

WEST VIRGINIA LEGISLATURE

2021 REGULAR SESSION

Committee Substitute

for

House Bill 2633

BY DELEGATES J. PACK, COOPER, SUMMERS, STEELE,
HANNA, GRAVES, PHILLIPS, BARNHART, ROHRBACH, G.
WARD, AND TULLY

[Originating in the Committee on Government Organization; March 15, 2021]

1 A BILL to amend and reenact §19-1-2, §19-1-3a, and §19-1-7 of the Code of West Virginia, 1931,
2 as amended; to amend and reenact §19-1C-2, §19-1C-3, and §19-1C-4 of said code; to
3 amend said code by adding thereto a new section, designated §19-1C-7; to amend and
4 reenact §19-9A-2 of said code; to amend and reenact §19-12A-5 of said code; to amend
5 and reenact §19-14-1, §19-14-2, §19-14-3, §19-14-5, §19-14-6, §19-14-7, §19-14-8, §19-
6 14-9, §19-14-10, §19-14-11, §19-14-12, and §19-14-14 of said code; to amend said code
7 by adding thereto a new section, designated §19-14-16; to amend and reenact §19-21A-
8 1, §19-21A-3, §19-21A-4, and §19-21A-8 of said code; to amend and reenact §19-25-1,
9 §19-25-2, and §19-25-5 of said code; to amend and reenact §19-31-1 of said code; to
10 amend and reenact §19-35-1, §19-35-2, §19-35-3, §19-35-4, §19-35-5, and §19-35-6 of
11 said code; to amend said code by adding thereto two new sections, designated §19-35-
12 3a and §19-35-3b; to amend and reenact §19-37-2 of said code; and to amend said code
13 by adding thereto a new article, designated §19-38-1, §19-38-2, §19-38-3, §19-38-4, and
14 §19-38-5, all relating to the 2021 Farm Bill; eliminating the requirement that the
15 commissioner must be a farmer; eliminating requirement that certain duties of the
16 department rest in a particular division; classifying materials received by the department
17 in furtherance of its economic development duties and for the purpose of furnishing
18 assistance to a new or existing business as confidential and exempt from disclosure under
19 the Freedom of Information Act; clarifying role of department in economic development;
20 clarifying that raw milk can be sold for purposes other than human consumption; defining
21 terms related to the care of livestock; providing that commissioner of agriculture appoint
22 members of Livestock Care Standards Board; directing commissioner to select members
23 for board; modifying membership of board; granting commissioner authority to promulgate
24 certain legislative rules in consultation with board; classifying complaints and related
25 communications regarding inhumane treatment of livestock as confidential and exempt
26 from disclosure under the Freedom of Information Act; directing board to review proposed
27 rules on livestock care standards and provide recommendation to legislative rule-making

28 review committee; directing commissioner of agriculture to administer and enforce
29 established standards; defining scope of said administration and enforcement authority;
30 authorizing commissioner to provide opinions to law-enforcement officers about
31 application of livestock care standards; directing law-enforcement officers to notify
32 commissioner of certain complaints and investigations; authorizing law-enforcement
33 officers to seek advice of commissioner concerning application of livestock care
34 standards; requiring commissioner to notify law-enforcement officers of changes made
35 during 2021 Regular Legislative session; eliminating fee for permit to feed untreated
36 garbage to swine; removing outdated language regarding procedures for leasing of
37 farmland; authorizing the cancellation of certain leases; amending name of West Virginia
38 Commercial Feed Law; defining and amending terms related to commercial feed;
39 modifying powers and duties of commissioner; eliminating requirement to publish annual
40 composite report; eliminating specific fee amounts in statute; modifying application
41 deadlines, timelines and permit expiration dates; setting forth requirements for individuals
42 to possess Commercial Feed Manufacturing Permit, Commercial Feed Distributor Permit,
43 and Commercial Feed Guarantor Permit; eliminating requirement to register commercial
44 feed products; establishing registration requirements for pet food and specialty pet food;
45 requiring new application for registration in certain circumstances; identifying situations in
46 which commissioner may refuse to grant, suspend, or revoke permits or registrations;
47 providing opportunities and procedures for applicants, permittees or registrants to amend
48 application and appeal adverse determinations; providing for review of commissioner's
49 decisions; establishing labeling requirements; modifying requirements for tonnage reports
50 and inspection fees; authorizing commissioner to inspect certain tonnage records; defining
51 adulteration of commercial feed or feed ingredients; defining misbranding of commercial
52 feed; make technical modifications; defining additional prohibited acts; establishing
53 requirements for distribution of raw milk as commercial feed; authorizing establishment of
54 analytical variation regulations; authorizing penalties for excessive deviations; providing

55 for penalties to be returned to purchasers where possible; authorizing late payment
56 penalties; expanding scope of authority for West Virginia Conservation Agency and State
57 Conservation Committee to address water quality issues; modifying legislative
58 determinations; defining terms related to conservation; expanding duties and powers of
59 State Conservation Committee; eliminating outdated language; expanding scope of
60 authority for conservation districts; limiting liability of landowner who invites or permits
61 persons to enter for agricultural purposes; defining agricultural purposes; clarifying
62 ownership of Guthrie Center; stating legislative findings and purpose related to farmers
63 markets and cottage foods; defining terms related to farmers markets and cottage foods;
64 eliminating certain definitions; establishing requirements for farmers market registration;
65 providing that registration be conspicuously displayed; clarifying that certain farmers
66 markets are not required to obtain food establishment permit; providing for department to
67 establish sampling regulations; authorizing penalties against non-compliant farmers
68 markets; requiring farmers market vendors to obtain vendor permit from department;
69 providing that farmers market vendor permit is valid in all counties; establishing
70 requirements for farmers market vendor permits; clarifying that farmers market vendors
71 are not required to obtain food establishment permit; exempting certain vendors from
72 obtaining vendor permit; directing department to establish conditions and procedures for
73 issuance of vendor permits; authorizing inspections and additional license or certifications
74 as condition of issuing vendor permits; requiring vendor permits be displayed in a
75 conspicuous manner; authorizing penalties against non-compliant farmers market
76 vendors; clarifying role of local health departments in farmers markets; prohibiting local
77 health department from requiring food establishment permits for farmers markets or
78 vendors except for consignment farmers markets; authorizing certain actions by local
79 health departments at farmers markets; requiring all actions by local health departments
80 at farmers markets to be done in consultation with department of agriculture; directing
81 department to promulgate rules; eliminating certain requirements for promulgation of

82 legislative rules; establishing requirements for regulation of potentially hazardous foods;
83 requiring vendors of potentially hazardous foods to obtain vendor permit; directing
84 department to establish requirements for obtaining vendor permits; eliminating certain
85 labeling requirements; establishing requirements for sale of nonpotentially hazardous
86 foods; expanding permissible kitchens for nonpotentially hazardous foods; expanding
87 West Virginia Fresh Food Act to include milk and other dairy products, expanding West
88 Virginia Fresh Food Act to include other foods grown, produced, or processed by in-state
89 producers; directing commissioner to establish criteria for food or food products to satisfy
90 in-state requirement; directing commissioner to establish criteria for determining when
91 exception or exemption should be granted to state institutions; requiring contracting entity
92 to ensure that all contracts related to the purchase of food include provisions to ensure
93 compliance with Fresh Food Act; establishing Agriculture Investment Program; setting
94 forth legislative findings and purpose; defining terms related to the Agriculture Investment
95 Fund; establishing fund in State Treasury; defining source of funds and permissible
96 expenditures from fund; authorizing West Virginia Agriculture Investment Program;
97 providing for program administration; authorizing either grants or loans from the fund;
98 establishing certain criteria for awarding grants or loans; authorizing commissioner to
99 establish committee to assist in program administration; and directing commissioner to
100 propose legislative rules for program.

Be it enacted by the Legislature of West Virginia:

ARTICLE 1. DEPARTMENT OF AGRICULTURE.

§19-1-2. Commissioner of agriculture.

1 The commissioner of agriculture shall be elected by the qualified voters of the state at the
2 same time and in the same manner as other state officers are elected, and shall hold office for a
3 term of four years and until his or her successor is elected and qualified.

4 ~~The commissioner shall be a practical farmer, learned in the science of agriculture, and~~
5 ~~shall have made agriculture his chief business for a period of ten years immediately preceding his~~
6 ~~election.~~

§19-1-3a. Marketing and Development Division; economic development duties.

1 ~~(a) The duties of the Marketing and Development Division are to~~ department shall
2 establish marketing, promotional, and economic development programs to advance West Virginia
3 agriculture in the domestic and international markets; ~~to~~ provide grading, inspection, and market
4 news services to the various elements of the West Virginia agricultural industry; and ~~to~~ regulate
5 and license individuals involved in the marketing of agricultural products.

6 (b) Any documentary material, data, or other writing made or received by the department
7 in furtherance of its economic development duties and for the purpose of furnishing assistance to
8 a new or existing business shall be exempt from the provisions of §29B-1-1 et seq. of this code.

§19-1-7. Shared animal ownership agreement to consume raw milk.

1 (a) Notwithstanding any other provision of the law to the contrary, a responsible party may
2 enter into a written shared animal ownership agreement to consume raw milk in which he or she:

3 (1) Acquires a percentage ownership interest in a milk-producing animal;

4 (2) Agrees to pay another for the percentage ownership interest for the care and boarding
5 of the milk-producing animal at the dairy farm;

6 (3) Is entitled to receive a fair share of the animal's raw milk production as a condition of
7 the contractual agreement;

8 (4) Agrees to sign a written document acknowledging the inherent dangers of consuming
9 raw milk that may contain bacteria, such as Brucella, Campylobacter, Listeria, Salmonella, and
10 E. Coli, that has not been pasteurized to remove bacteria and that is particularly dangerous to
11 children, pregnant women, and those with compromised immunity. The responsible party then
12 agrees to release the herd seller of liability for the inherent dangers of consuming raw milk but
13 not for those dangers that are caused by negligent acts or omissions of the herd seller; and

14 (5) Agrees not to distribute raw milk. The sale or resale of raw milk obtained from a herd
15 share is strictly prohibited.

16 (b) The signed and executed shared animal ownership agreement shall be filed by the
17 herd seller with the Commissioner of Agriculture and shall contain the names, addresses, and
18 phone numbers of the herd seller and the responsible party so that either party may be contacted
19 in the event of an illness.

20 (c) The herd seller shall meet the animal health requirements for milk-producing animals
21 established by the state veterinarian in accordance with state and national standards including
22 the following:

23 (1) Raw milk from milk-producing animals intended for consumption shall be from a herd
24 that tested negative within the previous 12 months for brucellosis, tuberculosis, and other
25 diseases as required by the state veterinarian. Additions to the herd shall test negative for the
26 diseases within the previous 30 days before introduction into the herd; and

27 (2) Milk-producing animals producing bloody, stringy, or abnormal milk, but with only slight
28 inflammation of the udder, shall be excluded from the milking herd until reexamination shows that
29 the milk has become normal. Milk-producing animals showing chronic mastitis, whether producing
30 abnormal milk or not, shall be permanently excluded from the milking herd.

31 (d) Parties to a shared animal ownership agreement and physicians who become aware
32 of an illness directly related to consuming raw milk shall report the illness to the local health
33 department and the Commissioner of Agriculture. Upon receipt of such a report, the
34 Commissioner of Agriculture or his or her designee shall contact and warn other parties
35 consuming raw milk from the same herd seller.

36 (e) The Commissioner of Agriculture may impose an administrative penalty not to exceed
37 \$100 for a person who violates the provisions of this section. Any penalty imposed under this
38 subsection may be contested by the person against whom it is imposed pursuant to §29A-5-1 *et*
39 *seq.* of this code.

40 (f) The Commissioner of Agriculture, in consultation with the Department of Health and
41 Human Resources, may propose rules for promulgation in accordance with the provisions of
42 §29A-3-1 *et seq.* of this code in compliance with raw milk dairy industry standards.

43 (g) Notwithstanding any provision of code to the contrary, raw milk may be sold without
44 the parties entering into a written shared animal ownership agreement if the raw milk is to be
45 used:

46 (1) As an ingredient in the preparation or making of a nonedible product, such as a soap
47 or lotion; or

48 (2) As feed for another animal: *Provided*, That the sale of raw milk to be used as animal
49 feed is subject to the provisions of §19-14-1 *et seq.* of this code.

ARTICLE 1C. CARE OF LIVESTOCK.

§19-1C-2. Definitions.

1 For the purposes of this article:

2 (1) "Board" means the Livestock Care Standards Board.

3 (2) "Commissioner" means the Commissioner of Agriculture.

4 (3) "Department" means the West Virginia Department of Agriculture.

5 (4) "Livestock" has the same definition as set out in §19-10B-2(d) of this code.

§19-1C-3. Livestock Care Standards Board.

1 (a) On July 1, 2010, there is hereby created the Livestock Care Standards Board.

2 ~~(b) Prior to July 1, 2010, the Governor shall appoint, by and with the advice and consent~~
3 ~~of the Senate, the following eleven members:~~

4 ~~(1) One member who is a veterinarian licensed in this state engaging in large animal~~
5 ~~practice, for a term of two years;~~

6 ~~(2) The dean of the agriculture department of a college or university located in this state,~~
7 ~~for a term of three years;~~

8 ~~(3) One member representing a county humane society that is organized under state law,~~
9 ~~for a term of four years;~~

10 ~~(4) One member who is knowledgeable about food safety in this state, for a term of five~~
11 ~~years;~~

12 ~~(5) Two members of the public representing West Virginia consumers, one for a term of~~
13 ~~two years and one for a term of four years;~~

14 ~~(6) Two members representing state agricultural organizations that represent farmers, one~~
15 ~~of whom must be a member of the largest organization in the state representing farmers for a~~
16 ~~term of three years, and the other must be a member of a statewide livestock organization, for a~~
17 ~~term of five years; and~~

18 ~~(7) Three members representing family farms engaged in animal production, at least two~~
19 ~~of whom are family farmers, for the following terms: one for three years, one for four years and~~
20 ~~one for five years.~~

21 ~~(c) After the initial appointment terms, the appointment term is five years. Appointed~~
22 ~~members may be reappointed for additional terms.~~

23 ~~(d) (b) Commencing July 1, 2010~~ 2021, the board consists of the following 13 members,
24 to be appointed by the commissioner:

25 (1) The Commissioner of the Department of Agriculture or his or her designee, ex officio
26 non-voting, who is the chairperson of the board;

27 (2) ~~The Director of the Animal Health Division~~ State Veterinarian, ex officio non-voting;

28 (3) One member who is a veterinarian licensed in this state engaging in large animal
29 practice;

30 (4) The dean of the agriculture department of a college or university located in this state;

31 (5) One member representing a county humane society that is organized under state law;

32 (6) One member who is knowledgeable about food safety in this state;

33 (7) ~~Two members of the public representing West Virginia consumers~~ who are law-
34 enforcement officers: *Provided*, That one member shall be appointed for an initial term of two
35 years, and the other shall be appointed for an initial term of five years;

36 (8) ~~Two members representing state agricultural organizations that represent farmers, one~~
37 ~~of whom must be a member of the largest organization in the state representing farmers, and the~~
38 ~~other must be a member of a statewide livestock organization; and~~ One member selected from a
39 list of three individuals submitted from the largest statewide poultry organization;

40 (9) One member selected from a list of three individuals submitted by the largest statewide
41 livestock organization; and

42 (10) Three members representing family farms engaged in animal production, at least two
43 of whom are family farmers selected from a list of 10 individuals submitted by the largest
44 organization in the state representing farmers.

45 (c) After the initial appointment terms, the appointment term is five years. Appointed
46 members may be reappointed for additional terms.

47 ~~(e) (d)~~ All members must be residents of this state during their terms. No more than seven
48 members of the board may be of the same political party and no more than five may be from the
49 same congressional district at any given time.

50 ~~(f) (e)~~ All appointed members serve until their successor has been appointed and qualified.
51 Vacancies shall be filled in the same manner as the original appointment for the remainder of the
52 unexpired term.

§19-1C-4. Powers and duties of the board.

1 (a) The board has the following powers and duties to:

2 (1) Establish standards governing the care and well-being of livestock;

3 (2) Maintain food safety;

4 (3) Encourage locally grown and raised food; and

5 (4) Protect West Virginia farms and families.

6 (b) The commissioner, in consultation with the board, is ~~also~~ authorized to establish
7 standards by legislative rule, pursuant to the provisions of §29A-3-1 *et seq.* of this code, governing
8 the care and well-being of livestock in this state, including:

9 (1) The agricultural best management practices for the care and well-being of livestock
10 and poultry in this state;

11 (2) Procedures for addressing complaints regarding the inhumane treatment of livestock
12 and coordinating efforts with county humane officers: Provided, That any such complaints
13 received by the board, the department, or the commissioner, as well as all documents and
14 communication regarding any investigation thereof, are considered confidential and are exempt
15 from disclosure pursuant to §29B-1-1 *et seq.* of this code;

16 (3) Biosecurity, disease prevention, animal morbidity, and mortality data;

17 (4) Food safety practices; and

18 (5) The protection of local, affordable food supplies for consumers.

19 (c) ~~The Department of Agriculture shall administer and enforce the standards established~~
20 ~~by the board that are approved by the Legislature.~~ The board shall review any rule proposed by
21 the commissioner for legislative approval pursuant to this section. After reviewing the proposed
22 legislative rule, the board may provide a recommendation to the Legislative Rule-Making Review
23 Committee that the Legislature:

24 (1) Authorize the promulgation of the legislative rule;

25 (2) Authorize the promulgation of part of the legislative rule;

26 (3) Authorize the promulgation of the legislative rule with certain amendments;

27 (4) Recommend that the proposed rule be withdrawn; or

28 (5) Reject the proposed rule.

§19-1C-6. Meetings of the board.

1 (a) The board shall meet at least annually, and the ~~chairperson~~ commissioner may call
2 additional meetings of the board upon the written request of three members.

3 (b) The commissioner, on behalf of the board, may file an annual report with the Joint
4 Committee on Government and Finance that contains information about the activities of the board
5 and department for the prior year concerning livestock care standards; *Provided*; That after
6 December 31, 2025, no reports filed on behalf the board may be filed with the Joint Committee
7 on Government and Finance.

§19-1C-7. Enforcement of livestock care standards.

1 (a) The commissioner shall administer and enforce the standards established pursuant to
2 this article. This authority may include, but is not limited to:

3 (1) Coordinating with and providing assistance to law-enforcement officers;

4 (2) Assisting law-enforcement officers with investigations and other actions taken in
5 response to complaints regarding the care of livestock;

6 (3) Working with county, municipal, and state authorities to address situations in which a
7 livestock care complaint needs to be reassigned due to a conflict of interest;

8 (4) Providing training for law-enforcement officers on the livestock care standards and
9 proper animal handling techniques; and

10 (5) Providing opinions to law-enforcement officers, when such opinions are requested,
11 regarding the application of livestock care standards promulgated pursuant to this article.

12 (b) State, county, and local law-enforcement officers shall notify the commissioner of all
13 complaints and investigations concerning care of livestock, and may seek the advice and opinion
14 of the commissioner regarding application of the livestock care standards in those cases.

15 (c) No later than September 1, 2021, the commissioner shall notify state, county, and local
16 law-enforcement officers of the changes made to this article of code during the 2021 Regular
17 Legislative Session.

ARTICLE 9A. FEEDING OF UNTREATED GARBAGE TO SWINE.

§19-9A-2. Permit required for feeding garbage to swine; renewal; fee; exception.

1 (a) No person shall feed garbage to swine without first securing a permit to do so from the
2 commissioner. Such permits shall be renewed annually. ~~The fee for obtaining such permit shall~~
3 ~~be \$5.~~

4 (b) This article shall not apply to any person who feeds only his own household garbage
5 to swine which are raised for such person's own use.

ARTICLE 12A. LAND DIVISION.

§19-12A-5. Powers, duties, and responsibilities of commissioner.

1 (a) The commissioner shall manage all institutional farms, equipment, and other property
2 ~~in order~~ to most efficiently produce food products for state institutions, support the department
3 and its activities, advance the agricultural interests of the state, as identified by the commissioner,
4 and otherwise implement the intent of the Legislature as set forth by this article. From the total
5 amount of food, milk, and other commodities produced on institutional farms, the commissioner
6 shall sell, at prevailing wholesale prices, and each of the institutions under the control of the
7 Department of Health and Human Resources and Division of Corrections and Rehabilitation shall
8 purchase, these products based on the dietary needs of each institution: *Provided*, That if the
9 commissioner cannot sell sufficient food products to each institution to meet the demand created,
10 each institution may purchase such food products from vendors who can supply those food
11 products at the greatest savings to the taxpayers of the state.

12 (b) If requested by the Commissioner of the Division of Corrections and Rehabilitation, the
13 commissioner may authorize the Division of Corrections and Rehabilitation to operate a farm or
14 other enterprise using inmates as labor on those lands. The Commissioner of the Division of
15 Corrections and Rehabilitation is responsible for the selection, direction, and supervision of the
16 inmates and shall, in consultation with the Commissioner of Agriculture, assign the work to be
17 performed by inmates. The Commissioner of Agriculture may also request inmate labor to perform

18 work on the institutional farms, and if requested, the Commissioner of the Division of Corrections
19 and Rehabilitation shall provide inmate labor, if available.

20 (c) The commissioner is hereby authorized and empowered to:

21 (1) Lease to public or private parties, for purposes including agricultural production or
22 experimentation, public necessity, or other purposes, any land, easements, equipment, or other
23 property, except that property may not be leased for any use in any manner that would render the
24 land toxic for agricultural use, nor may toxic or hazardous materials as identified by the
25 Commissioner of Agriculture be used or stored upon such property unless all applicable state and
26 federal permits necessary are obtained. ~~Any lease for an annual consideration of \$1,000 or more
27 shall be by sealed bid auction and the commission shall give notice of such auction by publication
28 thereof as a Class II-0 legal advertisement in compliance with the provisions of §59-3-1 et seq. of
29 this code, and the publication area for such publication is the county in which the property to be
30 leased is located;~~

31 (2) Transfer to the public land corporation land designated in its management plan as land
32 to be disposed of, which land shall be sold, exchanged, or otherwise transferred pursuant to §5A-
33 11-4 and §5A-11-5 of this code;

34 (3) Develop lands to which it has title for the public use including forestation, recreation,
35 wildlife, stock grazing, agricultural production, rehabilitation, and/or other conservation activities
36 and may contract or lease for the proper development of timber, oil, gas, or mineral resources,
37 including coal by underground mining or by surface mining where reclamation as required by
38 specifications of the Department of Environmental Protection will increase the beneficial use of
39 such property. ~~Any such contract or lease shall be by sealed bid auction as provided for in
40 subdivision (1) of this subsection; and~~

41 (4) Upon 30 days written notice to the lessee, cancel a lease to which the department is a
42 party and which is for annual consideration of less than \$5 per acre: *Provided*, That such lease
43 must contain a provision authorizing cancellation or impairment by the Legislature; and

44 (4) ~~(5)~~ Exercise all other powers and duties necessary to effectuate the purposes of this
45 article.

46 (d) Notwithstanding the provisions of subsection (c) of this section, no timberland may be
47 leased, sold, exchanged, or otherwise disposed of unless there is no commercially salable timber
48 on the timberland, an inventory is provided, and an appraisal of the timber is provided,~~and the~~
49 ~~sale, lease, exchange, or other disposition is accomplished by the sealed bid auction procedure~~
50 ~~provided above in subdivision (1) or (2), subsection (c) of this section as applicable.~~

51 (e) The commissioner may promulgate, pursuant to §29-1-1 *et seq.* of this code, rules and
52 regulations relating to the powers and duties of the commissioner as enumerated in this section.

ARTICLE 14. WEST VIRGINIA COMMERCIAL FEED LAW.

§19-14-1. Title.

1 This article shall be known as the “West Virginia Commercial Feed Law ~~of 1994.~~”

§19-14-2. Definitions.

1 (a) “Brand name” means any word, name, symbol or device, or any combination thereof,
2 identifying the commercial feed of a distributor, guarantor, or manufacturer and distinguishing it
3 from all others.

4 (b) “Bulk” refers to commercial feed or feed ingredients distributed in nonpackaged form
5 where a label cannot be attached and accompanied by an invoice or delivery slip.

6 (c) “Commercial feed” means all materials or combinations of materials which are
7 distributed, or intended for distribution, for use as feed or for mixing in feed for animals, other than
8 ~~man~~ humans, except: (1) Unmixed or unprocessed whole seeds when such whole or unprocessed
9 seeds are not chemically changed or adulterated; (2) ~~unground~~ unprocessed hay, straw, stover,
10 silage, cobs, husks, hulls, and raw meat when not mixed with other materials and when not
11 adulterated; (3) individual chemical compounds when not mixed with other materials. The term
12 commercial feed shall include the categories of feed ingredients, customer-formula feeds, pet
13 foods and specialty pet foods.

14 (d) "Commissioner" refers to the commissioner of agriculture of the State of West Virginia
15 or a duly authorized employee of the commissioner.

16 (e) "Contract feeder" means a person who, as an independent contractor, feeds
17 commercial feed to animals pursuant to a contract and the commercial feed is supplied, furnished,
18 or provided to the independent contractor and such contractor's remuneration is determined all
19 or in part by feed consumption, mortality, profits, or the amount or quality of the product.

20 (f) "Customer-formula feed" means a commercial feed that consists of a mixture of
21 commercial feed and/or feed ingredients, each batch of which is manufactured according to the
22 specific instructions of the final purchaser.

23 (g) "Distribute" means to offer for sale, sell, ~~expose for sale,~~ exchange, or barter
24 commercial feed; or to supply, furnish, or provide commercial feed to a contract feeder.

25 (h) "Distributor" means any person who ~~sells, exposes for sale, offers for sale, exchanges,~~
26 ~~barters, gives, parcels out, allots, shares, or dispenses~~ distributes a commercial feed.

27 ~~(i) "Domesticated animal" means any species of animal living and bred in a tame condition.~~

28 ~~(j) (i) "Drug" means any substance intended for use in the diagnosis, cure, mitigation,~~
29 ~~treatment, or prevention of disease in animals, other than man~~ humans; and ~~substances, other~~
30 ~~than nutritive components,~~ any substance intended to affect the structure or any function of the
31 animal body.

32 (j) "Feed" means any material consumed, or intended to be consumed, by animals other
33 than humans, or any element of that material that contributes nutrition, taste, or aroma, or
34 otherwise has a technical effect on the consumed material. The term "feed" includes raw
35 materials, ingredients, and finished product.

36 (k) "Feed ingredient" means each constituent material making up ~~commercial~~ feed,
37 including individual chemical compounds labeled for use as a feed ingredient.

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

40 ~~(l)~~ (m) “Label” means a display of written, printed, or graphic matter printed upon or
41 otherwise affixed to the container in which commercial feed is distributed; or printed upon or
42 otherwise affixed to the invoice, delivery slip, or other shipping document which accompanies bulk
43 shipments of commercial feed or customer-formula feed. All such labels shall be legible and in
44 English.

45 ~~(m)~~ (n) “Labeling” means and includes all labels as well as all other written, printed, or
46 graphic matter, ~~or advertising referencing such commercial feed~~ found: (1) upon a commercial
47 feed or any of its containers or wrappers, or (2) accompanying such commercial feed.

48 ~~(n)~~ (o) “Manufacture” means to grind, mix, blend, package, pack, repackage, repack, or
49 otherwise process a commercial feed for distribution.

50 ~~(o)~~ (p) “Medicated feed” means any ~~commercial~~ feed which contains one or more drugs.
51 Antibiotics included in a feed growth promotion and/or efficiency level are drug additives and feeds
52 containing such antibiotics are included in the definition of “medicated feed”.

53 ~~(p)~~ (q) “Mineral feed” means a commercial feed designed or intended to supply primarily
54 mineral elements or inorganic nutrients.

55 ~~(q)~~ (r) “Official sample” means any sample of ~~commercial~~ feed taken by the commissioner
56 in accordance with the provisions of this article and rules promulgated hereunder.

57 ~~(r)~~ (s) “Percent” or “percentage” means percentage by weights.

58 ~~(s)~~ (t) “Person” means an individual, partnership, association, fiduciary, firm, company,
59 corporation, or any organized group of persons whether incorporated or not.

60 ~~(t)~~ (u) “Pet” means ~~any domesticated species of animal normally maintained in or near the~~
61 ~~household of the owner including, but not limited to, dogs, cats and specialty pets~~ dog (Canis
62 familiaris) or cat (Felis catus).

63 ~~(u)~~ (v) “Pet food” means any commercial feed manufactured and distributed for
64 consumption by pets.

65 ~~(v) "Principal display panel" means the part of a label that is intended to be shown and~~
66 ~~examined when the product is on display for retail sale.~~

67 (w) "Process" means ~~any treatment that changes a feed ingredient so that it can no longer~~
68 ~~be restored to its previous form~~ a method used to prepare, treat, convert, or transform materials
69 into feed or feed ingredients. The word "processed" can be used to further describe an ingredient
70 name, so long as the ingredient is not nutritionally altered from the original form of the ingredient.

71 (x) "Product name" means the name of the commercial feed which identifies it, ~~such as:~~
72 ~~Species of animal, age group of animal, characterizing ingredients, specific use, or other~~
73 ~~descriptive terms~~ as to kind, class, or specific use and distinguishes it from all other products
74 bearing the same brand name.

75 (y) "Quantity statement" means the net weight (mass), liquid measure, or count.

76 ~~(y)"Registrant" means any person who registers commercial feed for distribution or use in~~
77 ~~this state.~~

78 (z) "Repack" or "repackaging" means to pack and label a previously manufactured ~~and~~
79 ~~packaged commercial feed prior to a specific request of a customer.~~

80 (aa) "Specialty pet" means any ~~domesticated pet~~ animal normally maintained in a ~~cage or~~
81 ~~tank including, but not limited to,~~ household, such as gerbils, hamsters rodents, ornamental birds,
82 tropical fish, goldfish, snakes and turtles, reptiles, amphibians, ferrets, hedgehogs, marsupials,
83 and rabbits not raised for food or fur.

84 (bb) "Specialty pet food" means any commercial feed ~~intended~~ prepared and distributed
85 for consumption by specialty pets.

86 (cc) "Ton" means a net weight of two thousand pounds avoirdupois.

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

1 The commissioner has the power and authority to:

2 ~~(a)~~(1) Enter and inspect, during reasonable hours, any location where commercial feeds
3 are feed is manufactured, distributed, transported, or used, and where records relating to the

4 manufacture, distribution, shipment, labeling, or sale of commercial feed are kept. Such inspection
5 ~~includes~~ may include, but is not limited to, examining, photographing, verifying, copying, and
6 auditing records as ~~is~~ necessary to determine compliance with this article; and reviewing labels,
7 consumer complaints, and papers relating to the manufacturing, distribution, sampling, testing,
8 and sale of commercial feeds.

9 (b) Open, examine, sample, and test commercial feed, unmixed or unprocessed whole
10 seeds, equipment, containers, transport containers, and packages used or intended to be used
11 in the manufacture and distribution of commercial feeds.

12 (c) Issue permits and registrations pursuant to this article.

13 (d) Refuse, suspend, or revoke permits and registrations as provided in this article.

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

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

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

18 (h) 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 by rules.

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

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

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

25 (l) Establish and maintain feed testing facilities; establish reasonable fees for such tests;
26 incur 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 by rules.

29 (m) Be guided by the analytical results of the official sample when determining whether
30 the commercial feed is deficient in any component.

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

33 (o) 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 ~~registrant~~ guarantor.

35 ~~(p) Publish and distribute annually a composite report containing: (1) The sales of~~
36 ~~commercial feeds and feed ingredients during the preceding period, (2) the results of the analysis~~
37 ~~of official samples as compared with the guarantee on the label, (3) firms responsible for the~~
38 ~~product, and (4) such other data the commissioner deems necessary: *Provided*, That the~~
39 ~~information on production and use so provided does not disclose the operations of any person.~~

40 ~~(q) (p) To cooperate~~ Cooperate with and enter into agreements with governmental
41 agencies of this state and other states, agencies of the federal government and foreign
42 governments, and private associations ~~in order~~ to carry out the purpose and provisions of this
43 article.

44 ~~(r) (q)~~ (q) Promulgate rules, in accordance with §29A-3-1 *et seq.* of this code, dealing with
45 commercial feeds and enforcement of this article.

§19-14-5. Permits; registration.

1 (a) Permits and registrations shall not be transferrable with respect to persons or locations.

2 (b) A person must apply for a permit or registration at least ~~fifteen~~ 30 days prior to the
3 expiration of the current permit or registration ~~expires~~; or at least ~~fifteen~~ 30 days prior to the date
4 that the person intends to engage in the business of selling or marketing commercial feed
5 products or market products in this state. All applications shall be accompanied by the required
6 ~~fee established in this section~~. A penalty of ~~\$2~~ shall be added to the fee for all permits or
7 registrations that are not applied for or renewed within the time limit.

8 (c) Persons manufacturing or serving as guarantor for commercial feed or customer-
9 formula feed in this state must obtain a Commercial Feed Manufacturing Permit from the
10 commissioner, except ~~all~~ for persons manufacturing feed for only his/her animals on his/her
11 premises, or those producing pet food. Application forms shall be provided by the commissioner
12 and include such information as established by rules. A separate permit shall be obtained for each
13 manufacturing facility or location in this state. Each Commercial Feed Manufacturing Permit
14 application shall be accompanied by ~~an~~ the required application fee of \$15. Each permit issued
15 shall expire on December 31, next following the date of issue.

16 (d) Each person ~~first~~ distributing commercial feed ~~into~~ in West Virginia ~~trade channels~~ must
17 obtain a Commercial Feed Distributor Permit from the commissioner, except: (1) Persons
18 distributing pet food exclusively, (2) persons holding a valid Commercial Feed Manufacturing
19 Permit issued by the commissioner, and (3) persons ~~distributing only those feeds that they register~~
20 holding a Commercial Feed Guarantor Permit issued by the commissioner. Application forms shall
21 be provided by the commissioner and include such information as established by rules. Each
22 Commercial Feed Distributor Permit application shall be accompanied by ~~an~~ the required
23 application fee of \$10. Each permit issued shall expire on December 31, next following the date
24 of issue.

25 (e) ~~All commercial feed distributed or used in this state, except customer formula feed,~~
26 ~~must be registered. Commercial feed that can be uniquely identified by its brand name, product~~
27 ~~name, physical form or other descriptive term shall be registered as a separate product.~~
28 ~~Commercial feed that is packaged in such weights as to apply to several categories shall be~~
29 ~~registered in each applicable category. Application forms shall be provided by the commissioner~~
30 ~~and include such information as established by rules.~~ Each person whose name appears on the
31 label of a commercial feed or customer-formula feed as guarantor must obtain a Commercial
32 Feed Guarantor Permit from the commissioner for each manufacturing facility or location that
33 distributes feed in or into the state, except those facilities or locations for which a Commercial

34 Feed Manufacturing Permit has already been issued by the commissioner. Application forms shall
35 be provided by the commissioner and include such information as established by rules. Each
36 Commercial Feed Guarantor Permit application shall be accompanied by the required application
37 fee. Each permit issued shall expire on December 31, next following the date of issue.

38 ~~(1) Commercial feed, other than pet food, in packages over ten pounds or bulk shall be~~
39 ~~registered permanently. A registration fee of \$10 per product shall accompany each application~~
40 ~~for registration, except that there will be no fee for a revision of a commercial feed already on file~~
41 ~~that involves a change in the net weight, a change in the list of ingredients, and/or a change in~~
42 ~~the guarantee for vitamins or minerals.~~

43 ~~(2) (f) On the thirty first day of August, 1991, permanent registrations for pet food in~~
44 ~~packages over ten pounds are void and application for registration and payment of fees will be~~
45 ~~required. Pet food, including specialty pet foods, in packages over 10 pounds or bulk shall be~~
46 ~~registered annually. A registration fee of \$50 per product shall accompany each Each application~~
47 ~~for registration shall be accompanied by the required registration fee. The Each registration shall~~
48 ~~expire on the thirty first day of August August 31 next following the date of issue: *Provided*, That~~
49 ~~until June 30, 2027, an additional registration fee of \$50 per product shall accompany each~~
50 ~~application for registration and the additional registration fee shall be deposited into the West~~
51 ~~Virginia Spay Neuter Assistance Fund for spay and neutering services performed within this state~~
52 ~~by licensed veterinarians.~~

53 ~~(3) (g) Commercial feed, excluding specialty pet food in packages of one pound or less,~~
54 ~~Pet food packaged in packages of 10 pounds and under shall be registered annually. A~~
55 ~~registration fee of \$40 per product shall accompany each Each application for registration shall~~
56 ~~be accompanied by the required registration fee. The Each registration shall expire on December~~
57 ~~31, next following the date of issue: *Provided*, That until June 1, 2027, an additional registration~~
58 ~~fee of \$35 per product shall accompany each application for registration and the additional~~

59 registration fee shall be deposited into the West Virginia Spay Neuter Assistance Fund for spay
60 and neutering services performed within this state by licensed veterinarians.

61 ~~(4)~~ (h) Specialty pet food ~~in packages of one pound or less~~ shall be registered annually. A
62 registration fee of \$20 per product shall accompany each Each application for registration shall
63 be accompanied by the required registration fee. The Each registration shall expire on December
64 31, next following the date of issue.

65 ~~(f)~~ (i) A person is not required to register any brand name or product name of commercial
66 feed which is already registered by another person.

67 ~~(g)~~ (j) Alteration of ~~commercial feed~~ a pet food or specialty pet food that changes the label
68 requires a new application for ~~a Commercial Feed Registration~~ registration be made and
69 approved before distribution.

§19-14-6. Refusal of applications; suspension and revocation of registrations and permits.

1 The commissioner may refuse to grant, or may suspend or revoke ~~registration of any~~
2 ~~commercial feed~~ Commercial Feed Manufacturing Permit; any ~~commercial feed manufacturing~~
3 ~~permit~~ Commercial Feed Guarantor Permit; or any ~~commercial feed distributor permit~~ Commercial
4 Feed Distributor Permit; or the registration of any Pet Food or Specialty Pet Food when it is
5 determined that: ~~(a)~~(1) The applicant, permittee, or ~~registrant~~ guarantor has violated the
6 provisions of this article or any official rule promulgated hereunder; or ~~(b)~~(2) this article or the
7 rules promulgated hereunder cannot be or will not be complied with: *Provided*, That the permittee
8 or ~~registrant~~ guarantor shall have the opportunity to be heard prior to the suspension or revocation
9 of the registration or permit.

§19-14-7. 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 ~~registrant~~
4 guarantor or permittee shall have the opportunity to have a hearing before the commissioner.

5 ~~(b)~~ (c) Any person adversely affected by an act, order, or ruling made pursuant to the
6 provisions of this article, may ~~within forty-five days thereafter,~~ bring an action for judicial review in
7 the circuit court of the county in which the violation occurred in accordance with §29A-5-1 et seq.
8 of this code.

9 ~~Any party aggrieved by a final judgment entered by a circuit court, may appeal to the West~~
10 ~~Virginia Supreme Court of Appeals.~~

§19-14-8. Labeling.

1 (a) When commercial feed, except customer-formula feed, is distributed in this state in
2 bags or other containers, the label shall be affixed to the container; when commercial feed is
3 distributed in bulk, the label shall accompany delivery.

4 (b) All commercial feed labels, except customer-formula feeds, shall ~~state~~ include the
5 following:

6 (1) ~~The net weight avoirdupois. The net weight may also be stated in metric units~~ quantity
7 statement.

8 (2) The product name, including brand name, if any, under which the commercial feed is
9 distributed.

10 (3) ~~The guaranteed analysis, expressed on an "as is" basis,~~ stating what the commissioner
11 determines by rules is required to advise the user of the composition of the commercial feed and
12 other necessary information to support claims made on the label. The substances or elements
13 guaranteed must be determinable by laboratory methods published by the association of official
14 analytical chemists or ~~by an acceptable method supplied by the registrant~~ other methods
15 approved by the commissioner.

16 (4) An ingredient statement, except that an ingredient statement is not required for single
17 standardized ingredient feeds ~~or when such statement is not in the interest of consumers.~~ An
18 ingredient statement shall include:

19 (A) The common or usual name of each ingredient as officially defined in the annual
20 Official Publication of the Association of American Feed Control Officials;

21 (B) ~~Collective~~ Feed terms as defined in the annual Official Publication of the Association
22 of American Feed Control Officials;

23 (C) The common or usual name of substances generally recognized as safe (GRAS) as
24 authorized by 21 Code of Federal Regulations 570.30 (~~April 1, 1990~~ revised April 1, 2019) of the
25 Federal Drug and Cosmetic Act as amended August, 1985;

26 (D) The common or usual name of substances which are so common ~~so~~ as to not need a
27 definition, have a substantially safe history, and no safety hazard is known to exist after
28 consumption by a significant number of animals, including, but not limited to, salt and sugar; or

29 (E) Other ingredients or additives that the commissioner, by rules, deems necessary.

30 (5) The name and principal mailing address of the manufacturer or the distributor.

31 (6) For all commercial feeds containing drugs and for all other such commercial feeds as
32 the commissioner may require by legislative rules. Adequate ~~adequate~~ adequate directions as necessary
33 for their safe and effective use and precautionary statements for safe and effective use.

34 (7) If a drug or drug containing product is used, then the following shall be stated:

35 (A) The established name of each active drug ingredient;

36 (B) The level of each drug used in the final mixture;

37 (C) The purpose of the medication (claim statement);

38 (D) Appropriate cautions and warnings on the use of the medicated commercial feed;

39 (E) Withdrawal statements, if applicable; and

40 (F) The word "medicated" shall appear directly following and below the product name in
41 type size, no smaller than one-half the type size of the product name.

42 (c) Pet food and specialty pet food labels shall have such additional information as
43 required by the commissioner through rules.

44 (d) All customer-formula feeds shall be labeled at all times and shall be supplied to the
45 purchaser at the time of delivery. The label shall bear the following information:

46 (1) Name and address of the manufacturer.

47 (2) Name and address of the purchaser.

48 (3) Date of manufacture and/or delivery.

49 (4) ~~Net weight (avoirdupois) of the commercial feed and each feed ingredient used in the~~
50 ~~customer formula feed~~ The product name and quantity statement of each commercial feed and
51 each other ingredient used in the mixture.

52 (5) For all customer-formula feeds containing drugs and for all other such customer-
53 formula feeds as the commissioner may require by legislative rules, Adequate adequate directions
54 as necessary for their safe and effective use and precautionary statements for safe and effective
55 use.

56 (6) If a drug or drug containing product is used, then the following shall be stated:

57 (A) The established name of each active drug ingredient;

58 (B) The level of each drug used in the final mixture;

59 (C) The purpose of the medication (claim statement);

60 (D) Appropriate cautions and warnings on the use of the commercial feed;

61 (E) Withdrawal statements, if applicable; and

62 (F) The word "medicated" shall appear directly following and below the product name in
63 type size no smaller than one-half the type size of the product name.

§19-14-9. Tonnage reports; inspection fees.

1 (a) Each person holding a Commercial Feed Manufacturing Permit, or a Commercial Feed
2 Distributor Guarantor Permit, ~~and every registrant,~~ except those persons ~~exempted in subsection~~
3 ~~(b) of this section~~ exclusively manufacturing pet food or specialty pet food, shall report the number
4 of tons of commercial feed distributed and pay an inspection fee on all feed distributed, except no
5 inspection fee shall be due on:

6 (1) Commercial feed, if the payment was previously made by a ~~previous~~ distributor,
7 manufacturer, or guarantor.

8 (2) Customer-formula feeds or commercial feeds manufactured in this state, if the
9 inspection fee was paid on the commercial feed or all the feed ingredients used as ingredients
10 therein. For the purpose of this exemption, the sale of the feed ingredients used in customer-
11 formula feeds are considered to have taken place before the processing of these items.

12 (3) ~~Commercial feeds or commercial feeds manufactured in this state~~ which are
13 subsequently used as ingredients in the continuing manufacture of commercial feeds in which the
14 end product is registered.

15 (4) Commercial feed supplied to a poultry contract feeder.

16 (5) ~~Commercial feed in packages of ten pounds or less.~~

17 (6) Pet food or specialty pet food.

18 (7) ~~Commercial feed, where the inspection fee was paid during a previous quarter and is
19 offered for sale in the current quarter.~~

20 (b) An annual fee for commercial feed which does not meet the minimum inspection fee
21 shall be paid in lieu of the inspection fee as established by legislative rule.

22 ~~(b)~~ (c) Each person holding a Commercial Feed Manufacturing Permit, or a Commercial
23 Feed Distributor Guarantor Permit, ~~or a registrant,~~ except those persons: ~~(1) Exclusively~~
24 exclusively distributing or manufacturing pet food or specialty pet food; ~~or (2) exclusively~~
25 ~~distributing or manufacturing commercial feed in packages of ten pounds or less,~~ shall file a
26 semiannual statement under oath before ~~the 31st day of January~~ 31 and July 31 of each year.
27 The statement shall include the number of net tons of commercial feeds and feed ingredients
28 manufactured or ~~first~~ distributed in this state during the preceding six-month period.

29 (d) Each report shall be accompanied by an inspection fee at the rate of ~~35¢ per ton~~
30 established by legislative rule, including a minimum inspection fee, on commercial feed and feed
31 ingredients ~~with the minimum inspection fee being \$10 each statement. The minimum fee is~~

32 ~~waived if the total amount of the calculated inspection fee due is \$2 or less. Such fees become~~
33 ~~effective on July 1, 1991.~~

34 Inspection fees which are due and payable and not remitted to the commissioner within
35 15 days following the due date shall be assessed a penalty of 10 percent of the amount due,
36 except that semiannual reports with no fees due received 15 days after the due date shall be
37 assessed a penalty of ~~\$10~~ in an amount established by legislative rule. The assessment of this
38 penalty fee shall not prevent the commissioner from taking other actions as provided in this
39 chapter.

40 ~~(e)~~ (e) All persons must keep accurate records, as may be necessary or required by the
41 commissioner, to indicate the tonnage of commercial feed distributed in this state. The
42 commissioner shall have the right to examine such records.

§19-14-10. Adulteration.

1 Commercial feed or feed ingredients is adulterated:

2 ~~(a)(1)~~ (1) If it bears or contains any poisonous, or deleterious ~~or nonnutritive~~ substance,
3 ~~including pesticide chemical residues, food additives, color additives or drugs which is or may be~~
4 render it injurious to animals when fed such feed in accordance with the directions, or to humans
5 who consume the resultant food product of the animal health; unless the substance is not an
6 added substance, in which case such commercial feed shall not be considered adulterated under
7 this subsection if the quantity of such substance in such commercial feed does not ordinarily
8 render it injurious to health;

9 ~~(b)(2)~~ (2) If its composition or quality falls below or differs from what is stated on the label or
10 by its labeling; if it bears or contains any added poisonous, added deleterious, or added
11 nonnutritive substance which is unsafe within the meaning of Section 406 of the Federal Food,
12 Drug, and Cosmetic Act (other than one which is: (A) A pesticide chemical in or on a raw
13 commodity; or (B) a food additive;

14 ~~(c)(3) If it contains viable weed seeds exceeding the limits set by the commissioner by~~
15 ~~rules; If it is, or it bears or contains any food additive which is unsafe within the meaning of Section~~
16 ~~409 of the Federal Food, Drug, and Cosmetic Act;~~

17 ~~(d)(4) If the facilities, controls, or methods used in the manufacture, processing, or~~
18 ~~packaging do not conform to industry standards set by the commissioner by rules; or If it is a raw~~
19 ~~agricultural commodity and it bears or contains a pesticide chemical which is unsafe within the~~
20 ~~meaning of Section 408(a) of the Federal Food, Drug, and Cosmetic Act: *Provided*, That where a~~
21 ~~pesticide chemical has been used in or on a raw agricultural commodity in conformity with an~~
22 ~~exemption granted or a tolerance prescribed under Section 408 of the Federal Food, Drug, and~~
23 ~~Cosmetic Act and such raw agricultural commodity has been subjected to processing such as~~
24 ~~canning, cooking, freezing, dehydrating, or milling, the residue of such pesticide chemical~~
25 ~~remaining in or such processed feed shall not be deemed unsafe if such residue in or on the raw~~
26 ~~agricultural commodity has been removed to the extent possible in good manufacturing practice~~
27 ~~and the concentration of such residue in the processed feed is not greater than the tolerance~~
28 ~~prescribed for the raw agricultural commodity unless the feeding of such processed feed will result~~
29 ~~or is likely to result in a pesticide residue in the edible product of the animal, which is unsafe within~~
30 ~~the meaning of Section 408(a) of the Federal Food, Drug, and Cosmetic Act;~~

31 ~~(e)(5) If it was manufactured or held under conditions whereby it became contaminated~~
32 ~~by dust, dirt, insects, birds, rodents, or animal excretion thereby rendering it injurious to animal~~
33 ~~health. If it bears or contains any color additive which is unsafe within the meaning of Section 721~~
34 ~~of the Federal Food, Drug, and Cosmetic Act;~~

35 ~~(6) If it is, or it bears or contains, any new animal drug which is unsafe within the meaning~~
36 ~~of Section 512 of the Federal Food, Drug, and Cosmetic Act;~~

37 ~~(7) If it consists, in whole or part, of any filth or decomposed substance, or if it is otherwise~~
38 ~~unfit for feed;~~

39 (8) If it has been prepared, packed, or held under unsanitary conditions whereby it may
40 have become contaminated with filth, or whereby it may have been rendered injurious to health;

41 (9) If it is, in whole or in part, the product of a diseased animal, or of an animal that has
42 died other than by slaughter that is unsafe within the meaning of Section 401(a)(1) or (a)(2) of the
43 Federal Food, Drug, and Cosmetic Act;

44 (10) If the container is composed, in whole or in part, of any poisonous or deleterious
45 substance which may render the contents injurious to health;

46 (11) If it has been intentionally subjected to radiation, unless the use of the radiation was
47 in conformity with the regulation or exemption in effect pursuant to Section 409 of the Federal
48 Food, Drug, and Cosmetic Act;

49 (12) If any valuable constituent has been, in whole or in part, omitted or abstracted
50 therefrom or any less valuable substance substituted therefor;

51 (13) If its composition falls below or differs from that which it is purported or represented
52 to possess by its labeling; or

53 (14) If it contains a drug, and the methods used in the facilities or controls used for its
54 manufacture, processing, or packaging do not conform to current good manufacturing practice
55 regulations promulgated by the commissioner to assure that the drug meets the requirements of
56 this law as to safety and has the identity and strength and meets the quality and purity
57 characteristics which it purports or is represented to possess.

§19-14-11. Misbranding.

1 Commercial feed ~~is~~ shall be deemed to be misbranded:

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

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

4 ~~(c)~~(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 ~~(d)~~(4) If it purports to be or is represented as a commercial feed, or ~~contains~~ if it purports
8 to contain or is represented as containing a commercial feed ingredient that does not conform to
9 the definition of identity prescribed by the commissioner by rules; or

10 ~~(e)~~(5) If any damage or inferiority has been concealed; or

11 (6) If it is distributed under the name of another commercial feed.

§19-14-12. Embargoes; condemnation and confiscation; injunctions.

1 (a) Embargo orders:.

2 (1) When the commissioner has reasonable cause to believe any lot of commercial feed
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/she~~ he or she
5 may issue and enforce a written embargo order, warning the custodian of the commercial feed
6 not to manufacture, distribute, use, remove, or dispose of the commercial feed lot in any manner
7 until the 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 commercial feed and/or to the manufacturing device warning that such product or process is
10 under embargo and notify the custodian that ~~he/she~~ he or she has a right to request an immediate
11 hearing.

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

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

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

19 (b) Condemnation and confiscation:.

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

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

30 (c) Injunctions: Upon application by the commissioner, the circuit court of the county in
31 which the violation is occurring, has occurred, or is about to occur, may grant a temporary or
32 permanent injunction restraining any person from violating or continuing to violate any of the
33 provisions of this article or any rule promulgated hereunder. An injunction shall be issued without
34 bond.

§19-14-14. Prohibited acts.

1 It shall be unlawful:

2 (a) To manufacture or distribute, ~~or knowingly use~~ any commercial feed that is adulterated
3 or misbranded.

4 (b) To adulterate or misbrand any commercial feed.

5 (c) To distribute, use, remove, or dispose of commercial feed in violation of an embargo
6 order, or condemnation and confiscation order provided for under this article.

7 (d) To manufacture, distribute, or use any commercial feed containing a drug or drugs that
8 cause or may cause residue of the drug or drugs in the edible tissues, milk, or eggs of the animals
9 fed such feed in excess of the acceptable residue levels set by the commissioner by rules.

10 (e) To fail or refuse to register ~~commercial feeds~~ pet foods or specialty pet foods.

11 (f) To fail or refuse to obtain permits required under this article.

12 (g) To fail to make an accurate statement of tonnage.

13 (h) To fail to pay inspection fees as required under this article.

14 (i) To distribute or knowingly use any commercial feed that has not had an accurate
15 statement of tonnage reported to the commissioner in the previous reporting period.

16 (j) To use or imply the name West Virginia Department of Agriculture, or reference any
17 inspection or sample findings made by the West Virginia Department of Agriculture on labels or
18 labeling of commercial feed.

19 (k) To interfere with the commissioner's official duties.

20 (l) To distribute raw milk for use as commercial feed for any species, unless:

21 (1) It has been decharacterized using a sufficient quantity of food coloring as designated
22 by the commissioner;

23 (2) It has been decharacterized using food coloring approved by the U.S. Food and Drug
24 Administration, or in the case of raw milk labeled as organic, approved by the U.S. Department of
25 Agriculture;

26 (3) It has been decharacterized and the nutritive value of the milk has not been adversely
27 affected by the decharacterization;

28 (4) The packaging of the raw milk does not resemble that used for the packaging of milk
29 for human consumption;

30 (5) It is not stored at retail with, or in the vicinity of, milk or milk products intended for
31 human consumption; and

32 (6) It does not otherwise violate this section.

§19-14-16. Deviations and Penalties.

1 (a) The commissioner is authorized to adopt regulations establishing permitted analytical
2 variation and providing for reasonable deviation from the guaranteed analysis.

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

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

8 (d) Penalties paid pursuant to this section shall, where possible, be used to reimburse the
9 purchaser of the lot of commercial feed representing the sample analyzed. If the purchaser or
10 purchasers cannot be found, the amount of the penalty assessed shall be paid to the
11 commissioner and deposited in the department's fees account to be used for feed related program
12 maintenance and educational training of the industry and consumers.

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

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

ARTICLE 21. CONSERVATION DISTRICTS.

§19-21A-1. Legislative determinations and declaration of policy.

1 It is hereby declared, as a matter of legislative determination:

2 (a) That the farm and grazing lands of the State of West Virginia are among the basic
3 assets of the state and that the preservation of these lands is necessary to protect and promote
4 the health, safety and general welfare of its people; that improper land-use practices have caused
5 and have contributed to, and are now causing and contributing to, a progressively more serious
6 erosion of the farm and grazing lands of this state by water; that the breaking of natural grass,
7 plant and forest cover has interfered with the natural factors of soil stabilization, causing loosening
8 of soil and exhaustion of humus and developing a soil condition that favors erosion; that the topsoil
9 is being washed out of fields and pastures; that there has been an accelerated washing of sloping
10 fields; that these processes of erosion by water and flooding is increased with removal of

11 absorptive topsoil, causing exposure of less absorptive and less protective but more erosive
12 subsoil; that failure by any landowner to conserve the soil and control erosion upon his lands
13 causes a washing of soil and water from his or her lands onto other lands and makes the
14 conservation of soil and control of erosion of such other lands difficult or impossible and increases
15 the potential damages from flooding.

16 (b) That the consequences of such soil erosion in the form of soil washing are the silting
17 and sedimentation of stream channels, reservoirs, dams, ditches and harbors; the piling up of soil
18 on lower slopes and its deposit over alluvial plains; the reduction in productivity or outright ruin of
19 rich bottom lands by over-wash of -poor subsoil material, sand and gravel swept out of the hills;
20 deterioration of soil and its fertility, deterioration of crops grown thereon and declining acre yields
21 despite development of scientific processes for increasing such yields; loss of soil and water
22 which causes destruction of food and cover for wildlife; the washing of soil into streams which
23 silts over spawning beds and destroys water plants, diminishing the food supply of fish; a
24 diminishing of the underground water reserve which causes water shortages, intensifies periods
25 of drought and causes crop failures; an increase in the speed and volume of rainfall runoff,
26 causing more severe and more numerous floods which bring suffering, disease and death;
27 impoverishment of families attempting to farm eroding and eroded lands; damage to roads,
28 highways, railways, farm buildings and other property from floods; and losses in navigation,
29 hydroelectric power, municipal water supply, irrigation developments, farming, grazing and
30 reduction of suitable land available for homes and businesses.

31 (c) That to conserve soil resources and control and prevent soil erosion and prevent
32 floodwater and sediment damage and further the conservation, development, utilization, water
33 quality, and disposal of water, it is necessary that land-use practices contributing to soil wastage
34 and soil erosion be discouraged and discontinued and appropriate soil-conserving land-use
35 practices and works of improvement for flood prevention or the conservation, development,
36 utilization, water quality, and disposal of water be adopted and carried out; that among the

37 procedures necessary for widespread adoption are engineering operations such as the
38 construction of terraces, terrace outlets, dams, desilting basins, floodwater retarding structures,
39 channel improvements, floodways, dikes, ponds, ditches and the like; the utilization of strip
40 cropping, lister furrowing, contour cultivating and contour furrowing; land drainage; land irrigation;
41 seeding and planting of waste, sloping, abandoned or eroded lands with water-conserving and
42 erosion-preventing plants, trees and grasses; forestation and reforestation; rotation of crops; soil
43 stabilization with trees, grasses, legumes and other thick-growing, soil-holding crops; retardation
44 of runoff by increasing absorption of rainfall; and retirement from cultivation of steep, highly
45 erosive areas and areas now badly gullied or otherwise eroded.

46 (d) It is hereby declared to be the policy of the Legislature to provide for the conservation
47 of the soil and soil resources of this state, for the control and prevention of soil erosion, for the
48 prevention of floodwater and sediment damage and for furthering the conservation, development,
49 utilization, water quality, and disposal of water, and thereby to preserve natural resources, control
50 floods, prevent impairment of dams and reservoirs, assist in maintaining the navigability of rivers
51 and harbors, preserve wildlife, protect the tax base, protect public lands and protect and promote
52 the health, safety and general welfare of the people of this state.

53 (e) This article contemplates that the incidental cost of organizing conservation districts
54 will be borne by the state, while the expense of operating the districts so organized will be provided
55 by donations, gifts, contributions, grants and appropriations, in money, services, materials or
56 otherwise, from the United States or any of its agencies, from the State of West Virginia or from
57 other sources, with the understanding that the owners or occupiers will contribute funds, labor,
58 materials and equipment to aid in carrying out erosion control measures on their lands.

§19-21A-3. Definitions.

1 Wherever used or referred to in this article, unless a different meaning clearly appears
2 from the context:

3 (1) "Agency of this state" means the government of this state and any subdivision, agency,
4 or instrumentality, corporate or otherwise, of the government of this state.

5 (2) "Committee" or "State Conservation Committee" means the agency created in §19-
6 21A-4 of this code.

7 (3) "Conservation" means the reduction of soil erosion, enhancement of water supplies,
8 control, and abatement of nonpoint sources of water pollution, improvement of water quality,
9 increased aquatic and wildlife habitat, and the reduction of damages caused by floodwater and
10 sediment damages and other natural disasters.

11 ~~(3)~~ (4) "District" or "conservation district" means a subdivision of this state, organized in
12 accordance with the provisions of this article, for the purposes, with the powers and subject to the
13 restrictions hereinafter set forth.

14 (4) ~~(5)~~ "Grant" means the providing of grants for conservation purposes pursuant to
15 legislative rule.

16 ~~(5)~~ (6) "Governing body" means the supervisors of any conservation district, town or city,
17 council, city commission, county court, or body acting in lieu of a county court, in this state, and
18 the term "governmental division" means any conservation district, town, city, or county in this
19 state.

20 ~~(6)~~ (7) "Land occupier" or "occupier of land" means any person, firm, or corporation who
21 shall hold title to, or shall be in possession of, any lands lying within a district organized under the
22 provisions of this article, whether as owner, lessee, renter, or tenant.

23 ~~(7)~~ (8) "Landowners" or "owners of land" means any person or persons, firm, or corporation
24 who holds title to any lands lying within a district organized under the provisions of this article.

25 ~~(8)~~ (9) "Notice" means notice published as a Class II legal advertisement in compliance
26 with the provisions of §59-3-1 *et seq.* of this code and the publication area for the publication is
27 the county in which is located the appropriate area. At any hearing held pursuant to such notice

28 at the time and place designated in the notice, adjournment may be made, from time to time,
29 without the necessity of renewing the notice for the adjournment dates.

30 ~~(9)~~ (10) "Petition" means a petition filed under the provisions of §19-21A-5(a) of this code
31 for the creation of a district.

32 ~~(40)~~ (11) "Soil conservation", "erosion control", or "erosion prevention projects" means
33 those projects that have been established by federal agencies in cooperation with state agencies
34 for the purpose of demonstrating soil erosion control and water conservation practices.

35 ~~(44)~~ (12) "State" means the State of West Virginia.

36 ~~(42)~~ (13) "Supervisor" means one of the members of the governing body of a district,
37 elected or appointed in accordance with the provisions of this article.

38 ~~(43)~~ (14) "United States" or "agencies of the United States" means the United States of
39 America, Natural Resources Conservation Service of the United States Department of Agriculture,
40 and any other agency or instrumentality, corporate or otherwise, of the United States of America.

41 ~~(44)~~ (15) "Works of improvement" means such structures as may be necessary or
42 convenient for flood prevention or the conservation, development, utilization, or disposal of water.

§19-21A-4. State Conservation Committee; continuation.

1 (a) The State Conservation Committee is continued. It serves as an agency of the state
2 and is to perform the functions conferred upon it in this article. The committee consists of the
3 following 10 members:

- 4 (1) Four citizen members;
- 5 (2) The following ex officio members or his or her designee:
- 6 (A) The Director of the state Cooperative Extension Service;
- 7 (B) The Director of the State Agricultural and Forestry Experiment Station;
- 8 (C) The Secretary of the Department of Environmental Protection;
- 9 (D) The State Commissioner of Agriculture, who is the chairperson of the committee;
- 10 (E) The Director of the Division of Forestry; and

11 (F) The President of the West Virginia Association of Conservation Districts.

12 (b) The Governor shall appoint, by and with the consent of the Senate, the four citizen
13 members. Members shall be appointed for four-year terms, which are staggered in accordance
14 with the initial appointments under prior enactment of this section. In the event of a vacancy, the
15 appointment is for the unexpired term.

16 (c) The committee may invite the Secretary of Agriculture of the United States of America
17 to appoint one person to serve with the committee as an advisory member.

18 (d) The committee shall keep a record of its official actions, shall adopt a seal, which shall
19 be judicially noticed, and may perform those acts, hold public hearings, and adopt or propose for
20 legislative approval rules necessary for the execution of its functions under this article.

21 (e) The State Conservation Committee may employ an administrative officer, technical
22 experts, and other agents and employees, permanent and temporary, as it requires. The
23 administrative officer and support staff shall be known as the West Virginia Conservation Agency.
24 The committee shall determine their qualifications, duties, and compensation. The committee may
25 call upon the Attorney General of the state for legal services it requires. It may delegate to its
26 chairperson, to one or more of its members, or to one or more agents or employees powers and
27 duties it considers proper. The committee may secure necessary and suitable office
28 accommodations and the necessary supplies and equipment. Upon request of the committee, for
29 the purpose of carrying out any of its functions, the supervising officer of any state agency or of
30 any state institution of learning shall, insofar as may be possible, under available appropriations
31 and having due regard to the needs of the agency to which the request is directed, assign or detail
32 to the committee members of the staff or personnel of the agency or institution of learning and
33 make special reports, surveys or studies required by the committee.

34 (f) A member of the committee holds office so long as he or she retains the office by virtue
35 of which he or she is serving on the committee. A majority of the committee is a quorum and the
36 concurrence of a majority in any matter within their duties is required for its determination. The

37 chairperson and members of the committee may receive no compensation for their services on
38 the committee, but are entitled to reimbursement of expenses, including traveling expenses
39 necessarily incurred in the discharge of their duties on the committee. The committee shall:

40 (1) Require the execution of surety bonds for all employees and officers who are entrusted
41 with funds or property;

42 (2) Provide for the keeping of a full and accurate public record of all proceedings and of
43 all resolutions, rules, and orders issued or adopted;

44 (3) Provide for an annual audit of the accounts of receipts and disbursements; and

45 (4) Cooperate with the State Resiliency Office to the fullest extent practicable to assist that
46 office in fulfilling its duties.

47 (g) In addition to other duties and powers conferred upon the State Conservation
48 Committee, it may:

49 (1) Offer appropriate assistance to the supervisors of conservation districts, organized as
50 provided in this article, in the carrying out of any of their powers and programs;

51 (2) Assist and advise conservation districts and others in implementing conservation
52 improvements, and projects to control and abate nonpoint sources of water pollution and prevent
53 damage from floodwater and sediment;

54 ~~(2)-(3)~~ Keep the supervisors of each of the several districts, organized under the provisions
55 of this article, informed of the activities and experience of all other districts organized under this
56 article, and facilitate an interchange of advice and experience between the districts and
57 cooperation between them;

58 ~~(3)~~ (4) Coordinate the programs of the several conservation districts so far as this may be
59 done by advice and consultation;

60 ~~(4)~~ (5) Contract for services directly related to natural disaster recovery and stream
61 restoration related to flooding, on an as needed basis;

62 ~~(5)~~ (6) Comply with provisions of present and future federal aid statutes and regulations,
63 including execution of contracts or agreements with, and cooperation in, programs of the United
64 States government and any of its proper departments, bureaus, or agencies relating to natural
65 disaster response, natural disaster recovery, or stream restoration related to flooding;

66 ~~(6)~~ (7) Secure the cooperation and assistance of the United States and any of its agencies
67 and of agencies of this state in the work of the districts;

68 ~~(7)~~ (8) Disseminate information throughout the state concerning the activities and
69 programs of the conservation districts and encourage the formation of the districts in areas where
70 their organization is desirable;

71 ~~(8)~~ (9) Administer a conservation grant program that provides financial assistance to
72 conservation districts and others to promote approved conservation, water quality, and soil
73 conservation projects;

74 ~~(9)~~ (10) Accept and receive donations, gifts, contributions, grants, and appropriations in
75 money, services, materials, or otherwise from the United States or any of its agencies, from the
76 State of West Virginia, or from other sources and use or expend the money, services, materials,
77 or other contributions in carrying out the policy and provisions of this article, including the right to
78 allocate the money, services, or materials in part to the various conservation districts created by
79 this article in order to assist them in carrying on their operations;

80 ~~(10)~~ (11) Obtain options upon and acquire by purchase, exchange, lease, gift, grant,
81 bequest, devise or otherwise any property, real or personal, or rights or interests in the property;
82 maintain, administer, operate, and improve any properties acquired; receive and retain income
83 from the property and to expend the income as required for operation, maintenance,
84 administration, or improvement of the properties or in otherwise carrying out the purposes and
85 provisions of this article; and sell, lease, or otherwise dispose of any of its property or interests in
86 the property in furtherance of the purposes and the provisions of this article. Money received from

87 the sale of land acquired in the small watershed program shall be deposited in the special account
88 of the State Conservation Committee and expended as provided in this article;

89 ~~(11)~~ (12) Promulgate emergency and legislative rules to effectuate the provisions of this
90 article ~~as amended and reenacted by the Legislature during the 2018 regular session of the~~
91 ~~Legislature~~; and

92 ~~(12)~~ (13) Upon a Governor's proclamation declaring a state of emergency or federal
93 disaster declaration, the state committee, its employees, or agents may enter any water of the
94 state for the purpose of removing debris and other obstruction which impede water flow and
95 present additional flood hazards. The agency shall make reasonable efforts to secure the
96 permission of the landowner before entering any private property in connection with these removal
97 activities. The exercise of this limited authority does not constitute taking of private property or
98 trespass. This authority shall continue for the duration of the Governor's proclamation or the
99 federal disaster declaration.

§19-21A-8. Powers of districts; additional powers of supervisors.

1 A conservation district organized under the provisions of this article and the supervisors
2 thereof shall have the following powers, in addition to others granted in other sections of this
3 article:

4 (1) To conduct surveys, investigations and research relating to the character of soil
5 erosion, ~~and~~ floodwater and sediment damage, and nonpoint source water pollution, and to the
6 conservation, development, utilization, water quality, and disposal of water and the preventive
7 and control measures needed to publish the results of such surveys, investigations or research
8 and to disseminate information concerning such preventive and control measures and works of
9 improvement: *Provided*, That in order to avoid duplication of research activities, no district shall
10 initiate any research program or publish the results except with the approval of the state
11 committee and in cooperation with the government of this state or any of its agencies, or with the
12 United States or any of its agencies;

13 (2) To conduct demonstrational projects within the district on lands owned or controlled by
14 this state or any of its agencies, with the consent and cooperation of the agency administering
15 and having jurisdiction thereof, and on any other lands within the district upon obtaining the
16 consent of the owner and occupier of the lands or the necessary rights or interests in the lands in
17 order to demonstrate by example the means, methods, and measures by which soil and soil
18 resources may be conserved and soil erosion in the form of soil washing may be prevented and
19 controlled, water quality may be improved, and works of improvement may be carried out;

20 (3) To carry out preventive and control measures and works of improvement within the
21 district, including, but not limited to, engineering operations, methods of cultivation, the growing
22 of vegetation, changes in use of land; drainage, irrigation and other agricultural water
23 management operations and measures for the prevention of floodwater and sediment damages,
24 or for the control and abatement of nonpoint sources of water pollution; and the measures listed
25 in §19-21A-2(c) of this code on lands owned or controlled by this state or any of its agencies with
26 the consent and cooperation of the agency administering and having jurisdiction thereof and on
27 any other lands within the district upon obtaining the consent of the owner and occupier of such
28 lands or the necessary rights or interests in such lands;

29 (4) To cooperate, or enter into agreements with, and within the limits of appropriations
30 duly made available to it by law, to furnish financial or other aid to any agency, governmental or
31 otherwise, or any occupier of lands within the district in the carrying on of erosion-control and
32 prevention operations, operations for the control and abatement of nonpoint sources of water
33 pollution, and works of improvement within the district, subject to such conditions as the
34 supervisors may deem necessary to advance the purposes of this article;

35 (5) To obtain options upon and to acquire, by purchase, exchange, lease, gift, grant,
36 bequest, devise or otherwise, any property, real or personal, or rights or interests therein; to
37 institute condemnation proceedings to acquire any property, real or personal, or rights or interests
38 therein, whether or not located in the district, required for works of improvement; to maintain,

39 administer and improve any properties acquired, to receive income from such properties and to
40 expend such income in carrying out the purposes and provisions of this article; and to sell, lease
41 or otherwise dispose of any of its property or interests therein in furtherance of the purposes and
42 the provisions of this article;

43 (6) To make available, on such terms as it shall prescribe, to land occupiers within the
44 district agricultural and engineering machinery and equipment, fertilizer, seeds and seedlings and
45 such other material or equipment as will assist such land occupiers to carry on operations upon
46 their lands for the conservation of soil resources and for the prevention and control of soil erosion
47 and for flood prevention or the conservation, development, utilization, water quality, and disposal
48 of water;

49 (7) To construct, improve, operate, and maintain such structures as may be necessary or
50 convenient for the performance of any of the operations authorized in this article;

51 (8) To develop with the approval of the state committee comprehensive plans for the
52 conservation of soil resources and for the control and prevention of soil erosion and for flood
53 prevention and water quality improvement, or the conservation, development, utilization and
54 disposal of water within the district. The plans shall specify, in as much detail as may be possible,
55 the acts, procedures, performances and avoidances which are necessary or desirable for the
56 effectuation of such plans, including the specification of engineering operations, methods of
57 cultivation, the growing of vegetation, cropping programs, tillage practices and changes in use of
58 land; and to publish such plans and information and bring them to the attention of occupiers of
59 lands within the district;

60 (9) To take over, by purchase, lease or otherwise, and to administer any soil-conservation,
61 flood-prevention, drainage, irrigation, water-management, erosion-control or erosion-prevention
62 project, or combinations thereof, located within its boundaries, undertaken by the United States
63 or any of its agencies, or by this state or any of its agencies; to manage, as agent of the United
64 States or any of its agencies, or of this state or any of its agencies, any soil-conservation, flood-

65 prevention, drainage, irrigation, water-management, erosion-control or erosion-prevention
66 project, or combinations thereof, within its boundaries; to act as agent for the United States or any
67 of its agencies, or for this state or any of its agencies, in connection with the acquisition,
68 construction, operation, or administration of any soil-conservation, flood-prevention, drainage,
69 irrigation, water-management, erosion-control or erosion-prevention project, or combinations
70 thereof, within its boundaries; to accept donations, gifts, contributions and grants in money,
71 services, materials or otherwise, from the United States or any of its agencies, or from this state
72 or any of its agencies, or from any other source and to use or expend such money, services,
73 materials or other contributions in carrying on its operations;

74 (10) To sue and be sued in the name of the district; to have a seal, which shall be judicially
75 noticed; to have perpetual succession unless terminated as hereinafter provided; to make and
76 execute contracts and other instruments, necessary or convenient to the exercise of its powers;
77 to make and, from time to time, amend and repeal rules and regulations not inconsistent with this
78 article to carry into effect its purposes and powers;

79 (11) As a condition to this extending of any benefits under this article to, or the
80 performance of work upon, any lands, the supervisors may require contributions in money,
81 services, materials or otherwise to any operations conferring such benefits and may require land
82 occupiers to enter into and perform such agreements or covenants as to the permanent use of
83 such lands as will tend to prevent or control erosion and prevent floodwater and sediment damage
84 thereon;

85 (12) No provisions with respect to the acquisition, operation or disposition of property by
86 other public bodies shall be applicable to a district organized hereunder in its acquisition,
87 operation and disposition of property unless the Legislature shall specifically so state;

88 (13) To enter into contracts and other arrangements with agencies of the United States,
89 with persons, firms or corporations, including public corporations, with the state government of
90 this state or other states, or any department or agency thereof, with governmental divisions, with

91 soil conservation, drainage, flood control, soil erosion or other improvement districts in this state
92 or other states, for cooperation or assistance in constructing, improving, operating or maintaining
93 works of improvement within the district, or in preventing floods, or in conserving, developing,
94 utilizing and disposing of water in the district, or for making surveys, investigations or reports
95 thereof; and to obtain options upon and acquire property, real or personal, or rights or interests
96 therein, in other districts or states required for flood prevention and water quality improvement, or
97 the conservation, development, utilization and disposal of water within the district and to construct,
98 improve, operate or maintain thereon or therewith works of improvement.

ARTICLE 25. LIMITING LIABILITY OF LANDOWNERS.

§19-25-1. Purpose.

1 The purpose of this article is to encourage owners of land to make available to the public
2 land and water areas for military, law-enforcement, or homeland-defense training or recreational,
3 agricultural, or wildlife propagation purposes by limiting their liability for injury to persons entering
4 thereon and for injury to the property of persons entering thereon and limiting their liability to
5 persons who may be injured or otherwise damaged by the acts or omissions of persons entering
6 thereon.

§19-25-2. Limiting duty of landowner generally.

1 (a) Subject to the provisions of §19-25-4 of this code, an owner of land owes no duty of
2 care to keep the premises safe for entry or use by others for recreational or wildlife propagation
3 purposes, or to give any warning of a dangerous or hazardous condition, use, structure, or activity
4 on such premises to persons entering for such purposes.

5 (b) Subject to the provisions of §19-25-4 of this code, an owner of land who either directly
6 or indirectly invites or permits without charge as that term is defined in §19-25-5 of this code, any
7 person to use such property for recreational or wildlife propagation purposes does not thereby:

8 ~~(a) Extend~~ (1) extend any assurance that the premises are safe for any purpose; ~~or (b) (2)~~ confer
9 upon such persons the legal status of an invitee or licensee to whom a duty of care is owed; or

10 ~~(e)~~ (3) assume responsibility for or incur liability for any injury to person or property caused by an
11 act or omission of such persons.

12 (c) Subject to the provisions of §19-25-4 of this code, an owner of land owes who invites
13 or permits without charge, as that term is defined in §19-25-5 of this code, any person to enter
14 onto the owner's land for the purpose of utilizing the owner's land for any agricultural purpose
15 does not thereby: (1) extend any assurance that the premises are safe for any purpose; (2) confer
16 upon such persons the legal status of an invitee or licensee to whom a duty of care is owed; or
17 (3) assume responsibility for or incur liability for any injury to person or property caused by an act
18 or omission of such persons.

§19-25-5. Definitions.

1 Unless the context used clearly requires a different meaning, as used in this article:

2 "Agricultural purposes" means the raising, cultivation, drying, harvesting, marketing,
3 production, or storage of agricultural products, including both crops and livestock, for sale or use
4 in agriculture or agricultural production, or the storage of machinery or equipment used in support
5 of agricultural production;

6 "Charge" means:

7 (A) For purposes of limiting liability for recreational or wildlife propagation purposes set
8 forth in §19-25-2 of this code, the amount of money asked in return for an invitation to enter or go
9 upon the land, including a one-time fee for a particular event, amusement, occurrence, adventure,
10 incident, experience, or occasion which may not exceed \$50 a year per recreational participant:
11 *Provided*, That the monetary cap on charges imposed pursuant to this article does not apply to
12 the provisions of §20-14-1 *et seq.* of this code pertaining to the Hatfield-McCoy regional
13 recreational authority or activities sponsored on the Hatfield-McCoy recreation area;

14 (B) For purposes of limiting liability for military, law-enforcement, or homeland-defense
15 training set forth in §19-25-6 of this code, the amount of money asked in return for an invitation to
16 enter or go upon the land;

17 “Land” includes, but is not limited to, roads, water, watercourses, private ways, and
18 buildings, structures and machinery or equipment when attached to the realty;

19 “Noncommercial recreational activity” does not include any activity for which there is any
20 charge which exceeds \$50 per year per participant;

21 “Owner” includes, but is not limited to, tenant, lessee, occupant, or person in control of the
22 premises;

23 “Recreational purposes” includes, but is not limited to, any one or any combination of the
24 following noncommercial recreational activities: hunting, fishing, swimming, boating, camping,
25 picnicking, hiking, pleasure driving, motorcycle or all-terrain vehicle riding, bicycling, horseback
26 riding, spelunking, nature study, water skiing, winter sports, and visiting, viewing, or enjoying
27 historical, archaeological, scenic or scientific sites, aircraft or ultralight operations on private
28 airstrips or farms or otherwise using land for purposes of the user;

29 “Wildlife propagation purposes” applies to and includes all ponds, sediment control
30 structures, permanent water impoundments, or any other similar structure created in connection
31 with surface mining activities as governed by §22-3-1 *et seq.* of this code or from the use of
32 surface in the conduct of underground coal mining as governed by that article and any rules
33 promulgated because of the article, which ponds, structures or impoundments are designated
34 and certified in writing by the Director of the Division of Environmental Protection and the owner
35 to be necessary and vital to the growth and propagation of wildlife, animals, birds, and fish or
36 other forms of aquatic life and finds and determines that the premises have the potential of being
37 actually used by the wildlife for those purposes and that the premises are no longer used or
38 necessary for mining reclamation purposes. The certification shall be in form satisfactory to the
39 director and shall provide that the designated ponds, structures, or impoundments may not be
40 removed without the joint consent of the director and the owner; and

41 “Military, law-enforcement, or homeland-defense training” includes, but is not limited to,
42 training, encampments, instruction, overflight by military aircraft, parachute drops of personnel or

43 equipment, or other use of land by a member of the Army National Guard or Air National Guard,
44 a member of a reserve unit of the armed forces of the United States, a person on active duty in
45 the armed forces of the United States, a state or federal law-enforcement officer, a federal agency
46 or service employee, a West Virginia military authority employee or a civilian contractor supporting
47 the military, and/or government employees acting in that capacity.

ARTICLE 31. GUS R. DOUGLASS AGRICULTURAL CENTER AT GUTHRIE.

§19-31-1. Establishing the name.

1 The Guthrie center, currently owned by the ~~Department of Health and Human Resources~~
2 Department of Agriculture, shall hereinafter be known as the Gus R. Douglass agricultural center
3 at Guthrie.

ARTICLE 35. FARMERS MARKETS.

§19-35-1. Legislative findings and purpose.

1 (a) The Legislature hereby makes the following findings:

2 (1) Farmers markets are critical incubators for small farm and food businesses because
3 they offer an inexpensive, accessible, entry-level market for reaching consumers directly, though
4 research has shown that the average vendor makes only a nominal dollar amount in sales on any
5 given market day;

6 (b) (2) The number of farmers markets and the variety of products sold at farmers markets
7 has increased significantly in the past 10 years, adding millions of dollars to the state's economy;

8 (c) (3) Encouraging locally grown and raised food is important to the health and welfare of
9 the citizens of West Virginia;

10 (d) (4) Permit fees and requirements for farmers market vendors can vary widely from
11 county to county and from one regulatory official to the other. Current food permit categories are
12 not designed for farmers markets and their vendors, but rather for restaurants, grocery stores or
13 concessioners; and

14 ~~(e)~~ (5) Food permits required for farmers market vendors are currently not recognized
15 across county lines.

16 (b) It is the purpose of this article:

17 (1) To reduce barriers on participants producing, preparing and selling certain foods at
18 farmers markets and elsewhere within West Virginia;

19 (2) To place regulation of farmers markets, vendors, and local food producers primarily
20 within the Department of Agriculture; and

21 (3) To encourage the growth of the local food industry in West Virginia.

§19-35-2. Definitions.

1 For purposes of this article:

2 “Acidified food” means a low-acid food item to which acid or acid foods are added with a
3 water activity of greater than 0.85 and a finished equilibrium of pH 4.6 or below. Acidified foods
4 are considered potentially hazardous foods.

5 ~~“Consignment farmers market” means a farmers market in which two or more vendors~~
6 ~~deliver their own farm and food products to a common location maintained by a third party that~~
7 ~~markets the vendors” products and receives a percentage share of the profits from sales, with the~~
8 ~~individual vendor retaining ownership of the farm and food product until it is sold. A consignment~~
9 ~~farmers market may be mobile or in a stationary location.~~

10 “Delivered” means transferred to the consumer, either immediately upon sale or at a time
11 thereafter.

12 “Department” means the Department of Agriculture.

13 “Farm and food product” means any agriculture, horticulture, agroforestry, animal
14 husbandry, dairy, livestock, ~~cottage food~~, beekeeping, or other similar product, and includes
15 potentially hazardous foods and nonpotentially hazardous food produced or manufactured
16 therefrom. ~~Farm and food products are to be properly labeled.~~

17 “Farmers market” means:

18 (1) A traditional farmers market in which two or more vendors gather to sell farm and food
19 products directly to consumers at a fixed location;

20 (2) An on-farm market or farm stand run by an individual producer that sells farm and food
21 products;

22 (3) An online farmers market in which two or more vendors collectively market farm and
23 food products and retain ownership of those products until they are sold; or

24 (4) A consignment farmers market ~~as defined herein~~ in which two or more vendors deliver
25 their own farm and food products to a common location maintained by a third party that markets
26 the vendors' products and receives a percentage share of the profits from sales, with the individual
27 vendor retaining ownership of the farm and food product until it is sold. A consignment farmers
28 market may be mobile or in a stationary location;

29 (5) A mobile farmers market;

30 (6) An area within a fair or festival at which farm and food products are sold; or

31 (7) Any other form of farmers market approved by the commissioner.

32 "Farmers market vendor" or "vendor" means a person or entity that sells farm and food
33 products at a farmers market.

34 ~~"Homemade food item" means a nonpotentially hazardous food item, including a~~
35 ~~nonalcoholic beverage, which is produced and/or packaged at the private residence of the~~
36 ~~producer.~~

37 "Nonpotentially hazardous" means a food item that does not require time/temperature
38 control for safety to limit pathogenic microorganism growth or toxin formation.

39 "Potentially hazardous" means a food item that requires time/temperature control or other
40 protocols for safety to limit pathogenic microorganism growth or toxin formation.

41 To "Produce produce" means to prepare a food item by cooking, baking, drying, mixing,
42 cutting, fermenting, preserving, dehydrating, growing, raising, or other process.

43 “Producer” means the person who produces a ~~homemade~~ nonpotentially hazardous food
44 item.

45 “Retailer” means and includes every person engaging in the business of selling, leasing,
46 or renting tangible personal property.

47 “Seller” means the person who sells a ~~homemade~~ nonpotentially hazardous food item to
48 a consumer. The seller of the ~~homemade~~ nonpotentially hazardous food item may be the producer
49 of the item, an agent of the producer, or a third-party vendor, such as a retail shop or grocery
50 store.

§19-35-3. Farmers markets; ~~farmers market vendor permits; fees; scope.~~

1 (a) All farmers markets operating within the state shall register with the department.
2 Farmers markets shall register ~~with the~~ on a form prepared by the department and provide
3 information to the department regarding:

- 4 (1) the type of farmers market;
5 (2) the location, dates, and hours of operation;
6 (3) ~~and its~~ the farmers markets’ vendors; and
7 (4) any other information required by the department.

8 (b) Upon submission of all required items, each farmers market shall be issued a Farmers
9 Market Registration. Each farmers market shall display its registration in a conspicuous manner.

10 (c) Except for consignment farmers markets, which are required to apply for and obtain a
11 food establishment permit from a local health department, no other type of farmers market is
12 required to apply for and obtain a food establishment permit from a local health department.

13 (d) The department may establish regulations permitting the sampling of certain farm and
14 food products at farmers markets by vendors.

15 (e) The department may establish penalties for violation of this section by legislative rule,
16 pursuant to the provisions of §29A-3-1 et seq. of this code.

17 ~~(b) Vendors at a farmers market selling farm and food products shall apply for a farmers~~
18 ~~market vendor permit and pay the annual permit fee to the department. The permit is valid in all~~
19 ~~counties in this state. A farmers market vendor permit shall be required in lieu of the food~~
20 ~~establishment permit, notwithstanding any other provisions of code or rule that require a food~~
21 ~~establishment permit or any other permit from a local health department. The department shall~~
22 ~~take final action upon all completed permit applications within 30 days of receipt if the application~~
23 ~~is uncontested, or within 90 days if the application is contested.~~

24 ~~(c) The annual farmers market vendor permit fee is \$35.~~

25 ~~(d) The following vendors are exempt from obtaining a farmers market vendor permit:~~

26 ~~(1) Producers delivering their products to a consignment farmers market only; or~~

27 ~~(2) Vendors selling fresh, uncut produce.~~

28 ~~(e) A consignment farmers market shall obtain a food establishment permit issued by the~~
29 ~~local health department. Certain farm and food product also require food establishment or other~~
30 ~~permits to be sold at farmers markets including, but not limited to, meat, poultry, dairy, fish, and~~
31 ~~sprouted seeds. Notwithstanding the provisions of this article, the local health department in the~~
32 ~~jurisdiction in which the farmers market is located has the right to inspect and suspend the food~~
33 ~~establishment permit of a farmers market vendor that sells or serves food for which a food~~
34 ~~establishment permit is required.~~

35 ~~(f) All farmers market vendor permits shall be displayed in a conspicuous manner.~~

36 ~~(g) Nothing in this article eliminates or limits other state and federal rules and regulations~~
37 ~~that apply to certain farm and food products sold at a farmers market or a consignment farmers~~
38 ~~market.~~

39 ~~(h) The department may establish regulations permitting the sampling of certain farm and~~
40 ~~food products at farmers markets by vendors.~~

41 ~~(i) A vendor is subject to food sampling and inspection by the local health department in~~
42 ~~the jurisdiction in which the farmers market is located if the local health department determines~~

43 ~~that the vendor's food product is misbranded pursuant to §19-35-5(c) of this code, or adulterated,~~
44 ~~or if a consumer complaint has been received: *Provided*, That all sampling and inspection shall~~
45 ~~be performed in consultation with the Department of Agriculture.~~

46 ~~(j) If the local health department in the jurisdiction in which the farmers market is located~~
47 ~~has reason to believe that an imminent health hazard exists it may invoke cessation of production~~
48 ~~until it deems that the hazardous situation has been addressed to the satisfaction of the local~~
49 ~~health department: *Provided*, That a local health department that invokes cessation of production~~
50 ~~under this subsection shall do so in consultation with the Department of Agriculture.~~

§19-35-3a. Farmers Market Vendor Permits.

1 (a) Except as provided in subsection (d) of this section, all vendors at a farmers market
2 selling farm and food products shall apply for a farmers market vendor permit from the
3 department.

4 (b) The farmers market vendor permit, once issued, is valid in all counties in this state.

5 (c) Notwithstanding any other provisions of code or rule to the contrary, a vendor is not
6 required to obtain a food establishment permit to sell at a farmers market.

7 (d) The following vendors are exempt from obtaining a farmers market vendor permit:

8 (1) Vendors selling fresh, uncut produce;

9 (2) Vendors selling nonpotentially hazardous foods; and

10 (3) Vendors selling other farm and food products that are identified by the department.

11 (e) The department shall establish the conditions and procedures for issuance of farmers
12 market vendor permits. As a condition of obtaining a farmers market vendor permit, a vendor may
13 be required to satisfy additional requirements, including but not limited to, submitting to
14 inspections, and obtaining and maintaining certain additional licenses or certifications.

15 (f) All farmers market vendor permits shall be displayed in a conspicuous manner.

16 (g) The department may establish penalties for violation of this section by legislative rule,
17 pursuant to the provisions of §29A-3-1 et seq. of this code.

§19-35-3b. Role of local health departments in farmers markets.

1 (a) No local health department may require a farmers market or a farmers market vendor
2 to obtain a food establishment permit, except a consignment farmers market is required to obtain
3 a food establishment permit: *Provided*, That nothing in this article shall be construed to exempt
4 restaurants or other prepared food vendors from the requirement to obtain a food establishment
5 permit.

6 (b) A vendor is subject to food sampling and inspection by the local health department in
7 the jurisdiction in which the farmers market is located if the local health department determines
8 that the vendor's food product is misbranded or adulterated, or if a consumer complaint has been
9 received: *Provided*, That all sampling and inspection shall be performed in consultation with the
10 Department of Agriculture.

11 (c) If the local health department in the jurisdiction in which the farmers market is located
12 has reason to believe that an imminent health hazard exists it may invoke cessation of production
13 until it deems that the hazardous situation has been addressed to the satisfaction of the local
14 health department: *Provided*, That a local health department that invokes cessation of production
15 under this subsection shall do so in consultation with the Department of Agriculture.

§19-35-4. Legislative rules.

1 ~~(a) The Department of Agriculture~~ department shall propose emergency or legislative rules
2 for approval in accordance with the provisions of §29A-3-1 *et seq.* of this code for the purposes
3 of implementing this article, including the setting of any fees.

4 ~~(b) The Department of Agriculture shall consult with the Department of Health and Human~~
5 ~~Resources and shall consider the guidelines established in the Farmers Market Vendor Guide in~~
6 ~~promulgating the rules. The rules shall set forth quantity limitations for each type of farm and food~~
7 ~~product for which a farmers market vendor permit is required pursuant to §19-35-5(d) of this code.~~

~~§19-35-5. Cottage foods; acidified foods; non-potentially hazardous foods; other exempted foods~~ Potentially hazardous foods.

1 (a) Notwithstanding any provision of §16-1-1 *et seq.* of this code or any rules or regulations
2 to the contrary, the department shall regulate ~~cottage foods, acidified foods, nonpotentially~~
3 potentially hazardous foods and other exempted foods sold at farmers markets.

4 (b) A vendor of potentially hazardous foods shall apply for and obtain a farmers market
5 vendor permit as required by §19-35-3a of this code.

6 ~~(b) (c) Online farmers market sales shall be delivered in person and are not permitted to~~
7 ~~be shipped.~~ A home, farm, community, or commercial kitchen may be used by a ~~cottage~~
8 potentially hazardous foods vendor, as determined by the department.

9 (d) The department shall establish by legislative rule the requirements for obtaining a
10 vendor permit for potentially hazardous foods, including acidified foods, and other categories
11 identified and defined by the department.

12 ~~(e) (e) All~~ potentially hazardous foods for which a farmers market vendor permit is required
13 ~~pursuant to §19-35-5(d) of this code~~ sold at farmers markets shall be labeled in compliance with
14 the department's labeling standards and provide information about its content and sources. The
15 label shall include the words "MADE IN A WV _____ KITCHEN" in capital, bold, 10-point type or
16 larger words, with the blank space to state whether the product was made in a home, farm,
17 community, or commercial kitchen.

18 ~~(d) A farmers market vendor permit is required to sell the following farm and food products~~
19 ~~at farmers markets: Certain canned acidified foods, including, but not limited to, pickled products,~~
20 ~~sauces, and salsas. Acidified foods are low-acid foods to which acid or acid foods are added with~~
21 ~~a water activity of greater than .085 and a finished equilibrium of pH 4.6 or below. The majority of~~
22 ~~the produce in canned acidified foods shall be sourced from the vendor's West Virginia farm or~~
23 ~~garden, and records of the source of the produce shall be maintained.~~

24 ~~(e) A farmers market vendor permit is not required to sell the following farm and food~~
25 ~~products at farmers markets:~~

26 ~~(1) Nonpotentially hazardous foods, including, but not limited to: Breads, cakes, and~~
27 ~~candies; honey, tree syrup, apple butter, and molasses; standardized, nondietary jams and jellies;~~
28 ~~and dehydrated fruits and vegetables; and~~

29 ~~(2) Other foods that are exempted from certain regulations, including, but not limited to,~~
30 ~~certain fermented products, certain exempted condiments, commercially harvested mushrooms,~~
31 ~~and canned, whole, or chopped tomatoes, tomato sauce, and tomato juice having a finished~~
32 ~~equilibrium of pH 4.6 or below.~~

33 ~~(f) The Department of Agriculture shall consult with the Department of Health and Human~~
34 ~~Resources to promulgate any rules deemed necessary by the Commissioner of Agriculture to~~
35 ~~ensure the health, sanitation, and safety of the products produced and sold pursuant to this~~
36 ~~section.~~

§19-35-6. Direct sale of homemade food items Nonpotentially hazardous foods.

1 (a) The production and sale of ~~homemade food items~~ nonpotentially hazardous foods,
2 when done in conformity with this section and the accompanying legislative rules, are exempt
3 from licensing, permitting, inspection, packaging, and labeling laws of this state.

4 (b) The following conditions apply to the sale and delivery of ~~homemade food items~~
5 nonpotentially hazardous foods:

6 (1) The ~~homemade~~ nonpotentially hazardous food item must be sold by the producer to
7 the consumer, whether in person or remotely, or by an agent of the producer or a third-party
8 vendor; and

9 (2) The ~~homemade~~ nonpotentially hazardous food items must be delivered to the
10 consumer by the producer, an agent of the producer, a third-party vendor, or a third-party carrier.

11 ~~(c) The following information must be provided to the consumer, in the format required by~~
12 ~~subsection (d) of this section: All nonpotentially hazardous foods shall be labeled in compliance~~
13 ~~with the department's labeling standards and provide information about their content and sources.~~

14 ~~(1) The name, home address, and telephone number of the producer of the homemade~~
15 ~~food item;~~

16 ~~(2) The common or usual name of the homemade food item;~~

17 ~~(3) The ingredients of the homemade food item in descending order of predominance; and~~

18 ~~(4) The following statement: "This product was produced at a private residence that is~~
19 ~~exempt from State licensing and inspection. This product may contain allergens."~~

20 ~~(d) The information required by subsection (c) of this section must be provided: A home,~~
21 ~~farm, community, or commercial kitchen may be used by a nonpotentially hazardous foods~~
22 ~~vendor, as determined by the department.~~

23 ~~(1) On a label affixed to the package, if the homemade food item is packaged;~~

24 ~~(2) On a label affixed to the container, if the homemade food item is offered for sale from~~
25 ~~a bulk container;~~

26 ~~(3) On a placard displayed at the point of sale, if the homemade food item is neither~~
27 ~~packaged nor offered for sale from a bulk container;~~

28 ~~(4) On the webpage on which the homemade food item is offered for sale, if the homemade~~
29 ~~food item is offered for sale on the Internet; or~~

30 ~~(5) On a receipt or other document provided to the customer with the homemade food~~
31 ~~item.~~

32 ~~(e) The homemade food item must not be meat, meat byproduct, meat food product,~~
33 ~~poultry, poultry byproduct, or poultry food product, as those terms are defined for purposes of the~~
34 ~~federal Meat Inspection Act and federal Poultry Products Inspection Act, unless the production~~
35 ~~and sale of the items are within the exemption in 9 C.F.R. §303.1(d), §381.10(c), or §381.10(d)~~
36 ~~and comply with other applicable federal regulations.~~

37 ~~(f)~~ (e) This section shall not be construed to:

38 (1) Impede the authority of a local health department or the department to investigate or
39 cease the production or sale of food items reported to have caused a foodborne illness;

40 (2) Preclude the department from providing assistance, consultation, or inspection at the
41 request of the producer of a ~~homemade~~ nonpotentially hazardous food item;

42 (3) Preclude the production or sale of food items otherwise allowed by law;

43 (4) Exempt a producer, seller, third-party vendor, or third-party agent from any applicable
44 tax law;

45 (5) Exempt producers or sellers of ~~homemade~~ nonpotentially hazardous food items from
46 any law that requires the producer, seller, third-party vendor, or third-party agent to register its
47 business name, address, and other identification information with the state;

48 (6) Exempt producers or sellers of ~~homemade~~ nonpotentially hazardous food items from
49 any applicable law of the federal government, including any federal law prohibiting the sale of
50 certain food items in interstate commerce; or

51 (7) Exempt producers or sellers of ~~homemade~~ nonpotentially hazardous food items from
52 any applicable law of another state.

53 ~~(g)~~ (f) This section preempts county, municipal, and other political jurisdictions from
54 prohibiting and regulating the production and sale of ~~homemade~~ nonpotentially hazardous food
55 items: *Provided*, That such preemption shall not include space rentals at government-owned or
56 operated facilities, government-sanctioned or operated events, or product placement agreements
57 with government-owned facilities, as well as temporary events 14 days or less in duration.

ARTICLE 37. WEST VIRGINIA FRESH FOOD ACT.

§19-37-2. State-funded institutions to purchase food from in-state sources; exception.

1 (a) Beginning July 1, 2019, all ~~each~~ state-funded ~~institutions~~ institution, ~~such as including,~~
2 but not limited to, schools, colleges, correctional facilities, governmental agencies, and state
3 parks, shall ~~purchase~~ obtain a minimum of five percent of its food from in-state producers.

4 (b) To satisfy this requirement, state-funded institutions may purchase, either directly or
5 indirectly fresh produce, meat and poultry products, milk and other dairy products, and other foods
6 grown, produced, or processed from by in-state producers.

7 (c) The commissioner shall establish by legislative rules the criteria for a food or food
8 product to satisfy the requirements of this section, and may further identify food and food products
9 that are eligible to be considered for in-state food credit.

10 (d) The commissioner shall further establish the criteria for determining when exceptions
11 or exemptions should be granted to state institutions, including, but not limited to, situations in
12 which the desired food, such as :- ~~Provided~~, That such produce, meat and poultry products, milk
13 and other dairy products, can cannot be grown or is not available from in-state producers.

14 (e) The state-funded institution shall ensure that all contracts for the purchase of food, or
15 that include the purchase of food as a component of the contract, contain provisions to ensure
16 that the institution complies with the provisions of this article and any legislative rule promulgated
17 pursuant thereto.

ARTICLE 38. AGRICULTURE INVESTMENT PROGRAM.

§19-38-1. Legislative findings and purpose.

1 (a) The Legislature finds that:

2 (1) It is an important public policy to attract new and expand existing agricultural
3 businesses and value-added facilities producing or further developing the availability of locally
4 grown food and locally produced products.

5 (2) Agriculture-based businesses are necessary for diversifying the state's economy.

6 (3) Because of the unique nature of these businesses, agriculture-based businesses
7 struggle to obtain appropriate capital for development or expansion and require unique tools and
8 guidance to navigate the hurdles associated with establishment and growth.

9 (b) Therefore, the Legislature hereby creates the West Virginia Agriculture Investment
10 Program to accomplish these important public policy goals.

§19-38-2. Definitions.

1 (a) "Commissioner" means the Commissioner of Agriculture, or his or her designee.

2 (b) "Department" means the West Virginia Department of Agriculture.

3 (c) "Fund" means the Agriculture Investment Fund created by this article.

4 (d) "Program" means the West Virginia Agriculture Investment Program created by this
5 article.

§19-38-3. Agriculture Investment Fund created.

1 (a) There is hereby created in the State Treasury a special revenue account to be known
2 as the West Virginia Agriculture Investment Fund. The fund shall be administered by the
3 Department of Agriculture. The fund shall consist of all moneys that may be appropriated and
4 designated for the fund by the Legislature, and all interest or other return earned from investment
5 of the fund. The fund may receive any appropriations, gifts, grants, contribution, or other money
6 from any source that is designated for deposit into the fund.

7 (b) Expenditures from the fund shall be for the purposes set forth in this article and are not
8 authorized from collections but are to be made only in accordance with appropriation by the
9 Legislature and in accordance with the provisions of §12-3-1 et seq. of this code and upon
10 fulfillment of the provisions of §11B-2-1 et seq. of this code. Any balance, including accrued
11 interest and other returns, remaining in the fund at the end of each fiscal year shall not revert to
12 the General Revenue Fund, but shall remain in the fund and be expended as provided by this
13 section.

§19-38-4. West Virginia Agriculture Investment Program.

1 (a) The West Virginia Agriculture Investment Program is hereby authorized. The purpose
2 of this program is to attract and support new and expanding agriculture businesses and facilities
3 producing or further developing products made, grown, or processed in West Virginia.

4 (b) The program shall be administered by the commissioner or his or her designee.

5 (c) Moneys may be awarded by the commissioner from the fund as either grants or loans.

6 (d) The criteria for awarding such grants or loans shall include, but are not limited to:

7 (1) The number of direct and indirect jobs expected to be created;

8 (2) The anticipated amount of private capital investment;

9 (3) The anticipated additional state tax revenue expected to accrue to the state and
10 affected localities as a result of the capital investment and jobs created;

11 (4) The anticipated amount of West Virginia-grown, processed, or produced agricultural
12 products utilized or promoted by the project; and

13 (5) The projected impact on agricultural producers.

14 (e) The commissioner may establish a committee to assist in the administration of the
15 program. Members of the committee shall receive no compensation for their service on the
16 committee but shall be entitled to receive reimbursement for expenses in accordance with the
17 Department of Agriculture travel regulations.

§19-38-5. Legislative rules.

1 The commissioner shall propose rules for legislative approval in accordance with §29A-3-
2 1 et seq. of this code. Those rules shall, at a minimum:

3 (1) Identify the types of individuals and entities that are eligible for grants or loans from
4 the program;

5 (2) Provide for the selection of members of any committee established by the
6 commissioner to assist in administration of the program;

7 (3) Establish criteria for making grants or loans: *Provided*, That the commissioner shall
8 consult with the Department of Commerce before proposing such criteria;

9 (4) Establish procedures and requirements for grant or loan applications; and

10 (5) Establish the administration, record-keeping, and reporting requirements for entities
11 that receive grants or loans from the program.

NOTE: The purpose of this bill is to create the 2021 Farm Bill. This bill amends and updates numerous sections of code within Chapter 19, all related to agriculture.

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