

WEST VIRGINIA LEGISLATURE

2023 REGULAR SESSION

ENGROSSED

Committee Substitute

for

Senate Bill 581

By Senators Hamilton, Plymale, and Deeds

[Originating in the Committee on Agriculture and
Natural Resources; reported on February 25, 2023]

1 A Bill to amend and reenact §11-1A-3 of the Code of West Virginia, 1931, as amended; to amend
2 and reenact §19-1-4 of said code; to amend and reenact §19-2-5 of said code; to amend
3 and reenact §19-2C-1, §19-2C-6a, and §19-2C-10 of said code; to amend and reenact
4 §19-12-2 of said code; to amend and reenact §19-12D-3, §19-12D-4, and §19-12D-5 of
5 said code; to amend and reenact §19-36-2 of said code; to amend said code by adding
6 thereto a new article, designated §19-39-1, §19-39-2, §19-39-3, §19-39-4, §19-39-5, §19-
7 39-6, §19-39-7, §19-39-8, §19-39-9, §19-39-10, and §19-39-11, all relating generally to the
8 2023 Farm Bill; defining terms; authorizing transfer of land owned by the Department of
9 Agriculture; increasing membership and composition of board of review; compensating
10 board of review members for services; limiting consecutive terms served by board of
11 review members; removing public hearing requirement relating to noxious weed and rule;
12 restricting ownership of agricultural land holdings; providing exceptions to restrictions on
13 ownership of agricultural land holdings; requiring report to be filed with Commissioner of
14 Agriculture in certain circumstances; providing for enforcement of violations of acquisition,
15 registration, and reporting requirements; permitting Attorney General to initiate action in
16 circuit court; requiring Attorney General to make notice filing; directing circuit court to enter
17 an order under certain circumstances; providing for escheat of property to state; directing
18 sale of escheated property; providing civil penalty for failure to meet filing requirements;
19 and providing effective dates.

Be it enacted by the Legislature of West Virginia:

CHAPTER 11. TAXATION.

ARTICLE 1A. APPRAISAL OF PROPERTY.

§11-1A-3. Definitions.

1 As used in this article, unless the context clearly requires a different meaning:
2 (a) "Assessed value" of any item of property is its assessed value after the certification of

3 the first statewide reappraisal and shall be 60 percent of the market value of ~~such~~ the item of
4 property regardless of its class or species, except as hereinafter specifically provided in this
5 article;

6 (b) "Base year" ~~shall have~~ has the meaning ascribed to that term by the provisions of §11-
7 1A-2 of this code;

8 (c) "Commission" ~~shall mean~~ means the West Virginia appraisal control and review
9 commission;

10 (d) "Commissioner" or "Tax Commissioner" ~~shall mean~~ means the chief executive officer of
11 the state Tax Department except in those instances where the context clearly relates to the West
12 Virginia appraisal control and review commission, in which case "commissioner" ~~shall mean~~
13 means any member of ~~such~~ the commission;

14 (e) "Designated agent" ~~shall mean~~ means a person, not directly employed by the Tax
15 Commissioner, who is designated by the Tax Commissioner to perform reappraisal functions
16 authorized or required by this article. ~~Such~~ That term shall include, but ~~not be~~ is not limited to,
17 agents and independent contractors, and nothing in this article ~~shall~~ may be construed to alter the
18 relationship of the State of West Virginia, or its officers, and such persons to create relationships
19 not contemplated by agreements between the Tax Commissioner and such persons;

20 (f) "Farm" ~~shall mean~~ means and includes land currently being used primarily for farming
21 purposes, whether by the owner thereof or by a tenant, and which has been so used for at least
22 seasonally during the year next preceding the then current tax year, but ~~shall~~ may not include
23 lands used primarily in commercial forestry or the growing of timber for commercial purposes; and
24 shall not include one acre surrounding the principal residence situate on a farm which shall be
25 valued as a homesite in the same manner as surrounding homes and properties not situated on
26 farmland, taking into consideration such variables as location, resale value and accessibility. The
27 Commissioner of Agriculture shall formulate criteria upon which a parcel of land qualifies as a
28 "farm." The county assessor may require the assistance of the Commissioner of Agriculture in

29 making a determination of whether a parcel of land qualifies as a "farm".

30 (g) "Farming purposes" ~~shall mean~~ means the utilization of land to produce for sale,
31 consumption, or use, any agricultural products, including, but not limited to, livestock, as defined in
32 §19-10B-2 of this code, poultry, fruit, vegetables, grains or hays or any of the products derived
33 from any of the foregoing, tobacco, syrups, honey, and ~~any and~~ all horticultural and nursery stock,
34 Christmas trees, all sizes of ornamental trees, sod, seed and ~~any and~~ all similar commodities or
35 products including farm wood lots and the parts of a farm which are lands lying fallow or in timber
36 or in wastelands;

37 (h) "Property situate in this state" ~~shall mean~~ means:

38 (1) Property having legal situs in this state; or

39 (2) In the case of persons with a place of business located in this state and authorized to do
40 business in this state and one or more other states of the United States or any foreign country:

41 (A) Any tangible property brought into this state from time to time or otherwise ~~deemed~~
42 determined to have situs in this state for purposes of ad valorem property taxation; and

43 (B) Any intangible property held by ~~such~~ the person, wherever evidence thereof is situate.
44 In the case of assessment of ~~such~~ the intangible property for ad valorem property taxation after the
45 first statewide reappraisal only ~~such~~ the part thereof, as may be determined by applicable law or
46 regulation to be subject to ~~such~~ taxation, shall be ~~deemed~~ determined to be situate in this state;

47 (i) "Value," "market value" and "true and actual value" ~~shall have~~ has the same meaning
48 and ~~shall mean~~ means the price at or for which a particular parcel or species of property would sell
49 if it were sold to a willing buyer by a willing seller, in an arm's length transaction, without either the
50 buyer or the seller being under any compulsion to buy or sell: *Provided*, That in determining value,
51 primary consideration shall be given to the trends of price paid for like or similar property in the
52 area or locality wherein ~~such~~ the property is situate over a period of not less than three nor more
53 than eight years next preceding the base year, and in the case of a farm or farms shall be
54 determined assuming ~~such~~ the land is being used for farming purposes. In addition, the

55 commissioner may, for purposes of appraisalment of any tract or parcel of real property, or chattels,
56 real or other species of property, real or personal, take into account one or more of the following
57 factors: (1) The location of ~~such~~ the property; (2) its site characteristics; (3) the ease of alienation
58 thereof, considering the state of its title, the number of owners thereof, and the extent to which the
59 same may be the subject of either dominant or servient easements; (4) the quantity of size of the
60 property and the impact which its sale may have upon surrounding properties; (5) if purchased
61 within the previous eight years, the purchase price thereof and the date of each such purchase; (6)
62 recent sale of, or other transactions involving comparable property within the next preceding eight
63 years; (7) the value of ~~such~~ the property to its owner; (8) the condition of ~~such~~ the property; (9) the
64 income, if any, which the property actually produces and has produced within the next preceding
65 eight years; and (10) any commonly accepted method of ascertaining the market value of any
66 such property, including techniques and methods peculiar to any particular species of property if
67 such technique or method is used uniformly and applied to all property of like species.

CHAPTER 19. AGRICULTURE.

ARTICLE 1. DEPARTMENT OF AGRICULTURE.

§19-1-4. Duties of commissioner.

1 The Commissioner of Agriculture shall perform the following duties:

2 (a) Devise means of advancing the agricultural interests of the state and, in the
3 performance of such duty, he or she shall have authority to call upon any state department, or
4 officer of the state or county, to cooperate in promoting the agricultural interests of the state. It shall
5 ~~be~~ is the duty of any such department, or officer, upon request of the commissioner to render the
6 assistance desired;

7 (b) Promote and encourage the organization of such societies and associations as have
8 for their object the improvement and development of the state's agricultural, horticultural, and
9 kindred interests, especially in production, processing for market, and distribution;

10 (c) Conduct cooperative work with the United States Department of Agriculture in
11 inspecting and determining the grade and condition of farm produce at collecting centers,
12 receiving centers, and shipping points;

13 (d) Induce the investment of capital in, and immigration into, this state by the dissemination
14 of information relative to the soil, climate, health, natural resources, market opportunities, and
15 advantages of the state;

16 (e) Investigate and report upon the kinds, conditions, and extent of the mineral products of
17 the state and their value;

18 (f) Take charge of the museum of the Department of Agriculture, collect, preserve and
19 exhibit therein specimens of agricultural, horticultural and kindred products, products of the
20 forests, minerals, flora, and fauna of the state;

21 (g) Publish and distribute, from time to time, such reports and bulletins concerning
22 agriculture, horticulture, and kindred subjects as may be of value to the farmers of the state and,
23 as conditions may demand, publish a handbook giving the resources of the several counties of the
24 state, the varieties of soil and products, both mineral and vegetable, and the adaptability of the
25 different sections of the state to the different branches of agriculture, horticulture, and kindred
26 interests;

27 (h) Submit a biennial report to the Governor and Legislature containing such information as
28 to the operations of the department as may be helpful to the agricultural interests of the state,
29 together with an itemized statement of all receipts and disbursements during the biennial period
30 covered thereby, and giving the name of every person employed during ~~such~~ the period, the time
31 employed, and the amount paid each employee;

32 (i) Perform such other duties and exercise such other powers as are provided in this
33 chapter and by general law;

34 (j) Enter into an agreement with the Secretary of the Department of Veterans' Assistance to
35 transfer without consideration all or part of the approximately 17 acres of Department of

36 Agriculture property in Beckley, West Virginia, located adjacent to the Jackie Withrow Hospital
37 which was formerly known as Pinecrest Hospital, for construction of a veterans skilled nursing
38 facility;

39 (k) Propose rules, including regulatory standards, for legislative approval in accordance
40 with the provisions of §29A-3-1 *et seq.* of this code for the purpose of carrying out the
41 requirements of this chapter; and

42 (l) Cooperate with the State Resiliency Office to the fullest extent practicable to assist that
43 office in fulfilling its duties;

44 (m) Notwithstanding any provision of this code to the contrary, transfer to the Village of
45 Barboursville, without consideration, all the approximately 250 acres of land known as the
46 Huntington State Hospital institutional farm, located at Barboursville, Cabell County, for the
47 purpose of providing public services; and

48 (n) Notwithstanding any provision of this code to the contrary, transfer to the City of
49 Ellenboro, without consideration, all the lots owned by the Department of Agriculture located in the
50 City of Ellenboro, for public services.

ARTICLE 2. MARKETING AGRICULTURAL PRODUCTS.

§19-2-5. Inspection and grading of agricultural products; charges.

1 The commissioner may comply with the request of any person for official inspection of
2 agricultural products and he or she, or his or her agents, ~~shall have authority to~~ may inspect and
3 determine the grade and quality of agricultural products at public markets, concentration points,
4 packing, grading, and processing plants and other places where agricultural products are
5 assembled for distribution; the commissioner ~~shall~~ may establish and publish a schedule of
6 charges for ~~such~~ the inspection and grading service; and ~~it shall be his duty and he shall have~~
7 ~~authority to~~ may collect ~~such~~ the charges for ~~such~~ the inspection and grading services, which
8 moneys shall be paid into the State Treasury and reappropriated to the Department of Agriculture
9 for the administration of this article.

ARTICLE

2C.

AUCTIONEERS.

§19-2C-1. Definitions.

1 ~~For the purposes of this article:~~

2 (a) "Absolute auction" means the sale of real or personal property at auction whereby
3 every item offered from the block is sold to the highest bidder without reserve and without the
4 requirements of a minimum bid or other conditions which limit the sale other than to the highest
5 bidder.

6 **(b) "Auction" means any sale of real or personal property in which offers or bids are made**
7 **by prospective purchasers by means of verbal exchange, physical gesture, or written**
8 **communication, whether bids are made in person, via mail, or electronically, the property is sold to**
9 **the highest bidder, and there is no fixed or predetermined time for the auction to end, as the close**
10 **of the auction is determined by either the auctioneer or the persons bidding on the item or items.**
11 **The term "auction" includes public auctions.**

12 (c) "Auctioneer" means a person who sells goods or real estate at public auction for
13 another on commission or for other compensation.

14 (d) "Commissioner" means the Commissioner of Agriculture of West Virginia.

15 (e) "Department" means the West Virginia Department of Agriculture.

16 (f) "Escrow account" means a separate custodial or trust fund account maintained by the
17 auctioneer.

18 (g) "Estate auction" means the sale at auction of property of a specified deceased person
19 or the property of a specified living person's estate. Estate auctions may contain property other
20 than that of the specified living or deceased person. However, the inclusion of additional property
21 must be included in all advertising and auction announcements.

22 (h) "In this state" means that an auction satisfies one of the following criteria:

23 (1) The auctioneer performed the auction within the borders of the State of West Virginia;

24 (2) The auctioneer is selling items for a person located in the State of West Virginia;

25 (3) The auctioneer is auctioning real or personal property located in the State of West
26 Virginia;

27 (4) The auctioneer delivers purchased property to a location in the State of West Virginia;
28 or

29 (5) The auctioneer is otherwise subject to the laws, including taxation authority, of the State
30 of West Virginia.

31 ~~(h) "Public auction" or "auction" means any public sale of real or personal property in any~~
32 ~~manner, whether in-person, via written offers or bids, or online, when offers or bids are made by~~
33 ~~prospective purchasers and the property sold to the highest bidder.~~

§19-2C-6a. Investigation of complaints; board of review.

1 (a) The Department of Agriculture may, upon its own action, and shall upon the verified
2 written complaint of any person, investigate the actions of any auctioneer, apprentice auctioneer,
3 any applicant for an auctioneer's or apprentice auctioneer's license, or any person who assumes
4 to act in that capacity, if the complaint, together with other evidence presented in connection with
5 it, establishes probable cause. Upon verification of the complaint, the department shall present the
6 complaint to the board of review. The board of review shall consider all facts of the complaint and
7 recommend a course of action to the commissioner.

8 (b) The board of review shall be appointed by the Governor, by and with the advice and
9 consent of the Senate, and shall consist of ~~three~~ five members, each appointed for a staggered
10 three-year term. ~~Two~~ Three members of the board of review shall be licensed auctioneers in West
11 Virginia, one of which has experience performing auctions, and residents of this state and shall
12 have been licensed and been practicing the profession of auctioneering for five years immediately
13 preceding their appointment. ~~The third~~ One member shall be a lay person from the commercial or
14 agricultural community who has utilized services of auctioneers for at least three years, and one
15 member shall be a citizen member. No more than ~~two~~ three board members shall be from any one
16 congressional district and no more than ~~two~~ three members shall be from the same political party.

17 (c) Board members shall receive ~~no compensation for their service on the board, but shall~~
18 ~~be entitled to~~ compensation for each day or portion of a day engaged in the discharge of official
19 duties, which compensation may not exceed the amount paid to members of the Legislature for
20 their interim duties as recommended by the Citizens Legislative Compensation Commission and
21 authorized by law, and shall be entitled to reimbursement for expenses in accordance with the
22 Department of Agriculture travel regulations.

23 (d) ~~There shall be no limit on the number of consecutive terms a member may serve on the~~
24 ~~board~~ Appointed members may be reappointed for up to two additional terms. All appointed
25 members serve until their successor has been appointed and qualified. The Governor is
26 ~~authorized to~~ may fill a vacancy when it occurs on the board for any reason. An appointment to fill a
27 vacancy shall be for the remainder of the existing term of the vacant position.

§19-2C-10. Advertising.

1 (a) In advertising an auction sale by any licensed auctioneer, the principal auctioneer, or
2 auctioneers who physically conduct the sale shall be listed prominently in such advertising as
3 used by said auctioneer or auctioneers. The individual auctioneer or auctioneers who conduct the
4 sale shall be the person or persons who call for, accept and close bids on the majority of items
5 offered for sale.

6 (b) Any apprentice auctioneer who advertises, as provided in this section, shall indicate in
7 his or her advertisement the name of the sponsoring auctioneer under whom he or she is licensed.

8 The auctioneer's name and license number shall be displayed in equal prominence with
9 the name of the apprentice auctioneer and license number in ~~such~~ the advertisement.

10 (c) Nothing in the provisions of this article shall ~~may~~ be construed so as to prohibit any
11 other auctioneer, licensed pursuant to this article, from assisting with any auction, notwithstanding
12 the failure to list the name of the other auctioneer in any advertising associated with such auction.

13 (d) Advertising prohibitions:

14 (1) It is unlawful to conduct or advertise that an auction is absolute if minimum opening bids

15 are required, or other conditions are placed on the sale that limit the sale other than to the highest
16 bidder.

17 (2) No property other than the property of a specified deceased person or the property of a
18 specified living person's estate may be sold at auction if the auction is conducted or advertised
19 only as an estate auction. However, property other than that of the specified estate may be sold at
20 the sale if all advertisements for the sale specify that items will be sold that do not belong to the
21 estate and those items are identified at the sale.

22 (3) It is unlawful for a sale to be advertised as an auction that does not satisfy the definition
23 of an auction set forth in this article.

ARTICLE 12. INSECT PESTS, PLANT DISEASES AND NOXIOUS WEEDS.

§19-12-2. Definitions.

1 The following definitions shall apply in the interpretation and enforcement of this article. All
2 words shall be construed to import either the plural or the singular, as the case demands:

3 (a) "Certificate" means a document issued or authorized by the commissioner indicating
4 that a regulated article is not contaminated with a pest.

5 (b) "Commissioner" means the Commissioner of Agriculture of the State of West Virginia
6 and his or her duly authorized representatives.

7 (c) "Compliance agreement" means a written agreement between the department and any
8 person engaged in growing, handling or moving articles, plants or plant products regulated under
9 this article, wherein the person agrees to comply with stipulated requirements.

10 (d) "Dealer" means any person who buys, receives on consignment, or otherwise acquires
11 and has in his or her possession nursery stock which that person has not grown from propagative
12 material such as tissue culture plants, cuttings, liners, seeds or transplanted nursery stock for the
13 purpose of offering or exposing for sale, reselling, reshipping or distributing same. Each separate
14 location shall constitute a dealership.

15 (e) "Department" means the Department of Agriculture of the State of West Virginia.

16 (f) "Genetically modified organism" means any organism altered or produced through
17 genetic modification from a donor, vector, or recipient organism using modern molecular
18 techniques.

19 (g) "Host" means any plant or plant product upon which a pest is dependent for completion
20 of any portion of its life cycle.

21 (h) "Infested area" means any area of uncontrolled growth of insects, plant diseases,
22 noxious weeds or other plant pests.

23 (i) "Noxious weed" means any living plant, or part thereof, declared by the commissioner,
24 ~~after public hearing,~~ to be detrimental to crops, other desirable plants, waterways, livestock, land,
25 or other property, or to be injurious to public health or the economy.

26 (j) "Nursery" means any grounds or premises on or in which nursery stock is being
27 propagated or grown for sale or distribution, including any grounds or premises on or in which
28 nursery stock is being fumigated, treated, packed, or stored or otherwise prepared or offered for
29 sale or movement to other localities.

30 (k) "Nurseryman" means and includes any person who owns, leases, manages, or
31 oversees a nursery.

32 (l) "Nursery stock" means all trees, shrubs and woody vines, including ornamentals, bush
33 fruits, grapevines, fruit trees and nut trees, whether cultivated, native or wild, and all buds, grafts,
34 scions, fruit pits, and cuttings from such plants. It also means sod, including sod plugs and sod-
35 producing plants, and such herbaceous plants, including strawberry plants, narcissus plants and
36 narcissus bulbs as the commissioner declares by rule to be so included whenever he or she
37 considers control of the movement of such plants and bulbs necessary for the control of any
38 destructive plant pest. Florists' or greenhouse plants for inside culture or use, unless declared
39 otherwise by the commissioner, as herein authorized, shall not be considered nursery stock,
40 except that all woody plants, whether greenhouse or field grown, if for outside planting, are hereby
41 defined as nursery stock.

42 (m) "Permit" means a document issued or authorized by the commissioner to provide for a
43 movement of regulated articles to restricted destinations for limited handling, utilization, or
44 processing.

45 (n) "Person" means any individual or combination of individuals, partnership, corporation,
46 company, society, association, governmental organization, or other business entity and each
47 officer, agent or employee thereof.

48 (o) "Plant and plant products" mean trees, shrubs, vines; forage, fiber, cereal plants, and all
49 other plants; cuttings, grafts, scions, buds, and lumber and all other parts of plants and plant
50 products; and fruit, vegetables, roots, bulbs, seeds, and wood.

51 (p) "Plant pest" means any living stage of: Any insects, mites, nematodes, slugs, snails,
52 protozoa, or other invertebrate animals, bacteria, fungi, other parasitic plants, or reproductive
53 parts thereof, viruses or any organisms similar to or allied with any of the foregoing, or any
54 infectious substances, and any genetically modified organisms for which there is reason to believe
55 may directly or indirectly injure or cause disease or damage in any plants or parts thereof, or any
56 processed, manufactured, or other products of plants.

57 (q) "Quarantine" means a legal declaration by the commissioner which specifies:

58 (1) The plant pest or noxious weeds.

59 (2) The articles to be regulated.

60 (3) Conditions governing movement.

61 (4) The area or areas quarantined.

62 (5) Exemptions.

63 (r) "Regulated article" means any article of any character, as described in quarantine or
64 other order of the commissioner carrying or capable of carrying a pest.

ARTICLE 12D. WEST VIRGINIA NOXIOUS WEED ACT.

§19-12D-3. Definitions.

1 As used in this article:

2 (a) "Certificate" means a document issued by the commissioner indicating a regulated
3 article is free of noxious weeds.

4 (b) "Commissioner" means the Commissioner of Agriculture of the State of West Virginia
5 and his or her duly authorized representatives.

6 (c) "Infested" means the establishment of a noxious weed or exposure to ~~such~~ the weed in
7 a way creating reasonable certainty that establishment will occur.

8 (d) "Move" means to ship, offer for shipment, receive for transportation, carry, or otherwise
9 transport, move or allow to be moved.

10 (e) "Noxious weed" means any living plant, or part thereof, declared by the commissioner;
11 ~~after public hearing~~, to be detrimental to crops, other desirable plants, waterways, livestock, land
12 or other property, or to be injurious to public health or the economy.

13 (f) "Permit" means a document issued by the commissioner to provide for movement of
14 regulated articles to restricted destinations for limited handling, utilization, processing, or for
15 scientific purposes.

16 (g) "Person" means any individual or combination of individuals, partnership, corporation,
17 company, society, association, firm, or other business entity and each officer, agent or employee
18 thereof; the state and federal government and any department, agency, or subdivision thereof; or
19 any other entity.

20 (h) "Quarantine" means a legal declaration by the commissioner specifying:

21 (1) The common and scientific name of the noxious weed.

22 (2) The articles to be regulated.

23 (3) The conditions governing movement.

24 (4) Exemptions.

25 (i) "Regulated article" means any article of any character which is transporting or which can
26 transport any noxious weed.

27 (j) "Reasonable notification" means at least 48 hours.

§19-12D-4. Administration of article; promulgation of regulations rules.

1 (a) The commissioner shall administer and enforce the provisions of this article and shall
2 have authority to issue regulations rules ~~after a public hearing following due notice to all interested~~
3 ~~persons~~ in conformance with the provisions of the state administrative procedures set forth in
4 chapter 29A of this code.

5 (b) In issuing such regulations rules, the commissioner shall give consider pertinent
6 research findings and recommendations of other agencies of the state, the federal government,
7 and other reliable sources.

§19-12D-5. Surveys for noxious weeds; multiflora rose.

1 (a) The commissioner shall make surveys for noxious weeds and when it is determined
2 that an infestation exists within the state he or she may, by regulation rule, ~~after public hearing held~~
3 ~~in accordance with procedures set forth in chapter twenty-nine-a of this code~~ declare the weed to
4 be noxious.

5 (b) Multiflora rose, Rosa multiflora, is a detriment to agriculture in West Virginia and is
6 hereby declared to be a noxious weed.

ARTICLE 36. AGRITOURISM RESPONSIBILITY ACT.

§19-36-2. Definitions.

1 Unless the context of usage clearly requires otherwise:

2 "Agritourism" activity means any lawful activity carried out on a farm or ranch that allows
3 members of the general public for recreational, entertainment, or educational purposes to view or
4 enjoy rural activities.

5 "Agritourism business" means any person, fiduciary, firm, association, partnership, limited
6 liability company, corporation, unit of government, or any other group or entity which is engaged in
7 the business of providing one or more agritourism activities, whether or not for compensation.

8 "Agritourism professional" means owners, operators, employees, and volunteers working
9 for or under the direction of the operators of an agritourism business.

10 "Farm" or "ranch" means an area of land used for the production, cultivation, growing,
11 harvesting, or processing of agricultural products, including horticulture, grazing, and livestock as
12 defined in §19-10B-2 of this code.

13 "Inherent risks of agritourism activity" are those dangers or conditions that are part of an
14 agritourism activity including certain hazards, natural conditions of land and terrain, vegetation,
15 and waters, the behavior of wild or domestic animals, and ordinary dangers of structures or
16 equipment ordinarily used in farming and ranching operations. Inherent risks of agritourism activity
17 also include the potential of a participant to act in a negligent manner that may contribute to injury
18 to the participant or others, including failing to follow instructions given by the agritourism
19 professional or failing to exercise reasonable caution while engaging in the agritourism activity.

20 "Participant" as used in this article means any person, other than the agritourism
21 professional, who engages in an agritourism activity.

ARTICLE 39. CERTAIN RESTRICTIONS ON OWNERSHIP OF AGRICULTURAL LAND.

§19-39-1. Definitions.

1 For purposes of this article:

2 "Agricultural land" means land suitable for use in farming.

3 "Farming" means the cultivation of land for the production of agricultural crops, the raising
4 of poultry, the production of eggs, the production of milk, the production of fruit or other horticultural
5 crops, grazing, or the production of livestock. Farming includes the production of timber, forest
6 products, nursery products, or sod. Farming does not include a contract where a processor or
7 distributor of farm products or supplies provides spraying, harvesting, or other farm services.

8 "Foreign business" means a corporation incorporated under the laws of a foreign country,
9 or a business entity whether or not incorporated, in which a majority interest is owned directly or
10 indirectly by nonresident aliens. Legal entities, including, but not limited to, trusts, holding
11 companies, multiple corporations, and other business arrangements do not affect the
12 determination of ownership or control of a foreign business.

13 "Foreign government" means a government other than the government of the United
14 States, its states, territories, or possessions.

15 "Nonresident alien" means an individual who is neither a citizen of the United States nor
16 a person lawfully admitted into the United States for permanent residence by the United States
17 immigration and naturalization service: *Provided*, That an individual is lawfully admitted for
18 permanent residence regardless of whether the individual's lawful permanent resident status is
19 conditional.

§19-39-2. Right to acquire nonagricultural land.

1 A nonresident alien, foreign business, or foreign government may acquire by grant,
2 purchase, devise, or descent, real property, except agricultural land or any interest in agricultural
3 land in this state, and may own, hold, devise, or alienate the real property, and shall incur the same
4 duties and liabilities in relation to the real property as a citizen and resident of the United States.

§19-39-3. Restriction on agricultural land holdings.

1 (a) A nonresident alien, foreign business, or foreign government, or an agent, trustee, or
2 fiduciary thereof shall not purchase or otherwise acquire agricultural land in this state. A
3 nonresident alien, foreign business, or foreign government, or an agent, trustee, or fiduciary
4 thereof, which owns or holds agricultural land in this state on July 1, 2023, may continue to own or
5 hold the land, but shall not purchase or otherwise acquire additional agricultural land in this state.

6 (b) A person or entity who acquires agricultural land in violation of this section or who fails
7 to convert the land to purposes other than farming within five years, remains in violation of this
8 section for as long as the person or entity holds an interest in the land.

9 (c) The restriction set forth in subsection (a) of this section does not apply to the following:

10 (1) Agricultural land acquired by devise or descent;

11 (2) A bona fide encumbrance on agricultural land taken for purposes of security; and

12 (3) Agricultural land acquired by a process of law in the collection of debts, by a deed in lieu
13 of foreclosure, pursuant to a forfeiture of a contract for deed, or by any procedure for the

14 enforcement of a lien or claim on the land, whether created by mortgage or otherwise: *Provided*,
15 That agricultural land so acquired shall be sold or otherwise disposed of within five years after the
16 title is transferred. Pending the sale or disposition, the land shall not be used for any purpose other
17 than farming, and the land shall not be used for farming except under lease to an individual, trust,
18 corporation, partnership, or other business entity not subject to any other restrictions. Agricultural
19 land which has been acquired pursuant to this subdivision shall not be acquired or used by the
20 nonresident alien, foreign business, or foreign government, or an agent, trustee, or fiduciary
21 thereof for agricultural research or experimental purposes.

22 (d) A nonresident alien, foreign business, or foreign government, or an agent, trustee, or
23 fiduciary of the alien, business, or government shall not acquire or hold agricultural land in an
24 amount greater than 300 acres: *Provided*, That a nonresident alien, foreign business, or foreign
25 government, or an agent, trustee, or fiduciary thereof who lawfully owns over 300 acres on July 1,
26 2023, may continue to own or hold the land, but shall not purchase or otherwise acquire additional
27 agricultural land in this state except as provided for in subsection (c) of this section. Pending the
28 development of the agricultural land for purposes other than farming, the land shall not be used for
29 farming except under lease to an individual, trust, corporation, partnership, or other business entity
30 not subject to any other restriction on the increase in agricultural land holdings imposed in this
31 article.

32 (e) A nonresident alien, foreign business, or foreign government, or an agent, trustee, or
33 fiduciary thereof shall not transfer title to or interest in agricultural land to a nonresident alien,
34 foreign business, or foreign government, or an agent, trustee, or fiduciary thereof except as
35 provided for in subsection (c) of this section.

§19-39-4. Development of agricultural land acquired for nonfarming purposes.

1 Development of the agricultural land which is not subject to the restrictions of this article,
2 because the land or interest in the land was acquired for an immediate or pending use other than

3 farming, shall be converted to a purpose other than farming within five years following the
4 acquisition of the agricultural land or the acquisition of the interest in the agricultural land.

§19-39-5. Agricultural land acquired by devise or descent.

1 A nonresident alien, foreign business, or foreign government, or an agent, trustee, or
2 fiduciary thereof which acquires agricultural land or an interest in agricultural land, by devise or
3 descent after July 1, 2023, shall divest itself of all right, title, and interest in the land within five
4 years from the date of acquiring the land or interest. This section shall not require divestment of
5 agricultural land or an interest in agricultural land acquired by devise or descent from a
6 nonresident alien if the land or an interest in the land was acquired by any nonresident alien prior
7 to _____ July _____ 1, _____ 2023.

§19-39-6. Change of status; divestment.

1 A person or entity which purchases or otherwise acquires agricultural land in this state
2 except by devise or descent after July 1, 2023, and whose status changes so that it becomes a
3 foreign business or nonresident alien subject to this article shall divest itself of all right, title, and
4 interest in the land within five years from the date that its status changed.

§19-39-7. Registration.

1 A nonresident alien, foreign business, or foreign government, or an agent, trustee, or
2 fiduciary thereof which owns an interest in agricultural land within this state on or after July 1,
3 2023, shall register the agricultural land with the Commissioner of Agriculture. The registration
4 shall be made within 60 days after July 1, 2023, or within 60 days after acquiring the land or the
5 interest in the land, whichever time is the later. The registration shall be in the form and manner
6 prescribed by the commissioner and shall contain the name of the owner and the location and
7 number of acres of the agricultural land by county. If the owner of the agricultural land or owner of
8 the interest in agricultural land is an agent, trustee, or fiduciary of a nonresident alien, foreign
9 business, or foreign government, the registration shall also include the name of any principal for
10 whom that land, or interest in that land, was purchased through an agent.

§19-39-8.

Reports.

1 A nonresident alien, foreign business, or foreign government, or an agent, trustee, or
2 fiduciary thereof who acquires agricultural land not subject to the restrictions of §19-39-3 of this
3 code because the land was acquired for an immediate or pending use other than farming, shall file
4 a report with the Commissioner of Agriculture before July 1 of each year. The report shall be in the
5 form and manner prescribed by the commissioner and shall contain the following:

6 (1) The name of the owner of the agricultural land or owner of the interest in the agricultural
7 land;

8 (2) If the owner of the agricultural land or interest in the agricultural land is an agent,
9 trustee, or fiduciary of a nonresident alien, foreign business, or foreign government, the name of
10 any principal for whom that land or interest in that land was acquired as agent;

11 (3) The location and number of acres of the agricultural land by city and county;

12 (4) The date the agricultural land or interest in the agricultural land was acquired;

13 (5) The immediate or pending use other than farming for which the agricultural land or
14 interest in the agricultural land was acquired and the status of the land's development for the
15 purpose other than farming; and

16 (6) The present use of the agricultural land.

§19-39-9.

Enforcement.

1 (a) If the Commissioner of Agriculture finds that a nonresident alien, foreign business,
2 foreign government, or an agent, trustee, or other fiduciary thereof has acquired or holds title to or
3 interest in agricultural land in this state in violation of §19-39-3 of this code, has failed to timely
4 register as required under §19-39-7 of this code, or has failed to timely report as required under
5 §19-39-8 of this code, the Commissioner of Agriculture shall report the violation to the Attorney
6 General.

7 (b) Upon receipt of the report from the Commissioner of Agriculture, the Attorney General
8 may, following a review of the report and any further applicable facts, initiate an action in the circuit
9 court of any county in which the land is located.

10 (c) If the circuit court finds that the land in question has been acquired or held in violation of
11 §19-39-3 of this code, or has not been properly registered as required under §19-39-7 of this code,
12 or has not been appropriately reported as required under §19-39-8 of this code, it shall enter an
13 order finding a violation exists and shall file a copy of the order with the circuit clerk of the county in
14 which any portion of the land is located. The circuit court shall also cause a copy of the order to be
15 recorded with the county clerk in any county in which a portion of the land is located.

§19-39-10. **Escheat.**

1 If the circuit court finds that the agricultural land in question has been acquired in violation
2 of this article or that the land has not been converted to a purpose other than farming within five
3 years as required by §19-39-4 of this code, the circuit court shall enter an order declaring the land
4 escheated to the state, and that title to the land shall be vested in the state in the name of the State
5 Commissioner of Delinquent and Nonentered Lands by decree of the circuit court. Any real estate,
6 acquired by the state under this section, shall be sold as soon as practicably possible in the same
7 manner in which delinquent properties are sold pursuant to §11A-3-45 of this code. The circuit
8 court order shall set forth the minimum bid for which the property will be sold. The proceeds of the
9 sale shall be used to pay court costs, including the cost of appraisal should one be performed, the
10 costs associated with the Auditor's sale, and any outstanding penalties imposed pursuant to §19-
11 39-11 of this code. The remaining funds, if any, shall be paid to the person or entity divested of the
12 property but only in an amount not exceeding the actual cost paid by the person or entity for the
13 purchase or acquisition of that property. Proceeds remaining after the payment of court costs,
14 costs associated with the Auditor's sale, and the payment to the person or entity divested of the
15 property shall be deposited into the General Revenue Fund of the county or counties in which the
16 land is located in proportion to the part of the land in each county.

§19-39-11. Penalty for failure to timely file.

1 A civil penalty of not more than \$2,000 shall be imposed for each offense upon a
2 nonresident alien, foreign business, or foreign government, or an agent, trustee, or other fiduciary
3 thereof, who fails to timely file the registration as required under §19-39-7 of this code or has failed
4 to timely report as required under §19-39-8 of this code. Any penalty collected pursuant to this
5 section shall be used by the Commissioner of Agriculture for the benefit of the Cedar Lakes Camp
6 and Conference Center.