

CHAPTER 1

(HB 236)

AN ACT relating to hemp and declaring an emergency.

Be it enacted by the General Assembly of the Commonwealth of Kentucky:

➔Section 1. KRS 250.355 is amended to read as follows:

- (1) The director, or the director's designee, shall receive samples and test ~~industrial~~ hemp plants, plant parts, and materials grown or located within the Commonwealth in order to determine whether the ~~industrial~~ hemp plants, plant parts, and materials are in compliance with the provisions of KRS 260.850 to 260.869 and the administrative regulations promulgated thereunder.
- (2) *The director, or the director's designee, shall perform testing services as the primary laboratory for delta-9 tetrahydrocannabinol as required by the department. The department may contract with other qualified laboratories to perform delta-9 tetrahydrocannabinol testing services when required.*

➔SECTION 2. A NEW SECTION OF KRS 260.850 TO 260.869 IS CREATED TO READ AS FOLLOWS:

- (1) *As used in this section, "location" means a single contiguous parcel of land and any buildings situated thereon.*
- (2) *No person shall move or transport, or aid or abet another person in moving or transporting, any hemp extract material having a delta-9 tetrahydrocannabinol concentration in excess of three-tenths of one percent (0.3%):*
 - (a) *From any location outside the Commonwealth to any location within the Commonwealth;*
 - (b) *From any location inside the Commonwealth to any location outside the Commonwealth; or*
 - (c) *Except as provided in subsection (3) of this section, from any location inside the Commonwealth to any other location inside the Commonwealth.*
- (3) *A licensed processor, or a person acting as a representative of a licensed processor, may move or transport hemp extract material having a delta-9 tetrahydrocannabinol concentration in excess of three-tenths of one percent (0.3%) from one (1) licensed processing location in the Commonwealth to another licensed processing location in the Commonwealth, provided that:*
 - (a) *The hemp extract material shall move directly from one (1) licensed processing location to another; and*
 - (b) *The licensed processor shall provide written notice to the department of the planned movement at least twenty-four (24) hours in advance to include the following information:*
 1. *The date of the movement;*
 2. *The address of the origin;*
 3. *The address of the destination; and*
 4. *Other information required by the department.*

➔Section 3. KRS 260.850 is amended to read as follows:

As used in KRS 260.850 to 260.869:

- (1) "Commissioner" means the Commissioner of the Kentucky Department of Agriculture;
- (2) "Cultivating" means planting, growing, and harvesting a plant or crop;
- (3) "Department" means the Kentucky Department of Agriculture;
- (4) "Handling" means possessing or storing ~~industrial~~ hemp for any period of time on premises owned, operated, or controlled by a person licensed to cultivate or process ~~industrial~~ hemp. "Handling" also includes possessing or storing ~~industrial~~ hemp in a vehicle for any period of time other than during its actual transport from the premises of a licensed person to cultivate or process ~~industrial~~ hemp to the premises of another licensed person;

- (5) **"Hemp" or "industrial hemp"** means the plant *Cannabis sativa* L. and any part of that plant, including the seeds thereof and all derivatives, extracts, cannabinoids, isomers, acids, salts, and salts of isomers, whether growing or not, with a delta-9 tetrahydrocannabinol concentration of not more than three-tenths of one percent (0.3%) on a dry weight basis;
- (6) **"Hemp products" or "industrial hemp products"** means products derived from, or made by, processing ~~industrial~~ hemp plants or plant parts;
- (7) "Licensee" means an individual or business entity possessing a license issued by the department under the authority of this chapter to grow, handle, cultivate, process, or market ~~industrial~~ hemp or ~~industrial~~ hemp products;
- (8) "Marketing" means promoting or selling a product within the Commonwealth, in another state, or outside of the United States. "Marketing" includes efforts to advertise and gather information about the needs or preferences of potential consumers or suppliers;
- (9) "Processing" means converting an agricultural commodity into a marketable form; **and**
- (10) ~~["Research pilot program" means a pilot program conducted by the department in collaboration with one (1) or more licensees or universities to study methods of cultivating, processing, or marketing industrial hemp under the authority of 7 U.S.C. sec. 5940 as it currently exists or as it may be subsequently amended; and~~
- ~~(11) "University" means an accredited institution of higher education located in the Commonwealth.~~

➔Section 4. KRS 260.852 is amended to read as follows:

It is the declared policy of the Commonwealth that ~~industrial~~ hemp is a viable agricultural crop in the Commonwealth. The purposes of KRS 260.850 to 260.869 are to:

- (1) Promote the research and study methods of cultivating, processing, and marketing ~~industrial~~ hemp;
- (2) Promote the expansion of the Commonwealth's ~~industrial~~ hemp industry to the maximum extent permitted by federal law ~~by~~, ~~in anticipation of a change in federal law~~ allowing citizens of the Commonwealth to cultivate, handle, or process ~~industrial~~ hemp and ~~industrial~~ hemp products for commercial purposes ~~without participating in research pilot programs~~; and
- (3) Move the Commonwealth and its citizens to the forefront of the ~~industrial~~ hemp industry.

➔Section 5. KRS 260.858 is amended to read as follows:

- (1) ~~The purpose of the research pilot program authorized by this chapter is to enable the department, and its licensees and affiliated universities, to study methods of cultivating, processing, or marketing industrial hemp.~~
- ~~(2)~~ Notwithstanding any other provision of law to the contrary, it is lawful for a licensee, or his or her agent, to cultivate, handle, or process ~~industrial~~ hemp or ~~industrial~~ hemp products in the Commonwealth.

~~(2)~~~~(3)~~ It is unlawful for a person who does not hold a license issued by the department, or who is not an agent of a licensee, to cultivate, handle, process, or market living ~~industrial~~ hemp plants or viable seeds, leaf materials, or floral materials derived from ~~industrial~~ hemp. Penalties for persons who cultivate, handle, process, or market living ~~industrial~~ hemp plants or viable seeds, leaf materials, or floral materials derived from ~~industrial~~ hemp without a license are the same as those penalties that are applicable to persons who violate KRS Chapter 218A, relating to marijuana.

- (3) ***It is unlawful for a person who does not hold a license issued by the department, or who is not an agent of a licensee, to possess hemp extract material having a delta-9 tetrahydrocannabinol concentration in excess of three-tenths of one percent (0.3%). Penalties for persons who possess such hemp extract materials without a license are the same as those penalties that are applicable to persons who violate KRS Chapter 218A, relating to marijuana.***
- (4) Nothing in this chapter authorizes any person to violate any federal or state law or regulation.

➔Section 6. KRS 260.860 is amended to read as follows:

- (1) The ~~Industrial~~ Hemp Advisory Board is created for the purpose of providing advice and expertise as may be needed by ~~a university or~~ the department with respect to plans, policies, and procedures applicable to the administration of its respective ~~industrial~~ hemp ~~research pilot~~ **program** ~~programs~~.
- (2) The ~~Industrial~~ Hemp Advisory Board shall be attached to the department for administrative purposes.

- (3) The ~~Industrial~~ Hemp Advisory Board shall be composed of the following members:
- (a) The Commissioner of the department or the Commissioner's designee;
 - (b) The executive director of the Governor's Office of Agricultural Policy or the executive director's designee;
 - (c) The dean of the University of Kentucky's College of Agriculture, Food and Environment or the dean's designee;
 - (d) The commissioner of the Department of Kentucky State Police or the commissioner's designee;
 - (e) The president of the Kentucky Sheriff's Association or the president's designee;
 - (f) The president of the Kentucky Association of Chiefs of Police or the president's designee; and
 - (g) Ten (10) at-large members designated by the Commissioner.
- (4) The Commissioner or the Commissioner's designee shall serve as chair.
- (5) A majority of the members of the board shall constitute a quorum.
- (6) The board shall meet at least one (1) time annually at the call of the chair.
- (7) In making the initial appointments of the board, the Commissioner shall stagger the terms of the board members. Thereafter, members shall be appointed to a term of four (4) years and shall serve until their successors are duly appointed and qualified.
- (8) Board members shall receive no compensation but shall be reimbursed, payable from the industrial hemp research pilot program fund, for any actual travel expense incurred while attending meetings of the board.

➔Section 7. KRS 260.862 is amended to read as follows:

- (1) In addition to any other powers vested in it by law, the department shall have the authority and power to promulgate administrative regulations to:
- (a) ~~Prescribe rules for any industrial hemp pilot program;~~
 - (b) ~~Conduct one (1) or more industrial hemp research pilot programs;~~
 - (c) ~~License persons who wish to cultivate, handle, process, or market [participate in an industrial hemp research pilot program by cultivating, handling, processing, or marketing industrial] hemp;~~
 - (b)(d) Prescribe rules for a university's participation in, or affiliation with, any ~~industrial~~ hemp ~~research pilot~~ program;
 - (c)(e) Prescribe sampling and testing procedures to ensure that ~~industrial~~ hemp and ~~industrial~~ hemp products cultivated, handled, processed, or marketed under the authority of this section do not exceed the concentration levels defined in *federal law* ~~[7 U.S.C. sec. 5940]~~ as it currently exists or as it may be subsequently amended;
 - (d)(f) Define classes or categories of ~~industrial~~ hemp products that are eligible for sale, transfer, or distribution to members of the public; and
 - (e)(g) Establish a schedule of nonrefundable fees for *applicants and licensees* ~~[administering any industrial hemp research pilot program]~~.
- (2) (a) No person shall cultivate, handle, process, or market ~~industrial~~ hemp in the Commonwealth unless the person holds ~~a [an industrial hemp]~~ license issued by the department.
- (b) Any person seeking to cultivate ~~industrial~~ hemp shall provide to the department the legal description and global positioning coordinates sufficient for locating the fields or greenhouses to be used to grow ~~industrial~~ hemp.
- (c) Any person seeking to cultivate or process ~~industrial~~ hemp shall provide to the department prior written consent allowing representatives of the department, the Department of Kentucky State Police, and other state and local law enforcement agencies to enter onto all premises where ~~industrial~~ hemp is cultivated, processed, or stored for the purpose of conducting physical inspections or ensuring compliance with the requirements of KRS 260.850 to 260.869 and administrative regulations promulgated by the department.

- (d) An applicant for a license issued by the department shall submit to and pay for an annual criminal background check conducted by the Department of Kentucky State Police or another state or federal law enforcement agency *or another entity* selected by the department.
- (e) No person who has been convicted of any felony or any drug-related misdemeanor or violation in the previous ten (10) years from the date of application shall be eligible to obtain a license, *provided, however, that:*
 - 1. *A person who was growing hemp lawfully with a license, registration, or authorization under a pilot program authorized by Section 7606 of the Agricultural Act of 2014, 7 U.S.C. sec. 5940, shall be eligible to obtain a license to grow hemp; and*
 - 2. *A person who was lawfully growing hemp under Section 7606 of the Agricultural Act of 2014 before December 20, 2018, and was convicted prior to December 20, 2018, shall be eligible to obtain a license to grow hemp.*

➔Section 8. KRS 260.864 is amended to read as follows:

- (1) The department may temporarily suspend a license up to sixty (60) days if the licensee is alleged to have:
 - (a) Violated any provision of KRS 260.850 to 260.869 or an administrative regulation promulgated under the authority of KRS 260.850 to 260.869;
 - (b) Made any false statement to the department or its representatives;
 - (c) Pled guilty to, or been convicted of, any felony or drug-related misdemeanor or violation;
 - (d) Failed to comply with only those instructions agreed upon in the contract signed by the licensee at the time the ~~industrial~~ hemp license was issued; or
 - (e) Failed to comply with an order from a representative of the department, representative of the Department of Kentucky State Police, or any law enforcement officer.
- (2) The department may temporarily suspend a license up to sixty (60) days without giving the licensee advance notice of the charge against him or her or an opportunity to be heard.
- (3) The department shall not permanently revoke a license until the department has notified the licensee of the charge against him or her and given the licensee an opportunity for a hearing before a three (3) person panel whose members have been designated by the Commissioner. The three (3) person panel shall include:
 - (a) Two (2) members who are employees of the department; and
 - (b) One (1) member who is not an employee of the department.
- (4) The department may permanently revoke a license if the licensee admits, or is found in a hearing, to have:
 - (a) Violated any provision of KRS 260.850 to 260.869 or an administrative regulation promulgated under the authority of KRS 260.850 to 260.869;
 - (b) Made any false statement to the department or its representative;
 - (c) Pled guilty to, or been convicted of, any felony or drug-related misdemeanor or violation; or
 - (d) Failed to comply with any instruction or order from the department, a representative of the Department of Kentucky State Police, or any law enforcement officer.
- (5) The department may impose a monetary civil penalty, not to exceed two thousand five hundred dollars (\$2,500) per violation, on any person who violates KRS 260.850 to 260.869 or an administrative regulation promulgated under the authority of KRS 260.850 to 260.869.
- (6) The department shall not impose a monetary civil penalty against a person alleged to have violated KRS 260.850 to 260.869, or an administrative regulation promulgated under the authority of KRS 260.850 to 260.869, until the department has notified the person of the charge against him or her and given the person the opportunity for a hearing before the three (3) person panel.

➔Section 9. KRS 260.866 is amended to read as follows:

- (1) The ~~industrial~~ hemp ~~research pilot~~ program fund is hereby created as a separate trust fund in the State Treasury. The fund shall consist of amounts received from appropriations, and any other proceeds from gifts, grants, federal funds, application fees, or license fees provided by KRS 260.862, civil penalties as provided by

KRS 260.864, and any other funds, both public and private, made available for purposes of KRS 260.850 to 260.869.

- (2) The ~~industrial hemp research pilot~~ program fund shall be administered by the department.
- (3) Amounts deposited in the ~~industrial hemp research pilot~~ program fund shall be used for the costs of personnel, program administration, testing, actual travel expenses of the advisory board established under KRS 260.860, and any other costs incurred while conducting the ~~industrial hemp research pilot~~ programs under KRS 260.850 to 260.869.
- (4) Notwithstanding KRS 45.229, the ~~industrial hemp research pilot~~ program fund amounts not expended at the close of a fiscal year shall not lapse but shall be carried forward into the next fiscal year.
- (5) Any interest earnings of the ~~industrial hemp research pilot~~ program fund shall become part of the fund and shall not lapse.
- (6) Moneys in the fund are hereby appropriated for the purposes set forth in this section and shall not be appropriated or transferred by the General Assembly for any other purposes ~~unless the industrial hemp research pilot program is discontinued by the Commissioner as provided by KRS 260.867. If the program is discontinued, moneys remaining in the fund shall lapse to the general fund no later than one (1) year after notice of the program discontinuation, and the fund shall be closed~~.

➔Section 10. The following KRS section is repealed:

260.867 Discontinuation of industrial hemp research pilot program -- Conditions -- Notice.

➔Section 11. Whereas in order for the Commonwealth to be in compliance with recent guidelines issued by the United States Department of Agriculture relating to hemp and hemp products, an emergency is declared to exist, and this Act takes effect upon its passage and approval by the Governor or upon it otherwise becoming a law.

Signed by Governor February 10, 2020.