WEST VIRGINIA CODE CHAPTER 19 ARTICLE 13

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§19-13-1. Short title.

This article may be cited as "The West Virginia Apiary Act."

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§19-13-2. Definitions.

For the purpose of this article, the term:

(1) "Abandoned apiary" means any apiary in which twenty-five percent or more of the colonies are dead or diseased, or the death or disarray of the colonies exposes them to robbing, or diseased or potentially diseased abandoned bee equipment which may jeopardize the welfare of neighboring colonies.

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

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

(4) "Bees" means any stage of the common hive or honey bee (Apis mellifera), or other species of the genus Apis.

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

(6) "Bee products" means honey, bees wax, pollen, propolis and royal jelly.

(7) "Colony" means the hive and includes bees, comb, honey and bee equipment.

(8) "Commissioner" means the commissioner of the Department of Agriculture of the State of West Virginia or a duly authorized employee.

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

(10) "Department" means the Department of Agriculture of the State of West Virginia.

(11) "Hive" means a frame hive, box hive, box, barrel, log, gum, skep or any other receptacle or container, natural or artificial, or any part thereof, which may be used or employed as a domicile for bees.

(12) "Honey bee pest" means American foulbrood (Bacillus larvae), European foulbrood (Melissococcus pluton), Varroa mite (Varroa destructor), honey bee tracheal mite (Acarapis woodi), or any other virus or infectious or parasitic organism determined by the commissioner to be transmissible to other bee colonies and that represents a threat to beekeeping in West Virginia.

(13) "Nuclei" means the removal of a split portion or division of any colony of honey bees for

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the express purpose of creating a numerical increase in colonies for honey production, pollination service or monetary gain through sale of honey bees.

(14) "Packaged bees" means bees shipped in combless packages accompanied by a valid certificate of health from an authorized state or federal agency verifying the absence or presence of any infectious or communicable diseases or parasitic infestations, and further providing that no honey has been used for food while in transit or that any honey used as food in transit was properly sterilized.

(15) "Person" means corporations, partnerships, associations, societies, individuals or group of individuals or any employee, servant or agent acting for or employed by any person.

(16) "Premises" means any parcel of real estate and structures in which bee equipment, bees, bee products and bee appliances are or may be utilized for storage purposes.

(17) "Quarantine" means a declaration by the commissioner which specifies a period of enforced isolation to contain and prevent the spread of honey bee pests.

(18) "Sterilized or sterilization" means to treat and neutralize honey bee pests by means of steam autoclave, pit incineration, or by any other acceptable method which the commissioner determines effective for control of honey bee pests.

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§19-13-3. Commissioner's powers and duties; rule-making authority; apiary education; cooperation with governmental agencies; seizure of infected bees and bee equipment.

(a) The commissioner may propose rules for legislative approval in accordance with the provisions of article three, chapter twenty-nine-a of this code: (1) To effectively eradicate, suppress or control honey bee pests as far as may be practical; (2) to regulate the keeping and maintaining of bees, bee equipment, queen breeding equipment, apiaries and appliances; (3) to regulate treatments, retreatments, and fees for the services; and (4) any other rules necessary to effectuate the enforcement of this article.

(b) The commissioner is authorized to conduct apiary education in a manner which advances and promotes bee culture in West Virginia.

(c) The commissioner is authorized to cooperate with the federal government and its agencies, departments and instrumentalities; other West Virginia agencies, departments, divisions, or political subdivisions; and any other state or commonwealth and its agencies, departments or political subdivisions, in order to carry out the effective administration of this article.

(d) The commissioner is authorized to stop the delivery of, to seize, to destroy, to treat or to order returned to point of origin, at the owner's expense, all appliances, bees, bee equipment, bee products or hives transported into or within this state, found to be infected with honey bee pests regardless of whether a valid certificate of inspection is attached.

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

(a) All persons keeping bees in this state shall apply for a certificate of registration for beekeeping from the commissioner, within ten days of the date that bees are acquired, by notifying the commissioner, in writing, of the number and location of colonies they own or rent, or which they keep for someone else, whether the bees are located on their own property or someone else's property. All apiary certificates of registration expire on June 30 of each year and must be renewed annually. Apiary certificates of registration issued in 2017 will be valid through June 30, 2018.

(b) All persons owning or operating an apiary which is not located on their own property must post the name and address of the owner or operator in a conspicuous place in the apiary.

(c) A person who:

(1) Owns and operates an apiary;

(2) Is registered with the commissioner; and

(3) Operates the apiary in a reasonable manner and in conformance with the West Virginia Department of Agriculture's written best management practices provided by rule, is not liable for any personal injury or property damage that occurs in connection with the keeping and maintaining of bees, bee equipment, queen breeding equipment, apiaries and appliances. The limitation of liability established by this section does not apply to intentional tortious conduct or acts or omissions constituting gross negligence.

(d) The commissioner shall promulgate legislative rules in accordance with article three, chapter twenty-nine-a of this code regarding the best management standards for the operation of apiaries. The limitation on liability contained in subsection (c) shall not take effect until legislative rules are promulgated in accordance with article three, chapter twenty-nine-a of this code.

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

(a) During reasonable working hours, the commissioner may enter upon any premises to access any apiary for the purpose of inspecting or sampling. No person shall obstruct or hinder the commissioner in the discharge of his or her duties.

(b) The commissioner shall inspect, as practicable, all colonies of honey bees domiciled within the State of West Virginia. If any honey bee pest is found in the apiary, the commissioner shall immediately notify, in writing, the owner or operator stating the type of honey bee pest and whether it may be successfully treated or not.

In cases where the honey bee pest is subject to treatment, the commissioner shall specify and direct the necessary treatment, which will be administered by the owner or operator, within fourteen days of the date of notice. If not treated, the colonies contained in the apiary in which the honey bee pests are found shall be depopulated without remuneration to the owner. All bee hives and related bee equipment found in any diseased apiary shall be destroyed, sterilized or treated in a manner approved by and under the direction of the commissioner.

(c) All apiaries producing queens, packaged bees or nuclei colonies for distribution shall be inspected each year. If honey bee pests are found in the apiary, the commissioner shall immediately notify, in writing, the owner or operator, and thereafter it shall be unlawful for the owner or operator to ship, sell or give away any queen bees, appliances, packaged bees, full colonies or nuclei colonies from the apiary until the honey bee pests have been controlled to the satisfaction of the commissioner.

(d) The commissioner shall quarantine all apiaries, bees, bee equipment, bee products, appliances and premises infected by honey bee pests. The notice of quarantine shall specify the name of the honey bee pest, the premises or apiary quarantined, bee equipment, bee products and appliances regulated and all conditions governing movement. The commissioner may adopt other orders to prevent the introduction of or to contain the spread of honey bee pests that are capable of being transported by bees, appliances or bee equipment. The order shall set forth the conditions governing the movement of the regulated items.

The commissioner shall rescind, in writing, quarantines and other orders when he or she determines the need no longer exists.

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

It shall be unlawful for a person to knowingly maintain an abandoned apiary or bee equipment. When the commissioner determines that an apiary or bee equipment has been abandoned, he or she shall notify, in writing, the owner or operator that the apiary or bee equipment has been declared abandoned. The owner or operator has thirty days from the date of notice to enclose, dispose of or destroy the abandoned apiary or bee equipment in a manner approved by the commissioner. If the owner or operator of the abandoned apiary or bee equipment cannot be located after reasonable inquiry, notice shall be provided to the owner of the real property on which the apiary or bee equipment is located. If the apiary or bee equipment continues to be abandoned for a period of thirty days thereafter, the commissioner may seize the apiary or bee equipment and take such action as is necessary to dispose of or to destroy the apiary or bee equipment as conditions warrant.

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

(a) It shall be unlawful for any person to transport bees, used bee equipment or used appliances into West Virginia, unless accompanied by a certificate of inspection signed by an authorized state or federal inspection official verifying the actual inspection of the bees, used bee equipment or used appliances within thirty days preceding the date of shipment and certifying the absence of honey bee pests.

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

(1) The exact location or destination of the bees, used bee equipment or used appliances.

(2) Name and address of the owner of the property where the bees, used bee equipment or used appliances will be located.

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

(4) A copy of the inspection certificate issued by the state or federal inspector.

The commissioner shall issue a temporary or permanent permit of entry. A temporary permit may not exceed sixty days.

If the commissioner denies the request for an entry permit, he or she shall notify the owner, operator or transporter of the denial and the reasons therefor.

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§19-13-8.

Repealed.

Acts, 2003 Reg. Sess., Ch. 8.

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§19-13-9. Candy for mailing cages.

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

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§19-13-10.

Repealed.

Acts, 2003 Reg. Sess., Ch. 8.

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

(a)(1) Criminal penalties. -- Any person violating any provision of this article is guilty of a misdemeanor and, upon conviction thereof, shall be fined not less than $100 nor more than $500 for the first offense, and for each subsequent offense, shall be fined not less than $500 nor more than $1,000, or imprisoned in the county or regional jail not more than six months, or both. Magistrates have concurrent jurisdiction with circuit courts to enforce the provisions of this article.

(2) It shall be the duty of the prosecuting attorney of the county in which the violation occurred to represent the Department of Agriculture, to institute proceedings, and to prosecute the person charged with such violation.

(b) Civil penalties. --

(1) Any person violating the provisions of this article or rule promulgated pursuant to this article may be assessed a civil penalty by the commissioner. In determining the amount of any civil penalty, the commissioner shall give due consideration to the history of previous violation of any persons, the seriousness of the violation, including any hazards to agriculture in West Virginia and the demonstrated good faith of any person charged in attempting to achieve compliance with this article after written notification of the violation.

(2) The commissioner may assess a penalty of not more than $100 for the first offense or less serious violation, as determined by the commissioner in accordance with the rules approved in accordance with the provisions of chapter twenty-nine-a of this code, and not more than $1,000 for a serious, repeat or intentional violation, as determined by the commissioner in accordance with the approved rules.

(3) The commissioner may negotiate and enter into a settlement agreement for the payment of civil penalties.

(4) The civil penalty is payable to the State of West Virginia and is collectable in any manner authorized by law for the collection of debts. Any person liable to pay a civil penalty and neglecting or refusing to pay it within thirty days of written notice of demand for payment, shall be assessed interest at the rate of ten percent per year from the date the penalty was assessed to the date of payment. The penalty and interest constitute a lien in favor of the State of West Virginia and shall attach on the person's property when a lien is properly recorded in the county wherein the property is situated. There shall be no cost as a condition precedent to recording.

(5) The commissioner shall propose rules for legislative approval in accordance with the provisions of article three, chapter twenty-nine-a of this code to establish procedures for the assessment and collection of civil penalties as provided in this section.

(6) No state court may allow the recovery of damages for administrative action taken if the

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court finds that there was probable cause for such action.

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§19-13-12. Severability.

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

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§19-13-13.

Repealed.

Acts, 1991 Reg. Sess., Ch. 10.

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§19-13-14.

Repealed.

Acts, 1991 Reg. Sess., Ch. 10.

WV Legislature

§19-13-15.

Repealed.

Acts, 1991 Reg. Sess., Ch. 10.

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§19-13-16.

Repealed.

Acts, 1991 Reg. Sess., Ch. 10.

WV Legislature

§19-13-17.

Repealed.

Acts, 1991 Reg. Sess., Ch. 10.

WV Legislature

§19-13-18.

Repealed.

Acts, 1991 Reg. Sess., Ch. 10.

WV Legislature

§19-13-19.

Repealed.

Acts, 1991 Reg. Sess., Ch. 10.

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§19-13-20.

Repealed.

Acts, 1991 Reg. Sess., Ch. 10.

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