

# WEST VIRGINIA LEGISLATURE

## 2019 REGULAR SESSION

**Introduced**

### **House Bill 3004**

BY DELEGATES WALKER, PYLES, HIGGINBOTHAM,  
ANGELUCCI, SKAFF, C. THOMPSON AND BROWN, S.

[Introduced February 12, 2019; Referred  
to the Committee on Agriculture and Natural Resources  
then the Judiciary.]

1 A BILL to amend and reenact §19-12E-4, §19-12E-5, §19-12E-6, §19-12E-7, and §19-12E-9 of  
 2 the Code of West Virginia, 1931, as amended; and to amend said code by adding thereto  
 3 a new section, designated §60A-7-708, all relating to amending the industrial hemp  
 4 development act consistent with federal law; providing for the Commissioner of Agriculture  
 5 to issue permits for growing industrial hemp; removing the requirement for permittees to  
 6 submit to criminal history records checks; allowing for personal growing of industrial hemp  
 7 without a permit; allowing permits for cannabis research; clarifying the commissioner may  
 8 contract for testing; prohibiting asset forfeiture for growing industrial hemp; and correcting  
 9 an internal code reference.

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

**CHAPTER 19. AGRICULTURE.**

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

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

1 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~~ five of this article, an individual in this  
 4 state may plant, grow, harvest, possess, process, sell or buy industrial hemp.

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

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

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

6 (c) The commissioner shall ~~require each first-time applicant for a license to file a set of the~~  
 7 ~~applicant's fingerprints, taken by a law enforcement officer, and any other information necessary~~

8 ~~to complete a statewide and nationwide criminal history check with the criminal investigation~~  
9 ~~bureau of the department of justice for state processing and with the Federal Bureau of~~  
10 ~~Investigation for federal processing. All of the costs associated with the criminal history check~~  
11 ~~are the responsibility of the applicant. Criminal history records provided to the department under~~  
12 ~~this section are confidential. The commissioner may use the records only to determine if an~~  
13 ~~applicant is eligible to receive a license for the production of industrial hemp~~ review the registration  
14 form and issue a permit for the production of industrial hemp to all qualifying applicants.

15 (d) ~~If the applicant has completed the application process to the satisfaction of the~~  
16 ~~commissioner, the commissioner shall issue the license which~~ Each permit for industrial hemp  
17 is valid until December 31, of the year of application. An individual licensed under this section is  
18 presumed to be growing industrial hemp for commercial purposes.

19 (e) Notwithstanding any provision of this article, rule or the provisions of chapter 60A of  
20 this code to the contrary, the Commissioner of Agriculture may license permit qualified persons  
21 and state institutions of higher learning to lawfully grow or cultivate industrial hemp in this state,  
22 ~~but institutions of higher learning may only lawfully grow industrial hemp~~ and pursuant to this  
23 article and the provisions of §16A-1-1 et seq. of this code may be permitted to grow any strain of  
24 cannabis for research and educational purposes.

25 (f) Any person may grow up to 10 mature flowering industrial hemp plants in this state for  
26 personal use without a permit: Provided, That they register with the Commissioner of Agriculture  
27 on a form proscribed by the commissioner: Provided, however, That the commissioner may not  
28 charge a fee for personal cultivation pursuant to the provisions of this section.

#### **§19-12E-6. Industrial hemp production - notification.**

1 (a) Every licensee industrial hemp permittee 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 tetrahydrocannabinol; and

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

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

**§19-12E-7. Rule-making authority.**

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

2 (1) Testing or contracting for testing of the industrial hemp during growth to determine  
3 tetrahydrocannabinol levels;

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

5 (3) Assessment of a fee that is commensurate with the costs of the commissioner's  
6 activities in ~~licensing~~ permitting testing and supervising industrial hemp production;

7 (4) Promulgate rules relating to the production and sale of industrial hemp which are  
8 consistent with the rules of the United States Department of Justice, Department of Agriculture,  
9 and drug enforcement administration for the production, distribution and sale of industrial hemp;  
10 and

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

12 (b) The commissioner may not require a criminal history check of any type for any  
13 applicant or permittee issued pursuant to 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 §60A-4-1 *et seq.* of this code that defendant was growing industrial  
3 hemp pursuant to the provisions of this article. A permittee authorized to grow industrial hemp  
4 pursuant to and in substantial compliance with the provisions of this article shall be exempt from  
5 any form of asset forfeiture pursuant to §60A-7-1 *et. seq.*, of this code.

6 (b) This section is not a defense to a charge of criminal sale or distribution of marijuana  
7 as defined in chapter 60A of this code which does not meet the definition of industrial hemp.

**CHAPTER 60A. UNIFORM CONTROLLED SUBSTANCES ACT.****ARTICLE 7. WEST VIRGINIA CONTRABAND FORFEITURE ACT.****§60A-7-708. Limitations of the contraband forfeiture act; penalties for noncompliance.**

1           (a) No person may be subject to the West Virginia Contraband Forfeiture Act, pursuant to  
2 the provisions of this article or any other provision of this code, including that a person may not  
3 have any rights infringed upon including those as granted by the Second Amendment to the  
4 Constitution of the United States of America, where the person is in substantial compliance with  
5 the provisions of chapter §16A-1-1 et seq., or the provisions of article §19-12E-1 et seq. of this  
6 code.

7           (b) A person subject to asset forfeiture in violation of this section shall be entitled to triple  
8 damages, including for legal fees and court costs in any court in this state.

NOTE: The purpose of this bill is to amend the Industrial Hemp Development Act consistent with federal law, providing the Commissioner of Agriculture to issue permits for growing industrial hemp, removing the requirement for background checks for permittees and prohibiting asset forfeiture for growing industrial hemp.

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