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OFFICE WEST VIRGINIA  
SECRETARY OF STATE

# WEST VIRGINIA LEGISLATURE

FIRST REGULAR SESSION, 2003

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**ENROLLED**

COMMITTEE SUBSTITUTE  
FOR  
**House Bill No. 2694**

(By Delegates Stemple, Boggs, Crosier, Williams, Anderson, Evans and Schoen)

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Passed March 6, 2003

In Effect Ninety Days from Passage

**FILED**

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**E N R O L L E D**

COMMITTEE SUBSTITUTE

FOR

**H. B. 2694**

(BY DELEGATES STEMPLE, BOGGS, CROSIER, WILLIAMS,  
ANDERSON, EVANS AND SCHOEN)

[Passed March 6, 2003; in effect ninety days from passage.]

AN ACT to repeal sections eight and ten, article thirteen, chapter nineteen of the code of West Virginia, one thousand nine hundred thirty-one, as amended; and to amend and reenact sections one, two, three, four, five, six, seven and eleven of said article, all relating to regulation of bees; removing pesticide poisoning and certain violations; adding, deleting and amending definitions; authorizing commissioner of agriculture to seize infected bees and bee equipment; establishing expiration date for certificates of registration; strengthening commissioner's inspection and quarantine powers; clarifying manner of dealing with abandoned apiaries and interstate movement of bees; making technical corrections and modifying penalties.

*Be it enacted by the Legislature of West Virginia:*

That sections eight and ten, article thirteen, chapter nineteen of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be repealed; and that sections one, two, three, four, five, six, seven, and eleven of said article be amended and reenacted, all to read as follows:

**ARTICLE 13. INSPECTION AND PROTECTION OF APICULTURE.**

**§19-13-1. Short title.**

1 This article may be cited as “The West Virginia Apiary  
2 Act”.

**§19-13-2. Definitions.**

1 For the purpose of this article, the term:

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

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

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

14 (4) “Bees” means any stage of the common hive or honey  
15 bee (*Apis mellifera*), or other species of the genus *Apis*.

16 (5) “Bee equipment” means hives, supers, frames, veils,  
17 gloves or any other appliances.

18 (6) “Bee products” means honey, bees wax, pollen, propolis  
19 and royal jelly.

20 (7) “Colony” means the hive and includes bees, comb,  
21 honey and bee equipment.

22 (8) “Commissioner” means the commissioner of the  
23 department of agriculture of the state of West Virginia or a duly  
24 authorized employee.

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

29 (10) “Department” means the department of agriculture of  
30 the state of West Virginia.

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

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

42 (13) “Nuclei” means the removal of a split portion or  
43 division of any colony of honey bees for the express purpose of  
44 creating a numerical increase in colonies for honey production,  
45 pollination service or monetary gain through sale of honey bees.

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

53 (15) "Person" means corporations, partnerships, associa-  
54 tions, societies, individuals or group of individuals or any  
55 employee, servant or agent acting for or employed by any  
56 person.

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

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

63 (18) "Sterilized or sterilization" means to treat and neutral-  
64 ize honey bee pests by means of steam autoclave, pit incinera-  
65 tion, or by any other acceptable method which the commis-  
66 sioner determines effective for control of honey bee pests.

**§19-13-3. Commissioner's powers and duties; rule-making au-  
thority; apiary education; cooperation with gov-  
ernmental agencies; seizure of infected bees and  
bee equipment.**

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

7 (3) to regulate treatments, retreatments, and fees for the  
8 services; and (4) any other rules necessary to effectuate the  
9 enforcement of this article.

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

13 (c) The commissioner is authorized to cooperate with the  
14 federal government and its agencies, departments and instru-  
15 mentalities; other West Virginia agencies, departments,  
16 divisions, or political subdivisions; and any other state or  
17 commonwealth and its agencies, departments or political  
18 subdivisions, in order to carry out the effective administration  
19 of this article.

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

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

1 (a) All persons keeping bees in this state shall apply for a  
2 certificate of registration for bee keeping from the commis-  
3 sioner, within ten days of the date that bees are acquired, by  
4 notifying the commissioner, in writing, of the number and  
5 location of colonies they own or rent, or which they keep for  
6 someone else, whether the bees are located on their own  
7 property or someone else's property. All apiary certificates of  
8 registration expire on the thirty-first day of December of each  
9 year and must be renewed annually.

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

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

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

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

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

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

28 bee pests have been controlled to the satisfaction of the com-  
29 missioner.

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

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

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

1 It shall be unlawful for a person to knowingly maintain an  
2 abandoned apiary or bee equipment. When the commissioner  
3 determines that an apiary or bee equipment has been aban-  
4 doned, he or she shall notify, in writing, the owner or operator  
5 that the apiary or bee equipment has been declared abandoned.  
6 The owner or operator has thirty days from the date of notice to  
7 enclose, dispose of or destroy the abandoned apiary or bee  
8 equipment in a manner approved by the commissioner. If the  
9 owner or operator of the abandoned apiary or bee equipment  
10 cannot be located after reasonable inquiry, notice shall be  
11 provided to the owner of the real property on which the apiary  
12 or bee equipment is located. If the apiary or bee equipment  
13 continues to be abandoned for a period of thirty days thereafter,  
14 the commissioner may seize the apiary or bee equipment and  
15 take such action as is necessary to dispose of or to destroy the  
16 apiary or bee equipment as conditions warrant.

**§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 bees, ,  
2 used bee equipment or used appliances into West Virginia,  
3 unless accompanied by a certificate of inspection signed by an  
4 authorized state or federal inspection official verifying the  
5 actual inspection of the bees, used bee equipment or used  
6 appliances within thirty days preceding the date of shipment  
7 and certifying the absence of honey bee pests.

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

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

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

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

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

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

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

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

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

10       (2) It shall be the duty of the prosecuting attorney of the  
11 county in which the violation occurred to represent the depart-  
12 ment of agriculture, to institute proceedings, and to prosecute  
13 the person charged with such violation.

14       (b) Civil penalties.—

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

24       (2) The commissioner may assess a penalty of not more  
25 than one hundred dollars for the first offense or less serious  
26 violation, as determined by the commissioner in accordance  
27 with the rules approved in accordance with the provisions of  
28 chapter twenty-nine-a of this code, and not more than one  
29 thousand dollars for a serious, repeat or intentional violation, as  
30 determined by the commissioner in accordance with the  
31 approved rules.

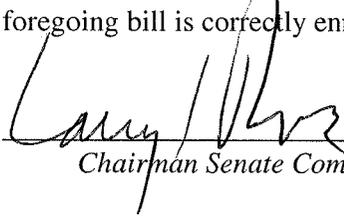
32 (3) The commissioner may negotiate and enter into a  
33 settlement agreement for the payment of civil penalties.

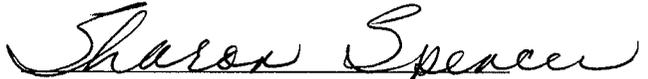
34 (4) The civil penalty is payable to the state of West Virginia  
35 and is collectable in any manner authorized by law for the  
36 collection of debts. Any person liable to pay a civil penalty and  
37 neglecting or refusing to pay it within thirty days of written  
38 notice of demand for payment,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

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

50 (6) No state court may allow the recovery of damages for  
51 administrative action taken if the court finds that there was  
52 probable cause for such action.

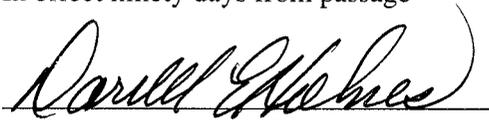
That Joint Committee on Enrolled Bills hereby certifies that the foregoing bill is correctly enrolled.

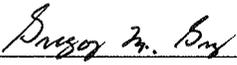
  
Chairman Senate Committee

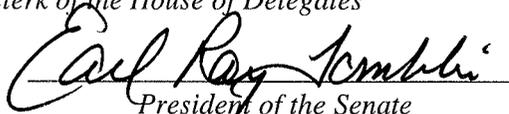
  
Chairman House Committee

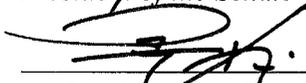
Originating in the House.

In effect ninety days from passage

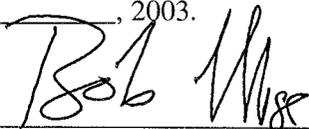
  
Clerk of the Senate

  
Clerk of the House of Delegates

  
President of the Senate

  
Speaker of the House of Delegates

The within is approved this the 20<sup>th</sup>  
day of March, 2003.

  
Governor

PRESENTED TO THE  
GOVERNOR

Date 3/14/03

Time 9:35 AM