

WEST VIRGINIA LEGISLATURE

2026 REGULAR SESSION

Introduced

House Bill 4498

By Delegates Linville, Clark, and Hornby

[Introduced January 19, 2026; referred to the
Committee on Government Organization]

1 A BILL to amend and reenact §19-13-3, §19-19-1, §19-19-2, §19-19-4, and §19-19-7 of the Code
2 of West Virginia, 1931, as amended; and creating a new code section designated §19-19-
3 2a; all relating to clarifying the Right to Farm Act relating to residential agricultural
4 operations, agritourism and the protection of agriculture through urban horticulture and
5 beekeeping.

Be it enacted by the Legislature of West Virginia:

**ARTICLE 13. ~~INSPECTION AND PROTECTION OF AGRICULTURE~~ WEST VIRGINIA
APIARY ACT.**

**§19-13-3. Commissioner's powers and duties; rule-making authority; apiary education;
cooperation with governmental agencies; seizure of infected bees and bee
equipment.**

1 (a) The commissioner may propose rules for legislative approval in accordance with the
2 provisions of §29A-3-1 et seq. of this code: (1) To effectively eradicate, suppress or control honey
3 bee pests as far as may be practical; (2) to regulate the keeping and maintaining of bees, bee
4 equipment, queen breeding equipment, apiaries and appliances; (3) to regulate treatments,
5 retreatments, and fees for the services; and (4) any other rules necessary to effectuate the
6 enforcement of this article.

7 (b) The commissioner ~~is authorized to~~ may conduct apiary education in a manner which
8 advances and promotes bee culture in West Virginia.

9 (c) The commissioner ~~is authorized to~~ may cooperate with the federal government and its
10 agencies, departments and instrumentalities; other West Virginia agencies, departments,
11 divisions, or political subdivisions; and any other state or commonwealth and its agencies,
12 departments or political subdivisions, in order to carry out the effective administration of this
13 article.

14 (d) The commissioner ~~is authorized to~~ may stop the delivery of, to seize, to destroy, to treat

or to order returned to point of origin, at the owner's expense, all appliances, bees, bee equipment, bee products or hives transported into or within this state, found to be infected with honeybee pests regardless of whether a valid certificate of inspection is attached.

(e) The authority to prohibit, regulate, inspect, and permit managed bees and apiaries and to adopt rules on the placement and location of apiaries shall be preempted to the commissioner and supersedes any related ordinance, charter, regulation, or law adopted by any county, municipalities, or political subdivision: *Provided*, That nothing in this article shall be construed to override or pre-empt existing Homeowners Association's bylaws restricting beekeeping.

Any person who challenges the validity of any ordinance, charter, regulation, or law of any county, municipal, or political subdivision in a court of law and prevails, then pursuant to subsection (e) of this section, shall be awarded his or her costs, attorney fees, and any other compensatory damages as provided by law.

ARTICLE 19. PRESERVATION OF AGRICULTURAL PRODUCTION.

§19-19-1. Purpose; public policy.

Whereas, Agricultural production of food and fiber is a basic necessity to sustain human life, and essential to the general welfare and stability of this state and the citizens thereof, and the continued conduct of the utilization of land in the conduct of agricultural production, including woodland and forestry production, is a necessity to the welfare and common good of all of the citizens of this state; and,

Whereas, The infringement upon residential agricultural lands, agricultural lands, and agricultural operations by other uses and occupancies which are either adverse or incompatible with the continued agricultural utilization may be of such nature as to endanger orderly agricultural production, it is hereby declared to be the public policy of this state that agricultural production and the utilization of land in agricultural productive operations be protected and preserved.

§19-19-2. Definitions.

For the purposes of this article:

2 ~~(a)~~ "Agriculture" ~~shall mean~~ means the production of food, fiber and woodland products, by
3 means of cultivation, tillage of the soil and by the conduct of animal, livestock, dairy, apiary, equine
4 or poultry husbandry, and the practice of forestry, silviculture, horticulture, harvesting of silviculture
5 products, packing, shipping, milling, and marketing of agricultural products conducted by the
6 proprietor of the agricultural operation, or any other legal plant or animal production and all farm
7 practices.

8 ~~(b)~~ "Agricultural land" ~~shall mean~~ means any amount of land and the improvements
9 thereupon, used or usable in the production of food, fiber or woodland products of an annual value
10 of \$1,000 or more, by the conduct of the business of agriculture, as defined in subsection (a) of this
11 section.

12 ~~(c)~~ "Agricultural operation" ~~shall mean~~ means any facility including agricultural residential
13 land and any appurtenances thereon utilized for agriculture, or agritourism as defined by West
14 Virginia Code §19-36-2.

15 "Agricultural residential land" means any amount of land zoned for residential purposes,
16 and the improvements or appurtenances thereon, used or usable for the purposes of urban
17 agriculture in the production of food for consumption by the owner or operator of the residential
18 agricultural land, or for the production and sale of non-potentially hazardous foods as defined by
19 West Virginia Code §19-35-2, limited to: (i) cultivation or tillage of the soil for horticulture; (ii) the
20 maintenance of apiaries, and/or (iii) the practice of silviculture and harvesting of silviculture
21 outside of town, city, municipality or county boundaries, which are conducted by the proprietor of
22 the agricultural residential land, and all farm practices, subject to the limitations set forth in §19-13-
23 3(e).

24 "Apiary" means a place where one or more beehives are kept.

25 "Beekeeper" means a person who owns or manages an apiary.

26 "Urban bee keeping" means a person who owns or manages an apiary within the
27 boundaries of a municipality.

"Department" means the West Virginia Department of Agriculture.

"Flyway barrier" means a solid fence, hedge, or structure at least six feet in height that directs bee flight paths upward.

"Hive" means a structure housing a colony of honeybees.

"Honey bee pest" means American foulbrood (Bacillus larvae), European foulbrood (Melissococcus pluton), Varroa mite (Varroa destructor), honey bee tracheal mite (Acarapis woodi), Tropilaelaps mite (Tropilaelaps clareae or Tropilaelaps mercedesae), or any other virus or infectious or parasitic organism determined by the commissioner to be transmissible to other bee colonies and that represents a threat to beekeeping in West Virginia.

"Quarantine" means a declaration by the commissioner of the West Virginia Department of Agriculture which specifies a period of enforced isolation to contain and prevent the spread of honey bee pests.

"Urban agriculture" means cultivation or tillage of the soil for horticulture; and/or the keeping, maintaining, raising, and/or harboring of any apiary within any town, city, municipality, county or political subdivision for personal consumption or the production and sale of a non-potentially hazardous food.

§19-19-2a. Urban Beekeeping.

(a) For the placement of any Hive as defined by §19-19-2 of this code:

(1) Hives must be placed at least 10 feet from any property line and 25 feet from any dwelling other than that of the beekeeper. A flyaway barrier is required 15 feet from any property line.

(b) Registration and Permitting.

(1) All urban beekeepers must adhere to all West Virginia Department of Agriculture code requirements.

(2) Urban Beekeepers must display registration numbers visibly near the apiary.

(c) Water Source Requirement.

(1) Urban Beekeepers must provide a dedicated water source within 10 feet of the hives to prevent bees from seeking water at neighboring properties.

(2) The water source must be maintained to prevent mosquito breeding.

(d) Swarm Prevention and Colony Management.

(1) Urban Beekeepers must monitor and manage colonies to minimize swarming.

(2) If a swarm occurs, the urban beekeeper must take immediate action to retrieve and rehouse the bees or contact a licensed beekeeper for removal.

(e) Existing Homeowners Association ("HOA") Charters and Rules.

(1) This section does not override existing HOA bylaws restricting or prohibiting bee-keeping.

(2) Property owners must verify compliance with HOA rules before applying to keep bees on their property.

§19-19-4. Agriculture not adverse; limitation of actions.

The conduct of agriculture upon agricultural land or agricultural residential land shall may not be ~~deemed~~ considered adverse to other use or uses of adjoining or neighboring land, whether such other land be used or occupied for residential, commercial, business or for governmental, or any uses other than agricultural.

No complaint or right of action shall may be maintained in any court of this state against the owner or operator of agricultural lands or agricultural residential land adverse to the conduct of agriculture upon agricultural lands or agricultural residential land, unless:

(1) The complainant's use and occupancy of land of the complainant has existed upon his or her adjoining or neighboring land before the agricultural operation complained of upon the agricultural land or agricultural residential land; and

(2) The conduct of ~~such~~ the agricultural operation complained of has by clear and convincing evidence caused or will cause actual physical damage to the person or property of the owner or occupant of ~~such~~ the adjoining or neighboring lands.

§19-19-7. Additional limitations on nuisance actions.

(a) The provisions of this section are in addition to the limitations on actions brought against an agricultural operation in §19-19-4 of this code, and shall also apply to any nuisance action brought against an agricultural operation in any court of this state.

(b) A person may not file a nuisance action to recover damages in which an agricultural operation is alleged to be a public or private nuisance unless:

(1) He or she is the majority legal land owner;

(2) He or she owns property adversely affected by agricultural operations within one half mile of the agricultural operation; and

(3) The agricultural operation has materially violated a federal, state, or local law applicable to agriculture.

(c) No agricultural operation within this state which has been in operation for a period of more than one year ~~shall~~ may be considered a nuisance, either public or private, as the result of a changed condition in or about the locality where ~~such~~ the agricultural operation is located. In any nuisance action, public or private, against an agricultural operation or its principals or employees proof that the agricultural operation has existed for one year or more is an absolute defense to the nuisance action, if the operation is in compliance with all applicable state and federal laws, regulations, and permits.

(d) No state, or local agency city, municipality, town, county or political subdivision may bring a criminal or civil action against an agricultural operation for an activity that is in material compliance with all applicable state and federal laws, regulations, and permits.

(e) No agricultural operation ~~shall~~ may be or become a private or public nuisance if the operators are conducting the agricultural operation in a manner consistent with commonly accepted agricultural practice. If the operation is in material compliance with all applicable state and federal laws, regulations, and permits, it shall be presumed to be conducted in a manner consistent with commonly accepted agricultural practice.

(f) No agricultural operation ~~shall~~ may be considered a nuisance, private or public, if the agricultural operation makes a reasonable expansion, so long as the operation is in material compliance with all applicable state and federal laws, regulations, and permits.

(1) For the purpose of this section, a reasonable expansion includes, but is not limited to:

(A) Transfer of the agricultural operation;

(B) Purchase of additional land for the agricultural operation;

(C) Introducing technology to an existing agricultural operation including, but not limited to, new activities, practices, equipment, and procedures consistent with technological development within the agricultural industry;

(D) Applying a Natural Resources Conservation Service program or other United States Department of Agriculture program to an existing or future agricultural operation; or

(E) Any other change that is related and applied to an existing agricultural operation, so long as the change does not affect the agricultural operation's compliance with applicable state and federal laws, regulations, and permits.

(2) The reasonable expansion exemption provided by this subsection cannot apply to an expansion that:

(A) Creates a substantially adverse effect upon the environment; or

(B) Creates a hazard to public health and safety.

(g) A requirement of a municipality does not apply to an agricultural operation situated outside of the municipality's corporate boundaries on the effective date of this chapter. If an agricultural operation is subsequently annexed or otherwise brought within the corporate boundaries of a municipality, the requirements of the municipality do not apply to the agricultural operation.

(h) An agricultural operation is not, nor ~~shall~~ may it become, a private or public nuisance after it has been in operation for more than one year, if ~~such~~ the operation was not a nuisance at the time the operation began, and the conditions or circumstances complained of as constituting

the basis for the nuisance action exist substantially unchanged since the established date of operation. The established date of operation is the date on which an agricultural operation commenced.

(i) The provisions of this section shall may not apply in any of the following circumstances:

(1) Whenever a nuisance results from the negligent operation of any such agricultural operation; or

(2) To affect or defeat the right of any person to recover for injuries or damages sustained because of an agricultural operation or portion of an agricultural operation that is conducted in violation of a federal, state, or local statute or governmental requirement that applies to the agricultural operation or portion of agricultural operation.

(j) The protected status of an agricultural operation, once acquired, is assignable, alienable, and inheritable. The protected status of an agricultural operation, once acquired, may not be waived by the temporary cessation of operations or by diminishing the size of the operation.

(k) No town, city, municipality, county or political subdivision may prohibit urban agriculture apiaries or agricultural residential land apiaries or cause a permit or license to be issued or obtained to engage in the practice of urban agriculture apiaries or agricultural residential land apiaries: *Provided*, That a municipality shall refer enforcement concerns to the West Virginia Department of Agriculture, and the Department shall enforce the requirements of approved urban apiaries or agricultural residential land apiaries and beekeeping related to such apiaries consistent with the requirements of §19-19-2a of this code, as follows:

(1) Fines or penalties shall be established by the commissioner of the Department, subject to legislative rulemaking review and approval.

(2) Proceeds of fines or penalties collected pursuant to §19-19-7(k) of this code shall be deposited with the West Virginia Department of Agriculture.

NOTE: The purpose of this bill is to clarify the Right to Farm Act and the intent of the legislature to promote agriculture through agricultural businesses, promote the health of West Virginians and the West Virginia economy, and promote the protection of West

Virginia agriculture through urban horticulture and beekeeping.

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