

ENROLLED
COMMITTEE SUBSTITUTE
FOR
Senate Bill No. 447

(Senators Facemyer and Bailey, *original sponsors*)

[Passed March 7, 2002; in effect ninety days from passage.]

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

ARTICLE 12E. INDUSTRIAL HEMP DEVELOPMENT ACT.

§19-12E-1. Short title.

This article is known as the "Industrial Hemp Development Act".

§19-12E-2. Purpose.

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

§19-12E-3. Definitions.

As used in this article:

- (1) "Commissioner" means the commissioner of agriculture;
- (2) "Industrial hemp" means all parts and varieties of the plant *cannabis sativa* L. containing no greater than one percent tetrahydrocannabinol; and
- (3) "Marijuana" means all plant material from the genus *cannabis* containing more than one percent tetrahydrocannabinol or seeds of the genus capable of germination.

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

Industrial hemp that has not more than one percent tetrahydrocannabinol is considered an agricultural crop in this state if grown for the purposes authorized by the provisions of this article. Upon meeting the requirements of section three of this article, an individual in this state may plant, grow, harvest possess, process, sell or buy industrial hemp.

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

- (a) A person growing industrial hemp for commercial purposes shall apply to the commissioner for license on a form prescribed by the commissioner.
- (b) The application for a license must include the name and address of the applicant and the legal description of the land area to be used for the production of industrial hemp.

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

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

(e) If the applicant has completed the application process to the satisfaction of the commissioner, the commissioner shall issue the license which is valid until the thirty-first day of December of the year of application. An individual licensed under this section is presumed to be growing industrial hemp for commercial purposes.

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

(a) Every licensee shall file with the commissioner:

(1) Documentation showing that the seeds planted are of a type and variety certified to contain no more than one percent tetrahydrocannabinol; and

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

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

§19-12E-7. Rule-making authority.

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

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

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

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

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

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

§19-12E-8. Disposition of fees.

All fees assessed as provided for in section five of this article must be deposited with the state treasurer to the credit of the "Agricultural Fee Fund" established by the provisions of section four-c, article one of this chapter for the use of the commissioner for administering and enforcing the provisions of this article.

§19-12E-9. Defense for possession or cultivation of marijuana.

(a) It is a complete defense to a prosecution for the possession or cultivation of marijuana pursuant to the provisions of article four, chapter sixty-a of this code that:

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

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

(3) The defendant fully complied with all of the conditions of the controlled substances registration.

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