

# **WEST VIRGINIA LEGISLATURE**

**2022 REGULAR SESSION**

**ENROLLED**

**Committee Substitute**

**for**

**Senate Bill 424**

BY SENATORS SYPOLT, BALDWIN, KARNES, PHILLIPS,

SMITH, WOODRUM, HAMILTON, MARTIN, LINDSAY,

JEFFRIES, ROMANO, CLEMENTS, MARONEY, AND RUCKER

[Passed March 12, 2022; in effect 90 days from passage]



1 AN ACT 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 one new section, designated  
4 §19-1-13; to amend and reenact §19-9-7a of said code; to amend and reenact §19-12E-  
5 4 and §19-12E-5 of said code; to amend and reenact §19-15A-4 of said code; to amend  
6 and reenact §19-16-6 of said code; to amend and reenact §19-16A-21 of said code; to  
7 amend and reenact §19-20C-3 of said code; to amend and reenact §19-36-5 of said code,  
8 all relating generally to the 2022 Farm Bill; increasing the West Virginia Farm-to-Food  
9 bank tax credit; allowing for retroactive application of the tax credit; allowing the  
10 Commissioner of Agriculture to accept certain funds and property from federal agencies,  
11 individuals, and certain businesses; repealing requirement for Social Security numbers on  
12 applications; removing requirement that commissioner file annual report on rural  
13 rehabilitation loan program with Joint Committee; requiring commissioner to file annual  
14 report detailing department activities with President of the Senate, Speaker of the House,  
15 and Joint Committee on Government and Finance and sending copy to archives and  
16 history; requiring license from state to produce industrial hemp; changing the National  
17 Animal Identification System to the Animal Disease Traceability Program; requiring license  
18 from state to produce industrial hemp; allowing commissioner to recognize hemp license  
19 issued by the USDA; repealing publication requirement for fertilizer law; removing  
20 requirement that commissioner publish annual report on the liming material law; removing  
21 requirement that commissioner publish and distribute annual report on the law; allowing  
22 commissioner to deny, suspend, modify, or revoke license or application for license for  
23 violation, conviction, or penalty assessment under a certain federal act; removing  
24 requirement that commissioner file annual spay and neuter report; providing that  
25 agritourism on land classified as agricultural does not change use of land for zoning

26 purposes; providing that agritourism business may use certain facilities for certain events  
27 without complying with fire codes.

*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 \$5,000 during a taxable year or the total amount of tax  
6 imposed by §11-21-1 *et seq.* or §11-24-1 *et seq.* of this code, whichever is less, in the year of  
7 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 regular session of the Legislature, 2022, 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 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, the United States Environmental Protection Agency, any other  
6 agency of the United States government, or any of their divisions or bureaus, and he or she shall  
7 have authority to use, utilize, develop, or expend such money, services, material, or other  
8 contributions in conformity with the conditions and provisions set forth in such grants,  
9 appropriations, or donations.

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

14           The commissioner is hereby empowered, and he or she shall have authority to enter into  
15 agreements with any department of state government for the purpose of carrying out any  
16 regulatory laws where or when any related functions or duties exist. He or she shall also have  
17 authority to enter into agreements with any city council or county commission of the State of West  
18 Virginia, for carrying out the provisions of the agricultural laws over which he or she has  
19 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 Department 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 not be required to utilize the services of the state agency for  
21 surplus property for the disposition of items purchased by participants in the loan program and  
22 subsequently repossessed by the committee to be sold in order to satisfy the balance of an  
23 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  
2 President of the State Senate, the Speaker of the House, and the Joint Committee on Government  
3 and Finance detailing the activities of the department, including all boards and commissions under  
4 the commissioner's authority, during the preceding fiscal year. The report shall include all  
5 donations, gifts, contributions, grants, and appropriations of money, services, materials, real

6 estate, or other things of value accepted and received by the department. A copy of the  
7 commissioner's annual report shall also be provided to the Division of Archives and History to be  
8 kept as a permanent record of the state.

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

**§19-9-7a. Animal disease traceability; rulemaking; exemption.**

1 West Virginia shall be a participating state in the United States Department of Agriculture's  
2 Animal Disease Traceability program. The commissioner may propose rules for legislative  
3 approval in accordance with the provisions of §29A-3-1 *et seq.* of this code governing the  
4 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 Animal Disease Traceability program are specifically exempt from  
7 disclosure under the provisions of §29B-1-1 *et seq.* of this 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 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 to produce  
5 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 State Police or its assigned agent for forwarding to the Federal  
10 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 State Police, and the Federal Bureau of Investigation to use  
15 all records submitted and produced for the purpose of screening the applicant for a license.

16 (2) The results of the state and national criminal history record check may not be released  
17 to or by a private entity except:

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

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

21 (C) Pursuant to a court order.

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

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

26 (d) If the applicant has completed the application process to the satisfaction of the  
27 commissioner, the commissioner shall issue the license, which is valid until December 31 of the  
28 year of application: *Provided*, That an individual applying to renew a current license may continue



29 to operate under an existing license, as long as his or her completed renewal application has  
30 been submitted to the department on or before the deadline established by the department.

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

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

38 (g) Sale of industrial hemp products —

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

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

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

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

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

52 (6) Notwithstanding any other provision of this code to the contrary, derivatives of hemp,  
53 including hemp-derived cannabidiol, may be added to cosmetics, personal care products, and

54 products intended for animal or human consumption, and the addition is not considered an  
55 adulteration of the products.

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

**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.

**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) Cooperate with and enter into agreements with governmental agencies of this state  
38 and other states, agencies of the federal government and foreign governments, and private  
39 associations in order to carry out the purpose and provisions of this article;

40 (r) Establish fees by legislative rule;

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

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

43 (u) Inspect and approve seed conditioning facilities in the state, issue permits, and  
44 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 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.),  
47 as the same is in effect on the effective date of this article, disposed of containers or unused  
48 portions of pesticide inconsistent with label directions or the rules of the commissioner in the  
49 absence of 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;

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 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, recordkeeping, and reporting requirements for nonprofit  
9 organizations and programs that receive spay neuter grants.

**ARTICLE 36. AGRITOURISM RESPONSIBILITY ACT.**

**§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, 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 if such facilities are deemed structurally sound and otherwise safe for the intended use.



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

.....  
*Chairman, Senate Committee*

.....  
*Chairman, House Committee*

Originated in the Senate.

In effect 90 days from passage.

.....  
*Clerk of the Senate*

.....  
*Clerk of the House of Delegates*

.....  
*President of the Senate*

.....  
*Speaker of the House of Delegates*

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The within ..... this the.....  
Day of ....., 2022.

.....  
*Governor*