

WEST VIRGINIA LEGISLATURE

2025 REGULAR SESSION

Introduced

Senate Bill 805

By Senators Rucker and Deeds

[Introduced March 19, 2025; referred
to the Committee on Agriculture; and then to the
Committee on Government Organization]

1 A BILL to amend the Code of West Virginia, 1931, as amended, by adding a new section,
2 designated §36-4-20, relating to promoting personal agriculture by making unenforceable
3 a housing association covenant or restriction that prohibits home gardens and ownership
4 of chickens; defining terms; and providing exceptions.

Be it enacted by the Legislature of West Virginia:

ARTICLE

4.

COVENANTS.

§36-4-20. Personal agricultural covenants unenforceable; exceptions.

1 (a) It is the policy of the state to encourage the sustainable use of residential property and
2 to remove obstacles that promote personal agriculture including the cultivation of home gardens
3 and ownership of certain types of poultry. Therefore, any covenant, restriction, or condition
4 contained in any governing document of a housing association executed or recorded after the
5 effective date of this section that effectively prohibits or restricts the planting or installation of a
6 personal garden, which includes plant crops in containers, or the ownership and enjoyment of no
7 more than four (4) chickens is void and unenforceable unless otherwise prohibited by state law or
8 local ordinance: *Provided*, That a housing association may, by vote of its members, remove a
9 restriction that prohibits or restricts the cultivation of a personal garden or the ownership of no
10 more than four (4) chickens; *Provided, however*, That nothing in this section authorizes a property
11 owner subject to a housing association governing document to own a rooster.

12 (b) For the purposes of this section:

13 (1) "Chicken" means an adult female chicken or "hen", or a young female chicken or
14 "pullet";

15 (2) "Housing association" (or "homeowners association," "HOA") means a private group
16 responsible for the upkeep of common areas and shared amenities within a common interest
17 community, enforcing rules, and regulations to maintain a standard of living, and adhering to local,
18 state, and federal laws;

19 (3) "Personal agriculture" means a use of land where an individual cultivates edible plant

20 crops for personal use or donation. It shall not include edible plant crops grown for sale or other
21 commercial purposes;

22 (4) "Plant crop" means any crop in its raw or natural state, which comes from a plant that
23 will bear edible fruits, vegetables, herbs or grains. It shall not include marijuana or any unlawful
24 crops or substances; and

25 (5) "Reasonable restriction" means restrictions that do not significantly increase the cost of
26 engaging in the personal agricultural addressed by this section or significantly decrease its
27 efficiency.

28 (c) This section does not apply to provisions that impose reasonable restrictions on
29 personal agriculture including restrictions for historical preservation, architectural significance,
30 religious or cultural importance to a given community. Nothing in this section precludes the
31 regulation of personal agriculture by state and local authorities which may establish land use,
32 health and safety standards.

33 (d) This section applies only to property that is designated for the exclusive use of the
34 homeowner or property owner. It does not apply to common areas and common structures.

35 (e) This section shall not prohibit a housing association from applying restrictions, rules
36 and regulations that require dead plant material and weeds, with the exception of straw, mulch,
37 compost, and other organic materials intended to encourage vegetation and retention of moisture
38 in the soil, to be regularly cleared from the property.

39 (f) This section shall not restrict a housing association from prohibiting the use of
40 herbicides, pesticides, fungicides, rodenticides, insecticides, or any other synthetic chemical
41 product commonly used in the growing of plant crops.

42 (g) This section shall not prohibit a housing association from applying restrictions, rules
43 and regulations that specify the size, type, and location of chicken coops. This section shall not
44 prohibit a housing association from mandating setback requirements, meaning the coop must be a
45 certain distance from property lines or other structures. Nothing in this section authorizes free-

46 ranging.

NOTE: The purpose of this bill is to promote personal agriculture by making unenforceable a housing association covenant or restriction that prohibits home gardens and ownership of chickens. The bill defines terms and provides exceptions.

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