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WEST VIRGINIA LEGISLATURE

FIRST REGULAR SESSION, 1991

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ENROLLED

Committee Substitute
for
HOUSE BILL No. 2293

(By ~~Mr.~~ Delegate D. Miller)

— ● —

Passed February 28, 1991

In Effect July 1, 1991 Passage

ENROLLED
COMMITTEE SUBSTITUTE
FOR
H. B. 2293
(By DELEGATE D. MILLER)

[Passed February 28, 1991; in effect July 1, 1991.]

AN ACT to amend and reenact article thirteen, chapter nineteen of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to the apiary law; definitions; commissioner's powers and duties generally; apiary education; cooperation with governmental agencies; registration of bees and identifying apiaries; right of entry to inspect apiaries; authorizing quarantines; abandoned apiaries and equipment; requirements for importing bees; pesticide poisoning to bees; candy for mailing cages; article violations; increasing criminal penalties; adding civil penalties; severability.

Be it enacted by the Legislature of West Virginia:

That article thirteen, chapter nineteen of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be amended and reenacted to read as follows:

ARTICLE 13. INSPECTION AND PROTECTION OF APICULTURE.

§19-13-1. Title.

- 1 This article shall be known by the short title as "The
- 2 West Virginia Apiary Law of 1991."

§19-13-2. Definitions.

1 The following definitions shall apply in the interpre-
2 tation and enforcement of this article. All words shall
3 be construed to impart either the plural or the singular,
4 as the case demands:

5 (a) "Abandoned apiary" means any apiary in which
6 the owner cannot be determined and in which twenty-
7 five percent or more of the colonies are dead or diseased,
8 or death or disarray of the colonies exposes them to
9 robbing, or diseased or potentially diseased abandoned
10 equipment which may jeopardize the welfare of neigh-
11 boring colonies.

12 (b) "Apiary" means any place where one or more
13 colonies or nuclei of bees are kept or where bee
14 equipment is stored.

15 (c) "Appliances" means any apparatus, tool, machine
16 or other device, used in the handling and manipulating
17 of bees, honey, wax and hives. It also means any
18 container of honey and wax that may be used in any
19 apiary or in transporting bees and their products and
20 apiary supplies.

21 (d) "Bees" shall be construed to mean any stage of the
22 common hive or honeybee, (*Apis mellifera*), or other
23 species of the genus *Apis*.

24 (e) "Bee diseases" shall be construed to mean Amer-
25 ican foulbrood (*Bacillus larvae*), European foulbrood
26 (*Bacillus pluton*), Varroa mite (*Varroa jacobsoni*), honey
27 bee tracheal mite (*Acarapis woodi*), or any other
28 infection or parasitic infestation determined by the
29 commissioner to be transmissible to other bee colonies
30 and that represents a threat to beekeeping in West
31 Virginia.

32 (f) "Bee equipment" means hives, supers, frames,
33 veils, gloves or any other appliances.

34 (g) "Colony" means the hive and includes bees, comb,
35 honey and equipment.

36 (h) "Commissioner" means the commissioner of the
37 department of agriculture of the state of West Virginia
38 or a duly authorized employee.

39 (i) "Control agents or control mechanisms" means any
40 method of chemical or mechanical control to suppress
41 or eradicate an apiary disease, pest, or parasitic
42 infestation in an apiary or the colonies contained
43 therein.

44 (j) "Department" means the department of agricul-
45 ture of the state of West Virginia.

46 (k) "Hive" shall be construed to mean frame hive, box
47 hive, box, barrel, log, gum, skep or any other receptacle
48 or container, natural or artificial, or any part thereof,
49 which may be used or employed as a domicile for bees.

50 (l) "Nuclei" means the removal of a split portion or
51 division of any colony of honey bees for the express
52 purpose of creating a numerical increase in colonies for
53 honey production, pollination service or monetary gain
54 through sale of honey bees.

55 (m) "Packaged bees" means bees shipped in combless
56 packages which shall bear a valid certificate of health
57 by an authorized state or federal agency verifying the
58 absence or presence of any infectious or communicable
59 diseases or parasitic infestations, and further provides
60 that no honey has been used for food while in transit or
61 that bears an affidavit that any honey used as food in
62 transit was properly sterilized.

63 (n) "Person" shall include all corporations, partner-
64 ships, associations, societies, individuals or group of
65 individuals or any employee, servant or agent acting for
66 or employed by any person as above defined.

67 (o) "Premises" means any parcel of real estate and
68 structures in which bee equipment, bees, bee products
69 and bee appliances can be utilized for storage purposes.

70 (p) "Quarantine" means a specific period of enforced
71 isolation to contain and prevent the spread of contagious
72 bee diseases or parasites, which shall include specific
73 perimeters deemed by the commissioner to be affected
74 or potentially affected by such contagious bee diseases
75 or parasites.

76 (q) "Sterilized or sterilization" means to treat and
77 neutralize contagious bee diseases by means of steam
78 autoclave or ethylene oxide fumigation, boiling at a

79 temperature of two hundred twelve degrees fahrenheit
80 for thirty minutes, pit incineration, or by any other
81 acceptable method which the commissioner determines
82 effective for control of bee diseases or parasites.

§19-13-3. Commissioner's powers and duties; apiary education; cooperation with governmental agencies.

1 (a) It shall be the duty of the commissioner of
2 agriculture to exercise the powers and duties imposed
3 by this article for the purpose of protecting agriculture.
4 For this purpose, the commissioner is hereby authorized
5 and empowered to promulgate such rules in accordance
6 with the provisions of chapter twenty-nine-a of this code:
7 (1) to effectively eradicate, suppress or control bee
8 diseases as far as may be practical; (2) to regulate the
9 keeping and maintaining of bees, bee equipment, queen
10 breeding equipment, apiaries and appliances; (3) to
11 regulate treatments, retreatments, and fees for said
12 services; and (4) such other rules as are necessary to
13 effectuate the enforcement of this article.

14 (b) The commissioner is authorized to conduct apiary
15 education in a manner which may advance and promote
16 bee culture in West Virginia.

17 (c) The commissioner is hereby authorized and
18 empowered to cooperate with the federal government
19 and any agencies, departments and instrumentalities
20 thereof; the state of West Virginia and any agencies,
21 departments, divisions, or political subdivisions thereof;
22 and any other state or commonwealth and any agencies,
23 departments or political subdivisions thereof, in order to
24 carry out the effective administration of this article.

§19-13-4. Registration of bees; identification of apiaries.

1 (a) All persons keeping bees in this state shall, within
2 ninety days of the effective date of this article, notify the
3 commissioner in writing of the number and location of
4 colonies they own or rent, or which they keep for
5 someone else, whether the bees are located on their own
6 property or someone else's property. Thereafter, such
7 information shall be provided within ten days of the
8 time the bees are acquired. Bees shall be registered on
9 an annual basis thereafter.

10 (b) All persons owning or operating an apiary which
11 is not located on said owner's or operator's property
12 must post the name and address of the owner or
13 operator in a conspicuous place in the apiary.

§19-13-5. Right of entry; apiary inspections; quarantines.

1 (a) To effectuate the purpose of this article, the
2 commissioner is hereby invested with authority, during
3 reasonable working hours, with prior consent by the
4 owner or person in charge of such apiaries, if known,
5 to enter upon any public or private premises, except
6 private residences, and shall have access to any apiary
7 for the purpose of inspecting or sampling.

8 (b) The commissioner shall inspect, as practical, all
9 colonies of honey bees domiciled within the state of West
10 Virginia. If upon such inspection, it is found that any
11 bee disease or parasite exists in such apiary, the
12 inspector making the inspection shall immediately
13 notify, in writing, the owner or person in charge of such
14 apiary, stating the nature of the disease or parasite and
15 whether the same may be successfully treated or not.

16 In cases where the disease or parasite is subject to
17 treatment, the inspector shall specify and direct the
18 necessary treatment, which shall be administered by the
19 owner or person in charge, within fourteen days
20 thereafter. Otherwise, the colonies contained in the
21 apiary in which such bee diseases or parasites are found
22 shall be depopulated without remuneration to the owner.
23 All bee hives and related equipment found in any
24 diseased apiary shall be destroyed or sterilized under
25 the direction of the commissioner.

26 (c) All queen breeding apiaries shall be thoroughly
27 inspected twice each season. If upon such inspection it
28 shall appear that any bee disease or parasite exists in
29 such apiary, the inspector making the inspection shall
30 immediately notify, in writing, the owner or person in
31 charge thereof, and thereafter it shall be unlawful for
32 any such person to ship, sell or give away any queen bees
33 from such apiary until the disease or parasitic infesta-
34 tion has been eradicated.

35 (d) The commissioner shall have the power to estab-
36 lish interior and exterior quarantines to prevent or
37 contain the spread of contagious bee diseases and
38 parasitic infestations. Such quarantines shall include
39 specific perimeters to encompass any township, area,
40 county or region within the state deemed by the
41 commissioner, which may be affected by such conta-
42 gious diseases or parasitic infestations.

43 Exterior quarantines may be established to prevent
44 diseased or parasitized bees and related equipment from
45 being transported into West Virginia. When the com-
46 missioner issues a quarantine pursuant to this authority,
47 he/she shall issue an order which specifies the type of
48 contagious bee disease or parasitic infestation, the area
49 or areas quarantined, conditions governing movement of
50 bees or bee equipment from the quarantined area and
51 such other information that protects the beekeeping
52 industry as deemed necessary by the commissioner. The
53 commissioner shall post a notice of quarantine at the
54 primary location of the bee disease or parasitic infesta-
55 tion. If the quarantine affects more than three miles in
56 radius, then notice of the order of quarantine shall be
57 published as a Class I legal advertisement in compliance
58 with the provisions of chapter fifty-nine of this code, and
59 the publication area for such publication shall be the
60 quarantined area.

61 All apiaries, bees, bee products, premises, bee
62 equipment and appliances wherein or on which bee
63 diseases and parasites are found to exist shall be
64 quarantined by the commissioner. Such quarantine shall
65 continue until the commissioner declares the same to be
66 apparently free from any such bee diseases and
67 parasites.

68 The commissioner shall have authority to rescind
69 quarantines as he/she determines the need or practic-
70 ability no longer exists by the same notice method
71 utilized to implement the quarantine.

§19-13-6. Abandoned apiaries and equipment; notice.

1 When any apiary or bee equipment is deemed by the
2 commissioner to be abandoned, the commissioner shall

3 give written notice by registered mail to the owner or
 4 operator thereof, if such ownership or operator can be
 5 determined, that the commissioner deems such apiary
 6 or bee equipment abandoned. If the owner or operator
 7 of the property cannot be located after reasonable
 8 inquiry, said notice shall be provided by the same
 9 mailing requirement to the owner of the real property
 10 on which the apiary or equipment is located. If such
 11 apiary or equipment continues to be abandoned for a
 12 period of sixty days thereafter, the commissioner may
 13 seize the apiary or equipment and take such action as
 14 is necessary to dispose or destroy said apiary or
 15 equipment as its condition warrants. In order to halt the
 16 spread of bee diseases and parasitic infestation when an
 17 abandoned apiary is found upon inspection to be
 18 diseased, the commissioner is authorized to cause it to
 19 be destroyed.

**§19-13-7. Bees brought into state to carry inspection
 certificate; commissioner to be notified;
 interstate movement of bees.**

1 (a) It shall be unlawful for any person to transport
 2 bees, used hives, used bee equipment or used appliances
 3 into West Virginia, unless the same be accompanied by
 4 a certificate of inspection signed by an authorized
 5 inspection official of the state from which such bees or
 6 equipment is being transported. Such certificate shall
 7 certify the actual inspection of the bees made within
 8 thirty days preceding the date of shipment, and that the
 9 bees, hives, equipment and appliances contained in the
 10 shipment are apparently free from bee diseases and
 11 parasitic infestation.

12 (b) Prior to the movement of any bees, used bee
 13 equipment, combs, bee appliances or equipment into
 14 West Virginia, and as a prerequisite to the issuance of
 15 a permit of entry, the commissioner shall be furnished
 16 by the owner, transporter, or lessee the following:

17 (1) The exact location or destination of the bees or
 18 equipment.

19 (2) Name and address of the owner of the property
 20 where the bees or equipment will be located.

21 (3) The exact number of colonies or amount of bee
22 equipment and appliances in the shipment.

23 (4) A copy of the inspection certificate issued by the
24 inspector of the state of origin.

25 Upon compliance with the mandatory requirements
26 set forth heretofore, the commissioner shall issue a
27 permit of entry not to exceed sixty days, unless said bees
28 and equipment are to be permanently located within
29 West Virginia, then the commissioner shall issue a
30 nonlimited permit.

31 If the commissioner denies the request for an entry
32 permit, then the commissioner shall notify the owner or
33 transporter of said denial and the reasons therefore.

§19-13-8. Pesticide poisoning to bees.

1 Any application or treatment of any pesticide to
2 agricultural crops while in full bloom which is incon-
3 sistent with product labeling of the pesticide and is
4 deemed by the commissioner to be injurious to bees shall
5 be prohibited.

§19-13-9. Candy for mailing cages.

1 Any person who engages in the shipping of bees in
2 combless packages in this state shall, in manufacturing
3 candy for mailing cages, sterilize the same or use candy
4 that does not contain honey.

§19-13-10. Violations.

1 It shall be unlawful for any person to:

2 (a) Knowingly keep in his/her possession without
3 proper treatment, any colony of bees affected with any
4 bee disease or parasitic infestation; or to expose any
5 diseased or infested colony, hive, or appliance so that
6 foraging bees have access to them.

7 (b) To sell, barter, give away, accept, receive or
8 transport any bees that are known to be affected with
9 any bee disease or parasitic infestation.

10 (c) To resist, impede or hinder the commissioner or an
11 authorized employee in the performance of his/her

12 duties under the provision of this article.

13 (d) To use or apply any apiary disease, pest or
 14 parasite control chemical by any mechanism which is
 15 inconsistent with the product label as approved by the
 16 United States Environmental Protection Agency.

§19-13-11. Penalties for violations of article; rules.

1 (a) Criminal penalties—Any person violating any
 2 provision of this article or rule adopted hereunder is
 3 guilty of a misdemeanor, and, upon conviction thereof,
 4 shall be fined not less than fifty dollars for the first
 5 offense, and for each subsequent offense, shall be fined
 6 not less than five hundred dollars nor more than one
 7 thousand dollars, or imprisoned in the county jail not
 8 more than six months, or both fined and imprisoned.
 9 Magistrates have concurrent jurisdiction with circuit
 10 courts to enforce the provisions of this article.

11 (b) Civil penalties.

12 (1) Any person violating the provisions of this article
 13 or rule adopted hereunder may be assessed a civil
 14 penalty by the commissioner. In determining the
 15 amount of any civil penalty, the commissioner shall give
 16 due consideration to the history of previous violation of
 17 any persons, the seriousness of the violation, including
 18 any hazards to agriculture in West Virginia and the
 19 demonstrated good faith of any person charged in
 20 attempting to achieve compliance with this article after
 21 written notification of the violation.

22 (2) The commissioner may assess a penalty of not
 23 more than two hundred fifty dollars for the first offense
 24 or nonserious violation, as determined by the commis-
 25 sioner in accordance with the rules promulgated in
 26 accordance with the provisions of chapter twenty-nine-
 27 a of this code, and not more than one thousand dollars
 28 for a serious, repeat or intentional violation, as deter-
 29 mined by the commissioner in accordance with such
 30 promulgated rules.

31 (3) The civil penalty is payable to the state of West
 32 Virginia and is collectible in any manner now or
 33 hereafter provided for collection of a debt. Any person

34 liable to pay the civil penalty and neglecting or refusing
35 to pay the same, shall be assessed interest at ten percent
36 from the date the penalty was assessed. Such penalty
37 and interest constitute a lien in favor of the state of West
38 Virginia and shall attach on the person's property when
39 such lien is properly recorded in the county where the
40 property is situated. There shall be no cost as a condition
41 precedent to recording.

42 (4) Notwithstanding any other provision of law to the
43 contrary, the commissioner may promulgate and adopt
44 rules which permit consent agreements for the civil
45 penalties assessed as a result of violation of the
46 provisions of this article.

47 (5) No state court may allow the recovery of damages
48 for administrative action taken if the court finds that
49 there was probable cause for such action.

50 (6) It shall be the duty of the prosecuting attorney of
51 the county in which the violation occurred to represent
52 the department of agriculture, to institute proceedings,
53 and to prosecute the person charged with such violation.

§19-13-12. Severability.

1 If any provision of this article or the application
2 thereof to any person or circumstances is held invalid,
3 such invalidity shall not affect other provisions or
4 applications of this article which can be given effect
5 without the invalid provision or application, and to this
6 end the provisions of the article are declared severable.

The Joint Committee on Enrolled Bills hereby certifies that the foregoing bill is correctly enrolled.

Homer Heck

Chairman Senate Committee

Ernest C. Moore

Chairman House Committee

Originating in the House.

Takes effect July 1, 1991.

David P. Johnson

Clerk of the Senate

Donald L. Kopp

Clerk of the House of Delegates

Neil Burdette

President of the Senate

Robert C. Byrd

Speaker of the House of Delegates

The within *is approved* this the *12th*
day of *March*, 1991.

Yaston Caperton

Governor

PRESENTED TO THE
GOVERNOR

Date 3/7/91

Time 2:50 pm