

No. 2016-92

AN ACT

HB 967

Amending Title 3 (Agriculture) of the Pennsylvania Consolidated Statutes, providing for industrial hemp research; imposing powers and duties on the Department of Agriculture and the Legislative Reference Bureau; imposing criminal and civil penalties; abrogating a regulation; and making a related repeal.

The General Assembly of the Commonwealth of Pennsylvania hereby enacts as follows:

Section 1. Title 3 of the Pennsylvania Consolidated Statutes is amended by adding a chapter to read:

CHAPTER 7
INDUSTRIAL HEMP RESEARCH

Sec.

701. Scope of chapter.

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§ 701. Scope of chapter.

This chapter relates to industrial hemp research.

§ 702. Definitions.

The following words and phrases when used in this chapter shall have the meanings given to them in this section unless the context clearly indicates otherwise:

"Agricultural pilot program." A pilot program to study the growth, cultivation or marketing of industrial hemp.

"Control order." A written order issued by the department to a person establishing required treatment measures, including destruction, for a violation of a provision of this chapter or a regulation, permit or order issued under this chapter.

"Department." The Department of Agriculture of the Commonwealth.

*"Industrial hemp." The plant *Cannabis sativa* L. and any part of the plant, whether growing or not, with a delta-9 tetrahydrocannabinol concentration of not more than 0.3% on a dry-weight basis.*

"Institution of higher education." As defined by section 101 of the Higher Education Act of 1965 (Public Law 89-329, 79 Stat. 1219).

"Secretary." The Secretary of Agriculture of the Commonwealth.

§ 703. Administration.

(a) Department.—The department has the following duties:

(1) Implement this chapter.

(2) Establish, through permits, a certification and registration program under this chapter and, when the program is operative, transmit notice of that fact to the Legislative Reference Bureau for publication in the Pennsylvania Bulletin.

(b) Powers and duties.—The department shall have the following powers and duties:

(1) Notwithstanding any other law to the contrary, to regulate and permit industrial hemp under this chapter in a manner consistent with the provisions of this chapter and all Federal laws, regulations and orders.

(2) To establish, implement and administer an agricultural pilot program to the extent funds are available.

(3) To develop and implement permitting requirements, and regulations if necessary, to carry out the provisions of this chapter.

(4) To issue, renew, deny, revoke, suspend or refuse to renew permits to conduct an agricultural pilot program.

(5) To develop an application for registration.

(6) To develop an application for permits.

(7) To create and maintain a database of permitted institutions of higher education and sites used to grow or cultivate industrial hemp.

(8) To inspect the facilities, growing areas, fields, seeds, plants and other items used by each permitted entity to ensure compliance with this chapter and permitting requirements and regulatory standards if promulgated, including conducting or requiring testing of seeds, plants and plant materials at the permit holder's cost.

(9) To establish, through permit, restrictions for the use or reuse of seeds, crops or products produced as the end result of an agricultural pilot program.

(10) To establish reasonable permitting and inspection fees to cover the cost of administration of this chapter.

(11) Notwithstanding any provision of Chapter 71 (relating to seed) and its attendant regulations, to regulate the labeling and testing of industrial hemp and industrial hemp seeds within this Commonwealth.

(12) To establish, through permitting standards or regulation, recordkeeping requirements necessary to administer the provisions of this chapter.

(c) Secretary.—If the secretary determines that a Federal agency is authorized to regulate industrial hemp, the secretary shall transmit notice of that authorization to the bureau for publication in the Pennsylvania Bulletin.

§ 704. Growth and cultivation.

(a) Authorization.—Industrial hemp may be grown or cultivated by the department or an institution of higher education for the purposes of research conducted under an agricultural pilot program in compliance with subsection (b), notwithstanding:

(1) The Controlled Substances Act (Public Law 91-513, 84 Stat. 1236, 21 U.S.C. § 801 et seq.).

(2) *(Reserved).*

(3) *41 U.S.C. Ch. 81 (relating to drug-free workplace).*

(4) *Section 4(1)(vii)1 of the act of April 14, 1972 (P.L.233, No.64), known as The Controlled Substance, Drug, Device and Cosmetic Act.*

(5) *18 Pa.C.S. § 7508(a)(1) (relating to drug trafficking sentencing and penalties).*

(6) *Any other Federal law or State law.*

(b) Manner.—Industrial hemp shall be grown or cultivated in a manner that complies with all of the following:

(1) Except as provided under subsection (c), only institutions of higher education and the department may grow or cultivate industrial hemp.

(2) Sites used for growing or cultivating industrial hemp must be certified, inspected and permitted by and registered with the department. The failure to permit inspection by the department shall be a violation of this chapter.

(c) Contracted growers.—

(1) The department, to the extent necessary to carry out the provisions of an agricultural pilot program, may contract with a person to grow or cultivate industrial hemp.

(2) An institution of higher education holding a permit from the department, to the extent necessary to carry out the provisions of an agricultural pilot program, may contract with a person to grow or cultivate industrial hemp.

(3) A contract between an institution of higher education and a person must incorporate the provisions of the permit issued to the institution of higher education and must require written approval from the department.

(4) A person with a contract to grow or cultivate industrial hemp must provide the following information:

(i) The name and mailing address of the person.

(ii) The legal description and global positioning coordinates sufficient to locate each site to be used to grow or cultivate industrial hemp.

(iii) A signed declaration indicating whether the person has ever been convicted of a felony or misdemeanor.

(5) A person with a contract under this subsection is subject to a grant of necessary permissions, waivers or other form of valid legal status by the United States Drug Enforcement Administration or other appropriate Federal agency pursuant to Federal laws relating to industrial hemp. The department may seek all-inclusive permissions, waivers or other forms of valid legal status from the United States Drug Enforcement Administration or other appropriate Federal agency pursuant to Federal laws relating to industrial hemp for all persons with a contract to grow or cultivate industrial hemp.

(6) Each contracted grower shall submit fingerprints to the Pennsylvania State Police for the purpose of obtaining criminal history record checks. The Pennsylvania State Police or its authorized agent shall submit the fingerprints to the Federal Bureau of Investigation for

the purpose of verifying the identity of the applicant and obtaining a current record of any criminal arrests and convictions. Any criminal history record information relating to contracted growers obtained under this paragraph by the department may be interpreted and used by the department only to determine the applicant's character, fitness and suitability to serve as contracted growers under this chapter.

(7) A person with a felony drug conviction within the past 10 years may not contract to grow or cultivate industrial hemp under this subsection.

§ 705. Control orders.

(a) Authority of department.—

(1) The department may issue a control order:

(i) Requiring any person registered and permitted to grow industrial hemp to implement treatment measures for industrial hemp if the department finds that the person has violated a provision of this chapter or a regulation, order or permitting requirement issued under this chapter.

(ii) Upon finding industrial hemp growing on any premises or property without a valid registration or permit.

(2) A control order shall set forth the general factual and legal basis for the action and shall advise the affected person that within 15 days of receipt of the control order the person may file with the department a written request for an administrative hearing.

(3) The hearing under paragraph (2) shall be conducted in accordance with 2 Pa.C.S. (relating to administrative law and procedure). The written control order of the department shall be served upon the affected person by personal service or by registered or certified mail, return receipt requested. The control order shall become final upon the expiration of the 15-day period for requesting an administrative hearing unless a timely request for a hearing has been filed with the department.

(b) Required contents.—The control order shall prescribe the required remediation, control, eradication or treatment measures and the date by which the measures must be completed.

(c) Expenses and costs.—The department may recover any expenses and costs incurred in enforcing and carrying out the measures established in the control order from the person that was the subject of the department's control order.

§ 706. Noncriminal offense.

An activity conducted in compliance with this chapter shall not be in violation of the laws of the Commonwealth including:

(1) The act of April 14, 1972 (P.L.233, No.64), known as The Controlled Substance, Drug, Device and Cosmetic Act.

(2) 18 Pa.C.S. § 7508(a)(1) (relating to drug trafficking sentencing and penalties).

(3) Any other law of the Commonwealth regulating the growth or cultivation of industrial hemp.

§ 707. Criminal and civil penalties.

(a) Penalties authorized.—In addition to any criminal penalty that may apply if a person is operating outside the requirements of this chapter or a permit, rule or regulation promulgated under this chapter, the department may impose the penalties under this section.

(b) Criminal penalties.—The following shall apply:

(1) A person commits a summary offense if the person:

(i) violates a provision of this chapter or a permit, rule or regulation promulgated under this chapter; or

(ii) impedes, obstructs, hinders or otherwise prevents or attempts to prevent the department in the performance of its duty in connection with a provision of this chapter or a permit, rule or regulation promulgated under this chapter.

(2) Upon conviction of an offense under paragraph (1), the person shall be sentenced to pay a fine of:

(i) Not less than \$100 nor more than \$300 for the first violation.

(ii) Not less than \$500 nor more than \$1,000 for a subsequent violation that occurs within one year of the first conviction.

(c) Civil penalties.—The following shall apply:

(1) In addition to any other remedy available at law or in equity for a violation of this chapter or a permit, rule or regulation promulgated under this chapter, the department may assess upon a person a civil penalty of not more than \$5,000, plus the cost of remediation, containment or eradication, for each violation of this chapter, a permit, rule or regulation promulgated under this chapter or an order issued under the authority of this chapter.

(2) A civil penalty assessed under this subsection shall be payable to the department.

(3) The amount of the civil penalty under this subsection shall be collectible in a manner provided by law for the collection of debt, including referral of the collection matter to the Office of Attorney General, which shall recover the amount by action in the appropriate court.

(4) A civil penalty may not be assessed unless the person subject to the penalty has been given notice and an opportunity for a hearing on the assessment in accordance with the provisions of 2 Pa.C.S. Ch. 5 Subch. A (relating to practice and procedure of Commonwealth agencies) and Ch. 7 Subch. A (relating to judicial review of Commonwealth agency action).

(d) Civil remedy.—The following shall apply:

(1) In addition to any other remedy provided for in this chapter, at the request of the secretary, the Attorney General may initiate, in the Commonwealth Court or the court of common pleas of the county in which the defendant resides or has a place of business, an action in equity for an injunction to restrain a violation of this chapter, a permit, rule or regulation promulgated under this chapter or an order of the department from which no timely appeal has been taken or sustained on appeal.

(2) In a proceeding under paragraph (1), upon motion of the Commonwealth, the court shall issue a preliminary injunction if it finds

that the defendant is engaging in conduct that is causing immediate or irreparable harm to the public. The Commonwealth shall not be required to furnish bond or other security in connection with the proceeding. In addition to an injunction, the court may levy a civil penalty as provided for under this chapter.

§ 708. Disposition of funds.

(a) Deposit of funds.—All fees, fines and penalties collected under this chapter shall be paid into a subaccount in a special restricted account in the General Fund known as the Plant Pest Management Account and shall be appropriated by the General Assembly to the department for the purpose of this chapter. The money in the subaccount shall not replace revenues appropriated to the fund as allowed under subsection (b).

(b) Supplement to account.—The subaccount in the Plant Pest Management Account may be supplemented by:

(1) Funds appropriated from the General Assembly to the department for purposes of this chapter.

(2) Federal funds appropriated to the department for purposes of this chapter.

(3) Gifts and other contributions from public or private sources for purposes of this chapter.

§ 709. Abrogation of regulation.

The provisions of 7 Pa. Code § 110.1(1) (relating to noxious weed control list) are abrogated.

§ 710. Expiration.

This chapter shall expire upon publication in the Pennsylvania Bulletin of the notice under section 703(c) (relating to administration).

Section 2. Repeals are as follows:

(1) The General Assembly finds and declares that the repeal under paragraph (2) is necessary to effectuate the addition of 3 Pa.C.S. Ch. 7.

(2) Section 8(1) of the act of April 7, 1982 (P.L.228, No.74), known as the Noxious Weed Control Law, is repealed.

Section 3. This act shall take effect as follows:

(1) The following provisions shall take effect immediately:

(i) The addition of 3 Pa.C.S. § 703(a).

(ii) Section 2(1) of this act.

(iii) This section.

(2) The remainder of this act shall take effect upon publication of the notice under 3 Pa.C.S. § 703(a)(2).

APPROVED—The 20th day of July, A.D. 2016

TOM WOLF