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OFFICE WEST VIRGINIA
SECRETARY OF STATE

WEST VIRGINIA LEGISLATURE

FIRST REGULAR SESSION, 2003

ENROLLED

COMMITTEE SUBSTITUTE
FOR
House Bill No. 2694

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

Passed March 6, 2003

In Effect Ninety Days from Passage

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article thirteen, chapter nineteen of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be repealed; and that sections one, two, three, four, five, six, seven, and eleven of said article be amended and reenacted, all to read as follows: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

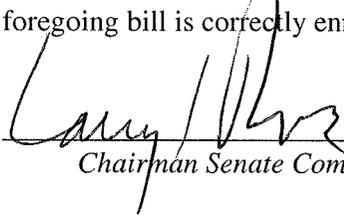
32 (3) The commissioner may negotiate and enter into a
33 settlement agreement for the payment of civil penalties.

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.

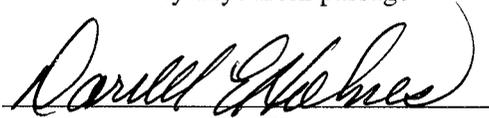
That Joint Committee on Enrolled Bills hereby certifies that the foregoing bill is correctly enrolled.

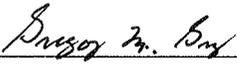

Chairman Senate Committee

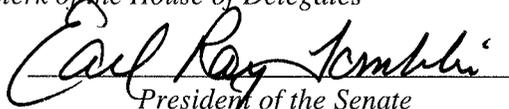

Chairman House Committee

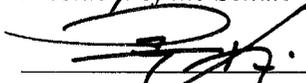
Originating in the House.

In effect ninety days from passage

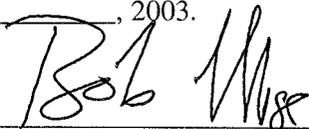

Clerk of the Senate


Clerk of the House of Delegates


President of the Senate


Speaker of the House of Delegates

The within is approved this the 20th
day of March, 2003.


Governor

PRESENTED TO THE
GOVERNOR

Date 3/14/03

Time 9:35 AM