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OFFICE OF
SECRETARY OF STATE
CHARLESTON, WEST VIRGINIA

WEST VIRGINIA LEGISLATURE

REGULAR SESSION, 1976

— ● —

ENROLLED

HOUSE BILL No. 1279

(By Mr. Moler & Mr. Millison)

— ● —

PASSED March 13, 1976

In Effect ninety days from Passage



FILE IN THE OFFICE OF
SECRETARY OF STATE OF
WEST VIRGINIA

THIS DATE 3/31/76

ENROLLED

H. B. 1279

(By MR. MOLER and MR. MILLESON)

[Passed March 13, 1976; in effect ninety days from passage.]

AN ACT to amend chapter nineteen of the code of West Virginia, one thousand nine hundred thirty-one, as amended, by adding thereto a new article, designated article twelve-d, relating to the suppression and control of noxious weeds; title; declaration of purpose; legislative findings; definitions; administration of article; promulgation of regulations; surveys for noxious weeds; quarantines; prohibited acts; permits; authority to stop sale or delivery; cooperation; right of entry; legal recourse; violations and penalties.

Be it enacted by the Legislature of West Virginia:

That chapter nineteen of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be amended by adding thereto a new article, designated article twelve-d, to read as follows:

ARTICLE 12D. WEST VIRGINIA NOXIOUS WEED ACT.

§19-12D-1. Title.

1 This article shall be known by the short title of "The West
2 Virginia Noxious Weed Act of 1976."

§19-12D-2. Declaration of purpose, legislative findings.

1 The purpose of this article is to provide for the suppression
2 or control of noxious weeds which have proven to be or
3 which scientific evidence indicates may become detrimental
4 factors affecting the public health or economy of the state.
5 The Legislature finds that certain plant species may spread to

6 the extent they become detrimental to agricultural crops, other
7 desirable plants, livestock, waterways, land, public health and/
8 or the general economy and that certain noxious weeds, not
9 yet known to occur in West Virginia, may be inadvertently
10 introduced and that procedures for locating and eliminating
11 such infestations need to be established. Therefore, it is deemed
12 necessary, in the public interest, to provide authority for the
13 surveillance of, suppression and control of noxious weeds.

§19-12D-3. Definitions.

1 As used in this article:

2 (a) "Certificate" means a document issued by the commis-
3 sioner indicating a regulated article is free of noxious weeds.

4 (b) "Commissioner" means the commissioner of agricul-
5 ture of the state of West Virginia and his duly authorized rep-
6 resentatives.

7 (c) "Infested" means the establishment of a noxious weed
8 or exposure to such weed in a way creating reasonable cer-
9 tainty that establishment will occur.

10 (d) "Move" means to ship, offer for shipment, receive for
11 transportation, carry, or otherwise transport, move or allow to
12 be moved.

13 (e) "Noxious weed" means any living plant, or part there-
14 of, declared by the commissioner, after public hearing, to be
15 detrimental to crops, other desirable plants, waterways, live-
16 stock, land or other property, or to be injurious to public
17 health or the economy.

18 (f) "Permit" means a document issued by the commissioner
19 to provide for movement of regulated articles to restricted des-
20 tinations for limited handling, utilization, processing, or for
21 scientific purposes.

22 (g) "Person" means any individual or combination of in-
23 dividuals, partnership, corporation, company, society, asso-
24 ciation, firm, or other business entity and each officer, agent
25 or employee thereof; the state and federal government and
26 any department, agency, or subdivision thereof; or any other
27 entity.

28 (h) "Quarantine" means a legal declaration by the com-
29 missioner specifying:

30 (1) The common and scientific name of the noxious weed.

31 (2) The articles to be regulated.

32 (3) The conditions governing movement.

33 (4) Exemptions.

34 (i) "Regulated article" means any article of any character
35 which is transporting or which is capable of transporting any
36 noxious weed.

37 (j) "Reasonable notification" means at least forty-eight
38 hours.

§19-12D-4. Administration of article; promulgation of regulations.

1 (a) The commissioner shall administer and enforce the
2 provisions of this article and shall have authority to issue
3 regulations after a public hearing following due notice to
4 all interested persons in conformance with the provisions of
5 the state administrative procedures set forth in chapter
6 twenty-nine-a of this code.

7 (b) In issuing such regulations, the commissioner shall
8 give consideration to pertinent research findings and recom-
9 mendations of other agencies of the state, the federal govern-
10 ment, and other reliable sources.

§19-12D-5. Surveys for noxious weeds; multiflora rose.

1 (a) The commissioner shall make surveys for noxious
2 weeds and when it is determined that an infestation exists
3 within the state he may, by regulation after public hearing held
4 in accordance with procedures set forth in chapter twenty-
5 nine-a of this code, declare the weed to be noxious.

6 (b) Multiflora rose, *Rosa multiflora*, is a detriment to
7 agriculture in West Virginia and is hereby declared to be a
8 noxious weed.

§19-12D-6. Quarantines.

1 When a plant is declared to be noxious under section five
2 of this article, the commissioner shall, subsequent to the decla-

3 ration of a quarantine, limit the application of rules and regu-
4 lations pertinent to such quarantine to the infested portion of
5 the state and appropriate environs, which would be known as
6 the regulated area and may, without further hearing, extend
7 the regulated area to include additional portions of the state
8 upon publication of a notice to that effect in a newspaper dis-
9 tributed in the extended area or by direct written notice to
10 those concerned.

**§19-12D-7. Prohibited acts; permits; authority to stop sale or de-
livery.**

1 (a) No person shall violate any provision of this law or any
2 rule promulgated thereunder.

3 (b) No person shall move, transport, deliver, ship or offer
4 for shipment into or within this state any noxious weed with-
5 out first obtaining a permit from the commissioner and such
6 permit shall be issued only after it has been determined that
7 the noxious weed is generally present throughout the state or
8 is for scientific purposes subject to prescribed safeguards.

9 (c) The commissioner, in order to prevent the introduction
10 or dissemination of noxious weeds, is hereby authorized to
11 stop delivery, stop sale, seize, destroy, treat, or order returned
12 to the point of origin, at the owner's expense, any noxious
13 weed, article or substance, whatsoever, if it is being transported
14 or moved within this state, or if it exists on any premises with-
15 in the state, or if it is being brought into this state from any
16 place outside thereof, if such is found by him to be infested
17 with any noxious weed subject to this article.

§19-12D-8. Cooperation.

1 (a) The commissioner is authorized to cooperate in any
2 way with any person in order to prevent the establishment of
3 noxious weeds in this state.

4 (b) The commissioner is authorized to cooperate in any
5 way with any person in programs designed to suppress or con-
6 trol noxious weeds already widely distributed in the state
7 without first declaring a quarantine.

8 (c) The commissioner may, upon request, cooperate with
9 federal and state agencies and political subdivisions in the

10 enforcement of the narcotic laws to the extent of preventing
11 the spread of and destroying marihuana or hemp, Cannabis
12 spp., or other plants which produce drugs which have been
13 condemned for destruction under the narcotics laws: *Pro-*
14 *vided*, That nothing herein shall authorize the commissioner
15 to participate in a criminal investigation or prosecution under
16 the controlled substances act or federal narcotic laws. Such
17 drug producing plants are hereby declared noxious.

§19-12D-9. Right of entry.

1 To effectuate the purpose of this article, the commissioner
2 is hereby invested with authority to enter upon any public or
3 private premises, except private residences, and the curtilage
4 thereof, at reasonable times, after reasonable notification to the
5 owner and tenant or agent in order to examine and sample all
6 plants and trees, soil, articles, and substances which are sus-
7 pected of being infested with a noxious weed in discharge of
8 the duties prescribed by this article.

§19-12D-10. Legal recourse.

1 Any person aggrieved by any action of the commissioner
2 may obtain a review thereof by filing in a court of competent
3 jurisdiction, within thirty days of notice of the action, a writ-
4 ten petition praying that the action of the commissioner be
5 enjoined or set aside. A copy of such petition shall forthwith be
6 delivered to the commissioner and within thirty days thereafter
7 the commissioner shall certify and file in the court a transcript
8 of any record pertaining thereto, including a transcript of evi-
9 dence received, whereupon the court shall have jurisdiction to
10 affirm, set aside, or modify the action of the commissioner,
11 except that the findings of the commissioner as to the facts, if
12 supported by substantial evidence shall be conclusive.

§19-12D-11. Penalties.

1 Any person violating any of the provisions of this article,
2 or the rules and regulations adopted thereunder, shall be
3 deemed guilty of a misdemeanor, and, upon conviction thereof,
4 shall be fined not less than ten dollars nor more than one
5 hundred dollars.

6 It shall be the duty of the prosecuting attorney of the
7 county in which the violation occurred to represent the
8 commissioner, to institute proceedings and to prosecute the
9 person charged with such violation. In the event a county or
10 prosecuting attorney refuses to act on behalf of the com-
11 missioner, the attorney general shall so act.

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

James L. Davis

Chairman Senate Committee

Charles C. Chestnut, Jr.

Chairman House Committee

Originated in the House.

Takes effect ninety days from passage.

J. C. Millon, Jr.

Clerk of the Senate

C. Blankenship

Clerk of the House of Delegates

W. A. Brotherton

President of the Senate

Lewis F. McManus

Speaker House of Delegates

The within *approved* this the *29th*
March, 1976.

Paula Pearce, Jr.

Governor



PRESENTED TO THE
GOVERNOR

Date 3/24/76

Time 3:45 p.m.