

WEST VIRGINIA LEGISLATURE ENROLLED

2019 REGULAR SESSION

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OFFICE WEST VIRGINIA
SECRETARY OF STATE

ENROLLED

Committee Substitute

for

House Bill 2694

BY DELEGATES HOWELL, D. JEFFRIES, PACK, PHILLIPS,
SYPOLT, HOTT, CADLE, HAMRICK, GRAVES, MCGEEHAN

AND PUSHKIN

[Passed March 9, 2019; in effect ninety days from
passage.]

HB 2694

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1 AN ACT to amend and reenact §19-12E-3, §19-12E-4, §19-12E-5, §19-12E-6, §19-12E-7, §19-
2 12E-8, and §19-12E-9 of the Code of West Virginia, 1931, as amended, and to amend
3 said code by adding thereto two new sections, designated §19-12E-10 and §19-12E-11,
4 all relating generally to the Industrial Hemp Development Act; adding and modifying
5 definitions; updating code to reflect changes in federal law; clarifying that no person may
6 grow, cultivate, possess, or process industrial hemp without a license from the Department
7 of Agriculture; requiring certain documentation requested by the commissioner to be
8 submitted by licensees; authorizing commissioner to submit plan for state regulation of
9 industrial hemp to United States Department of Agriculture; requiring licensee to provide
10 prior written consent for law enforcement to enter the premises; providing that a license is
11 not necessary to possess, handle, transport, or sell hemp products and extracts; setting
12 standards regarding sale of industrial hemp products; requiring plan to comply with federal
13 law; providing for continued legality of hemp production in absence of submitted plan;
14 providing for handling negligent violations; addressing handling of non-negligent
15 violations; requiring notification of attorney general and law enforcement under certain
16 circumstances; and making technical corrections.

Be it enacted by the Legislature of West Virginia:

ARTICLE 12E. INDUSTRIAL HEMP DEVELOPMENT ACT.

§19-12E-3. Definitions.

1 As used in this article:

2 (a) "Cannabidiol" or "CBD" means the compound by the same name derived from the
3 hemp variety of the cannabis sativa L. plant;

4 (b) "Commercial sales" means the sale of products in the stream of commerce, at retail,
5 wholesale, and online;

6 (c) "Commissioner" means the Commissioner of Agriculture or his or her designee;

7 (d) "Cultivating" means planting, watering, growing, and harvesting a plant or crop;

8 (e) “Department” means the West Virginia Department of Agriculture and its employees;

9 (f) “Handling” means possessing or storing hemp plants for any period of time on premises
10 owned, operated, or controlled by a person licensed to cultivate or process hemp. “Handling” also
11 includes possessing or storing hemp plants in a vehicle for any period of time other than during
12 its actual transport from the premises of one licensed person to cultivate or process industrial
13 hemp to the premises of another licensed person. “Handling” does not mean possessing or storing
14 finished hemp products;

15 (g) “Hemp” or “industrial hemp” means all parts and varieties of the plant *Cannabis sativa*
16 L. and any part of the plant, including the seeds of the plant and all derivatives, extracts,
17 cannabinoids, isomers, acids, salts, and salts of isomers, whether growing or not with no greater
18 than 0.3% tetrahydrocannabinol, or the THC concentration for hemp defined in 7 U.S.C. § 5940,
19 whichever is greater;

20 (h) “Hemp products” means all products derived from, or made by, processing hemp plants
21 or plant parts, that are prepared in a form available for commercial sale;

22 (i) “Licensee” means an individual or business entity possessing a license issued by the
23 Department to grow, handle, cultivate, or process hemp;

24 (j) “Marijuana” means all plant material from the genus *cannabis* containing more than
25 one percent tetrahydrocannabinol or seeds of the genus capable of germination;

26 (k) “Processing” means converting an agricultural commodity into a marketable form; and

27 (l) “THC” means tetrahydrocannabinol. Notwithstanding any other provision of this code
28 to the contrary, the THC found in industrial hemp shall not be considered to be THC for the
29 purposes of qualifying as a controlled substance.

§19-12E-4. Industrial hemp authorized as agricultural crop; license required.

1 (a) Industrial hemp is considered an agricultural crop in this state if grown for the purposes
2 authorized by the provisions of this article. Upon meeting the requirements of §19-12E-5 of this

3 code, an individual in this state may plant, grow, harvest, possess, process, sell or buy industrial
4 hemp.

5 (b) A person shall not cultivate, handle, or process industrial hemp in this state unless the
6 person holds an industrial hemp license issued by the department.

§19-12E-5. Industrial hemp – licensing.

1 (a) A person growing industrial hemp shall apply to the commissioner for a license on a
2 form prescribed by the commissioner.

3 (b) The application for a license must include the name and address of the applicant and
4 the legal description and global positioning coordinates of the land area to be used for the
5 production of industrial hemp.

6 (c) The commissioner shall require each first-time applicant, and may establish
7 requirements for other persons involved with the industrial hemp program, to submit to a state
8 and national criminal history record check. The criminal history record check shall be based on
9 fingerprints submitted to the West Virginia State Police or its assigned agent for forwarding to the
10 Federal Bureau of Investigation.

11 (1) The applicant shall meet all requirements necessary to accomplish the state and
12 national criminal history record check, including:

13 (A) Submitting fingerprints; and

14 (B) Authorizing the board, the West Virginia State Police, and the Federal Bureau of
15 Investigation to use all records submitted and produced for the purpose of screening the applicant
16 for a license.

17 (2) The results of the state and national criminal history record check may not be released
18 to or by a private entity except:

19 (A) To the individual who is the subject of the criminal history record check;

20 (B) With the written authorization of the individual who is the subject of the criminal history
21 record check; or

22 (C) Pursuant to a court order.

23 (3) The criminal history record check and related records are not public records for the
24 purposes of §29B-1-1 *et seq.* of this code.

25 (4) The applicant shall pay the actual costs of the fingerprinting and criminal history record
26 check.

27 (d) If the applicant has completed the application process to the satisfaction of the
28 commissioner, the commissioner shall issue the license, which is valid until December 31 of the
29 year of application: *Provided*, That an individual applying to renew a current license may continue
30 to operate under an existing license, as long as his or her completed renewal application has
31 been submitted to the department on or before the deadline established by the department.

32 (e) Any person seeking to grow, cultivate, or process industrial hemp shall provide to the
33 Department prior written consent allowing the Department, State Police, and other state and local
34 law enforcement agencies to enter onto all premises where industrial hemp is grown, cultivated,
35 processed, or stored to conduct physical inspections or otherwise ensure compliance with the
36 requirements of this code and the legislative rules promulgated pursuant to this code.

37 (f) Sale of industrial hemp products —

38 (1) Notwithstanding any provision of the code to the contrary, a person need not obtain a
39 license to possess, handle, transport, or sell hemp products or extracts, including those containing
40 one or more hemp-derived cannabinoids, including CBD.

41 (2) Hemp-derived cannabinoids, including CBD, are not controlled substances or
42 adulterants.

43 (3) Products containing one or more hemp-derived cannabinoids, such as CBD, intended
44 for ingestion are to be considered foods, not controlled substances or adulterated products.

45 (4) Applicable state agencies shall make available any and all customary registrations to
46 the processors and manufacturers of hemp products.

47 (5) Retail sales of hemp products may be conducted when the products and the hemp
48 used in the products were grown and cultivated legally in another state or jurisdiction and meet
49 the same or substantially the same requirements for processing hemp products or growing hemp
50 under this article and rules promulgated under §19-2E-7 of this code.

51 (6) Notwithstanding any other provision of this code to the contrary, derivatives of hemp,
52 including hemp-derived cannabidiol, may be added to cosmetics, personal care products, and
53 products intended for animal or human consumption, and the addition is not considered an
54 adulteration of the products.

55 (7) Hemp and hemp products may be legally transported across state lines, and exported
56 to foreign nations, consistent with U. S. federal law and laws of respective foreign nations.

§19-12E-6. Industrial hemp production – notification.

1 (a) Every licensee shall file with the commissioner:

2 (1) Documentation showing that the seeds planted are of a type and variety certified to
3 contain no more than 0.3% tetrahydrocannabinol;

4 (2) A copy of any contract to grow industrial hemp; and

5 (3) Any other document required to be submitted by the commissioner.

6 (b) Each licensee shall notify the commissioner of the sale or distribution of any industrial
7 hemp grown by the licensee, including, but not limited to, the name and address of the person or
8 entity receiving the industrial hemp and the amount of industrial hemp sold.

§19-12E-7. Rule-making authority.

1 The commissioner shall propose legislative rules for promulgation in accordance with
2 §29A-3-1 *et seq.* of this code that include, but are not limited to:

3 (1) Licensing persons who wish to grow, cultivate, handle, or process industrial hemp;

4 (2) Sampling and testing of the industrial hemp to determine tetrahydrocannabinol levels;

5 (3) Supervision of the industrial hemp during its growth and harvest;

6 (4) Assessment of fees that are commensurate with the costs of the commissioner's
7 activities in licensing, testing, and supervising industrial hemp production;

8 (5) The production and sale of industrial hemp;

9 (6) The production, sale, possession, handling, or transport of hemp products and
10 extracts, including those containing one or more hemp-derived cannabinoids, including CBD; and

11 (7) Any other rules and procedures necessary to carry out the purposes of this article.

§19-12E-8. Disposition of fees.

1 All fees assessed as provided for in §19-12E-5 of this code must be deposited with the
2 state treasurer to the credit of the "Agricultural Fees Fund" established by the provisions of §19-
3 1-4c of this code for the use of the commissioner for administering and enforcing the provisions
4 of this article.

§19-12E-9. Defense for possession or cultivation of marijuana.

1 (a) It is a complete defense to a prosecution for the possession or cultivation of marijuana
2 pursuant to the provisions of §60A-4-401 *et seq.* of this code that defendant was growing industrial
3 hemp pursuant to the provisions of this article.

4 (b) This section is not a defense to a charge of criminal sale or distribution of marijuana
5 as defined in §60A-1-101 *et seq.* of this code which does not meet the definition of industrial
6 hemp.

§19-12E-10. State regulation of industrial hemp.

1 (a) The commissioner may submit to the Secretary of the United States Department of
2 Agriculture, for his or her approval, a plan under which this state monitors and regulates the
3 production of industrial hemp. The plan shall comply with the requirements of 7 U.S.C. § 1621 *et*
4 *seq.* and any other requirements established by the United States Department of Agriculture.

5 (b) Nothing in this section prohibits the production of industrial hemp in this state if the
6 commissioner declines to submit a plan, or if a submitted plan is not approved by the United
7 States Department of Agriculture in accordance with other federal laws and regulations.

§19-12E-11. Violations; negligent violations; notice.

1 (a) A licensee in this state that does not comply with any approved plan is subject to §19-
2 12E-11(b) of this code if the department determines the licensee has negligently violated the state
3 plan by:

4 (1) Failing to provide a legal description of the land on which the licensee produces hemp;

5 (2) Failing to obtain a license or other required authorization from the West Virginia
6 Department of Agriculture; or

7 (3) Producing industrial hemp containing more than 0.3% of tetrahydrocannabinol.

8 (b) A licensee described in subsection (a) of this section shall comply with any
9 requirements established by the department to correct any negligent violation, including:

10 (1) A reasonable date by which the hemp producer shall correct the negligent violation;
11 and

12 (2) In the discretion of the commissioner, any requirement that the licensee shall
13 periodically report to the department the licensee's compliance with the state plan for at least two
14 calendar years from the date of the negligent violation.

15 (c) A licensee that negligently violates the provisions of this article, legislative rules
16 promulgated pursuant to this article, or this state's approved plan authorized pursuant to §19-
17 12E-10 of this code three times in a five-year period, is ineligible to produce hemp in this state for
18 a period of five years beginning on the date of the third violation.

19 (d) If the department determines that a licensee in this state has intentionally violated the
20 provisions of this article, legislative rules promulgated pursuant to this article, or this state's
21 approved plan authorized pursuant to §19-12E-10 of this code, the provisions of §19-12E-11(b)
22 of this code shall not apply to the violation and the department shall report the licensee to:

23 (1) The attorney general;

24 (2) The sheriff of the county in which the hemp is being grown; and

25 (3) The local detachment of the West Virginia State Police.

26 (e) Absent a notification pursuant to subsection (d) of this section, a licensee that
27 negligently violates state laws or rules is not subject to any criminal or civil enforcement action by
28 any state, county, or municipal government.

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

FILED

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OFFICE WEST VIRGINIA
SECRETARY OF STATE

Moore Capito
.....
Chairman, House Committee

CSZ
.....
Member Chairman, Senate Committee

Originating in the House.

In effect ninety days from passage.

Steve Harris
.....
Clerk of the House of Delegates

Jee Gwin
.....
Clerk of the Senate

Ray Haskew
.....
Speaker of the House of Delegates

Mitch B. Canine
.....
President of the Senate

The within *is approved* this the *27th*
March
day of, 2019.

James Owens
.....
Governor

PRESENTED TO THE GOVERNOR

Time 3:35 pm