

THE GENERAL ASSEMBLY OF PENNSYLVANIA

HOUSE BILL

No. 967 Session of 2015

INTRODUCED BY DIAMOND, FLYNN, SABATINA, V. BROWN, CALTAGIRONE, M. DALEY, DAVIS, EVERETT, FABRIZIO, GAINNEY, GIBBONS, GROVE, J. HARRIS, KORTZ, MARSHALL, McNEILL, MOUL, MURT, REESE, SANTORA, SCHLOSSBERG, SCHREIBER, WHEELAND, FARINA, D. COSTA, DAVIDSON, WARNER, ROZZI, DONATUCCI, JAMES, STAATS AND RAVENSTAHL, APRIL 15, 2015

AS AMENDED ON SECOND CONSIDERATION, HOUSE OF REPRESENTATIVES, APRIL 5, 2016

AN ACT

1 Amending Title 3 (Agriculture) of the Pennsylvania Consolidated
2 Statutes, providing for industrial hemp research; imposing
3 powers and duties on the Department of Agriculture and the
4 Legislative Reference Bureau; imposing criminal and civil
5 penalties; abrogating a regulation; and making a related
6 repeal.

7 The General Assembly of the Commonwealth of Pennsylvania
8 hereby enacts as follows:

9 Section 1. Title 3 of the Pennsylvania Consolidated Statutes
10 is amended by adding a chapter to read:

11 CHAPTER 7

12 INDUSTRIAL HEMP RESEARCH

13 Sec.

14 701. Scope.

15 702. Definitions.

16 703. Administration.

17 704. Growth and cultivation.

- 1 705. CONTROL ORDERS. <--
- 2 705 706. Noncriminal offense. <--
- 3 706 707. Criminal and civil penalties. <--
- 4 707 708. Disposition of funds. <--
- 5 708 709. Abrogation of regulation. <--
- 6 709 710. Expiration. <--

7 § 701. Scope.

8 This chapter relates to industrial hemp research.

9 § 702. Definitions.

10 The following words and phrases when used in this chapter  
11 shall have the meanings given to them in this section unless the  
12 context clearly indicates otherwise:

13 "Agricultural pilot program." A pilot program to study the  
14 growth, cultivation or marketing of industrial hemp.

15 "CONTROL ORDER." A WRITTEN ORDER ISSUED BY THE DEPARTMENT TO <--  
16 A PERSON ESTABLISHING REQUIRED TREATMENT MEASURES, INCLUDING  
17 DESTRUCTION, FOR A VIOLATION OF A PROVISION OF THIS CHAPTER OR A  
18 REGULATION, PERMIT OR ORDER ISSUED UNDER THIS CHAPTER.

19 "Department." The Department of Agriculture of the  
20 Commonwealth.

21 "Industrial hemp." The plant Cannabis sativa L. and any part  
22 of the plant, whether growing or not, with a delta-9  
23 tetrahydrocannabinol concentration of not more than 0.3% on a  
24 dry-weight basis.

25 "Institution of higher education." As defined by section 101  
26 of the Higher Education Act of 1965 (Public Law 89-329, 20  
27 U.S.C. § 1001).

28 "Secretary." The Secretary of Agriculture of the  
29 Commonwealth.

30 § 703. Administration.

1 (a) Department.--The department has the following duties:

2 (1) Implement this chapter.

3 (2) Establish, through permits, a certification and  
4 registration program under section 704(b)(2) (relating to  
5 growth and cultivation) and, when the program is operative,  
6 transmit notice of that fact to the Legislative Reference  
7 Bureau for publication in the Pennsylvania Bulletin.

8 (b) Powers and duties.--The department shall have the  
9 following powers and duties:

10 (1) Notwithstanding any other law to the contrary, to  
11 regulate and permit industrial hemp under this chapter in a  
12 manner consistent with the provisions of this chapter and all  
13 Federal laws, regulations and orders.

14 (2) To ESTABLISH, implement AND ADMINISTER an <--  
15 agricultural pilot program TO THE EXTENT FUNDS ARE AVAILABLE. <--

16 (3) To develop and implement permitting requirements,  
17 and regulations if necessary, to carry out the provisions of  
18 this chapter.

19 (4) To issue, renew, deny, revoke, suspend or refuse to  
20 renew permits to conduct an agricultural pilot program.

21 (5) To develop an application for registration.

22 (6) To develop an application for permits.

23 (7) To create and maintain a database of permitted  
24 institutions of higher education AND SITES USED TO GROW OR <--  
25 CULTIVATE INDUSTRIAL HEMP.

26 (8) To inspect the facilities, growing areas, fields,  
27 seeds, plants and other items used by each permitted  
28 institution of higher education ENTITY to ensure compliance <--  
29 with this chapter and permitting requirements and regulatory  
30 standards if promulgated.

1       (9) To establish, through permit, restrictions for the  
2 use or reuse of seeds, crops or products produced as the end  
3 result of an agricultural pilot program.

4       (10) To establish reasonable permitting and inspection  
5 fees to cover the cost of administration of this chapter.

6       (11) Notwithstanding any provision of 3 Pa.C.S. Ch. 71  
7 (relating to seed) and its attendant regulations, to regulate  
8 the labeling and testing of industrial hemp and industrial  
9 hemp seeds within this Commonwealth.

10       (12) To establish, through permitting standards or  
11 regulation, recordkeeping requirements necessary to  
12 administer the provisions of this chapter.

13       (c) Secretary.--If the secretary determines that a Federal  
14 agency is authorized to regulate industrial hemp, the secretary  
15 shall transmit notice of that authorization to the bureau for  
16 publication in the Pennsylvania Bulletin.

17 § 704. Growth and cultivation.

18       (a) Authorization.--Industrial hemp may be grown or  
19 cultivated by the department or an institution of higher  
20 education for the purposes of research conducted under an  
21 agricultural pilot program in compliance with subsection (b),  
22 notwithstanding:

23       (1) The Controlled Substances Act (Public Law 91-513, 84  
24 Stat. 1236, 21 U.S.C. § 801 et seq.).

25       ~~(2) The Safe and Drug Free Schools and Communities Act~~ <--  
26 ~~(Public Law 107-110, 20 U.S.C. § 7101 et seq.).~~ (RESERVED). <--

27       (3) 41 U.S.C. Ch. 81 (relating to drug-free workplace).

28       (4) Section 4(1)(vii)1 of the act of April 14, 1972  
29 (P.L.233, No.64), known as The Controlled Substance, Drug,  
30 Device and Cosmetic Act.

1       (5) 18 Pa.C.S. § 7508(a)(1) (relating to drug  
2 trafficking sentences and penalties).

3       (6) Any other Federal law or State law.

4       (b) Manner.--Industrial hemp shall be grown or cultivated in  
5 a manner that complies with all of the following:

6       (1) ~~Ensures that~~ EXCEPT AS PROVIDED UNDER SUBSECTION       <--  
7 (C), only institutions of higher education and the department  
8 ~~are used to~~ MAY grow or cultivate industrial hemp.       <--

9       (2) ~~Requires that sites~~ SITES used for growing or       <--  
10 cultivating industrial hemp MUST be certified and permitted       <--  
11 by and registered with the department.

12       (C) CONTRACTED GROWERS.--       <--

13       (1) THE DEPARTMENT, TO THE EXTENT NECESSARY TO CARRY OUT  
14 THE PROVISIONS OF AN AGRICULTURAL PILOT PROGRAM, MAY CONTRACT  
15 WITH A PERSON TO GROW OR CULTIVATE INDUSTRIAL HEMP.

16       (2) AN INSTITUTION OF HIGHER EDUCATION HOLDING A PERMIT  
17 FROM THE DEPARTMENT, TO THE EXTENT NECESSARY TO CARRY OUT THE  
18 PROVISIONS OF AN AGRICULTURAL PILOT PROGRAM, MAY CONTRACT  
19 WITH A PERSON TO GROW OR CULTIVATE INDUSTRIAL HEMP.

20       (3) A CONTRACT BETWEEN AN INSTITUTION OF HIGHER  
21 EDUCATION AND A PERSON MUST INCORPORATE THE PROVISIONS OF THE  
22 PERMIT ISSUED TO THE INSTITUTION OF HIGHER EDUCATION AND MUST  
23 REQUIRE WRITTEN APPROVAL FROM THE DEPARTMENT.

24       (4) A PERSON WITH A CONTRACT TO GROW OR CULTIVATE  
25 INDUSTRIAL HEMP MUST PROVIDE THE FOLLOWING INFORMATION:

26       (I) THE NAME AND MAILING ADDRESS OF THE PERSON.

27       (II) THE LEGAL DESCRIPTION AND GLOBAL POSITIONING  
28 COORDINATES SUFFICIENT TO LOCATE EACH SITE TO BE USED TO  
29 GROW OR CULTIVATE INDUSTRIAL HEMP.

30       (III) A SIGNED DECLARATION INDICATING WHETHER THE

1 PERSON HAS EVER BEEN CONVICTED OF A FELONY OR  
2 MISDEMEANOR.

3 (5) A PERSON WITH A CONTRACT UNDER THIS SUBSECTION IS  
4 SUBJECT TO A GRANT OF NECESSARY PERMISSIONS, WAIVERS OR OTHER  
5 FORM OF VALID LEGAL STATUS BY THE UNITED STATES DRUG  
6 ENFORCEMENT ADMINISTRATION OR OTHER APPROPRIATE FEDERAL  
7 AGENCY PURSUANT TO FEDERAL LAWS RELATING TO INDUSTRIAL HEMP.  
8 THE DEPARTMENT MAY SEEK ALL-INCLUSIVE PERMISSIONS, WAIVERS OR  
9 OTHER FORMS OF VALID LEGAL STATUS FROM THE UNITED STATES DRUG  
10 ENFORCEMENT ADMINISTRATION OR OTHER APPROPRIATE FEDERAL  
11 AGENCY PURSUANT TO FEDERAL LAWS RELATING TO INDUSTRIAL HEMP  
12 FOR ALL PERSONS WITH A CONTRACT TO GROW OR CULTIVATE  
13 INDUSTRIAL HEMP.

14 (6) A PERSON WITH A FELONY DRUG CONVICTION WITHIN THE  
15 PAST 10 YEARS MAY NOT CONTRACT TO GROW OR CULTIVATE  
16 INDUSTRIAL HEMP UNDER THIS SUBSECTION.

17 § 705. CONTROL ORDERS.

18 (A) AUTHORITY OF DEPARTMENT.--

19 (1) THE DEPARTMENT MAY ISSUE A CONTROL ORDER:

20 (I) REQUIRING ANY PERSON REGISTERED AND PERMITTED TO  
21 GROW INDUSTRIAL HEMP TO IMPLEMENT TREATMENT MEASURES FOR  
22 INDUSTRIAL HEMP IF THE DEPARTMENT FINDS THAT THE PERSON  
23 HAS VIOLATED A PROVISION OF THIS CHAPTER OR A REGULATION,  
24 ORDER OR PERMITTING REQUIREMENT ISSUED UNDER THIS  
25 CHAPTER.

26 (II) UPON FINDING INDUSTRIAL HEMP GROWING ON ANY  
27 PREMISES OR PROPERTY WITHOUT A VALID REGISTRATION OR  
28 PERMIT.

29 (2) A CONTROL ORDER SHALL SET FORTH THE GENERAL FACTUAL  
30 AND LEGAL BASIS FOR THE ACTION AND SHALL ADVISE THE AFFECTED

1 PERSON THAT WITHIN 15 DAYS OF RECEIPT OF THE CONTROL ORDER  
2 THE PERSON MAY FILE WITH THE DEPARTMENT A WRITTEN REQUEST FOR  
3 AN ADMINISTRATIVE HEARING.

4 (3) THE HEARING UNDER PARAGRAPH (2) SHALL BE CONDUCTED  
5 IN ACCORDANCE WITH 2 PA.C.S. (RELATING TO ADMINISTRATIVE LAW  
6 AND PROCEDURE). THE WRITTEN CONTROL ORDER OF THE DEPARTMENT  
7 SHALL BE SERVED UPON THE AFFECTED PERSON BY PERSONAL SERVICE  
8 OR BY REGISTERED OR CERTIFIED MAIL, RETURN RECEIPT REQUESTED.  
9 THE CONTROL ORDER SHALL BECOME FINAL UPON THE EXPIRATION OF  
10 THE 15-DAY PERIOD FOR REQUESTING AN ADMINISTRATIVE HEARING  
11 UNLESS A TIMELY REQUEST FOR A HEARING HAS BEEN FILED WITH THE  
12 DEPARTMENT.

13 (B) REQUIRED CONTENTS.--THE CONTROL ORDER SHALL PRESCRIBE  
14 THE REQUIRED REMEDIATION, CONTROL, ERADICATION OR TREATMENT  
15 MEASURES AND THE DATE BY WHICH THE MEASURES MUST BE COMPLETED.

16 (C) EXPENSES AND COSTS.--THE DEPARTMENT MAY RECOVER ANY  
17 EXPENSES AND COSTS INCURRED IN ENFORCING AND CARRYING OUT THE  
18 MEASURES ESTABLISHED IN THE CONTROL ORDER FROM THE PERSON THAT  
19 WAS THE SUBJECT OF THE DEPARTMENT'S CONTROL ORDER.

20 § ~~705~~ 706. Noncriminal offense. <--

21 An activity conducted in compliance with this chapter shall  
22 not be in violation of the laws of the Commonwealth including:

23 (1) The act of April 14, 1972 (P.L.233, No.64), known as  
24 The Controlled Substance, Drug, Device and Cosmetic Act.

25 (2) 18 Pa.C.S. § 7508(a)(1) (relating to drug  
26 trafficking sentencing and penalties).

27 (3) Any other law of the Commonwealth regulating the  
28 growth or cultivation of industrial hemp.

29 § ~~706~~ 707. Criminal and civil penalties. <--

30 (a) Penalties authorized.--In addition to any criminal

1 penalty that may apply if a person is operating outside the  
2 requirements of this chapter or a rule or regulation promulgated  
3 under this chapter, the department may impose the penalties  
4 under this section.

5 (b) Criminal penalties.--The following shall apply:

6 (1) A person commits a summary offense if the person:

7 (i) violates a provision of this chapter or a rule  
8 or regulation promulgated under this chapter; or

9 (ii) impedes, obstructs, hinders or otherwise  
10 prevents or attempts to prevent the department in the  
11 performance of its duty in connection with a provision of  
12 this chapter or a rule or regulation promulgated under  
13 this chapter.

14 (2) Upon conviction of an offense under paragraph (1),  
15 the person shall be sentenced to pay a fine of:

16 (i) Not less than \$100 nor more than \$300 for the  
17 first violation.

18 (ii) Not less than \$500 nor more than \$1,000 for a  
19 subsequent violation that occurs within one year of the  
20 first conviction.

21 (c) Civil penalties.--The following shall apply:

22 (1) In addition to any other remedy available at law or  
23 in equity for a violation of this chapter or a rule or  
24 regulation promulgated under this chapter, the department may  
25 assess upon a person a civil penalty of not more than \$5,000,  
26 plus the cost of remediation, containment or eradication, for  
27 each violation of this chapter, a rule or regulation  
28 promulgated under this chapter or an order issued under the  
29 authority of this chapter.

30 (2) A civil penalty assessed under this subsection shall



1 be payable to the department.

2 (3) The amount of the civil penalty under this  
3 subsection shall be collectible in a manner provided by law  
4 for the collection of debt, including referral of the  
5 collection matter to the Office of Attorney General, which  
6 shall recover the amount by action in the appropriate court.

7 (4) A civil penalty may not be assessed unless the  
8 person subject to the penalty has been given notice and an  
9 opportunity for a hearing on the assessment in accordance  
10 with the provisions of 2 Pa.C.S. Ch. 5 Subch. A (relating to  
11 practice and procedure of Commonwealth agencies) and Ch. 7  
12 Subch. A (relating to judicial review of Commonwealth agency  
13 action).

14 (d) Civil remedy.--The following shall apply:

15 (1) In addition to any other remedy provided for in this  
16 chapter, at the request of the secretary, the Attorney  
17 General may initiate, in the Commonwealth Court or the court  
18 of common pleas of the county in which the defendant resides  
19 or has a place of business, an action in equity for an  
20 injunction to restrain a violation of this chapter, a rule or  
21 regulation promulgated under this chapter or an order of the  
22 department from which no timely appeal has been taken or  
23 sustained on appeal.

24 (2) In a proceeding under paragraph (1), upon motion of  
25 the Commonwealth, the court shall issue a preliminary  
26 injunction if it finds that the defendant is engaging in  
27 conduct that is causing immediate or irreparable harm to the  
28 public. The Commonwealth shall not be required to furnish  
29 bond or other security in connection with the proceeding. In  
30 addition to an injunction, the court may levy a civil penalty

1 as provided for under this chapter.

2 § 707 708. Disposition of funds. <--

3 (a) Deposit of funds.--Permitting fees, fines and penalties  
4 shall be paid into a special restricted account in the General  
5 Fund known as the Plant Pest Management Account. All funds  
6 deposited in the Plant Pest Management Account are appropriated  
7 to the department for the purpose of this chapter and the act of  
8 December 16, 1992 (P.L.1228, No.162), known as the Plant Pest  
9 Act, and are not to replace revenues appropriated to the fund as  
10 allowed under subsection (b).

11 (b) Supplement to account.--The Plant Pest Management  
12 Account may be supplemented by:

13 (1) Funds appropriated from the General Assembly to the  
14 department for purposes of this chapter.

15 (2) Federal funds appropriated to the department for  
16 purposes of this chapter.

17 (3) Gifts and other contributions from public or private  
18 sources for purposes of this chapter.

19 § 708 709. Abrogation of regulation. <--

20 The provisions of 7 Pa. Code § 110.1(1) (relating to noxious  
21 weed control list) are abrogated.

22 § 709 710. Expiration. <--

23 This chapter shall expire upon publication of the notice  
24 under section 703(c) (relating to administration).

25 Section 2. Repeals are as follows:

26 (1) The General Assembly finds and declares that the  
27 repeal under paragraph (2) is necessary to effectuate the  
28 addition of 3 Pa.C.S. Ch. 7.

29 (2) Section 8(1) of the act of April 7, 1982 (P.L.228,  
30 No.74), known as the Noxious Weed Control Law, is repealed.

1 Section 3. This act shall take effect as follows:

2 (1) The following provisions shall take effect  
3 immediately:

4 (i) The addition of 3 Pa.C.S. § 703(a).

5 (ii) Section 2(1) of this act.

6 (iii) This section.

7 (2) The remainder of this act shall take effect upon  
8 publication of the notice under 3 Pa.C.S. § 703(a)(2).