WEST VIRGINIA CODE CHAPTER 19 ARTICLE 12

WV Legislature

§19-12-1. Title.

This article shall be known by the short title of "The Plant Pest Act."

WV Legislature

§19-12-2. Definitions.

The following definitions shall apply in the interpretation and enforcement of this article. All words shall be construed to import either the plural or the singular, as the case demands:

(a) "Certificate" means a document issued or authorized by the commissioner indicating that a regulated article is not contaminated with a pest.

(b) "Commissioner" means the commissioner of agriculture of the State of West Virginia and his or her duly authorized representatives.

(c) "Compliance agreement" means a written agreement between the department and any person engaged in growing, handling or moving articles, plants or plant products regulated under this article, wherein the person agrees to comply with stipulated requirements.

(d) "Dealer" means any person who buys, receives on consignment or otherwise acquires and has in his or her possession nursery stock which that person has not grown from propagative material such as tissue culture plants, cuttings, liners, seeds or transplanted nursery stock for the purpose of offering or exposing for sale, reselling, reshipping or distributing same. Each separate location shall constitute a dealership.

(e) "Department" means the Department of Agriculture of the State of West Virginia.

(f) "Genetically modified organism" means any organism altered or produced through genetic modification from a donor, vector or recipient organism using modern molecular techniques.

(g) "Host" means any plant or plant product upon which a pest is dependent for completion of any portion of its life cycle.

(h) "Infested area" means any area of uncontrolled growth of insects, plant diseases, noxious weeds or other plant pests.

(i) "Noxious weed" means any living plant, or part thereof, declared by the commissioner, after public hearing, to be detrimental to crops, other desirable plants, waterways, livestock, land or other property, or to be injurious to public health or the economy.

(j) "Nursery" means any grounds or premises on or in which nursery stock is being propagated or grown for sale or distribution, including any grounds or premises on or in which nursery stock is being fumigated, treated, packed or stored or otherwise prepared or offered for sale or movement to other localities.

(k) "Nurseryman" means and includes any person who owns, leases, manages or is in charge of a nursery.

(l) "Nursery stock" means all trees, shrubs and woody vines, including ornamentals, bush

WV Legislature

fruits, grapevines, fruit trees and nut trees, whether cultivated, native or wild, and all buds, grafts, scions, fruit pits and cuttings from such plants. It also means sod, including sod plugs and sod-producing plants, and such herbaceous plants, including strawberry plants, narcissus plants and narcissus bulbs as the commissioner declares by rule to be so included whenever he or she considers control of the movement of such plants and bulbs necessary for the control of any destructive plant pest. Florists' or greenhouse plants for inside culture or use, unless declared otherwise by the commissioner, as herein authorized, shall not be considered nursery stock, except that all woody plants, whether greenhouse or field grown, if for outside planting, are hereby defined as nursery stock.

(m) "Permit" means a document issued or authorized by the commissioner to provide for a movement of regulated articles to restricted destinations for limited handling, utilization or processing.

(n) "Person" means any individual or combination of individuals, partnership, corporation, company, society, association, governmental organization or other business entity and each officer, agent or employee thereof.

(o) "Plant and plant products" means trees, shrubs, vines; forage, fiber, cereal plants and all other plants; cuttings, grafts, scions, buds and lumber and all other parts of plants and plant products; and fruit, vegetables, roots, bulbs, seeds and wood.

(p) "Plant pest" means any living stage of: Any insects, mites, nematodes, slugs, snails, protozoa or other invertebrate animals, bacteria, fungi, other parasitic plants or reproductive parts thereof, viruses or any organisms similar to or allied with any of the foregoing, or any infectious substances, and any genetically modified organisms for which there is reason to believe may directly or indirectly injure or cause disease or damage in any plants or parts thereof, or any processed, manufactured or other products of plants.

(q) "Quarantine" means a legal declaration by the commissioner which specifies:

(1) The plant pest or noxious weeds.

(2) The articles to be regulated.

(3) Conditions governing movement.

(4) The area or areas quarantined.

(5) Exemptions.

(r) "Regulated article" means any article of any character, as described in quarantine or other order of the commissioner carrying or capable of carrying a pest.

WV Legislature

§19-12-3. Commissioner to enforce article; powers and duties generally.

(a) It shall be the duty of the commissioner to exercise the powers and duties imposed upon him or her by this article for the purpose of protecting agricultural, horticultural and other interests of the state from plant pests or other insects and noxious weeds and for this purpose the commissioner is hereby authorized and empowered to promulgate such legislative rules, in accordance with the provisions of chapter twenty-nine-a of this code, as are necessary to effectively eradicate, suppress or control plant pests or other insects or noxious weeds or to retard the dissemination of plant pests or other insects or noxious weeds as far as may be practical and to employ or contract with such persons as may be appropriate.

(b) The commissioner is hereby authorized and empowered to cooperate with the federal government and any agencies, departments and instrumentalities thereof, the State of West Virginia and any agencies, departments, divisions or political subdivisions thereof and any other state or commonwealth and any agencies, departments or political subdivisions thereof, in order to carry out the effective administration of this article.

(c) The commissioner is empowered to enter into compliance agreements with any person engaged in growing, handling or moving articles, plants or plant products regulated by the provisions of this article.

WV Legislature

§19-12-4. Detection and abundance surveys; findings of commissioner; eradication and suppression.

The commissioner shall cause detection and abundance surveys to be made for plant pests or other insects or noxious weeds of a highly injurious nature that may be present in the state to determine the necessity for establishing control practices. When the commissioner determines that a new and dangerous plant pest or other insect or noxious weed exists within the state or that an established pest or weed requires control and the nature of the pest or weed dictates immediate action, he shall proceed with a plan of eradication or suppression.

WV Legislature

§19-12-5. Rules and regulations for eradication, etc., of plant pests and other insects and noxious weeds; enjoining violations of article or rules and regulations.

The commissioner may promulgate rules and regulations under which he may proceed to eradicate or suppress and prevent the dissemination of plant pests or other insects or noxious weeds as far as may be practical and such rules and regulations as are necessary to carry out the purpose of this article. Any person violating any of the provisions of this article or any rules or regulations promulgated thereunder may be enjoined from continuing such violation or violations upon proper application to the circuit court of any county, and a judge thereof shall not require a bond as a condition precedent to the issuance of the injunction.

WV Legislature

§19-12-6. Quarantines and other orders; plants or plant products entering state.

The commissioner shall have power to establish and maintain quarantines and to adopt other orders and rules and regulations concerning the planting, exposing, sale and transportation of all plants or plant products and regulated articles capable of carrying plant pests of a highly injurious nature in any living stage within this state. The commissioner shall also have the power to prescribe like rules and regulations pertaining to all plants or plant products entering this state. The commissioner shall have the authority to rescind quarantines and other orders when he determines the need or practicability no longer exists.

WV Legislature

§19-12-7. Infected or infested nursery stock, articles or materials subject to seizure, etc.

The commissioner is hereby authorized to stop the delivery of, destroy, stop sale, to seize, to treat or to order returned to point of origin, at the owner's expense, any nursery stock or any article or material whatsoever transported or moved within this state or being transported into this state from any place outside thereof, if such nursery stock, article or material is found by him to be infested or infected with any dangerous plant pest or other insect or noxious weed or is in violation of any part of this article whether or not there is attached a valid certificate of inspection.

WV Legislature

§19-12-8. Right of entry on premises.

The effectuate the purpose of this article, the commissioner is hereby invested with authority, during reasonable working hours, to enter upon any public or private premises, except private residences, to examine and sample all plants and trees, soil, articles, and substances which are suspected of being infested or infected with dangerous plant pests or other insects or noxious weeds in discharge of the duties prescribed by this article. No person shall obstruct or hinder him in the discharge of his duties.

WV Legislature

§19-12-9. Certificate of registration for nurserymen, dealers, etc.; refusal, suspension, etc., of certificates; annual registration fees.

It shall be unlawful for any nurseryman or dealer to expose or offer for sale, sell, deliver or give away any plants or parts of plants commonly known as nursery stock unless such person shall have first secured from the commissioner a certificate of registration. The commissioner may refuse, suspend or cancel any certificate upon satisfactory evidence that any of the provisions of this article or rules governing the sale of nursery stock within the state have been violated. The commissioner shall for each certificate of registration issued and for each renewal thereof, collect an annual registration fee in the amount of $10 for each nurseryman and $20 for each dealer. All certificates or registration shall expire on June 30 next after issue.

WV Legislature

§19-12-10. Inspection of nurseries; orders of commissioner as to eradication or control of infestation.

All stock in custody of any dealer or person shall be subject to inspection. It shall be the duty of the commissioner to provide for the annual inspection, or more often if necessary, of all nurseries within the state.

The commissioner may order the owner or any person in charge of any infested or infected nursery stock or other nursery material, article or host plants, including soil, to take such necessary measures as will eradicate or control the said infestation or infection as he may deem necessary or proper. Such owner or person in charge shall carry out the order of the commissioner within the period of time designated in the order. If such owner or person in charge shall refuse or fail to carry out any such order, the commissioner may cause to be performed such eradication or control measures as are required by the order which shall be at the expense of the owner or person in charge.

WV Legislature

§19-12-11. Nursery stock brought into state to carry inspection certificate.

It shall be unlawful to deliver, transport or ship within this state, nursery stock which has not been inspected in accordance with the provisions of this article and which does not carry an inspection certificate attached to each carload, truckload, box, bale, package or item, or to deliver, ship, send or bring any such nursery stock into this state from any place outside thereof, unless there is attached to each carload, truckload, box, bale, package or item, in a conspicuous place, a valid certificate of inspection issued by the proper official of the state, territory, district or country from which it was shipped, sent or brought, showing that such nursery stock, including soil, was found to be free from plant pests at the time of inspection.

Nursery stock brought into the state under an inspection certificate, as above required, may be sold and moved under the certificate of a registered West Virginia nurseryman or dealer or agent, but this shall not preclude inspection at any time within the state.

WV Legislature

§19-12-12. Disposition of fees collected.

The commissioner shall deposit all fees collected by him under the provisions of this article, into the state Treasury to the credit of a special fund, which funds shall be expended by the commissioner for the enforcement of this article.

WV Legislature

§19-12-13. Inspection of plants, etc., by commissioner upon request; certificate stating results of inspection.

Any person growing or possessing any plants or plant products or any other substance, material or thing may apply to the commissioner for a special inspection for the purpose of determining the presence of plant pests or noxious weeds which might prevent the movement or use of same. The expenses incurred in making the inspection shall be paid by the person making such request. The commissioner may comply with such request and shall issue to the person requesting an inspection a certificate stating the results of the inspection.

WV Legislature

§19-12-14. Permit required to sell, transport, etc., plant pests or noxious weeds.

No person may sell, barter, expose, offer for sale or move, transport, deliver, ship or offer for shipment into or within this state any plant pest or other insects or noxious weeds in any living stage without first obtaining either a federal permit, where applicable, or a state permit from the commissioner. A state permit may be issued only after it has been determined that the plant pests or other insects or noxious weeds are not injurious, are generally present already or are for scientific purposes subject to specified safeguards. If a permit, which addresses environmental safety, has been issued by the appropriate federal regulatory agency in consultation with the commissioner, no state permit is required. If the appropriate federal regulatory agency determines that a permit is unnecessary, the commissioner may, if he or she deems it necessary to protect West Virginia's agricultural interests, require a state permit.

WV Legislature

§19-12-15. Information to be furnished and inspection allowed upon request of commissioner.

The commissioner may request any person who has plants or plant products or articles or substances suspected of being infested or infected with dangerous pests in his possession to present same for inspection and to give full information as to the origin, number and destination of same, and it shall be a misdemeanor for such person to refuse to give the information upon request or to allow inspection.

WV Legislature

§19-12-16. Criminal penalties; civil penalties; duties of the prosecuting attorney.

(a) Criminal penalties. -- Any person violating any of the provisions of this article, or the rules adopted hereunder, is guilty of a misdemeanor, and, upon conviction thereof, shall be fined not less than $100 nor more than $500 for the first offense; and for the second offense, shall be fined not less than $500 nor more than $1,000, or confined in the county jail not more than six months, or both.

(b) Civil penalties. --

(1) Any person violating a provision of this article or rules adopted hereunder may be assessed a civil penalty by the commissioner. In determining the amount of any civil penalty, the commissioner shall give due consideration to the history of previous violations of any person, the seriousness of the violation, including any irreparable harm to the environment, any hazards to the health and safety of the public and any economic damages to the public and the demonstrated good faith of any person charged in attempting to achieve compliance with the article before and after written notification of the violation.

(2) The commissioner may assess a penalty of not more than $500 for each first offense or nonserious violation, and not more than $1,000 for a serious violation, or for a repeat or intentional violation.

(3) The civil penalty is payable to the State of West Virginia and is collectible in any manner now or hereafter provided for collection of debt. If any person liable to pay the civil penalty neglects or refuses to pay the same, the amount of the civil penalty, together with interest at ten percent, is a lien in favor of the State of West Virginia upon the property, both real and personal, of such a person after the same has been entered and docketed to record in the county where such property is situated. The clerk of the county, upon receipt of the certified copy of such, shall enter same to record without requiring the payment of costs as a condition precedent to recording.

(4) The commissioner shall promulgate legislative rules, in accordance with the provisions of chapter twenty-nine-a of this code, to provide for the implementation and assessment of civil penalties pursuant to subsection (b) of this section.

(5) The commissioner shall promulgate legislative rules, in accordance with the provisions of chapter twenty-nine-a of this code, to permit consent agreements or negotiated settlements for the civil penalties which may be assessed pursuant to the provisions of this section.

(c) No state court may allow for the recovery of damages for any administrative action taken, if the court finds that there was a probable cause for such action.

(d) It shall be the duty of the prosecuting attorney of the county in which the violation occurred to represent the Department of Agriculture, to institute proceedings and to prosecute the person charged with such violation.

WV Legislature

§19-12-17. Severability.

If any provision of this article or the application thereof to any person or circumstance is held invalid, such invalidity shall not affect other provisions or applications of the article which can be given effect without the invalid provision or application and to this end the provisions of this article are declared to be severable.

WV Legislature

§19-12-18. Confidentiality of trade secrets.

The commissioner may not make public information which contains or relates to trade secrets, commercial or financial information obtained from a person which is privileged or confidential information: Provided, That when the information is necessary to carry out the provisions of this article, this information may be revealed, subject to a protective order, to any federal, state or local agency consultant; or may be revealed, subject to a protective order, at a closed hearing or in findings of fact issued by the commissioner.

WV Legislature