

WEST VIRGINIA LEGISLATURE

2024 REGULAR SESSION

Introduced

Senate Bill 770

By Senator Woodrum

[Introduced February 13, 2024; referred
to the Committee on Government Organization]

1 A BILL to amend and reenact §19-12E-3, §19-12E-7, and §19-12E-11 of the Code of West
 2 Virginia, 1931, as amended, all relating to the Industrial Hemp Development Act; adding
 3 definitions for "establishment" and fluorescent lighting signage; legislative rules
 4 concerning false advertising and usage of fluorescent lighting signage; and penalties for
 5 violations.

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 "Establishment" means an entity engaged in the sale of CBD hemp products, delta
 10 products, and kratom.

11 "Fluorescent lighting signage" means any sign illuminated by fluorescent light intended to
 12 advertise or draw attention to an establishment.

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

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

24 ~~(h)~~ "Hemp products" means all products derived from, or made by, processing hemp plants
25 or plant parts, that are prepared in a form available for commercial sale;

26 ~~(i)~~ "Licensee" means an individual or business entity possessing a license issued by the
27 Department to grow, handle, cultivate, or process hemp;

28 ~~(j)~~ "Marijuana" means all plant material from the genus *cannabis* containing more than one
29 percent tetrahydrocannabinol or seeds of the genus capable of germination;

30 ~~(k)~~ "Processing" means converting an agricultural commodity into a marketable form; and

31 ~~(l)~~ "THC" means tetrahydrocannabinol. Notwithstanding any other provision of this code to
32 the contrary, the THC found in industrial hemp shall not be considered to be THC for the purposes
33 of qualifying as a controlled substance.

§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 extracts,
10 including those containing one or more hemp-derived cannabinoids, including CBD; and

- 11 (7) Advertising regulations that prohibit advertisements of all establishments:
- 12 (A) May not contain false or misleading claims about the products sold;
- 13 (B) May not target individuals under the age of 21; and
- 14 (C) Shall include a clear and conspicuous disclosure of the potential risk associated with
- 15 the use of the products sold;
- 16 (8) Prohibiting establishments from using fluorescent lighting signage at store locations or
- 17 as a part of their outdoor advertising, including, but not limited to, signs, banners, billboards, and
- 18 other forms of public display; and
- 19 ~~(7)~~ ~~(8)~~ (9) Any other rules and procedures necessary to carry out the purposes of this
- 20 article.

§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; and
- 11 (2) In the discretion of the commissioner, any requirement that the licensee shall
- 12 periodically report to the department the licensee’s compliance with the state plan for at least two
- 13 calendar years from the date of the negligent violation.
- 14 (c) A licensee that negligently violates the provisions of this article, legislative rules
- 15 promulgated pursuant to this article, or this state’s approved plan authorized pursuant to §19-12E-

16 10 of this code three times in a five-year period, is ineligible to produce hemp in this state for a
17 period of five years beginning on the date of the third violation.

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

22 (1) The attorney general;

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

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

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

28 (f) A licensee that negligently violates the provisions of §19-12E-7 of this code relating to
29 advertising may be subject to penalties, including fines and suspension or revocation of their
30 business license.

NOTE: The purpose of this bill is to add definitions for "establishment" and fluorescent lighting signage; and legislative rules concerning false advertising and usage of fluorescent lighting signage; and penalties for violations relating to the Industrial Hemp Development Act.

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