTIONEERS.**

### **§19-2C-1. Definitions.**

12 ~~For the purposes of this article:~~

13 (a) "Absolute auction" means the sale of real or personal property at auction whereby  
 14 every item offered from the block is sold to the highest bidder without reserve and without the  
 15 requirements of a minimum bid or other conditions which limit the sale other than to the highest  
 16 bidder.

17 (b) "Auction" means any sale of real or personal property in which offers or bids are made  
 18 by prospective purchasers by means of verbal exchange, physical gesture, or written  
 19 communication, whether bids are made in person or via mail or electronically, the property is sold  
 20 to the highest bidder, and there is no fixed or predetermined time for the auction to end, as the  
 21 close of the auction is determined by either the auctioneer or the persons bidding on the item or  
 22 items. The term "auction" includes public auctions.

23 ~~(b)~~ (c) "Auctioneer" means a person who sells goods or real estate at public auction for  
 24 another on commission or for other compensation.

25 ~~(c)~~ (d) "Commissioner" means the Commissioner of Agriculture of West Virginia or his or  
 26 her designee.

27 ~~(d)~~ (e) "Department" means the West Virginia Department of Agriculture.

28 ~~(e)~~ (f) "Escrow account" means a separate custodial or trust fund account maintained by  
 29 the auctioneer.

30 ~~(f)~~ (g) "Estate auction" means the sale at auction of property of a specified deceased  
 31 person or the property of a specified living person's estate. Estate auctions may contain property  
 32 other than that of the specified living or deceased person. However, the inclusion of additional

33 property must be included in all advertising and auction announcements.

34 ~~(g)~~ (h) "In this state" means that an auction satisfies one of the following criteria:

35 (1) The auctioneer performed the auction within the borders of the state of West Virginia;

36 (2) The auctioneer is selling items for a person located in the state of West Virginia;

37 (3) The auctioneer is auctioning real or personal property located in the state of West  
38 Virginia;

39 (4) The auctioneer delivers purchased property to a location in the state of West Virginia;

40 or

41 (5) The auctioneer is otherwise subject to the laws, including taxation authority, of the  
42 State of West Virginia.

43 ~~(h) "Public auction" or "auction" means any public sale of real or personal property in any  
44 manner, whether in person, via written offers or bids, or online, when offers or bids are made by  
45 prospective purchasers and the property sold to the highest bidder~~

**§19-2C-6a. Investigation of complaints; board of review.**

1 (a) The Department of Agriculture may, upon its own action, and shall upon the verified  
2 written complaint of any person, investigate the actions of any auctioneer, apprentice auctioneer,  
3 any applicant for an auctioneer's or apprentice auctioneer's license, or any person who assumes  
4 to act in that capacity, if the complaint, together with other evidence presented in connection with  
5 it, establishes probable cause. Upon verification of the complaint, the department shall present  
6 the complaint to the board of review. The board of review shall consider all of the facts of the  
7 complaint and recommend a course of action to the commissioner.

8 (b) The board of review shall be appointed by the Governor, by and with the advice and  
9 consent of the Senate, and shall consist of ~~three~~ five members, each appointed for a staggered  
10 three-year term. ~~Two~~ Three members of the board of review shall be licensed auctioneers in West  
11 Virginia, one of which has experience performing online auctions, and residents of this state and  
12 shall have been licensed and been practicing the profession of auctioneering for five years

13 immediately preceding their appointment. ~~The third~~ One member shall be a lay person from the  
14 commercial or agricultural community who has utilized services of auctioneers for at least three  
15 years, and one member shall be a citizen member. No more than ~~two~~ three board members shall  
16 be from any one congressional district and no more than ~~two~~ three members shall be from the  
17 same political party.

18 (c) Board members shall receive compensation for each day or portion of a day engaged  
19 in the discharge of official duties, which compensation may not exceed the amount paid to  
20 members of the Legislature for their interim duties as recommended by the Citizens Legislative  
21 Compensation Commission and authorized by law, and receive no compensation for their service  
22 ~~on the board, but~~ shall be entitled to receive reimbursement for expenses in accordance with the  
23 Department of Agriculture travel regulations.

24 ~~(d) There shall be no limit on the number of consecutive terms a member may serve on~~  
25 ~~the board~~ Appointed members may be reappointed for up to two additional terms. All appointed  
26 members serve until their successor has been appointed and qualified. The Governor is  
27 authorized to fill a vacancy when it occurs on the board for any reason. An appointment to fill a  
28 vacancy shall be for the remainder of the existing term of the vacant position.

#### **§19-2C-10. Advertising.**

1 (a) In advertising an auction sale by any licensed auctioneer, the principal auctioneer or  
2 auctioneers who physically conduct the sale shall be listed prominently in such advertising as  
3 used by said auctioneer or auctioneers. The individual auctioneer or auctioneers who conduct the  
4 sale shall be the person or persons who call for, accept and close bids on the majority of items  
5 offered for sale.

6 (b) Any apprentice auctioneer who advertises, as provided in this section, shall indicate in  
7 his or her advertisement the name of the sponsoring auctioneer under whom he or she is licensed.  
8 The auctioneer's name and license number shall be displayed in equal prominence with the name  
9 of the apprentice auctioneer and license number in such advertisement.

10           (c) Nothing in the provisions of this article shall be construed so as to prohibit any other  
 11 auctioneer, licensed pursuant to this article, from assisting with any auction, notwithstanding the  
 12 failure to list the name of the other auctioneer in any advertising associated with such auction.

13           (d) Advertising Prohibitions.

14           (1) It is unlawful to conduct or advertise that an auction is absolute if minimum opening  
 15 bids are required or other conditions are placed on the sale that limit the sale other than to the  
 16 highest bidder.

17           (2) No property other than the property of a specified deceased person or the property of  
 18 a specified living person's estate may be sold at auction if the auction is conducted or advertised  
 19 only as an estate auction. However, property other than that of the specified estate may be sold  
 20 at the sale if all advertisements for the sale specify that items will be sold that do not belong to  
 21 the estate and those items are identified at the sale.

22           (3) It is unlawful for a sale to be advertised as an auction that does not satisfy the definition  
 23 of an auction set forth in this article.

## **ARTICLE 9. DISEASES AMONG DOMESTIC ANIMALS.**

**§19-9-7a. ~~National Animal Identification System~~ Animal disease traceability; rulemaking;  
 exemption.**

1           West Virginia shall be a participating state in the United States Department of Agriculture's  
 2 ~~National Animal Identification System~~ Animal Disease Traceability program. The commissioner  
 3 may propose rules for legislative approval in accordance with the provisions of §29A-3-1 *et seq.*  
 4 of this code governing the collection of farm premises and animal identification data.

5           The premises and animal identification data collected by the commissioner in accordance  
 6 with the requirements of the ~~National Animal Identification System~~ Animal Disease Traceability  
 7 program are specifically exempt from disclosure under the provisions of §29B-1-1 *et seq.* of this  
 8 code.

**ARTICLE 12E. INDUSTRIAL HEMP DEVELOPMENT ACT.****§19-12E-4. Industrial hemp authorized as agricultural crop; license required.**

1 (a) Industrial hemp is considered an agricultural crop in this state if grown for the purposes  
2 authorized by the provisions of this article. Upon meeting the requirements of §19-12E-5 of this  
3 code, an individual in this state may plant, grow, harvest, possess, process, sell or buy industrial  
4 hemp.

5 (b) A person shall not cultivate, handle, or process industrial hemp in this state unless the  
6 person holds an industrial hemp license issued ~~by the department~~ for this state.

**§19-12E-5. Industrial hemp – licensing.**

1 (a) A person growing industrial hemp shall apply to the commissioner for a license on a  
2 form prescribed by the commissioner.

3 (b) The application for a license must include the name and address of the applicant and  
4 the legal description and global positioning coordinates of the land area to be used for the  
5 production of industrial hemp.

6 (c) The commissioner shall require each first-time applicant, and may establish  
7 requirements for other persons involved with the industrial hemp program, to submit to a state  
8 and national criminal history record check. The criminal history record check shall be based on  
9 fingerprints submitted to the West Virginia State Police or its assigned agent for forwarding to the  
10 Federal Bureau of Investigation.

11 (1) The applicant shall meet all requirements necessary to accomplish the state and  
12 national criminal history record check, including:

13 (A) Submitting fingerprints; and

14 (B) Authorizing the board, the West Virginia State Police, and the Federal Bureau of  
15 Investigation to use all records submitted and produced for the purpose of screening the applicant  
16 for a license.

17 (2) The results of the state and national criminal history record check may not be released

18 to or by a private entity except:

19 (A) To the individual who is the subject of the criminal history record check;

20 (B) With the written authorization of the individual who is the subject of the criminal history  
21 record check; or

22 (C) Pursuant to a court order.

23 (3) The criminal history record check and related records are not public records for the  
24 purposes of §29B-1-1 *et seq.* of this code.

25 (4) The applicant shall pay the actual costs of the fingerprinting and criminal history record  
26 check.

27 (d) If the applicant has completed the application process to the satisfaction of the  
28 commissioner, the commissioner shall issue the license, which is valid until December 31 of the  
29 year of application: *Provided*, That an individual applying to renew a current license may continue  
30 to operate under an existing license, as long as his or her completed renewal application has  
31 been submitted to the department on or before the deadline established by the department.

32 (e) Any person seeking to grow, cultivate, or process industrial hemp shall provide to the  
33 department prior written consent allowing the department, State Police, and other state and local  
34 law enforcement agencies to enter onto all premises where industrial hemp is grown, cultivated,  
35 processed, or stored to conduct physical inspections or otherwise ensure compliance with the  
36 requirements of this code and the legislative rules promulgated pursuant to this code.

37 (f) In the alternative, the commissioner may choose to recognize industrial hemp grower  
38 licenses issued by the United States Department of Agriculture.

39 ~~(f)~~-(g) Sale of industrial hemp products —

40 (1) Notwithstanding any provision of the code to the contrary, a person need not obtain a  
41 license to possess, handle, transport, or sell hemp products or extracts, including those containing  
42 one or more hemp-derived cannabinoids, including CBD.

43 (2) Hemp-derived cannabinoids, including CBD, are not controlled substances or

44 adulterants.

45 (3) Products containing one or more hemp-derived cannabinoids, such as CBD, intended  
46 for ingestion are to be considered foods, not controlled substances or adulterated products.

47 (4) Applicable state agencies shall make available any and all customary registrations to  
48 the processors and manufacturers of hemp products.

49 (5) Retail sales of hemp products may be conducted when the products and the hemp  
50 used in the products were grown and cultivated legally in another state or jurisdiction and meet  
51 the same or substantially the same requirements for processing hemp products or growing hemp  
52 under this article and rules promulgated under §19-2E-7 of this code.

53 (6) Notwithstanding any other provision of this code to the contrary, derivatives of hemp,  
54 including hemp-derived cannabidiol, may be added to cosmetics, personal care products, and  
55 products intended for animal or human consumption, and the addition is not considered an  
56 adulteration of the products.

57 (7) Hemp and hemp products may be legally transported across state lines, and exported  
58 to foreign nations, consistent with U.S. federal law and laws of respective foreign nations.

## **ARTICLE 14A. WEST VIRGINIA ANIMAL REMEDY LAW.**

### **§19-14A-1. Title.**

1 This article shall be known as the “West Virginia Animal Remedy Law.”

### **§19-14A-2. Definitions.**

1 (a) “Advertisement” means any representation made by a manufacturer, guarantor,  
2 distributor, or other party associated with the product, other than those on the product label,  
3 disseminated in any manner or by any means, relating to an animal remedy.

4 (b) “Animal remedy” means any drug, combination of drugs, proprietary medicine, or  
5 combination of drugs and other ingredients, other than for food purposes, that are prepared or  
6 compounded for animal use.

7 (c) “Commissioner” refers to the Commissioner of Agriculture or his or her designee.

8 (d) "Distributor" means any person who distributes an animal remedy.

9 (e) "Dosage form" means the method of administration of an animal remedy, and includes,  
10 but is not limited to, tablets, pills, capsules, ampules, or other units suitable for administration of  
11 an animal remedy.

12 (f) "Drug" means a substance that is: (1) recognized by United States Pharmacopoeia, the  
13 Homeopathic Pharmacopoeia of the United States, or the United States Pharmacopoeia National  
14 Formulary; (2) intended for use in the diagnosis, cure, mitigation, treatment, or prevention of  
15 disease in animals; and (3) is not a food, a substance intended to affect the structure of any  
16 function of the body of animals, or a substance intended for use as a component of any articles  
17 specified in clauses (1) or (2) of this definition.

18 (g) "Guarantor" means any person whose name appears on a label and who is therefore  
19 responsible for the product and its labeling.

20 (h) "Label" means a display of written, printed, or graphic matter printed upon or otherwise  
21 affixed to the container in which an animal remedy is distributed.

22 (i) "Labeling" means and includes all labels as well as all other written, printed, or graphic  
23 matter found upon an animal remedy or its containers or wrappers.

24 (j) "Official sample" means any sample of animal remedy taken by the commissioner in  
25 accordance with the provisions of this article and rules promulgated hereunder.

26 (k) "Person" means an individual, partnership, association, fiduciary, firm, company,  
27 corporation, or any organized group of persons whether incorporated or not.

28 (l) "Quantity Statement" means the net weight or mass, liquid measure, or count.

**§19-14A-3. Powers and duties of the commissioner.**

1 The commissioner has the power and authority to:

2 (1) Enter and inspect, during reasonable hours, any location where an animal remedy is  
3 manufactured, distributed, transported or sold, or where records relating to the manufacture,  
4 distribution, shipment, labeling or sale of animal remedies are kept. Such inspection may include,

5 but is not limited to, examining, photographing, verifying, copying, and auditing records as is  
6 necessary to determine compliance with this article; and reviewing labels, consumer complaints,  
7 and papers relating to the manufacturing, distribution, sampling, testing, and sale of animal  
8 remedies.

9 (2) Open, examine, sample, and test animal remedies, equipment, containers, transport  
10 containers, and packages used or intended to be used in the manufacture and distribution of  
11 animal remedies.

12 (3) Issue registrations pursuant to this article.

13 (4) Refuse, suspend, or revoke registrations as provided in this article.

14 (5) Issue embargoes as provided in this article.

15 (6) Condemn and confiscate any product that is not brought into compliance with this  
16 article.

17 (7) Collect fees and penalties and expend moneys under the terms of this article.

18 (8) Conduct sampling in accordance with the official methods published in the current  
19 edition of the Official Methods of Analysis of the Association of Official Analytical Chemists and  
20 supplements thereto, or other methods approved by the commissioner.

21 (9) Conduct hearings as provided by this article.

22 (10) Assess civil penalties and refer violations to a court of competent jurisdiction.

23 (11) Obtain court orders directing any person refusing to submit to inspection, sampling,  
24 and auditing to submit.

25 (12) Establish and maintain testing facilities; establish reasonable fees for such tests; incur  
26 expenses; and conduct tests in accordance with the official methods published in the current  
27 edition of the Official Methods of Analysis of the Association of Official Analytical Chemists and  
28 supplements thereto, or other methods approved by the commissioner.

29 (13) Be guided by the analytical results of the official sample when determining whether  
30 the animal remedy is deficient in any component.

31 (14) Report the analytical results on all official samples to the guarantor and, in the case  
32 of deficient samples, also to the dealer and the purchaser, if known.

33 (15) Upon request made within 30 days from the date the official sample results are  
34 reported, furnish a portion of the official sample to the guarantor.

35 (16) Cooperate with and enter into agreements with governmental agencies of this state  
36 and other states, agencies of the federal government and foreign governments, and private  
37 associations to carry out the purpose and provisions of this article.

38 (17) Promulgate rules, in accordance with §29A-3-1 et seq. of this code, dealing with  
39 animal remedies, penalties, and enforcement of this article.

#### **§19-14A-4. Exemptions.**

1 (a) The compounding or dispensing of veterinarians' prescriptions, nor the dispensing of  
2 drugs or preparations by registered pharmacists compounded at the request of the purchaser and  
3 not intended for resale, nor shall such provisions apply to any animal remedy sold exclusively to  
4 or used exclusively by licensed veterinarians.

5 (b) Any animal remedy that contains hemp or hemp derivatives that is considered a hemp  
6 product pursuant to §19-12E-2(h) of this code must also be registered with the department as a  
7 hemp product.

8 (c) This article does include products regulated as medicated commercial feed in  
9 accordance with §19-14-1 et seq of this code.

#### **§19-14A-5. Registration.**

1 (a) Animal remedy products shall be registered annually. Each application for registration  
2 shall be accompanied by the required registration fee. Each registration shall expire on December  
3 31, next following the date of issue.

4 (b) A person must submit registration at least 30 days prior to the expiration of the current  
5 registration; or at least 30 days prior to the date that the person intends to engage in the business  
6 of selling or marketing animal remedy products in this state. All applications shall be accompanied

7 by the required fee. A penalty shall be added to the fee for all registrations that are not applied for  
8 or renewed within the time limit.

9 (c) The person responsible for first distributing an animal remedy into West Virginia trade  
10 channels shall register the animal remedy with the commissioner before placing the product on  
11 the market.

12 (d) Registrations are not transferrable between persons or locations.

13 (e) A person is not required to register any brand name or product name of an animal  
14 remedy that has already been registered by another person.

15 (f) Alteration of an animal remedy that changes the label requires a new application for  
16 registration be made and approved before distribution.

17 (g) The granting of a registration does not constitute the commissioner’s recommendation  
18 or endorsement of the animal remedy.

**§19-14A-6. Refusal of application; suspension and revocation of registration.**

1 The commissioner may refuse to grant or may suspend or revoke the registration of any  
2 Animal Remedy when it is determined that: (1) the applicant or guarantor has violated the  
3 provisions of this article or any official rule promulgated hereunder; or (2) this article or the rules  
4 promulgated hereunder cannot be or will not be complied with: *Provided*, That the applicant or  
5 guarantor shall have the opportunity to be heard prior to the suspension or revocation of the  
6 registration.

**§19-14A-7. Hearings and appeals.**

1 (a) No application shall be refused until the applicant has the opportunity to amend his/her  
2 application to comply with the requirements of this article.

3 (b) No registration or permit shall be refused, suspended, or revoked until the guarantor  
4 or permittee shall have the opportunity to have a hearing before the commissioner.

5 (c) Any person adversely affected by an act, order, or ruling made pursuant to the  
6 provisions of this article, may bring an action for judicial review in the circuit court of the county in

7 which the violation occurred in accordance with §29A-5-1 et seq. of this code.

**§19-14A-8. Labeling.**

1 (a) When animal remedy products are distributed in this state the label shall be affixed to  
2 the container.

3 (b) All animal remedy labels shall include the following:

4 (1) The quantity statement;

5 (2) The product name, including brand name, if any, or trademark under which the animal  
6 remedy is distributed;

7 (3) The name and principal mailing address of the manufacturer or the distributor;

8 (4) Adequate directions for use;

9 (5) The common or usual name of each active ingredient;

10 (6) The level of each active ingredient present in the final product;

11 (7) The purpose of the remedy (claim statement);

12 (8) Appropriate cautions and warnings on the use of the remedy;

13 (9) Withdrawal statements, if applicable; and

14 (10) Any other information required by the commissioner in rule.

15 (c) The commissioner is authorized to adopt regulations establishing permitted analytical  
16 variation and providing for reasonable deviation from the products label.

17 (d) All labels and labeling of animal remedies shall be legible and in English.

**§19-14A-9. Adulteration.**

1 An animal remedy is adulterated if:

2 (1) It was prepared or held under unsanitary conditions and as a result it: (i) may have  
3 become contaminated with filth; or (ii) may have been rendered injurious to animal health;

4 (2) Its composition, purity, strength, or quality falls below or differs from what it is purported  
5 or is represented to possess by its labeling;

6 (3) It consists, in whole or in part, of any filthy, putrid, or decomposed substance;

7 (4) It bears or contains any poisonous or deleterious substance that may render it injurious  
8 to health under such conditions of use as are customary or usual; or

9 (5) Its container is composed of any injurious or deleterious substance that may render it  
10 injurious to health.

**§19-14A-10. Misbranding.**

1 An animal remedy shall be deemed to be misbranded:

2 (1) If its label or labeling is false or misleading;

3 (2) If it is not labeled as required by this article;

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

7 (4) If any damage or inferiority has been concealed;

8 (5) If its container is made, formed, or filled so as to be deceptive or misleading as to the  
9 amount of contents;

10 (6) If it is dangerous to the health of animals when used in the dosage or with the frequency  
11 or duration prescribed, recommended, or suggested in the labeling of such remedy; or

12 (7) If any word, statement, or other information appearing on the label does not also  
13 appear on the outside container or wrapper, if present, of the retail package of such article, or is  
14 not easily legible through the outside container or wrapper.

**§19-14A-11. Embargo; condemnation and confiscation; injunctions.**

1 (a) Embargo orders.

2 (1) When the commissioner has reasonable cause to believe any lot of an animal remedy  
3 is being manufactured, distributed, offered for sale, exposed for sale, or used in this state in  
4 violation of the provisions of this article or any rule promulgated hereunder, then he or she may  
5 issue and enforce a written embargo order, warning the custodian of the animal remedy not to  
6 manufacture, distribute, use, remove, or dispose of the animal remedy lot in any manner until the

7 embargo is released by the commissioner or by court order.

8 (2) When the embargo is issued, the commissioner shall affix a tag or other marking to the  
9 animal remedy and/or to the manufacturing device warning that such product or process is under  
10 embargo and notify the custodian that he or she has a right to request an immediate hearing.

11 (3) The commissioner shall release the animal remedy lot so embargoed when said animal  
12 remedy has been brought into compliance with this article and its rules.

13 (4) The commissioner shall have the authority to issue an embargo against a perishable  
14 product, even if the result is the involuntary disposal of the product.

15 (5) The commissioner may take action to seize and condemn any product if not brought  
16 into compliance with this article and the rules issued hereunder, within 90 days of the notice to  
17 the custodian.

18 (b) Condemnation and confiscation.

19 (1) Any animal remedy not in compliance with the provisions of this article or the rules  
20 promulgated hereunder shall be subject to condemnation and confiscation on complaint of the  
21 commissioner to the circuit court of the county in which the animal remedy in question is located.  
22 Jurisdiction is hereby conferred upon the circuit courts to hear and determine such matter.

23 (2) If the court finds that the animal remedy is in violation of the provisions of this article  
24 or its rules and should be confiscated, then the court shall order the condemnation and  
25 confiscation of such animal remedy and its disposition in a manner consistent with the quality of  
26 such animal remedy which is not in violation of any other laws of this state: *Provided*, That the  
27 owner thereof must first be given an opportunity to process or relabel such animal remedy or  
28 dispose of the same in full compliance with the provisions of this article and its rules.

29 (c) Injunctions.

30 (1) Upon application by the commissioner, the circuit court of the county in which the  
31 violation is occurring, has occurred, or is about to occur, may grant a temporary or permanent  
32 injunction restraining any person from violating or continuing to violate any of the provisions of

33 this article or any rule promulgated hereunder.

34 (2) An injunction shall be issued without bond.

**§19-14A-12. Confidentiality of trade secrets.**

1 The commissioner may not make public any information which contains or relates to trade  
 2 secrets, acquired under the authority of this article, concerning any methods, formulas, processes,  
 3 sales, or distribution information: *Provided*, That the commissioner may exchange information of  
 4 a regulatory nature with duly appointed officials of the United States Government, other states, or  
 5 other foreign governments who are similarly prohibited by law from revealing this information.

**§19-14A-13. Prohibited acts.**

1 It shall be unlawful to:

2 (1) Manufacture or distribute any animal remedy that is adulterated or misbranded.

3 (2) Adulterate or misbrand any animal remedy.

4 (3) Distribute, use, remove, or dispose of an animal remedy in violation of an embargo  
 5 order, or condemnation and confiscation order provided for under this article.

6 (4) Fail or refuse to register animal remedy products.

7 (5) Use or imply the name West Virginia Department of Agriculture or reference any  
 8 inspection or sample findings made by the West Virginia Department of Agriculture on labels or  
 9 labeling of animal remedy products.

10 (6) Interfere with the commissioner's official duties.

11 (7) Disseminate any advertisement that is false or misleading; or

12 (8) Manufacture, distribute, or use any animal remedy containing a drug or drugs that  
 13 cause or may cause residue of the drug or drugs in the edible tissues, milk, or eggs of the animals  
 14 given such products in excess of the acceptable residue levels set by the commissioner by rules.

**§19-14A-14. Penalties.**

1 (a) Criminal penalties. Any person violating any of the provisions of this article is guilty of  
 2 a misdemeanor and, upon conviction thereof, shall be fined not less than \$100 nor more than

3 \$500 for the first offense, and for each subsequent offense, shall be fined not less than \$500 nor  
4 more than \$1,000, or imprisoned in the county jail not more than six months, or both fined and  
5 imprisoned. Magistrates have concurrent jurisdiction with circuit courts to enforce the provisions  
6 of this article.

7 (b) Civil penalties.

8 (1) Any person violating any of the provisions of this article or the rules adopted hereunder  
9 may be assessed a civil penalty by the commissioner. In determining the amount of any civil  
10 penalty, the commissioner shall give due consideration to the history of previous violations of any  
11 person; the seriousness of the violation, including any irreparable harm to the environment, any  
12 hazards to the health and safety of the public and to the animals using or intended to use the  
13 animal remedy; and the demonstrated good faith of any person charged in attempting to achieve  
14 compliance with this article after written notification of the violation.

15 (2) The commissioner may assess a penalty of not more than \$500 for the first offense or  
16 nonserious violation, as determined by the commissioner in accordance with the rules  
17 promulgated in accordance with the provisions of §29A-3-1 et seq. of this code, and not more  
18 than \$1,000 for a serious, repeat, or intentional violation, as determined by the commissioner in  
19 accordance with such promulgated rules.

20 (3) The civil penalty is payable to the State of West Virginia and is collectible in any manner  
21 now or hereafter provided for collection of a debt. Any person liable to pay the civil penalty and  
22 neglecting or refusing to pay the same, shall be assessed interest at 10 percent from the date the  
23 penalty was assessed. Such penalty and interest constitute a lien in favor of the State of West  
24 Virginia and shall attach on the person's property when such lien is properly recorded in the county  
25 where such property is located. There shall be no cost as a condition precedent to recording.

26 (c) Notwithstanding any other provision of law to the contrary, the commissioner may  
27 promulgate and adopt rules which permit consent agreements or negotiated settlements for the  
28 civil penalties assessed as a result of a violation of the provisions of this article.

29 (d) It shall be the duty of each prosecuting attorney to whom any violation is reported to  
 30 cause appropriate proceedings to be instituted and prosecuted in a court of competent jurisdiction  
 31 without delay.

32 (e) Nothing in this article shall be construed as to require the commissioner to report minor  
 33 violations of this article when he/she believes that the public interest will be best served by a  
 34 written notice.

35 (f) No state court may allow the recovery of damages for administrative action taken if the  
 36 court finds that there was probable cause for such action.

**§19-14A-15. Deviation.**

1 (a) If the analysis of a sample shows a deviation from permitted analytical variation  
 2 established by the commissioner, the guarantor or other responsible person shall be penalized  
 3 as established by legislative rule.

4 (b) Penalties for multiple deviations within a sample shall be cumulative: *Provided*, That in  
 5 no case shall the penalty exceed the retail value of the product.

6 (c) If any penalty has not been paid within 90 days of notice of such penalty, a late payment  
 7 penalty established by legislative rule will be added to the original penalty.

8 (d) If a product is found to be adulterated, the guarantor or other responsible party shall  
 9 be penalized as established by legislative rules.

**ARTICLE 15. WEST VIRGINIA FERTILIZER LAW.**

**§19-15-11. Publications.**

1 [Repealed.]

**ARTICLE 15A. WEST VIRGINIA AGRICULTURAL LIMING MATERIALS LAW.**

**§19-15A-4. Inspection fee; report of tonnage; annual report.**

1 (a) Each sales invoice prepared in normal course of business by either a registrant or  
 2 distributor shall reflect the amount of the inspection fee and the name of the payor.

3 (b) Within 30 days following June 30 and December 31, of each year, each registrant and  
4 distributor shall submit on a form furnished by the commissioner a summary of tons of each  
5 agricultural liming material sold or distributed by each registrant and distributor in the state during  
6 the previous six months' period. The report of tonnage shall be accompanied by payment of an  
7 inspection fee as established by legislative rule. If the tonnage, or portion thereof, has been paid  
8 by another person, documentation by invoice must accompany such report. The semiannual  
9 payment and late fee shall be established by legislative rule.

10 ~~(c) The commissioner shall publish annually on the Department of Agriculture's website a~~  
11 ~~composite report showing the net tons of agricultural liming material sold in this state during the~~  
12 ~~preceding period. This report may not divulge information that can be related to the business of~~  
13 ~~any individual registrant~~

## **ARTICLE 16. WEST VIRGINIA SEED LAW.**

### **§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 ~~(f)~~ 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)~~(r) Establish fees by legislative rule;

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

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

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

## **ARTICLE 16A. WEST VIRGINIA PESTICIDE CONTROL ACT.**

### **§19-16A-21. Violations.**

1 It is unlawful for any person to manufacture, distribute, sell or offer for sale, use or offer to  
 2 use:

3 (1) Product registration. -- (A) Any pesticide which is not registered pursuant to the  
 4 provisions of this article, or any pesticide if any of the claims made for it or any of the directions  
 5 for its use differ in substance from the representation made in connection with its registration, or  
 6 if the composition of a pesticide differs from its composition as represented in connection with its  
 7 registration, in the discretion of the commissioner, a change in the labeling or formula of a  
 8 pesticide may be made, within a registration period, without requiring registration of the product,  
 9 however, changes are not permissible if they lower the efficiency of the product.

10 (B) Any pesticide sold, offered for sale or offered for use which is not in the registrant's or  
 11 the manufacturer's unbroken container and to which there is not affixed a label, visible to the  
 12 public, bearing the following information:

13 (i) The name and address of the manufacturer, registrant or person for whom

14 manufactured;

15 (ii) The name, brand or trademark under which the pesticide is sold; and

16 (iii) The net weight or measure of the content, subject to such reasonable variation as the  
17 commissioner may permit.

18 (C) Any pesticide which contains any substance or substances in quantities highly toxic to  
19 ~~man~~ humans, unless the label bears, in addition to any other matter required by this article:

20 (i) A skull and crossbones;

21 (ii) The word "poison" prominently in red, on a background of distinctly contrasting color;

22 and

23 (iii) A statement of an antidote for the pesticide.

24 (D) The pesticides commonly known as lead arSenate, basic lead arSenate, calcium  
25 arSenate, magnesium arSenate, zinc arSenate, sodium fluoride, sodium fluosilicate and barium  
26 fluosilicate unless they have been distinctly colored or discolored as provided by rules issued in  
27 accordance with this article, or any other white powder pesticide which the commissioner, after  
28 investigation of and after public hearing on the necessity for such action for the protection of the  
29 public health and the feasibility of coloration or discoloration, by rules, requires to be distinctly  
30 colored or discolored, unless it has been so colored or discolored. The commissioner may exempt  
31 any pesticide to the extent that it is intended for a particular use or uses from the coloring or  
32 discoloring required or authorized by this subsection if he or she determines that such coloring or  
33 discoloring for such use or uses is not necessary for the protection of the public health.

34 (E) Any pesticide which is adulterated or misbranded, or any device which is misbranded.

35 (F) Any pesticide that is subject of a stop sale, use or removal order provided for  
36 hereinafter in this article until such time as the provisions of that section hereafter have been met.

37 (2) Business/applicator violations. -- In addition to imposing civil penalties or referring  
38 certain violations for criminal prosecution the commissioner may, after providing an opportunity  
39 for a hearing, deny, suspend, modify or revoke a license issued under this article, if he or she

40 finds that the applicant, or licensee or his or her employee has committed any of the following  
41 acts, each of which is declared to be a violation:

42 (A) Made false or fraudulent claims through any media, misrepresenting the effect of  
43 materials or methods to be utilized or sold;

44 (B) Used or caused to be used any pesticide in a manner inconsistent with its labeling or  
45 rules of the commissioner: *Provided*, That such deviation may include provisions set forth in  
46 section 2(ee) of the federal insecticide, fungicide and rodenticide act (7 U.S.C. §136 et seq.), as  
47 the same is in effect on the effective date of this article, disposed of containers or unused portions  
48 of pesticide inconsistent with label directions or the rules of the commissioner in the absence of  
49 label directions if those rules further restrict such disposal;

50 (C) Acted in a manner to exhibit negligence, incompetence or misconduct in acting as a  
51 pesticide business;

52 (D) Made false or fraudulent records, invoices or reports;

53 (E) Failed or refused to submit records required by the commissioner;

54 (F) Used fraud or misrepresentation, or presented false information in making application  
55 for a license or renewal of a license, or in selling or offering to sell pesticides;

56 (G) Stored or disposed of containers or pesticides by means other than those prescribed  
57 on the label or adopted rules;

58 (H) Provided or made available any restricted use pesticide to any person not certified  
59 under the provisions of this article or rules issued hereunder;

60 (I) Made application of any pesticide in a negligent manner;

61 (J) Neglected or, after notice, refused to comply with the provisions of this article, the rules  
62 adopted hereunder or of any lawful order of the commissioner;

63 (K) Refused or neglected to keep and maintain records or reports required under the  
64 provisions of this article or required pursuant to rules adopted under the provisions of this article  
65 or refused to furnish or permit access for copying by the commissioner any such records or

66 reports;

67 (L) Used or caused to be used any pesticide classified for restricted use on any property  
68 unless by or under the direct supervision of a certified applicator;

69 (M) Made false or misleading statements during or after an inspection concerning any  
70 infestation of pests found on land;

71 (N) Refused or neglected to comply with any limitations or restrictions on or in a duly  
72 issued certification;

73 (O) Aided, abetted or conspired with any person to violate the provisions of this article, or  
74 permitted one's certification or registration to be used by another person;

75 (P) Impersonated any federal, state, county or city inspector or official;

76 (Q) Made any statement, declaration or representation through any media implying that  
77 any person certified or registered under the provisions of this article is recommended or endorsed  
78 by any agency of this state;

79 (R) Disposed of containers or unused portions of pesticide inconsistent with label  
80 directions or the rules of the commissioner in the absence of label directions if those rules further  
81 restrict such disposal;

82 (S) Detach, alter, deface or destroy, in whole or in part, any label or labeling provided for  
83 in this article or the rules promulgated under the provisions of this article; ~~or~~

84 (T) Refuse, upon a request in writing specifying the nature or kind of pesticide or device  
85 to which such request relates, to furnish to or permit any person designated by the commissioner  
86 to have access to and to copy such records of business transactions as may be essential in  
87 carrying out the purposes of this article; or

88 (U) Violated or been convicted of or is subject to a final order assessing a penalty pursuant  
89 to §14(a) or (b) of the Federal Insecticide, Fungicide and Rodenticide Act (7 U.S.C. §136 et seq.).

## **ARTICLE 20C. WEST VIRGINIA SPAY NEUTER ASSISTANCE PROGRAM.**

### **§19-20C-3. Rulemaking; annual report.**

1 (a) The commissioner shall propose rules for legislative approval in accordance with §29A-  
2 3-1 *et seq.* of this code, to implement the provisions of this article.

3 (b) Rules promulgated under this section shall, at a minimum:

4 (1) Identify the types of nonprofit organizations and programs that qualify for spay neuter  
5 grants;

6 (2) Establish parameters for spay neuter grants;

7 (3) Establish procedures and requirements for grant applications; and

8 (4) Establish administration, record-keeping and reporting requirements for nonprofit  
9 organizations and programs that receive spay neuter grants.

10 ~~(c) Beginning the year following the program's inception, the commissioner shall file an~~  
11 ~~annual report with the Joint Committee on Government and Finance regarding the program, funds~~  
12 ~~received and grants awarded, the number of dogs and cats sterilized and other pertinent data~~

## **ARTICLE 36. AGRITOURISM RESPONSIBILITY ACT.**

### **§19-36-2. Definitions.**

1 Unless the context of usage clearly requires otherwise:

2 “Agritourism” activity means any lawful activity carried out on a farm or ranch that allows  
3 members of the general public for recreational, entertainment, or educational purposes to view or  
4 enjoy rural activities. For purposes of this article and this code, agritourism is considered  
5 agriculture.

6 “Agritourism business” means any person, fiduciary, firm, association, partnership, limited  
7 liability company, corporation, unit of government, or any other group or entity which is engaged  
8 in the business of providing one or more agritourism activities, whether or not for compensation.

9 “Agritourism professional” means owners, operators, employees, and volunteers working  
10 for or under the direction of the operators of an agritourism business.

11 “Farm” or “ranch” means an area of land used for the production, cultivation, growing,  
12 harvesting, or processing of agricultural products.

13           “Inherent risks of agritourism activity” are those dangers or conditions that are part of an  
14 agritourism activity including certain hazards, natural conditions of land and terrain, vegetation,  
15 and waters, the behavior of wild or domestic animals, and ordinary dangers of structures or  
16 equipment ordinarily used in farming and ranching operations. Inherent risks of agritourism activity  
17 also include the potential of a participant to act in a negligent manner that may contribute to injury  
18 to the participant or others, including failing to follow instructions given by the agritourism  
19 professional or failing to exercise reasonable caution while engaging in the agritourism activity.

20           “Participant” as used in this article means any person, other than the agritourism  
21 professional, who engages in an agritourism activity.

**§19-36-5. Maintenance of property status for certain purposes; exceptions.**

1           (a) Notwithstanding any provision of this code to the contrary, the occurrence of  
2 agritourism does not change the nature or use of property that otherwise qualifies as agricultural  
3 for building code, zoning, and or property tax classification purposes.

4           (b) An agritourism business may use certain of its facilities for occasional events without  
5 complying with building and fire codes applicable to structures used for such purposes on a full-  
6 time basis as long as such facilities are deemed structurally sound and otherwise safe for the  
7 intended use.

NOTE: The purpose of this bill is to enact the WV Farm bill of 2022; provide additional powers to the commissioner, including increased powers to collect debts and interest owed the department; modify reporting requirements; establish the West Virginia Animal Remedy law, and clarify definition of agritourism.

This bill was recommended for passage during the 2022 Regular Session by the Agriculture and Rural Development Interim Committee.

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