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OFFICE WEST VIRGINIA  
SECRETARY OF STATE

**WEST VIRGINIA LEGISLATURE**  
*REGULAR SESSION, 2002*



**ENROLLED**

*COMMITTEE SUBSTITUTE FOR*

**SENATE BILL NO. 447**

(By Senators FACEMYER AND BAILEY)



**PASSED MARCH 8, 2002**

**In Effect NINETY DAYS FROM Passage**

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FOR

### Senate Bill No. 447

(SENATORS FACEMYER AND BAILEY, *original sponsors*)

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[Passed March 8, 2002; in effect ninety days from passage.]

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AN ACT to amend chapter nineteen of the code of West Virginia, one thousand nine hundred thirty-one, as amended, by adding thereto a new article, designated article twelve-e, relating to legalizing the growing of industrial hemp generally; defining terms; authorizing growing industrial hemp as an agricultural crop; requiring the agricultural commissioner to promulgate rules and otherwise regulate; providing grower licensing requirements; requiring federal approval of hemp production; distribution of fees; and providing defenses.

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

That chapter nineteen of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be amended by

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Enr. Com. Sub. for S. B. No. 447] 2

adding thereto a new article, designated article twelve-e, to read as follows:

**ARTICLE 12E. INDUSTRIAL HEMP DEVELOPMENT ACT.**

**§19-12E-1. Short title.**

1 This article is known as the "Industrial Hemp Develop-  
2 ment Act".

**§19-12E-2. Purpose.**

1 The Legislature finds that the development and use of  
2 industrial hemp can serve to improve the state's economy  
3 and agricultural vitality and that the production of  
4 industrial hemp can be regulated so as not to interfere  
5 with the strict regulation of controlled substances in this  
6 state. The purpose of the industrial hemp development act  
7 is to promote the economy and agriculture by permitting  
8 the development of a regulated industrial hemp industry  
9 while maintaining strict control of marijuana.

**§19-12E-3. Definitions.**

1 As used in this article:

2 (1) "Commissioner" means the commissioner of agricul-  
3 ture;

4 (2) "Industrial hemp" means all parts and varieties of the  
5 plant *cannabis sativa* L. containing no greater than one  
6 percent tetrahydrocannabinol; and

7 (3) "Marijuana" means all plant material from the genus  
8 *cannabis* containing more than one percent tetrahy-  
9 drocannabinol or seeds of the genus capable of germina-  
10 tion.

**§19-12E-4. Industrial hemp authorized as agricultural crop.**

1 Industrial hemp that has not more than one percent  
2 tetrahydrocannabinol is considered an agricultural crop in  
3 this state if grown for the purposes authorized by the

4 provisions of this article. Upon meeting the requirements  
5 of section three of this article, an individual in this state  
6 may plant, grow, harvest possess, process, sell or buy  
7 industrial hemp.

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

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

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

8 (c) The commissioner shall require each first-time  
9 applicant for a license to file a set of the applicant's  
10 fingerprints, taken by a law-enforcement officer, and any  
11 other information necessary to complete a statewide and  
12 nationwide criminal history check with the criminal  
13 investigation bureau of the department of justice for state  
14 processing and with the federal bureau of investigation for  
15 federal processing. All of the costs associated with the  
16 criminal history check are the responsibility of the appli-  
17 cant. Criminal history records provided to the department  
18 under this section are confidential. The commissioner may  
19 use the records only to determine if an applicant is eligible  
20 to receive a license for the production of industrial hemp.

21 (d) Prior to issuing a license under the provisions of this  
22 article, the commissioner shall determine that the appli-  
23 cant has complied with all applicable requirements of the  
24 United States department of justice, drug enforcement  
25 administration for the production, distribution and sale of  
26 industrial hemp.

27 (e) If the applicant has completed the application process  
28 to the satisfaction of the commissioner, the commissioner  
29 shall issue the license which is valid until the thirty-first  
30 day of December of the year of application. An individual

31 licensed under this section is presumed to be growing  
32 industrial hemp for commercial purposes.

**§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  
3 a type and variety certified to contain no more than one  
4 percent tetrahydrocannabinol; and

5 (2) A copy of any contract to grow industrial hemp.

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

**§19-12E-7. Rule-making authority.**

1 The commissioner shall promulgate legislative rules that  
2 include, but are not limited to:

3 (1) Testing of the industrial hemp during growth to  
4 determine tetrahydrocannabinol levels;

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

7 (3) Assessment of a fee that is commensurate with the  
8 costs of the commissioner's activities in licensing, testing  
9 and supervising industrial hemp production;

10 (4) Promulgate rules relating to the production and sale  
11 of industrial hemp which are consistent with the rules of  
12 the United States department of justice, drug enforcement  
13 administration for the production, distribution and sale of  
14 industrial hemp; and

15 (5) Any other rules and procedures necessary to carry out  
16 the purposes of this article.

**§19-12E-8. Disposition of fees.**

1 All fees assessed as provided for in section five of this  
2 article must be deposited with the state treasurer to the  
3 credit of the "Agricultural Fee Fund" established by the  
4 provisions of section four-c, article one of this chapter for  
5 the use of the commissioner for administering and enforc-  
6 ing the provisions 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  
2 possession or cultivation of marijuana pursuant to the  
3 provisions of article four, chapter sixty-a of this code that:

4 (1) The defendant was growing industrial hemp pursuant  
5 to the provisions of this article;

6 (2) The defendant has a valid applicable controlled  
7 substances registration from the United States department  
8 of justice, drug enforcement administration; and

9 (3) The defendant fully complied with all of the condi-  
10 tions of the controlled substances registration.

11 (b) This section is not a defense to a charge of criminal  
12 sale or distribution of marijuana as defined in chapter  
13 sixty-a of this code which does not meet the definition of  
14 industrial hemp.

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

*Larry D. ...*  
.....  
Chairman Senate Committee

*[Signature]*  
.....  
Chairman House Committee

Originated in the Senate.

In effect ninety days from passage.

*David Holmes*  
.....  
Clerk of the Senate

*Bryan M. ...*  
.....  
Clerk of the House of Delegates

*Carl Ray ...*  
.....  
President of the Senate

*[Signature]*  
.....  
Speaker House of Delegates

The within *is approved* ..... this the *28<sup>th</sup>*  
Day of *March* ....., 2002.

*[Signature]*  
.....  
Governor

PRESENTED TO THE

GOVERNOR

Date 3/19/02

Time 9:05 AM