

WEST VIRGINIA LEGISLATURE

2019 REGULAR SESSION

Committee Substitute

for

House Bill 2694

BY DELEGATES HOWELL, D. JEFFRIES, PACK, PHILLIPS,
SYPOLT, HOTT, CADLE, HAMRICK, GRAVES, McGEEHAN
AND PUSHKIN

[Originating in the Committee on Government
Organization, February 20, 2019.]

1 A BILL 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 plan to comply with
10 federal law; providing for continued legality of hemp production in absence of submitted
11 plan; providing for handling negligent violations; addressing handling of non-negligent
12 violations; requiring notification of attorney general and law enforcement under certain
13 circumstances; and making technical corrections.

Be it enacted by the Legislature of West Virginia:

ARTICLE 19. INDUSTRIAL HEMP DEVELOPMENT ACT.

§19-12E-3. Definitions.

1 As used in this article:
2 “Cannabidiol” or “CBD” means the compound by the same name derived from the hemp
3 variety of the cannabis sativa L. plant;
4 “Commercial sales” mean the sale of products in the stream of commerce, at retail,
5 wholesale, and online;
6 (1) “Commissioner” means the Commissioner of Agriculture or his or her designee;
7 “Cultivating” means planting, watering, growing, and harvesting a plant or crop.
8 “Department” means the West Virginia Department of Agriculture and its employees;
9 “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 (2) "Hemp" or "Industrial industrial hemp" means all parts and varieties of the plant
16 cannabis sativa L. containing no greater than one percent 0.3% tetrahydrocannabinol, or the THC
17 concentration for hemp defined in 7 U.S.C. §5940, whichever is greater; and

18 "Hemp products" means all products derived from, or made by, processing hemp plants
19 or plant parts, that are prepared in a form available for commercial sale;

20 "Licensee" means an individual or business entity possessing a license issued by the
21 Department to grow, handle, cultivate, or process hemp;

22 (3) "Marijuana" means all plant material from the genus cannabis containing more than
23 one percent tetrahydrocannabinol or seeds of the genus capable of germination;

24 "Processing" means converting an agricultural commodity into a marketable form; and

25 "THC" means tetrahydrocannabinol. Notwithstanding any other provision of this code, the
26 THC found in industrial hemp shall not be considered to be THC for the purposes of qualifying as
27 a controlled substance.

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

1 (a) Industrial hemp that has not more than one percent tetrahydrocannabinol is considered
2 an agricultural crop in this state if grown for the purposes authorized by the provisions of this
3 article. Upon meeting the requirements of section three §19-12E-5 of this article code, an
4 individual in this state may plant, grow, harvest possess, process, sell or buy industrial hemp.

5 (b) No person shall cultivate, handle, or process industrial hemp in this state unless the
6 person holds a hemp license issued by the Department.

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

1 (a) A person growing industrial hemp ~~for commercial purposes~~ shall apply to the
2 commissioner for license on a 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 others involved with the industrial hemp program, to submit to a for a license to
8 ~~file a set of the applicant's fingerprints, taken by a law enforcement officer, and any other~~
9 ~~information necessary to complete a statewide and nationwide criminal history check with the~~
10 ~~criminal investigation bureau of the department of justice for state processing and with the Federal~~
11 ~~Bureau of Investigation for federal processing. All of the costs associated with the criminal history~~
12 ~~check are the responsibility of the applicant. Criminal history records provided to the department~~
13 ~~under this section are confidential. The commissioner may use the records only to determine if~~
14 ~~an applicant is eligible to receive a license for the production of industrial hemp. state and national~~
15 criminal history record check. The criminal history record check shall be based on fingerprints
16 submitted to the West Virginia State Police or its assigned agent for forwarding to the Federal
17 Bureau of Investigation.

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

20 (A) Submitting fingerprints for the purposes set forth in this subsection; and

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

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

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

27 (B) With the written authorization of the individual who is the subject of the criminal history

28 record check; or

29 (C) Pursuant to a court order.

30 (3) The criminal history record check and related records are not public records for the

31 purposes of chapter 29B of this code.

32 (4) The applicant shall pay the actual costs of the fingerprinting and criminal history record

33 check.

34 (d) If the applicant has completed the application process to the satisfaction of the

35 commissioner, the commissioner shall issue the license, which is valid until December 31, of the

36 year of application: Provided, That an individual applying to renew a current license may continue

37 to operate under an existing license, so long as his or her completed renewal application has

38 been submitted to the department on or before the deadline established by the department. An

39 individual licensed under this section is presumed to be growing industrial hemp for commercial

40 purposes.

41 (e) Notwithstanding any provision of this article, rule or the provisions of chapter sixty-a

42 60A of this code to the contrary, the Commissioner of Agriculture may license qualified persons

43 and state institutions of higher learning to lawfully grow or cultivate industrial hemp in this state,

44 but institutions of higher learning may only lawfully grow industrial hemp for research and

45 educational purposes.

46 (e) Any person seeking to grow, cultivate, or process industrial hemp shall provide to the

47 Department prior written consent allowing the Department, State Police, and other state and local

48 law enforcement agencies to enter onto all premises where industrial hemp is grown, cultivated,

49 processed, or stored to conduct physical inspections or otherwise ensure compliance with the

50 requirements of this code and the legislative rules promulgated pursuant thereto.

§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 ~~one percent~~ 0.3% tetrahydrocannabinol; and

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 promulgate legislative rules that include, but are not limited to:

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

3 (2) Sampling and Testing ~~of the industrial hemp during growth to determine~~
4 tetrahydrocannabinol levels;

5 (2) (3) Supervision of the industrial hemp during its growth and harvest;

6 (3) (4) Assessment of a fee fees that is are commensurate with the costs of the
7 commissioner's activities in licensing, testing and supervising industrial hemp production;

8 (4) Promulgate rules relating to the (5) The production and sale of industrial hemp which
9 ~~are consistent with the rules of the United States Department of Justice, Drug Enforcement~~
10 ~~Administration for the production, distribution and sale of industrial hemp;~~

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

13 (5) (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 ~~section five~~ §19-12E-5 of this ~~article~~ code must be
2 deposited with the state treasurer to the credit of the "Agricultural Fee Fund" established by the
3 provisions of ~~section four-e~~, §19-1-4c ~~article~~ one of this ~~chapter~~ code for the use of the
4 commissioner for administering and enforcing 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 possession or cultivation of marijuana
2 pursuant to the provisions of ~~article four, §60A-4-401 et seq. chapter sixty-a~~ of this code that
3 defendant was growing industrial 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 chapter ~~sixty-a~~ 60A 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 is hereby authorized to submit to the Secretary of the United States
2 Department of Agriculture, for his or her approval, a plan under which this state monitors and
3 regulates the production of industrial hemp. Such plan shall comply with the requirements of 7
4 U.S.C. §1621 et seq. and any other requirements established by the United States Department
5 of Agriculture.

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

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

1 (a) An industrial hemp producer in this state failing to comply with any approved plan shall
2 be subject to §19-12E-11(b) of this code if the department determines the industrial hemp
3 producer has negligently violated the state plan by:

4 (1) Failing to provide a legal description of the land on which the producer produces hemp;
5 (2) Failing to obtain a license or other required authorization from the West Virginia
6 Department of Agriculture; or

7 (3) Failing to produce industrial hemp containing one percent or less of
8 tetrahydrocannabinol.

9 (b) An industrial hemp producer described in §19-12E-11(a) of this code shall comply with
10 any requirements established by the department to correct any negligent violation, including:

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

12 and

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

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

20 (d) If the department determines that an industrial hemp producer in this state has violated
21 the provisions of this article, legislative rules promulgated pursuant thereto, or this state's
22 approved plan authorized pursuant to §19-12E-10 of this code with a culpable mental state
23 greater than negligence, §19-12E-11(b) of this code shall not apply to the violation and the
24 department shall report the industrial hemp producer to:

25 (1) The attorney general;

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

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

28 (e) Absent a notification pursuant to subsection (d) of this section, a licensee that
29 negligently violates state laws or regulations shall not be subject to any criminal or civil
30 enforcement action by any state, county, or municipal government.

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