

INDUSTRIAL HEMP GROWERS ACT (EXCERPT)

Act 220 of 2020

CHAPTER VI

Violations and Penalties

333.29601 Negligent violations of this act; notice; corrective action plan; penalties.

Sec. 601. (1) A grower negligently violates this act if the grower does any of the following:

(a) Fails to provide a legal description for each field, greenhouse, building, or other location where industrial hemp will be grown under section 201.

(b) Fails to obtain a registration.

(c) Grows industrial hemp that exceeds the acceptable THC level but does not have more than 1.0% total delta-9-THC on a dry weight basis.

(d) Any other violation that the department determines is negligent under subsection (7).

(2) If a grower violates subsection (1), the department shall issue the grower a notice of violation and the terms of a corrective action plan. The grower must comply with the terms of the corrective action plan.

(3) The department shall develop a corrective action plan under subsection (2) or (7) that includes the following terms:

(a) A reasonable date by which the grower will correct the negligent violation.

(b) A requirement that for not less than 2 years after a violation under subsection (1), the grower shall make periodic reports to the department about the grower's progress and compliance with the requirements of the corrective action plan.

(4) A grower that negligently violates this act 3 times in a 5-year period is ineligible to register as a grower for 5 years from the date of the third violation.

(5) A negligent violation under this section is not subject to criminal enforcement.

(6) A grower is not subject to more than 1 negligent violation under subsection (1) per growing season.

(7) In addition to a negligent violation listed in subsection (1), the department may determine that any other violation of this act is a negligent violation. If the department determines that a grower negligently violated this act, the department shall issue the grower a notice of violation and the terms of a corrective action plan. The grower must comply with the terms of the corrective action plan. The department shall use the enforcement response policy created under section 505 to determine whether a violation of this act is a negligent violation.

History: 2020, Act 220, Imd. Eff. Oct. 16, 2020;—Am. 2021, Act 4, Imd. Eff. Mar. 24, 2021.

333.29602 Violations of this act.

Sec. 602. Except for a negligent violation under section 601(1), a person violates this act if the person does any of the following:

(a) Intentionally grows or is in possession of cannabis with a total delta-9-THC content greater than the acceptable THC level.

(b) Makes a false or misleading statement, as determined by the department, to the department or a law enforcement agency.

(c) Fails to comply with an order from the department or a law enforcement agency.

(d) Materially falsifies information required under section 201.

(e) Commits any other violation of this act, a rule promulgated under this act, or an order issued under this act.

History: Add. 2021, Act 4, Imd. Eff. Mar. 24, 2021.

333.29603 Investigations; registration suspension; notice.

Sec. 603. (1) If a grower violates or is suspected of violating section 602(a), (b), (c), or (e), the department shall investigate and may suspend the grower's registration for not more than 60 days.

(2) If the department suspends a registration under this section, the department shall notify the grower in writing that the registration is suspended.

(3) If a registration is suspended under this section, the grower shall not harvest or remove industrial hemp from the location where the industrial hemp was located at the time the department issued the notice of suspension, except as authorized in writing by the department.

History: 2020, Act 220, Imd. Eff. Oct. 16, 2020;—Am. 2021, Act 4, Imd. Eff. Mar. 24, 2021.

333.29605 Revocation of registration; hearing; suspension removal; effect on other

registrations.

Sec. 605. (1) The department shall not permanently revoke a registration suspended under section 603 unless the department notifies the grower of the allegation against the grower and gives the grower an opportunity for a hearing to appeal the revocation.

(2) The department shall schedule a hearing on a revocation under subsection (1) for a date as soon as practicable that is not more than 60 days after the date of notification of a registration suspension.

(3) The department shall conduct the hearing required under this section pursuant to the administrative procedures act of 1969, 1969 PA 306, MCL 24.201 to 24.328.

(4) If the department finds by a preponderance of the evidence that a person committed a violation under section 602(a), (b), (c), or (e) is true, the department shall revoke the registration. The revocation is effective immediately, and the department or a law enforcement agency must order the grower to dispose of all cannabis that is in the grower's possession under section 407.

(5) The department or a law enforcement agency shall not compensate or indemnify the value of the cannabis that is destroyed or confiscated under this section.

(6) If the department revokes a registration, the grower is barred from participating in the program in any capacity for a minimum of 5 years from the date on which the registration was revoked.

(7) If the department does not find by a preponderance of the evidence that a person committed a violation under section 602(a), (b), (c), or (e) is true, the department shall remove the suspension imposed under section 603 within 24 hours of the department's determination.

(8) If a grower commits a violation under section 602(a), (b), (c), or (e) 3 times within a 5-year period, the grower is barred from participating in the program in any capacity for a minimum of 5 years from the date of the grower's third violation.

(9) A suspension, revocation, or denial of a registration of a person who is an individual may result in the suspension, revocation, or denial of any other registration held or applied for by that individual under this act. The registration of a corporation, partnership, or other association may be suspended when a registration or registration application of a partner, trustee, director or officer, member, or a person exercising control of the corporation, partnership, or other association is suspended, revoked, or denied.

History: 2020, Act 220, Imd. Eff. Oct. 16, 2020;—Am. 2021, Act 4, Imd. Eff. Mar. 24, 2021.

333.29607 Violation of MCL 333.29602; misdemeanor.

Sec. 607. A grower that commits a violation under section 602 is guilty of a misdemeanor punishable by imprisonment for not more than 90 days or a fine of not more than \$5,000.00, or both.

History: 2020, Act 220, Imd. Eff. Oct. 16, 2020;—Am. 2021, Act 4, Imd. Eff. Mar. 24, 2021.

333.29609 Violation of MCL 333.29601 or 333.29602; administrative fine and penalties; civil action; affirmative defense.

Sec. 609. (1) A grower that commits a violation under section 601 or 602 may be subject to an administrative fine. On the request of a person to whom an administrative fine is issued, the department shall conduct a hearing pursuant to the administrative procedures act of 1969, 1969 PA 306, MCL 24.201 to 24.328. The department shall impose an administrative fine authorized under this section as follows:

(a) For a first violation, an administrative fine of not less than \$100.00 or more than \$500.00, plus the actual costs of the investigation and double the amount of any economic benefit associated with the violation.

(b) For a second violation that occurs within 5 years after a violation under subdivision (a), an administrative fine of not less than \$500.00 or more than \$1,000.00, plus the actual costs of the investigation and double the amount of any economic benefit associated with the violation.

(c) For a third or subsequent violation that occurs within 5 years after a violation under subdivision (a), an administrative fine of not less than \$1,000.00 or more than \$2,000.00, plus the actual costs of the investigation and double the amount of any economic benefit associated with the violation.

(2) A grower that commits a violation under section 602(d) is ineligible to participate in the program.

(3) In addition to imposing an administrative fine under subsection (1), the department may do any of the following:

(a) Issue a cease and desist order, either orally or in writing. The department must inform the grower of the reasons for the cease and desist order. A cease and desist order issued under this subdivision is effective immediately, and failure to comply may subject the grower to an administrative fine under subsection (1).

(b) Bring an action to enjoin a violation or attempted violation under section 602 in the county in which the violation occurs or is about to occur.

(c) Bring a civil action to restrain, by temporary or permanent injunction, a violation under section 602. The action may be brought in the circuit court for the county where the violation occurred. The court may

issue a temporary or permanent injunction and issue other equitable orders or judgments.

(4) The attorney general may file a civil action for a violation under section 602. A person that commits or attempts to commit a violation under section 602 may be ordered to pay a civil fine of not more than \$5,000.00 for each violation or attempted violation. In addition, the attorney general may bring an action in circuit court to recover the reasonable costs of the investigation from a grower that committed or attempted to commit a violation under section 602. Money recovered under this subsection must be forwarded to the state treasurer for deposit into the fund.

(5) A decision of the department under this section is subject to judicial review as provided by law.

(6) The department shall advise the attorney general of the failure of any person to pay an administrative fine imposed under subsection (1). The attorney general shall bring an action to recover the fine.

(7) Any administrative fine, investigation costs, or recovery of an economic benefit associated with a violation that is collected under this section must be paid to the state treasury and deposited into the fund.

(8) A person that violates this act is liable for all damages sustained by a purchaser of a product sold in violation of this act. In an enforcement action, a court may order, in addition to other sanctions provided by law, restitution to a party injured by the purchase of a product sold in violation of this act.

(9) As an affirmative defense to any action filed under this section, in addition to any other lawful defense, a grower may present evidence that, at the time of the alleged violation or attempted violation, the grower was in compliance with this act and the rules promulgated under this act.

(10) If the department determines that a grower individually, or by the action of an agent or employee, or as the agent or employee of another, committed a violation under section 602, that did not result in significant harm to public health or the environment, the department may issue a warning instead of imposing an administrative fine under subsection (1).

(11) The applicable provisions of the revised judicature act of 1961, 1961 PA 236, MCL 600.101 to 600.9948, apply to civil actions filed under this section.

(12) The department shall report to the United States Attorney General, the USDA, and the chief law enforcement officer of this state any violation under this chapter committed with a culpable mental state greater than negligence.

(13) The department shall use the enforcement response policy in determining what actions to pursue under this section.

History: 2020, Act 220, Imd. Eff. Oct. 16, 2020;—Am. 2021, Act 4, Imd. Eff. Mar. 24, 2021.