WEST VIRGINIA CODE CHAPTER 19 ARTICLE 12D

WV Legislature

§19-12D-1. Title.

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

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

The purpose of this article is to provide for the suppression or control of noxious weeds which have proven to be or which scientific evidence indicates may become detrimental factors affecting the public health or economy of the state. The Legislature finds that certain plant species may spread to the extent they become detrimental to agricultural crops, other desirable plants, livestock, waterways, land, public health and/or the general economy and that certain noxious weeds, not yet known to occur in West Virginia, may be inadvertently introduced and that procedures for locating and eliminating such infestations need to be established. Therefore, it is deemed necessary, in the public interest, to provide authority for the surveillance of, suppression and control of noxious weeds.

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§19-12D-3. Definitions.

As used in this article:

(a) "Certificate" means a document issued by the commissioner indicating a regulated article is free of noxious weeds.

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

(c) "Infested" means the establishment of a noxious weed or exposure to such weed in a way creating reasonable certainty that establishment will occur.

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

(e) "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.

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

(g) "Person" means any individual or combination of individuals, partnership, corporation, company, society, association, firm, or other business entity and each officer, agent or employee thereof; the state and federal government and any department, agency, or subdivision thereof; or any other entity.

(h) "Quarantine" means a legal declaration by the commissioner specifying:

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

(2) The articles to be regulated.

(3) The conditions governing movement.

(4) Exemptions.

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

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

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

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

(b) In issuing such regulations, the commissioner shall give consideration to pertinent research findings and recommendations of other agencies of the state, the federal government, and other reliable sources.

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

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

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

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§19-12D-6. Quarantines.

When a plant is declared to be noxious under section five of this article, the commissioner shall, subsequent to the declaration of a quarantine, limit the application of rules and regulations pertinent to such quarantine to the infested portion of the state and appropriate environs, which would be known as the regulated area and may, without further hearing, extend the regulated area to include additional portions of the state upon publication of a notice to that effect in a newspaper distributed in the extended area or by direct written notice to those concerned.

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

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

(b) No person shall move, transport, deliver, ship or offer for shipment into or within this state any noxious weed without first obtaining a permit from the commissioner and such permit shall be issued only after it has been determined that the noxious weed is generally present throughout the state or is for scientific purposes subject to prescribed safeguards: Provided, That the division shall take final action upon all completed permit applications within thirty days of receipt if the application is uncontested, or within ninety days if the application is contested.

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

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§19-12D-8. Cooperation with federal and state agencies; drug producing plants declared noxious; establishment of program for eradication of multiflora rose.

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

(b) The commissioner is authorized to cooperate in any way with any person in programs designed to suppress or control noxious weeds already widely distributed in the state without first declaring a quarantine.

(c) The commissioner may, upon request, cooperate with federal and state agencies and political subdivisions in the enforcement of the narcotic laws to the extent of preventing the spread of and destroying marijuana or hemp, Cannabis spp., or other plants which produce drugs which have been condemned for destruction under the narcotics laws: Provided, That nothing herein shall authorize the commissioner to participate in a criminal investigation or prosecution under the Controlled Substances Act or federal narcotic laws. Such drug producing plants are hereby declared noxious.

(d) It is hereby declared to be the policy of the Legislature to control, and ultimately to eradicate, in West Virginia the noxious weed known as multiflora rose, which, having been introduced into West Virginia, multiplied and infested fields and meadows to the point where it defies eradication or control by means available to the average landowner.

The commissioner shall take any and all action necessary to eradicate the multiflora rose, Rosa multiflora, including, but not limited to, the commissioner's initiating a research and testing program.

The commissioner is therefore authorized to initiate a research and testing program for the control, and ultimately the eradication, of multiflora rose on suitable lands, public or private, which are infested by that noxious weed. The program may include control of any and all means by which multiflora rose is spread, whether by plant, animal or fowl, or by any other means. If the land to be used for the program is privately owned, then the owner must give his consent in writing to such use. In selecting the site for, and in conducting the program on the land the commissioner shall solicit the opinion of persons and groups affected by, or concerned about the proliferation of multiflora rose.

In conducting the program the commissioner shall use only such chemicals and other means that have been tested and determined to be reasonably safe for the purposes stated herein, and shall take all due care to avoid injury and damage to plant, animal and human life and health and to all structures of any kind on or near the site of the test program.

All agencies of state government and its political subdivisions shall cooperate with the commissioner for the purposes stated herein, and the commissioner shall use any public moneys available or appropriated for the pilot program. The commissioner may also use, as part of a cost- sharing program, any moneys contributed voluntarily by landowners,

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including persons whose land may be used for the program. The results of such programs shall be reported to the Legislature at its next regular session.

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§19-12D-9. Right of entry.

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

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§19-12D-10. Review of actions of commissioner.

Any person aggrieved by any action of the commissioner may obtain a review thereof by filing in a court of competent jurisdiction, within thirty days of notice of the action, a written petition praying that the action of the commissioner be enjoined or set aside. A copy of such petition shall forthwith be delivered to the commissioner and within thirty days thereafter the commissioner shall certify and file in the court a transcript of any record pertaining thereto, including a transcript of evidence received, whereupon the court shall have jurisdiction to affirm, set aside, or modify the action of the commissioner, except that the findings of the commissioner as to the facts, if supported by substantial evidence, shall be conclusive.

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§19-12D-11. Penalties.

Any person violating any of the provisions of this article, or the rules and regulations adopted thereunder, shall be deemed guilty of a misdemeanor, and, upon conviction thereof, shall be fined not less than $10 nor more than $100.

It shall be the duty of the prosecuting attorney of the county in which the violation occurred to represent the commissioner, to institute proceedings and to prosecute the person charged with such violation. In the event a county or prosecuting attorney refuses to act on behalf of the commissioner, the Attorney General shall so act.

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§19-12D-12. Importation or sale of multiflora rose unlawful.

Notwithstanding any other provisions of this code to the contrary, it is unlawful for any person, firm or corporation to import or otherwise bring or move into this state or sell or offer or expose for sale or have in possession with intent to sell or offer or expose for sale in this state the noxious weed known as multiflora rose, rosa multiflora. Any person, firm or corporation violating the provisions of this section is guilty of a misdemeanor, and, upon conviction thereof, shall be fined not less than $1,000, or confined in jail not more than one year or both fined and imprisoned. In addition, the commissioner may obtain injunctive relief, along with a civil penalty of $1,000, for any violation of this section in the circuit court of any county wherein such violation occurs. The commissioner shall not under any circumstances grant any permit for the sale in this state of or importation or other movement into this state of multiflora rose, rosa multiflora. The provisions of this section are in addition to the powers, duties and authority given to the commissioner elsewhere in this article and do not limit or abrogate in any way the powers and authority given the commissioner elsewhere in this article, except that the criminal penalties of this section apply to violations of this section and the penalty provisions of section eleven of this article do not apply thereto.

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