

# **WEST VIRGINIA LEGISLATURE**

## **2021 REGULAR SESSION**

**Introduced**

### **Senate Bill 357**

BY SENATORS SYPOLT, RUCKER, PHILLIPS, AND SMITH

[Introduced February 18, 2021; referred  
to the Committee on the Judiciary; and then to the  
Committee on Finance]

1 A BILL to amend and reenact §19-1-3a and §19-1-7 of the Code of West Virginia, 1931, as  
2 amended; to amend and reenact §19-1C-2, §19-1C-3, §19-1C-4, §19-1C-5, and §19-1C-  
3 6 of said code; to amend said code by adding thereto a new section, designated §19-1C-  
4 7; 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 requirement  
15 that certain duties of the department rest in a particular division; clarifying that raw milk  
16 can be sold for purposes other than human consumption; defining terms related to the  
17 care of livestock; reorganize Livestock Care Standards Board as an advisory board to the  
18 commissioner; direct commissioner to select members for advisory board; requiring  
19 certain constituencies be represented; modify duties of advisory board; granting  
20 commissioner authority to promulgate certain legislative rules after consultation with  
21 advisory board; classifying complaints and related communications regarding inhumane  
22 treatment of livestock as confidential and exempt from disclosure under the Freedom of  
23 Information Act; providing for reimbursement and compensation of advisory board  
24 members; requiring annual meetings of the advisory board; directing department of  
25 agriculture to administer and enforce established standards; defining the scope of said  
26 administration and enforcement; eliminating fee for permit to feed untreated garbage to

27 swine; removing outdated language regarding procedures for leasing of farmland;  
28 authorizing the cancellation of certain leases; amend name of West Virginia Commercial  
29 Feed Law; define terms related to commercial feed; modify the powers and duties of the  
30 commissioner; eliminate requirement to publish annual composite report; eliminating  
31 specific fee language in statute; modifying application deadlines and timelines and permit  
32 expiration dates; defining requirements for individuals to possess Commercial Feed  
33 Manufacturing Permit, Commercial Feed Distributor Permit, and Commercial Feed  
34 Interstate Permit; establishing registration requirements for pet food and specialty pet  
35 food; identifying situations in which commissioner may refuse to grant, suspend, or revoke  
36 permits; providing opportunities for applicants, permittees or registrants to amend  
37 application and appeal adverse determinations; establishing labeling requirements;  
38 establishing certain inspection and registration fees and requirements; authorizing the  
39 commissioner to inspect certain tonnage records; defining adulteration of commercial feed  
40 or feed ingredients; defining misbranding of commercial feed; make technical  
41 modifications; define additional prohibited acts; establish requirements for distribution of  
42 raw milk as commercial feed; authorize establishment of analytical variation regulations;  
43 authorize penalties for excessive deviations; provide for penalties to be returned to  
44 purchasers where possible; authorize late payment penalties; expanding scope of  
45 authority for West Virginia Conservation Agency and State Conservation Committee to  
46 address water quality issues; defining terms related to conservation; expand duties and  
47 powers of State Conservation Committee; expanding scope of authority for conservation  
48 districts; limiting liability of landowner who invites or permits persons to enter for  
49 agricultural purposes; defining agricultural purposes; clarifying ownership of Guthrie  
50 Center; stating legislative findings and purpose; defining terms related to farmers markets  
51 and cottage foods; eliminating certain definitions; establishing requirements for farmers  
52 market registration; providing that registration be conspicuously displayed; clarifying that

53 farmers markets are not required to obtain food establishment permit; providing for  
54 department to establish sampling regulations; authorizing enforcement actions against  
55 non-compliant farmers markets; establishing requirements for farmers market vendor  
56 permits; clarifying that farmers market vendors are not required to obtain food  
57 establishment permit; exempting certain vendors from obtaining vendor permit;  
58 authorizing department to establish conditions and procedures for issuance of vendor  
59 permits; authorizing inspections as a condition of issuing vendor permits; requiring vendor  
60 permits be displayed in a conspicuous manner; authorizing enforcement action against  
61 non-compliant farmers market vendors; clarifying role of local health departments in  
62 farmers markets; prohibiting local health department from requiring food establishment  
63 permits for farmers markets or vendors; authorizing certain actions by local health  
64 departments at farmers markets; requiring all actions by local health departments at  
65 farmers markets to be done in consultation with department of agriculture; directing  
66 department to promulgate rules; eliminating requirement to consult with department of  
67 health and human resources; establishing requirements for regulation of potentially  
68 hazardous foods; requiring vendors of potentially hazardous foods to obtain vendor permit;  
69 directing department to establish requirements for obtaining vendor permits; eliminating  
70 certain labeling requirements; establishing requirements for sale of nonpotentially  
71 hazardous foods; expanding permissible kitchens for nonpotentially hazardous foods to  
72 include farm, community, or commercial kitchens; expanding West Virginia Fresh Food  
73 Act to include milk and other dairy products, expanding West Virginia Fresh Food Act to  
74 include other foods grown, produced, or processed by in-state producers; directing  
75 commissioner to establish criteria for food or food products to satisfy in-state requirement;  
76 directing commissioner to establish criteria for determining when exception or exemption  
77 should be granted to state institutions; requiring Purchasing Division to ensure that all  
78 contracts related to the purchase of food include provisions to ensure compliance with

79 Fresh Food Act; establishing Agriculture Investment Program; setting forth legislative  
 80 findings and purpose; defining terms related to the Agriculture Investment Fund;  
 81 establishing fund in State Treasury; defining source of funds and permissible expenditures  
 82 from fund; authorizing West Virginia Agriculture Investment Program; providing for  
 83 program administration; authorizing either grants or loans from the fund; establishing  
 84 certain criteria for awarding grants or loans; authorizing commissioner to establish  
 85 committee to assist in program administration; and directing commissioner to propose  
 86 legislative rules for program.

*Be it enacted by the Legislature of West Virginia:*

## **ARTICLE 1. DEPARTMENT OF AGRICULTURE.**

### **§19-1-3a. Marketing and Development ~~Division~~; duties.**

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

### **§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 E.

10 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 diseases  
25 as required by the state veterinarian. Additions to the herd shall test negative for the diseases  
26 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) To give or feed to another animal: *Provided*, That sale of the milk must comply with the  
 49 provisions of §19-14-14 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 or his or her designee.

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

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

1 (a) On July 1, 2010, there is hereby created the Livestock Care Standards Board. Effective  
 2 July 1, 2021, the Livestock Care Standards Board previously established by this code is hereby  
 3 converted to an advisory board to the commissioner.

4 (b) The commissioner shall select members for the advisory board on livestock care  
 5 standards. The commissioner or his or her designee shall serve as chair of the advisory board. In

6 identifying members for the advisory board, the commissioner shall ensure that the following  
7 constituencies are represented:

- 8 (1) Veterinary and animal sciences;
- 9 (2) Agriculture professionals, including farmers and ranchers;
- 10 (3) Higher education and academia;
- 11 (4) Humane organizations;
- 12 (5) Law enforcement and local humane officers; and
- 13 (6) Other individuals or constituencies that are identified by the commissioner.

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

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

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

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

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

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

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

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



32 ~~one for five years.~~

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

35 ~~(d) Commencing July 1, 2010, the board consists of the following thirteen members:~~

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

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

39 ~~(3) One member who is a veterinarian licensed in this state engaging in large animal~~  
40 ~~practice;~~

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

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

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

44 ~~(7) Two members of the public representing West Virginia consumers;~~

45 ~~(8) Two members representing state agricultural organizations that represent farmers, one~~  
46 ~~of whom must be a member of the largest organization in the state representing farmers, and the~~  
47 ~~other must be a member of a statewide livestock organization; and~~

48 ~~(9) Three members representing family farms engaged in animal production, at least two~~  
49 ~~of whom are family farmers.~~

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

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

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

1 (a) The advisory board has the following powers and duties to may advise the

2 commissioner on the following:

- 3 (1) Establish standards governing the care and well-being of livestock;
- 4 (2) Maintain food safety;
- 5 (3) Encourage locally grown and raised food; and
- 6 (4) Protect West Virginia farms and families.

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

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

12 (2) Procedures for addressing complaints regarding the inhumane treatment of livestock  
13 and coordinating efforts with county humane officers: Provided, That complaints received by the  
14 advisory board or the commissioner, as well as all communication regarding any investigation  
15 and discussion thereof, are considered confidential and are exempt from disclosure pursuant to  
16 §29B-1-1 et seq. of this code;

- 17 (3) Biosecurity, disease prevention, animal morbidity and mortality data;
- 18 (4) Food safety practices; and
- 19 (5) The protection of local, affordable food supplies for consumers.

20 ~~(c) The Department of Agriculture shall administer and enforce the standards established~~  
21 ~~by the board that are approved by the Legislature.~~

**§19-1C-5. Compensation of board members.**

1 (a) ~~The ex officio members of the board may not receive compensation for serving on the~~  
2 ~~board.~~

3 ~~(b) The appointed members of the board shall receive compensation for each day or~~  
4 ~~portion of a day engaged in the discharge of official duties, which compensation may not exceed~~  
5 ~~the amount paid to members of the Legislature for their interim duties as recommended by the~~

6 Citizens Legislative Compensation Commission and authorized by law.

7 ~~(c)~~ (b) Each member of the board shall be reimbursed actual and necessary expenses  
8 incurred for each day or portion of a day engaged in the discharge of official duties in a manner  
9 consistent with the West Virginia Department of Agriculture Travel Policy and Procedure.

**§19-1C-6. Meetings of the board.**

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

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

1 The Department of Agriculture shall administer and enforce the standards established  
2 pursuant to this article that are approved by the Legislature. This authority includes, but is not  
3 limited to:

- 4 (1) Coordinating with and assistance for local law-enforcement officers;
- 5 (2) Assisting county sheriffs and other law-enforcement officials with investigations and  
6 other actions taken in response to complaints regarding livestock care standards;
- 7 (3) Working with county, municipal and state authorities to address situations in which a  
8 livestock care complaint needs to be reassigned due to a conflict of interest; and
- 9 (4) Providing training for law enforcement and local humane officers on these standards  
10 and proper animal handling techniques.

**ARTICLE 9A. FEEDING OF UNTREATED GARBAGE TO SWINE.**

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

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

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

**ARTICLE 12A. LAND DIVISION.****§19-12A-5. Powers, duties, and responsibilities of commissioner.**

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

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

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

21           (1) Lease to public or private parties, for purposes including agricultural production or  
22 experimentation, public necessity, or other purposes, any land, easements, equipment, or other  
23 property, except that property may not be leased for any use in any manner that would render the  
24 land toxic for agricultural use, nor may toxic or hazardous materials as identified by the

25 Commissioner of Agriculture be used or stored upon such property unless all applicable state and  
26 federal permits necessary are obtained; ~~Any lease for an annual consideration of \$1,000 or more~~  
27 ~~shall be by sealed bid auction and the commission shall give notice of such auction by publication~~  
28 ~~thereof as a Class II-0 legal advertisement in compliance with the provisions of §59-3-1 et seq. of~~  
29 ~~this code, and the publication area for such publication is the county in which the property to be~~  
30 ~~leased is located~~

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

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

41 (4) Cancel leases that were either not entered into as a result of competitive bidding or  
42 were entered into for nominal consideration, defined as less than \$5 per acre annually; and

43 ~~(4)~~ (5) Exercise all other powers and duties necessary to effectuate the purposes of this  
44 article.

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

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

51 regulations relating to the powers and duties of the commissioner as enumerated in this section.

**ARTICLE 14. WEST VIRGINIA COMMERCIAL FEED LAW.**

**§19-14-1. Title.**

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

**§19-14-2. Definitions.**

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

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

6 (c) “Commercial feed” means all materials or combinations of materials which are  
7 distributed, or intended for distribution, for use as feed or for mixing in feed for animals, other than  
8 man, except: (1) Unmixed or unprocessed whole seeds when such whole or unprocessed seeds  
9 are not chemically changed or adulterated; (2) ~~unground~~ 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, ~~expose for sale~~, exchange, or barter  
24 commercial feed; or to supply, furnish, or provide commercial feed to a contract feeder.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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



74 bearing the same brand name.

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

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

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

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

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

86 (cc) "Ton" means a net weight of 2,000 pounds avoirdupois.

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

1 The commissioner has the power and authority to:

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

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

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

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

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

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

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

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

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

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

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

25 (l) Establish and maintain feed testing facilities; establish reasonable fees for such tests;  
26 incur expenses; and conduct tests in accordance with the official methods published in the current  
27 edition of the Official Methods of Analysis of the Association of Official Analytical Chemists and  
28 supplements thereto, or other methods approved by the commissioner by rules.

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

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

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

35 ~~(p) Publish and distribute annually a composite report containing: (1) The sales of~~  
36 ~~commercial feeds and feed ingredients during the preceding period, (2) the results of the analysis~~  
37 ~~of official samples as compared with the guarantee on the label, (3) firms responsible for the~~  
38 ~~product, and (4) such other data the commissioner deems necessary: Provided, That the~~

39 ~~information on production and use so provided does not disclose the operations of any person.~~

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

44 ~~(r) (g)~~ Promulgate rules, in accordance with chapter 29A of this code, dealing with  
45 commercial feeds and enforcement of this article.

**§19-14-5. Permits; registration.**

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

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

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

16 (d) Each person ~~first~~ distributing commercial feed ~~into in~~ in West Virginia ~~trade channels~~ must  
17 obtain a Commercial Feed Distributor Permit from the commissioner, except: (1) Persons  
18 distributing pet food exclusively, (2) persons holding a valid Commercial Feed Manufacturing

19 ~~Permit issued by the commissioner, and (3) persons distributing only those feeds that they register~~  
20 holding a Commercial Feed Interstate Permit issued by the commissioner. Application forms shall  
21 be provided by the commissioner and include such information as established by rules. Each  
22 Commercial Feed Distributor Permit application shall be accompanied by an the required  
23 application fee ~~of \$10.~~ Each permit issued shall expire on December 31, next following the date  
24 of issue.

25 ~~(e) All commercial feed distributed or used in this state, except customer-formula feed,~~  
26 ~~must be registered. Commercial feed that can be uniquely identified by its brand name, product~~  
27 ~~name, physical form or other descriptive term shall be registered as a separate product.~~  
28 ~~Commercial feed that is packaged in such weights as to apply to several categories shall be~~  
29 ~~registered in each applicable category. Application forms shall be provided by the commissioner~~  
30 ~~and include such information as established by rules~~ Each person whose name appears on the  
31 label of a commercial feed or customer-formula feed as guarantor must obtain a Commercial  
32 Feed Interstate Permit from the commissioner for each manufacturing facility or location that  
33 distributes feed into the state, except those persons who have obtained a Commercial Feed  
34 Manufacturing Permit from the commissioner. Application forms shall be provided by the  
35 commissioner and include such information as established by rules. Each Commercial Feed  
36 Interstate Permit application shall be accompanied by the required application fee. Each permit  
37 issued shall expire on December 31, next following the date of issue.

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

43 ~~(2) (f) On the thirty-first day of August, 1991, permanent registrations for pet food in~~  
44 ~~packages over ten pounds are void and application for registration and payment of fees will be~~

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

53 ~~(3) (g) Commercial feed, excluding specialty pet food in packages of one pound or less,~~  
 54 Pet food packaged in packages of 10 pounds and under shall be registered annually. A  
 55 ~~registration fee of \$40 per product shall accompany each~~ Each application for registration shall  
 56 be accompanied by the required registration fee. ~~The~~ Each registration shall expire on December  
 57 31, next following the date of issue: *Provided,* That until June 1, 2027, an additional registration  
 58 fee of \$35 per product shall accompany each application for registration and the additional  
 59 registration fee shall be deposited into the West Virginia Spay Neuter Assistance Fund for spay  
 60 and neutering services performed within this state by licensed veterinarians.

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

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

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

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

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

**§19-14-7. Hearings and appeals.**

1           (a) No application shall be refused until the applicant has the opportunity to amend his/her  
2 application to comply with the requirements of this article.

3           **(b)** No registration or permit shall be refused, suspended or revoked until the ~~registrant~~  
4 guarantor or permittee shall have the opportunity to have a hearing before the commissioner.

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

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

**§19-14-8. Labeling.**

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

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

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

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

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

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

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

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

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

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

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

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

31 (6) For all commercial feeds containing drugs and for all other such commercial feeds as

32 the commissioner may require by legislative rules, Adequate adequate directions as necessary  
33 for their safe and effective use and precautionary statements for safe and effective use.

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

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

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

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

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

39 (E) Withdrawal statements, if applicable;

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

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

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

46 (1) Name and address of the manufacturer.

47 (2) Name and address of the purchaser.

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

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

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

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

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



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

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

- 1 (a) Each person holding a Commercial Feed Manufacturing Permit, a Commercial Feed
- 2 Distributor Permit, and every ~~registrant~~ guarantor, except those persons exempted in subsection
- 3 (b) of this section, shall report the number of tons of commercial feed distributed and pay an
- 4 inspection fee on all feed distributed, except no inspection fee shall be due on:
- 5 (1) Commercial feed, if the payment was previously made by a ~~previous~~ distributor,
- 6 manufacturer, 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 or commercial feeds manufactured in this state~~ which are
- 12 subsequently used as ingredients in the continuing manufacture of commercial feeds in which the
- 13 end product is registered.
- 14 (4) Commercial feed supplied to a poultry contract feeder.
- 15 (5) ~~Commercial feed in packages of ten pounds or less.~~
- 16 (6) Pet food or specialty pet food.
- 17 (7) ~~Commercial feed, where the inspection fee was paid during a previous quarter and is~~
- 18 ~~offered for sale in the current quarter.~~
- 19 (b) An annual fee for commercial feed which does not meet the minimum inspection fee

20 shall be paid in lieu of the inspection fee as established by legislative rule.

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

29 (d) Each report shall be accompanied by an inspection fee at the rate of ~~35¢ per ton~~  
 30 established by legislative rule, including a minimum inspection fee, on commercial feed and feed  
 31 ingredients ~~with the minimum inspection fee being \$10 each statement. The minimum fee is~~  
 32 ~~waived if the total amount of the calculated inspection fee due is \$2 or less. Such fees become~~  
 33 ~~effective on July 1, 1991.~~

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

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

#### **§19-14-10. Adulteration.**

1 Commercial feed or feed ingredients is adulterated:

2 (a) If it bears or contains any poisonous, or deleterious ~~or nonnutritive~~ substance, including

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

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

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

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

29 to result in a pesticide residue in the edible product of the animal, which is unsafe within the  
30 meaning of Section 408 (a) of the Federal Food, Drug, and Cosmetic Act;

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

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

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

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

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

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

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

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

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

53 (n) If it contains a drug, and the methods used in the facilities or controls used for its  
54 manufacture, processing, or packaging do not conform to current good manufacturing practice

55 regulations promulgated by the commissioner to assure that the drug meets the requirements of  
 56 this law as to safety and has the identity and strength and meets the quality and purity  
 57 characteristics which it purports or is represented to possess.

**§19-14-11. Misbranding.**

1 Commercial feed is shall be deemed to be misbranded:

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

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

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

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

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

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

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

1 (a) Embargo orders:;

2 (1) When the commissioner has reasonable cause to believe any lot of commercial feed  
 3 is being manufactured, distributed, offered for sale, exposed for sale, or used in this state in  
 4 violation of the provisions of this article or any rule promulgated hereunder, then he/she may issue  
 5 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/she has a right to request an immediate hearing.

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

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

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

18           (b) Condemnation and confiscation:̄

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

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

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

**§19-14-14. Prohibited acts.**

1           It shall be unlawful:

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

3 or misbranded.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

28 (4) Its packaging does not resemble that used for the packaging of milk for human

29 consumption;

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

31 human consumption; and

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

**§19-14-16. Deviations and Penalties.**

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

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

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

8 (d) Penalties paid pursuant to this section shall, where possible, be used to reimburse the  
9 purchaser of the lot of commercial feed representing the sample analyzed. If the purchaser or  
10 purchasers cannot be found, the amount of the penalty assessed shall be paid to the  
11 commissioner and deposited in the department's fees account to be used for feed related  
12 programs 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  
14 payment 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  
16 be penalized as established by legislative rules.

**ARTICLE 21. CONSERVATION DISTRICTS.**

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

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

2 (a) That the farm and grazing lands of the State of West Virginia are among the basic  
3 assets of the state and that the preservation of these lands is necessary to protect and promote



4 the health, safety and general welfare of its people; that improper land-use practices have caused  
5 and have contributed to, and are now causing and contributing to, a progressively more serious  
6 erosion of the farm and grazing lands of this state by water; that the breaking of natural grass,  
7 plant and forest cover has interfered with the natural factors of soil stabilization, causing loosening  
8 of soil and exhaustion of humus and developing a soil condition that favors erosion; that the topsoil  
9 is being washed out of fields and pastures; that there has been an accelerated washing of sloping  
10 fields; that these processes of erosion by water and flooding is increased with removal of  
11 absorptive topsoil, causing exposure of less absorptive and less protective but more erosive  
12 subsoil; that failure by any landowner to conserve the soil and control erosion upon his lands  
13 causes a washing of soil and water from his or her lands onto other lands and makes the  
14 conservation of soil and control of erosion of such other lands difficult or impossible and increases  
15 the potential damages from flooding.

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

30 reduction of suitable land available for homes and businesses.

31 (c) That to conserve soil resources and control and prevent soil erosion and prevent  
32 floodwater and sediment damage and further the conservation, development, utilization, water  
33 quality, and disposal of water, it is necessary that land-use practices contributing to soil wastage  
34 and soil erosion be discouraged and discontinued and appropriate soil-conserving land-use  
35 practices and works of improvement for flood prevention or the conservation, development,  
36 utilization, water quality, and disposal of water be adopted and carried out; that among the  
37 procedures necessary for widespread adoption are engineering operations such as the  
38 construction of terraces, terrace outlets, dams, desilting basins, floodwater retarding structures,  
39 channel improvements, floodways, dikes, ponds, ditches and the like; the utilization of strip  
40 cropping, lister furrowing, contour cultivating and contour furrowing; land drainage; land irrigation;  
41 seeding and planting of waste, sloping, abandoned or eroded lands with water-conserving and  
42 erosion-preventing plants, trees and grasses; forestation and reforestation; rotation of crops; soil  
43 stabilization with trees, grasses, legumes and other thick-growing, soil-holding crops; retardation  
44 of runoff by increasing absorption of rainfall; and retirement from cultivation of steep, highly  
45 erosive areas and areas now badly gullied or otherwise eroded.

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

53 (e) This article contemplates that the incidental cost of organizing conservation districts  
54 will be borne by the state, while the expense of operating the districts so organized will be provided  
55 by donations, gifts, contributions, grants and appropriations, in money, services, materials or

56 otherwise, from the United States or any of its agencies, from the State of West Virginia or from  
57 other sources, with the understanding that the owners or occupiers will contribute funds, labor,  
58 materials and equipment to aid in carrying out erosion control measures on their lands.

**§19-21A-3. Definitions.**

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

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

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

7           ~~(3)~~ (4) "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 marine and wildlife habitat, and the reduction of damages caused by floodwater and  
10 sediment damages and other natural disasters.

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

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

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

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

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

25           ~~(8)~~ (9) “Notice” means notice published as a Class II legal advertisement in compliance  
 26 with the provisions of §59-3-1 *et seq.* of this code and the publication area for the publication is  
 27 the county in which is located the appropriate area. At any hearing held pursuant to such notice  
 28 at the time and place designated in the notice, adjournment may be made, from time to time,  
 29 without the necessity of renewing the notice for the adjournment dates.

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

32           ~~(10)~~ (11) “Soil conservation”, “erosion control”, or “erosion prevention projects” means  
 33 those projects that have been established by federal agencies in cooperation with state agencies  
 34 for the purpose of demonstrating soil erosion control and water conservation practices.

35           ~~(11)~~ (12) “State” means the State of West Virginia.

36           ~~(12)~~ (13) “Supervisor” means one of the members of the governing body of a district,  
 37 elected or appointed in accordance with the provisions of this article.

38           ~~(13)~~ (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           ~~(14)~~ (15) “Works of improvement” means such structures as may be necessary or  
 42 convenient for flood prevention or the conservation, development, utilization, or disposal of water.

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

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

4           (1) Four citizen members;

5           (2) The following ex officio members or his or her designee:

- 6 (A) The Director of the state Cooperative Extension Service;
- 7 (B) The Director of the State Agricultural and Forestry Experiment Station;
- 8 (C) The Secretary of the Department of Environmental Protection;
- 9 (D) The State Commissioner of Agriculture, who is the chairperson of the committee;
- 10 (E) The Director of the Division of Forestry; and
- 11 (F) The President of the West Virginia Association of Conservation Districts.

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

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

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

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

32 to the committee members of the staff or personnel of the agency or institution of learning and  
33 make special reports, surveys or studies required by the committee.

34 (f) A member of the committee holds office so long as he or she retains the office by virtue  
35 of which he or she is serving on the committee. A majority of the committee is a quorum and the  
36 concurrence of a majority in any matter within their duties is required for its determination. The  
37 chairperson and members of the committee may receive no compensation for their services on  
38 the committee, but are entitled to reimbursement of expenses, including traveling expenses  
39 necessarily incurred in the discharge of their duties on the committee. The committee shall:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

80           ~~(10)~~ (11) Obtain options upon and acquire by purchase, exchange, lease, gift, grant,  
81 bequest, devise or otherwise any property, real or personal, or rights or interests in the property;  
82 maintain, administer, operate, and improve any properties acquired; receive and retain income  
83 from the property and to expend the income as required for operation, maintenance,

84 administration, or improvement of the properties or in otherwise carrying out the purposes and  
 85 provisions of this article; and sell, lease, or otherwise dispose of any of its property or interests in  
 86 the property in furtherance of the purposes and the provisions of this article. Money received from  
 87 the sale of land acquired in the small watershed program shall be deposited in the special account  
 88 of the State Conservation Committee and expended as provided in this article;

89 ~~(14)~~ (12) Promulgate emergency and legislative rules to effectuate the provisions of this  
 90 article ~~as amended and reenacted by the Legislature during the 2018 regular session of the~~  
 91 ~~Legislature~~; and

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

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

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

4 (1) To conduct surveys, investigations and research relating to the character of soil  
 5 erosion, ~~and floodwater and sediment damage, and nonpoint source water pollution,~~ and to the  
 6 conservation, development, utilization, water quality, and disposal of water and the preventive  
 7 and control measures needed to publish the results of such surveys, investigations or research  
 8 and to disseminate information concerning such preventive and control measures and works of  
 9 improvement: *Provided*, That in order to avoid duplication of research activities, no district shall



10 initiate any research program or publish the results except with the approval of the state  
11 committee and in cooperation with the government of this state or any of its agencies, or with the  
12 United States or any of its agencies;

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

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

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

35 (5) To obtain options upon and to acquire, by purchase, exchange, lease, gift, grant,

36 bequest, devise or otherwise, any property, real or personal, or rights or interests therein; to  
37 institute condemnation proceedings to acquire any property, real or personal, or rights or interests  
38 therein, whether or not located in the district, required for works of improvement; to maintain,  
39 administer and improve any properties acquired, to receive income from such properties and to  
40 expend such income in carrying out the purposes and provisions of this article; and to sell, lease  
41 or otherwise dispose of any of its property or interests therein in furtherance of the purposes and  
42 the provisions of this article;

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

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

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

## **ARTICLE 25. LIMITING LIABILITY OF LANDOWNERS.**

### **§19-25-1. Purpose.**

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

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

1 Subject to the provisions of §19-25-4 of this code, an owner of land owes no duty of care  
 2 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 Subject to the provisions of §19-25-4 of this code, an owner of land who either directly or  
 6 indirectly invites or permits without charge as that term is defined in §19-25-5 of this code, any

7 person to use such property for recreational or wildlife propagation purposes does not thereby:  
 8 (a) Extend any assurance that the premises are safe for any purpose; or (b) confer upon such  
 9 persons the legal status of an invitee or licensee to whom a duty of care is owed; or (c) assume  
 10 responsibility for or incur liability for any injury to person or property caused by an act or omission  
 11 of such persons.

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

5 "Charge" means:

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

13 (B) For purposes of limiting liability for military, law-enforcement or homeland-defense

14 training set forth in section six of this article, the amount of money asked in return for an invitation  
15 to enter or go upon the land;

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

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

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

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

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

40 “Military, law-enforcement or homeland-defense training” includes, but is not limited to,  
 41 training, encampments, instruction, overflight by military aircraft, parachute drops of personnel or  
 42 equipment or other use of land by a member of the Army National Guard or Air National Guard,  
 43 a member of a reserve unit of the armed forces of the United States, a person on active duty in  
 44 the armed forces of the United States, a state or federal law-enforcement officer, a federal agency  
 45 or service employee, a West Virginia military authority employee or a civilian contractor supporting  
 46 the military and/or government employees acting in that capacity.

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

**§19-31-1. Establishing the name.**

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

**ARTICLE 35. FARMERS MARKETS AND COTTAGE FOODS.**

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

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

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

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

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

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

13 concessioners; and

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

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

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

19 (2) To place regulation of farmers markets, vendors, and local food producers solely within  
20 the Department of Agriculture and not under either local health departments or the Department of  
21 Health and Human Resources; and

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

5 “Cottage foods” means nonpotentially hazardous foods.

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

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

13 “Department” means the Department of Agriculture.

14 “Farm and food product” means any agriculture, horticulture, agroforestry, animal  
15 husbandry, dairy, livestock, cottage food, beekeeping, or other similar product. ~~Farm and food~~



16 ~~products are to be properly labeled.~~

17 “Farmers market” means:

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

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

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

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

29 (5) A mobile farmers market;

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

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

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

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

37 “Nonpotentially hazardous” means food that does not require time/temperature control for  
38 safety to limit pathogenic microorganism growth or toxin formation. The term “nonpotentially  
39 hazardous” foods means the same thing as “cottage foods.”

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

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

44            “Producer” means the person who produces a ~~homemade~~ cottage food item.

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

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

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

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

4            (1) the type of farmers market;

5            (2) the location, dates, and hours of operation;

6            (3) ~~and its~~ the farmers markets’ vendors; and

7            (4) any other information requested or required by the department.

8            (b) The department shall establish a registration fee for farmers markets.

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

11            (d) Farmers markets are not required to apply for and obtain food establishment permits  
12 from local health departments.

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

15            (f) If a farmers market fails to register with the department, it shall be subject to  
16 enforcement actions by the department, up to and including requiring the farmers market to cease  
17 operations.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

7 (1) Producers delivering their products to a consignment farmers market only;

8 (2) Vendors selling fresh, uncut produce;

9 (3) Vendors selling nonpotentially hazardous foods; and

10 (4) Vendors selling other food or 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 submit to an inspection.

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

15 (g) If a farmers market vendor does not obtain a permit from the department, it shall be  
 16 subject to enforcement actions by the department, up to and including requiring the vendor to  
 17 cease operations.

**§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 to sell at a farmers market.

3 (b) A vendor is subject to food sampling and inspection by the local health department in  
 4 the jurisdiction in which the farmers market is located if the local health department determines  
 5 that the vendor's food product is misbranded pursuant to §19-35-5(c) of this code, or adulterated,  
 6 or if a consumer complaint has been received: *Provided*, That all sampling and inspection shall  
 7 be performed in consultation with the Department of Agriculture.

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

**§19-35-4. Legislative rules.**

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

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

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

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

4           (b) A vendor wishing to sell potentially hazardous foods at farmers markets shall apply to  
 5 the department for a farmers market vendor permit as required by §19-35-3a of this code.

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

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

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

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

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

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

29           ~~(2) Other foods that are exempted from certain regulations, including, but not limited to,~~

30 ~~certain fermented products, certain exempted condiments, commercially harvested mushrooms,~~  
 31 ~~and canned, whole, or chopped tomatoes, tomato sauce, and tomato juice having a finished~~  
 32 ~~equilibrium of pH 4.6 or below.~~

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

**§19-35-6. Direct sale of homemade food items Cottage foods.**

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

39           (2) Preclude the department from providing assistance, consultation, or inspection at the  
40 request of the producer of a homemade cottage food item;

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

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

44           (5) Exempt producers or sellers of homemade cottage food items from any law that



45 requires the producer, seller, third-party vendor, or third-party agent to register its business name,  
 46 address, and other identification information with the state;

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

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

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

**ARTICLE 37. WEST VIRGINIA FRESH FOOD ACT.**

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

1 (a) Beginning July 1, 2019, all state-funded institutions, such as schools, colleges,  
 2 correctional facilities, governmental agencies and state parks, shall ~~purchase~~ obtain a minimum  
 3 of five percent of its food from in-state producers.

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

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

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

13 and other dairy products, ~~can~~ cannot be grown or is not available from in-state producers.

14 (e) The Purchasing Division shall ensure that all contracts for the purchase of food, or that  
15 include the purchase of food as a component of the contract, contain provisions ensuring that  
16 they are compliant with the provisions of this article.

**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 agriculture  
3 businesses and value-added facilities producing or further developing the availability of locally  
4 grown food and locally produced products.

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

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

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

**§19-38-2. Definitions.**

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

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

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

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

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

1 (a) There is hereby created in the State Treasury a special revenue account to be known  
2 as the West Virginia Agriculture Investment Fund. The fund shall be administered by the  
3 Department of Agriculture. The fund shall consist of all moneys that may be appropriated and

4 designated for the fund by the Legislature, and all interest or other return earned from investment  
5 of the fund. The fund may receive any appropriations, gifts, grants, contribution, or other money  
6 from any source that is designated for deposit into the fund.

7 (b) Expenditures from this fund shall be for the purposes set forth in this article and are  
8 not 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, (A) a return on investment analysis to  
14 determine the appropriate size of any grant or loan, and (B) an analysis of the impact on  
15 competing businesses already located in the area.

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

**§19-38-5. Legislative rules.**

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

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

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

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

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

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

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

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