

# **WEST VIRGINIA LEGISLATURE**

**2021 REGULAR SESSION**

**ENROLLED**

**Committee Substitute**

**for**

**House Bill 2633**

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

WARD AND TULLY

[Passed April 6, 2021; in effect ninety days from passage.]



1 AN ACT to amend and reenact §19-1-2, §19-1-3a, and §19-1-7 of the Code of West Virginia,  
2 1931, as amended; to amend and reenact §19-1C-2, §19-1C-3, §19-1C-4, and §19-1C-6  
3 of said code; to amend said code by adding thereto a new section, designated §19-1C-7;  
4 to amend and reenact §19-9A-2 of said code; to amend and reenact §19-12A-5 of said  
5 code; to amend and reenact §19-14-1, §19-14-2, §19-14-3, §19-14-5, §19-14-6, §19-14-  
6 7, §19-14-8, §19-14-9, §19-14-10, §19-14-11, §19-14-12, and §19-14-14 of said code; to  
7 amend said code by adding thereto a new section, designated §19-14-16; to amend and  
8 reenact §19-21A-1, §19-21A-3, §19-21A-4, and §19-21A-8 of said code; to amend and  
9 reenact §19-25-1, §19-25-2, and §19-25-5 of said code; to amend and reenact §19-31-1  
10 of said code; to amend and reenact §19-35-1, §19-35-2, §19-35-3, §19-35-4, §19-35-5,  
11 and §19-35-6 of said code; to amend said code by adding thereto two new sections,  
12 designated §19-35-3a and §19-35-3b; to amend and reenact §19-37-2 of said code; and  
13 to amend said code by adding thereto a new article, designated §19-38-1, §19-38-2, §19-  
14 38-3, §19-38-4, and §19-38-5, all relating to the 2021 Farm Bill; eliminating certain  
15 qualifications for Commissioner of Agriculture; eliminating certain references to Marketing  
16 and Development Division of Department of Agriculture; authorizing Department of  
17 Agriculture to undertake certain marketing, promotional, and economic development  
18 activities; authorizing coordination between Department of Economic Development and  
19 Department of Agriculture; providing an exemption from disclosure under Freedom of  
20 Information Act for certain materials in connection with Department of Agriculture's  
21 marketing, promotional, and economic development duties; clarifying that raw milk can be  
22 sold for purposes other than human consumption; defining terms related to care of  
23 livestock; removing outdated information relating to appointment and composition of  
24 Livestock Care Standards Board; establishing length of term for appointments; authorizing  
25 reappointment of members for additional terms; providing for gubernatorial appointment  
26 of members of Livestock Care Standards Board, by and with consent of Senate; modifying  
27 membership of Livestock Care Standards Board; eliminating certain qualifications for

28 members of Livestock Care Standards Board; authorizing Commissioner of Agriculture to  
29 promulgate certain legislative rules in consultation with Livestock Care Standards Board;  
30 providing an exemption from disclosure under Freedom of Information Act for certain  
31 materials in connection with complaints regarding inhumane treatment of livestock;  
32 directing board to review proposed rules on livestock care standards and provide  
33 recommendation to Legislative Rule-Making Review Committee; authorizing  
34 Commissioner of Agriculture to call additional meetings of Livestock Care Standards  
35 Board; authorizing Commissioner of Agriculture to file annual reports with Joint Committee  
36 on Government and Finance prior to a date certain; providing for administration and  
37 enforcement authority of Commissioner of Agriculture with respect to livestock care  
38 standards; directing law-enforcement officers to notify Commissioner of Agriculture of  
39 certain complaints and investigations; authorizing law-enforcement officers to seek advice  
40 of Commissioner of Agriculture concerning application of livestock care standards;  
41 requiring Commissioner of Agriculture to notify law-enforcement officers of changes made  
42 during 2021 Regular Legislative session respecting livestock care standards; eliminating  
43 fee for permit to feed untreated garbage to swine; removing certain procedural  
44 requirements for certain contracts, leases, sales, exchanges, and other dispositions;  
45 authorizing cancellation of certain leases and providing for written notice to lessee;  
46 amending name of West Virginia Commercial Feed Law; defining, amending, and  
47 removing terms related to commercial feed; modifying powers and duties of commissioner;  
48 removing certain references to registrant in West Virginia Commercial Feed Law;  
49 eliminating requirement to publish annual composite report; changing deadline to apply  
50 for permit or registration under West Virginia Commercial Feed Law; eliminating specific  
51 fee amounts in statute and authorizing rulemaking related thereto; updating requirements  
52 for Commercial Feed Manufacturing Permit and Commercial Feed Distributor Permit;  
53 setting forth requirements for individuals to possess Commercial Feed Guarantor Permit;  
54 eliminating certain registration requirements for commercial feed products; modifying

55 registration requirements for pet food and specialty pet food; requiring new application for  
56 registration in certain circumstances; authorizing Commissioner of Agriculture to refuse to  
57 grant, suspend, or revoke permits or registrations in certain circumstances; modifying  
58 procedures for certain persons to amend application and appeal adverse determinations;  
59 requiring appeals to be in accordance with Administrative Procedures Act; modifying  
60 labeling requirements for certain commercial feed products; modifying requirements for  
61 tonnage reports and inspection fees; authorizing commissioner to inspect certain tonnage  
62 records; modifying meaning of commercial feed or feed ingredients; modifying meaning  
63 of misbranding of commercial feed; make technical modifications; modifying certain  
64 prohibited acts; defining additional prohibited acts; authorizing establishment of analytical  
65 variation rules; authorizing penalties for excessive deviations; providing for penalties to be  
66 returned to purchasers where possible; authorizing late payment penalties; modifying  
67 authority of West Virginia Conservation Agency and State Conservation Committee to  
68 address certain water quality issues; modifying legislative determinations; defining terms  
69 related to conservation districts; eliminating outdated language; modifying authority for  
70 conservation districts to address certain water quality issues; limiting liability of landowner  
71 who invites or permits persons to enter for agricultural purposes; defining terms related to  
72 landowner liability; clarifying ownership of Guthrie Center; modifying legislative findings  
73 and purpose; defining terms related to farmers markets and certain foods; eliminating  
74 certain definitions; modifying requirements for farmers market registration; requiring that  
75 registration be conspicuously displayed; clarifying that certain farmers markets are not  
76 required to obtain food establishment permit; providing for department to establish  
77 sampling regulations; authorizing rulemaking to establish penalties; modifying  
78 requirements for farmers market vendor permits; providing that farmers market vendor  
79 permit is valid in all counties; establishing requirements for farmers market vendor permits;  
80 clarifying that farmers market vendors are not required to obtain food establishment  
81 permit; exempting certain vendors from farmers market vendor permit requirement;

82 directing department to establish conditions and procedures for issuance of vendor  
83 permits; authorizing inspections and additional license or certifications as condition of  
84 issuing vendor permits; requiring vendor permits be displayed in a conspicuous manner;  
85 authorizing rulemaking to establish penalties; clarifying role of local health departments in  
86 farmers markets; prohibiting local health department from requiring food establishment  
87 permits for farmers markets or vendors except for consignment farmers markets; clarifying  
88 that restaurants and prepared food vendors remain subject to food establishment  
89 permitting requirements; authorizing food sampling and inspection of a farmers market  
90 vendor by local health departments in certain conditions; authorizing local health  
91 department to invoke cessation of production in certain conditions; requiring vendor food  
92 sampling and inspection and invocation of cessation of production by local health  
93 departments at farmers markets to be in consultation with department of agriculture;  
94 directing department to promulgate rules; eliminating certain requirements for  
95 promulgation of legislative rules; establishing requirements for regulation of potentially  
96 hazardous foods and nonpotentially hazardous foods sold at farmers markets; requiring  
97 vendors of potentially hazardous foods to obtain vendor permit; directing department to  
98 establish requirements for obtaining vendor permits; eliminating certain labeling  
99 requirements for potentially hazardous and nonpotentially hazardous; establishing  
100 requirements for sale of potentially hazardous and nonpotentially hazardous foods;  
101 expanding permissible kitchens for potentially hazardous foods and nonpotentially  
102 hazardous foods; modifying West Virginia Fresh Food Act to include additional categories  
103 of foods grown, produced, or processed by in-state producers; modifying requirements for  
104 state-funded institutions to obtain food from in-state producers; directing commissioner to  
105 establish criteria for food or food products to satisfy in-state requirement; directing  
106 commissioner to establish criteria for granting exceptions or exemptions; requiring state-  
107 funded institutions to ensure that all contracts related to purchase of food include  
108 provisions to ensure compliance with Fresh Food Act; establishing Agriculture Investment

109 Program; setting forth legislative findings and purpose; defining terms; establishing special  
110 revenue account in State Treasury to be known as Agriculture Investment Fund; defining  
111 source of funds and permissible expenditures from fund; authorizing West Virginia  
112 Agriculture Investment Program; providing for program administration; authorizing either  
113 grants or loans from fund; establishing certain criteria for awarding grants or loans;  
114 authorizing commissioner to establish committee to assist in program administration; and  
115 authorizing rulemaking related to Agriculture Investment Program and Agriculture  
116 Investment Fund.

*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  
2 the same time and in the same manner as other state officers are elected, and shall hold office  
3 for a term of four years and until his or her successor is elected and qualified.

**§19-1-3a. Marketing and economic development duties.**

1 (a) The department shall establish marketing, promotional, and economic development  
2 programs to advance West Virginia agriculture in the domestic and international markets; provide  
3 grading, inspection, and market news services to the various elements of the West Virginia  
4 agricultural industry; and regulate and license individuals involved in the marketing of agricultural  
5 products. Upon request of the commissioner, the Department of Economic Development may  
6 coordinate with the Department of Agriculture in the development of such programs.

7 (b) Any documentary material, data, or other writing made or received by the department  
8 in furtherance of its economic development duties and for the purpose of furnishing assistance to  
9 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) Commencing July 1, 2021, the board consists of the following 13 members, to be  
3 appointed by the Governor, by and with the consent of the Senate:

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

6 (2) The State Veterinarian, ex officio non-voting;

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

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

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

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

12 (7) Two members who are law-enforcement officers: *Provided*, That one member shall be  
13 appointed for an initial term of two years, and the other shall be appointed for an initial term of  
14 five years;

15 (8) One member selected from a list of three individuals submitted from the largest  
16 statewide poultry organization;

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

19 (10) Three members, at least two of whom are family farmers, selected from a list of 10  
20 individuals submitted by the largest organization in the state representing farmers.

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

23 (d) All members must be residents of this state during their terms.

24 (e) All appointed members serve until their successor has been appointed and qualified.  
25 Vacancies shall be filled in the same manner as the original appointment for the remainder of the  
26 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 authorized to establish standards  
7 by legislative rule, pursuant to the provisions of §29A-3-1 *et seq.* of this code, governing the care  
8 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 documents and  
13 communication regarding any investigation thereof, are considered confidential and are exempt  
14 from disclosure pursuant to §29B-1-1 *et seq.* of this code;

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

16 (4) Food safety practices; and

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

18 (c) The board shall review any rule proposed by the commissioner for legislative approval  
19 pursuant to this section. After reviewing the proposed legislative rule, the board may provide a  
20 recommendation to the Legislative Rule-Making Review Committee that the Legislature:

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

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

- 23 (3) Authorize the promulgation of the legislative rule with certain amendments;
- 24 (4) Recommend that the proposed rule be withdrawn; or
- 25 (5) Reject the proposed rule.

**§19-1C-6. Meetings of the board.**

1 (a) The board shall meet at least annually, and the commissioner may call additional  
2 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; 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.

3 (b) This article shall not apply to any person who feeds only his own household garbage  
4 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 to most efficiently produce food products for state institutions, support the department and its  
3 activities, advance the agricultural interests of the state, as identified by the commissioner, and  
4 otherwise implement the intent of the Legislature as set forth by this article. From the total amount  
5 of food, milk, and other commodities produced on institutional farms, the commissioner shall sell,  
6 at prevailing wholesale prices, and each of the institutions under the control of the Department of  
7 Health and Human Resources and Division of Corrections and Rehabilitation shall purchase,  
8 these products based on the dietary needs of each institution: *Provided*, That if the commissioner  
9 cannot sell sufficient food products to each institution to meet the demand created, each institution  
10 may purchase such food products from vendors who can supply those food products at the  
11 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.;

27 (2) Transfer to the public land corporation land designated in its management plan as land  
28 to be disposed of, which land shall be sold, exchanged, or otherwise transferred pursuant to §5A-  
29 11-4 and §5A-11-5 of this code;

30 (3) Develop lands to which it has title for the public use including forestation, recreation,  
31 wildlife, stock grazing, agricultural production, rehabilitation, and/or other conservation activities  
32 and may contract or lease for the proper development of timber, oil, gas, or mineral resources,  
33 including coal by underground mining or by surface mining where reclamation as required by  
34 specifications of the Department of Environmental Protection will increase the beneficial use of  
35 such property;

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

39 (5) Exercise all other powers and duties necessary to effectuate the purposes of this  
40 article.

41 (d) Notwithstanding the provisions of subsection (c) of this section, no timberland may be  
42 leased, sold, exchanged, or otherwise disposed of unless there is no commercially salable timber  
43 on the timberland, an inventory is provided, and an appraisal of the timber is provided.

44 (e) The commissioner may promulgate, pursuant to §29-1-1 *et seq.* of this code, rules and  
45 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.”

### **§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 humans, except: (1) Unmixed or unprocessed whole seeds when such whole or unprocessed  
9 seeds are not chemically changed or adulterated; (2) unprocessed hay, straw, stover, silage,  
10 cobs, husks, hulls, and raw meat when not mixed with other materials and when not adulterated;  
11 (3) individual chemical compounds when not mixed with other materials. The term commercial

12 feed shall include the categories of feed ingredients, customer-formula feeds, pet foods and  
13 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, exchange, or barter commercial feed; or to  
24 supply, furnish, or provide commercial feed to a contract feeder.

25 (h) "Distributor" means any person who distributes a commercial feed.

26 (i) "Drug" means any substance intended for use in the diagnosis, cure, mitigation,  
27 treatment, or prevention of disease in animals, other than humans; and any substance intended  
28 to affect the structure or any function of the animal body.

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

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

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



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

42 (n) "Labeling" means and includes all labels as well as all other written, printed, or graphic  
43 matter found: (1) upon a commercial feed or any of its containers or wrappers, or (2)  
44 accompanying such commercial feed.

45 (o) "Manufacture" means to grind, mix, blend, package, pack, repackage, repack, or  
46 otherwise process a commercial feed for distribution.

47 (p) "Medicated feed" means any feed which contains one or more drugs. Antibiotics  
48 included in a feed growth promotion and/or efficiency level are drug additives and feeds containing  
49 such antibiotics are included in the definition of "medicated feed".

50 (q) "Mineral feed" means a commercial feed designed or intended to supply primarily  
51 mineral elements or inorganic nutrients.

52 (r) "Official sample" means any sample of feed taken by the commissioner in accordance  
53 with the provisions of this article and rules promulgated hereunder.

54 (s) "Percent" or "percentage" means percentage by weights.

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

57 (u) "Pet" means dog (*Canis familiaris*) or cat (*Felis catus*).

58 (v) "Pet food" means any commercial feed manufactured and distributed for consumption  
59 by pets.

60 (w) "Process" means a method used to prepare, treat, convert, or transform materials into  
61 feed or feed ingredients. The word "processed" can be used to further describe an ingredient  
62 name, so long as the ingredient is not nutritionally altered from the original form of the ingredient.

63 (x) "Product name" means the name of the commercial feed which identifies it as to kind,  
64 class, or specific use and distinguishes it from all other products bearing the same brand name.

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

66 (z) "Repack" or "repackaging" means to pack and label a previously manufactured feed.

67 (aa) "Specialty pet" means any animal normally maintained in a household, such as  
68 rodents, ornamental birds, fish, , reptiles, amphibians, ferrets, hedgehogs, marsupials, and rabbits  
69 not raised for food or fur.

70 (bb) "Specialty pet food" means any commercial feed prepared and distributed for  
71 consumption by specialty pets.

72 (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 (1) Enter and inspect, during reasonable hours, any location where commercial feed is  
3 manufactured, distributed, transported, or used, and where records relating to the manufacture,  
4 distribution, shipment, labeling, or sale of commercial feed are kept. Such inspection may include,  
5 but is not limited to, examining, photographing, verifying, copying, and auditing records as  
6 necessary to determine compliance with this article; and reviewing labels, consumer complaints,  
7 and papers relating to the manufacturing, distribution, sampling, testing, and sale of commercial  
8 feeds.

9 (2) 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 (3) Issue permits and registrations pursuant to this article.

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

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

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

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

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

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

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

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

25 (12) Establish and maintain 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 (13) Be guided by the analytical results of the official sample when determining whether  
30 the commercial feed is deficient in any component.

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

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

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

38 (17) Promulgate rules, in accordance with §29A-3-1 *et seq.* of this code, dealing with  
39 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 30 days prior to the expiration  
3 of the current permit or registration; or at least 30 days prior to the date that the person intends to  
4 engage in the business of selling or marketing commercial feed products in this state. All  
5 applications shall be accompanied by the required fee. A penalty shall be added to the fee for all  
6 permits or registrations that are not applied for or renewed within the time limit.

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

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

23           (e) Each person whose name appears on the label of a commercial feed or customer-  
24 formula feed as guarantor must obtain a Commercial Feed Guarantor Permit from the  
25 commissioner for each manufacturing facility or location that distributes feed in or into the state,  
26 except those facilities or locations for which a Commercial Feed Manufacturing Permit has already  
27 been issued by the commissioner. Application forms shall be provided by the commissioner and  
28 include such information as established by rules. Each Commercial Feed Guarantor Permit  
29 application shall be accompanied by the required application fee. Each permit issued shall expire  
30 on December 31, next following the date of issue.

31           (f) Pet food in packages over 10 pounds or bulk shall be registered annually. Each  
32 application for registration shall be accompanied by the required registration fee. Each registration  
33 shall expire on August 31 next following the date of issue: *Provided*, That until June 30, 2027, an  
34 additional registration fee of \$50 per product shall accompany each application for registration  
35 and the additional registration fee shall be deposited into the West Virginia Spay Neuter  
36 Assistance Fund for spay and neutering services performed within this state by licensed  
37 veterinarians.

38           (g) Pet food packaged in packages of 10 pounds and under shall be registered annually.  
39 Each application for registration shall be accompanied by the required registration fee. Each  
40 registration shall expire on December 31, next following the date of issue: *Provided*, That until  
41 June 1, 2027, an additional registration fee of \$35 per product shall accompany each application  
42 for registration and the additional registration fee shall be deposited into the West Virginia Spay  
43 Neuter Assistance Fund for spay and neutering services performed within this state by licensed  
44 veterinarians.

45           (h) Specialty pet food shall be registered annually. Each application for registration shall  
46 be accompanied by the required registration fee. Each registration shall expire on December 31,  
47 next following the date of issue.

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

50 (j) Alteration of a pet food or specialty pet food that changes the label requires a new  
51 application for registration be made and 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 any Commercial Feed  
2 Manufacturing Permit; any Commercial Feed Guarantor Permit; any Commercial Feed Distributor  
3 Permit; or the registration of any Pet Food or Specialty Pet Food when it is determined that: (1)  
4 The applicant, permittee, or guarantor has violated the provisions of this article or any official rule  
5 promulgated hereunder; or (2) this article or the rules promulgated hereunder cannot be or will  
6 not be complied with: *Provided*, That the permittee or guarantor shall have the opportunity to be  
7 heard prior to the suspension or revocation 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 guarantor  
4 or permittee shall have the opportunity to have a hearing before the commissioner.

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

**§19-14-8. 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 include the following:

5 (1) The quantity statement.

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

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

13 (4) An ingredient statement, except that an ingredient statement is not required for single  
14 standardized ingredient feeds. An ingredient statement shall include:

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

17 (B) Feed terms as defined in the annual Official Publication of the Association of American  
18 Feed Control Officials;

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

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

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

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

27 (6) For all commercial feeds containing drugs and for all other such commercial feeds as  
28 the commissioner may require by legislative rules, adequate directions as necessary for their safe  
29 and effective use and precautionary statements for safe and effective use.

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

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

- 32 (B) The level of each drug used in the final mixture;
- 33 (C) The purpose of the medication (claim statement);
- 34 (D) Appropriate cautions and warnings on the use of the medicated commercial feed;
- 35 (E) Withdrawal statements, if applicable; and
- 36 (F) The word “medicated” shall appear directly following and below the product name in
- 37 type size, no smaller than one-half the type size of the product name.

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

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

- 42 (1) Name and address of the manufacturer.
- 43 (2) Name and address of the purchaser.
- 44 (3) Date of manufacture and/or delivery.
- 45 (4) The product name and quantity statement of each commercial feed and each other  
46 ingredient used in the mixture.
- 47 (5) For all customer-formula feeds containing drugs and for all other such customer-  
48 formula feeds as the commissioner may require by legislative rules, adequate directions as  
49 necessary for their safe and effective use and precautionary statements for safe and effective  
50 use.

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

- 52 (A) The established name of each active drug ingredient;
- 53 (B) The level of each drug used in the final mixture;
- 54 (C) The purpose of the medication (claim statement);
- 55 (D) Appropriate cautions and warnings on the use of the commercial feed;
- 56 (E) Withdrawal statements, if applicable; and



57 (F) The word “medicated” shall appear directly following and below the product name in  
58 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 Guarantor Permit, except those persons exclusively manufacturing pet food or specialty pet food,  
3 shall report the number of tons of commercial feed distributed and pay an inspection fee on all  
4 feed distributed, except no inspection fee shall be due on:

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

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

11 (3) Commercial feeds which are subsequently used as ingredients in the continuing  
12 manufacture of commercial feeds in which the end product is registered.

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

14 (5) Pet food or specialty pet food.

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

17 (c) Each person holding a Commercial Feed Manufacturing Permit or a Commercial Feed  
18 Guarantor Permit, except those persons exclusively distributing or manufacturing pet food or  
19 specialty pet food, shall file a semiannual statement under oath before January 31 and July 31 of  
20 each year. The statement shall include the number of net tons of commercial feeds and feed  
21 ingredients manufactured or distributed in this state during the preceding six-month period.

22 (d) Each report shall be accompanied by an inspection fee at the rate established by  
23 legislative rule, including a minimum inspection fee, on commercial feed and feed ingredients.

24           Inspection fees which are due and payable and not remitted to the commissioner within  
25 15 days following the due date shall be assessed a penalty of 10 percent of the amount due,  
26 except that semiannual reports with no fees due received 15 days after the due date shall be  
27 assessed a penalty in an amount established by legislative rule. The assessment of this penalty  
28 fee shall not prevent the commissioner from taking other actions as provided in this chapter.

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

**§19-14-10. Adulteration.**

1           Commercial feed or feed ingredients is adulterated:

2           (1) If it bears or contains any poisonous or deleterious substance, which may render it  
3 injurious to health; unless the substance is not an added substance, in which case such  
4 commercial feed shall not be considered adulterated under this subsection if the quantity of such  
5 substance in such commercial feed does not ordinarily render it injurious to health;

6           (2) If it bears or contains any added poisonous, added deleterious, or added nonnutritive  
7 substance which is unsafe within the meaning of Section 406 of the Federal Food, Drug, and  
8 Cosmetic Act (other than one which is: (A) A pesticide chemical in or on a raw commodity; or (B)  
9 a food additive;

10           (3) If it is, or it bears or contains any food additive which is unsafe within the meaning of  
11 Section 409 of the Federal Food, Drug, and Cosmetic Act;

12           (4) If it is a raw agricultural commodity and it bears or contains a pesticide chemical which  
13 is unsafe within the meaning of Section 408(a) of the Federal Food, Drug, and Cosmetic Act:  
14 *Provided*, That where a pesticide chemical has been used in or on a raw agricultural commodity  
15 in conformity with an exemption granted or a tolerance prescribed under Section 408 of the  
16 Federal Food, Drug, and Cosmetic Act and such raw agricultural commodity has been subjected  
17 to processing such as canning, cooking, freezing, dehydrating, or milling, the residue of such

18 pesticide chemical remaining in or such processed feed shall not be deemed unsafe if such  
19 residue in or on the raw agricultural commodity has been removed to the extent possible in good  
20 manufacturing practice and the concentration of such residue in the processed feed is not greater  
21 than the tolerance prescribed for the raw agricultural commodity unless the feeding of such  
22 processed feed will result or is likely to result in a pesticide residue in the edible product of the  
23 animal, which is unsafe within the meaning of Section 408(a) of the Federal Food, Drug, and  
24 Cosmetic Act;

25 (5) If it bears or contains any color additive which is unsafe within the meaning of Section  
26 721 of the Federal Food, Drug, and Cosmetic Act;

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

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

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

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

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

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

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

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

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

**§19-14-11. Misbranding.**

1 Commercial feed shall be deemed to be misbranded:

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

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

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

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

10 (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 or she may  
5 issue and enforce a written embargo order, warning the custodian of the commercial feed not to

6 manufacture, distribute, use, remove, or dispose of the commercial feed lot in any manner until  
7 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 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 any commercial feed that is adulterated or misbranded.

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

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

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

9 (e) To fail or refuse to register pet foods or specialty pet foods.

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

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

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

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

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

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

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

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

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

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

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

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

31 (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 21A. 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  
8 loosening of soil and exhaustion of humus and developing a soil condition that favors erosion;  
9 that the topsoil is being washed out of fields and pastures; that there has been an accelerated  
10 washing of sloping fields; that these processes of erosion by water and flooding is increased with  
11 removal of absorptive topsoil, causing exposure of less absorptive and less protective but more  
12 erosive subsoil; that failure by any landowner to conserve the soil and control erosion upon his  
13 lands 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  
18 soil on lower slopes and its deposit over alluvial plains; the reduction in productivity or outright  
19 ruin of rich bottom lands by over-wash of -poor subsoil material, sand and gravel swept out of the  
20 hills; deterioration of soil and its fertility, deterioration of crops grown thereon and declining acre  
21 yields despite development of scientific processes for increasing such yields; loss of soil and  
22 water which causes destruction of food and cover for wildlife; the washing of soil into streams



23 which 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 (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 (5) "Grant" means the providing of grants for conservation purposes pursuant to legislative  
15 rule.

16 (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 (7) "Land occupier" or "occupier of land" means any person, firm, or corporation who shall  
21 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 (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 (9) "Notice" means notice published as a Class II legal advertisement in compliance with  
26 the provisions of §59-3-1 *et seq.* of this code and the publication area for the publication is the  
27 county in which is located the appropriate area. At any hearing held pursuant to such notice at  
28 the time and place designated in the notice, adjournment may be made, from time to time, without  
29 the necessity of renewing the notice for the adjournment dates.

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

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

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

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

38 (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 (15) "Works of improvement" means such structures as may be necessary or convenient  
42 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           (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           (4) Coordinate the programs of the several conservation districts so far as this may be  
59 done by advice and consultation;

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

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

71           (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           (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           (11) Obtain options upon and acquire by purchase, exchange, lease, gift, grant, bequest,  
81 devise, or otherwise any property, real or personal, or rights or interests in the property; maintain,  
82 administer, operate, and improve any properties acquired; receive and retain income from the  
83 property and to expend the income as required for operation, maintenance, administration, or  
84 improvement of the properties or in otherwise carrying out the purposes and provisions of this  
85 article; and sell, lease, or otherwise dispose of any of its property or interests in the property in  
86 furtherance of the purposes and the provisions of this article. Money received from the sale of  
87 land acquired in the small watershed program shall be deposited in the special account of the  
88 State Conservation Committee and expended as provided in this article;

89           (12) Promulgate emergency and legislative rules to effectuate the provisions of this article;  
90 and

91           (13) Upon a Governor's proclamation declaring a state of emergency or federal disaster  
92 declaration, the state committee, its employees, or agents may enter any water of the state for  
93 the purpose of removing debris and other obstruction which impede water flow and present  
94 additional flood hazards. The agency shall make reasonable efforts to secure the permission of  
95 the landowner before entering any private property in connection with these removal activities.  
96 The exercise of this limited authority does not constitute taking of private property or trespass.  
97 This authority shall continue for the duration of the Governor's proclamation or the federal disaster  
98 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, 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,  
45 and such other material or equipment as will assist such land occupiers to carry on operations  
46 upon their lands for the conservation of soil resources and for the prevention and control of soil  
47 erosion and for flood prevention or the conservation, development, utilization, water quality, and  
48 disposal 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  
98 construct, 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, 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 (1) Extend any assurance that the premises are safe for any purpose;

9 (2) Confer upon such persons the legal status of an invitee or licensee to whom a duty of  
10 care is owed; or

11 (3) Assume responsibility for or incur liability for any injury to person or property caused  
12 by an act or omission of such persons.

13 (c) Subject to the provisions of §19-25-4 of this code, an owner of land owes who invites  
14 or permits without charge, as that term is defined in §19-25-5 of this code, any person to enter  
15 onto the owner's land for the purpose of utilizing the owner's land for any agricultural purpose  
16 does not thereby:

17 (1) Extend any assurance that the premises are safe for any purpose;

18 (2) Confer upon such persons the legal status of an invitee or licensee to whom a duty of  
19 care is owed; or

20 (3) Assume responsibility for or incur liability for any injury to person or property caused  
21 by an act 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 Agriculture, shall hereinafter be  
2 known as the Gus R. Douglass Agricultural Center 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 (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 (3) Encouraging locally grown and raised food is important to the health and welfare of the  
9 citizens of West Virginia;

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

14 (5) Food permits required for farmers market vendors are currently not recognized across  
15 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           “Delivered” means transferred to the consumer, either immediately upon sale or at a time  
6 thereafter.

7           “Department” means the Department of Agriculture.

8           “Farm and food product” means any agriculture, horticulture, agroforestry, animal  
9 husbandry, dairy, livestock, beekeeping, or other similar product, and includes potentially  
10 hazardous foods and nonpotentially hazardous food produced or manufactured therefrom.

11           “Farmers market” means:

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

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

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

18           (4) A consignment farmers market in which two or more vendors deliver their own farm  
19 and food products to a common location maintained by a third party that markets the vendors’  
20 products and receives a percentage share of the profits from sales, with the individual vendor  
21 retaining ownership of the farm and food product until it is sold. A consignment farmers market  
22 may be mobile or in a stationary location;

23           (5) A mobile farmers market;

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

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

26           “Farmers market vendor” or “vendor” means a person or entity that sells farm and food  
27 products at a farmers market.



28 “Nonpotentially hazardous” means a food item that does not require time/temperature  
29 control for safety to limit pathogenic microorganism growth or toxin formation.

30 “Potentially hazardous” means a food item that requires time/temperature control or other  
31 protocols for safety to limit pathogenic microorganism growth or toxin formation.

32 To “produce” means to prepare a food item by cooking, baking, drying, mixing, cutting,  
33 fermenting, preserving, dehydrating, growing, raising, or other process.

34 “Producer” means the person who produces a nonpotentially hazardous food item.

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

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

**§19-35-3. Farmers markets.**

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

- 4 (1) The type of farmers market;
- 5 (2) The location, dates, and hours of operation;
- 6 (3) 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.

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

**§19-35-5. 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 potentially hazardous foods sold at farmers markets.

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

5 (c) A home, farm, community, or commercial kitchen may be used by a potentially  
6 hazardous foods vendor, as determined by the department.

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

10 (e) All potentially hazardous foods sold at farmers markets shall be labeled in compliance  
11 with the department's labeling standards and provide information about its content and sources.

**§19-35-6. Nonpotentially hazardous foods.**

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

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

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

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

10 (c) All nonpotentially hazardous foods shall be labeled in compliance with the department's  
11 labeling standards and provide information about their content and sources.

12 (d) A home, farm, community, or commercial kitchen may be used by a nonpotentially  
13 hazardous foods vendor, as determined by the department.

14 (e) This section shall not be construed to:

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

17 (2) Preclude the department from providing assistance, consultation, or inspection at the  
18 request of the producer of a nonpotentially hazardous food item;

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

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

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

25 (6) Exempt producers or sellers of nonpotentially hazardous food items from any  
26 applicable law of the federal government, including any federal law prohibiting the sale of certain  
27 food items in interstate commerce; or

28 (7) Exempt producers or sellers of nonpotentially hazardous food items from any  
29 applicable law of another state.

30 (f) This section preempts county, municipal, and other political jurisdictions from  
31 prohibiting and regulating the production and sale of nonpotentially hazardous food items:  
32 *Provided*, That such preemption shall not include space rentals at government-owned or operated  
33 facilities, government-sanctioned or operated events, or product placement agreements with  
34 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, each state-funded institution, including, but not limited to,  
2 schools, colleges, correctional facilities, governmental agencies, and state parks, shall obtain a  
3 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 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 produce, meat and poultry products, milk and other dairy  
13 products, 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, contributions, 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.



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

.....  
*Chairman, House Committee*

.....  
*Chairman, Senate Committee*

Originating in the House.

In effect ninety days from passage.

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

.....  
*Clerk of the Senate*

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

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*President of the Senate*

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The within ..... this the.....  
day of ....., 2021.

.....  
*Governor*