

WEST VIRGINIA LEGISLATURE

2020 REGULAR SESSION

Introduced

Senate Bill 244

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WOELFEL, ROMANO, AND FACEMIRE

[Introduced January 9, 2020; referred

to the Committee on Agriculture and Rural

Development; and then to the Committee on the

Judiciary]

1 A BILL to amend and reenact §19-12E-3 and §19-12E-7 of the Code of West Virginia, 1931, as
2 amended; and to amend said code by adding thereto a new section, designated §19-12E-
3 12, all relating to modifying the Industrial Hemp Development Act; conforming the
4 definition of “hemp” to federal law; clarifying the authority of the Commissioner of
5 Agriculture related to testing; authorizing independent laboratories certified by the
6 commissioner to test hemp produced by a licensee; and requiring the commissioner to
7 propose emergency rules.

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 a~~ THC concentration for hemp defined in 7 U.S.C. § 5940,
 19 ~~whichever is greater~~ that is no greater than allowed by federal law;

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 one
 25 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-7. Rule-making authority.

1 (a) 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 conducted using post-decarboxylation or other similarly reliable method, including the manner in
 6 which testing results are reported;

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

8 (4) Certification of independent laboratories to test industrial hemp to determine
 9 tetrahydrocannabinol levels;

10 ~~(4)~~ (5) Assessment of fees that are commensurate with the costs of the commissioner's
 11 activities in licensing, certification of laboratories, testing, and supervising industrial hemp
 12 production;

13 ~~(5)~~ (6) The production and sale of industrial hemp;

14 ~~(6)~~ (7) The production, sale, possession, handling, or transport of hemp products and
15 extracts, including those containing one or more hemp-derived cannabinoids, including CBD; and

16 ~~(7)~~ (8) Any other rules and procedures necessary to carry out the purposes of this article.

17 (b) The commissioner shall propose emergency legislative rules for promulgation in
18 accordance with §29A-3-1 et seq. of this code to implement amendments to this article enacted
19 during the 2020 regular session of the Legislature.

§19-12E-12. Testing of industrial hemp.

1 (a) Industrial hemp produced pursuant to this article is subject to testing at harvest in
2 accordance with procedures established by the commissioner pursuant to §19-12E-7 of this code.

3 (b) A licensee shall contract with an independent laboratory certified by the commissioner
4 to test hemp produced by the licensee.

5 (c) A laboratory providing testing pursuant to this article must be certified by the
6 commissioner.

7 (d) The possession of hemp by a certified laboratory for the purpose of testing pursuant
8 to this article is lawful.

NOTE: The purpose of this bill is to modify the Industrial Hemp Development Act by: (1) Conforming the definition of hemp to federal law; (2) clarifying the authority of the Commissioner of Agriculture related to testing; (3) authorizing independent laboratories certified by the commissioner to test hemp produced by a licensee; and (4) requiring the commissioner to propose emergency rules.

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