

WEST VIRGINIA LEGISLATURE

REGULAR SESSION, 1939

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ENROLLED

HOUSE BILL No. 139

(By Mr. Brotherton)

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PASSED March 10, 1939

In Effect ninety days from Passage

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House Bill No. 139

(BY MR. BROTHERTON)

[Passed March 10, 1939; in effect ninety days from passage.]

AN ACT to amend and reenact sections twenty-five, twenty-six and twenty-seven, article twelve, chapter nineteen of the code of West Virginia, one thousand nine hundred thirty-one, changing the registration fee for nurserymen and dealers in nursery stock and providing for additional regulations for agents, and to amend said article twelve, by the addition thereto of a new section, to be designated section thirty-two, pertaining to the sale of nursery stock.

Be it enacted by the Legislature of West Virginia:

That sections twenty-five, twenty-six and twenty-seven, article twelve, chapter nineteen of the code of West Virginia, one thousand nine hundred thirty-one, be amended and reenacted, and that section thirty-two, added thereto, be enacted, to read as follows:

Section 25. *Registration of Nurserymen.* It shall be un-

2 lawful for any person, either for himself or as agent for
3 another, to offer for sale, sell, deliver or give away, within
4 the bounds of this state, any plants known as nursery stock,
5 unless such person shall have first procured from the com-
6 missioner a certificate of registration, which certificate shall
7 contain such rules and regulations concerning the sale of
8 nursery stock as the commissioner may prescribe, who shall
9 have full power, and is hereby authorized and required, to
10 cancel and withdraw any certificate upon satisfactory evidence
11 that any rules and regulations governing the sale of nursery
12 stock within this state have been violated by the holder of the
13 same. The commissioner shall not issue any certificate of
14 registration except on the filing with the commissioner of a
15 certified copy of a certificate of inspection, as specified in
16 sections twenty-one and twenty-four of this article, accom-
17 panied by a fee of five dollars from all resident nurserymen;
18 all other nurserymen shall pay a fee of fifteen dollars for
19 each nursery registration. All such certificates as may be
20 granted shall expire and become null and void June thirtieth
21 next succeeding the issuance thereof. Any person, either
22 for himself or as agent for another, who shall sell, offer for

23 sale, deliver or give away any plants, commonly known as
24 nursery stock without exhibiting a copy of the certificate of
25 registration as herein provided for to each and every person
26 whom he shall sell, offer for sale, deliver or give away any
27 such plants, shall be guilty of a misdemeanor, and, upon con-
28 viction thereof, shall be fined as provided in section thirty
29 of this article. This section shall not be construed so as to
30 prevent a neighbor from giving away a plant or tree which
31 is not from a nursery.

Sec. 26. *Dealers' Registration Certificates.* Every dealer
2 engaged in selling or soliciting orders for nursery stock
3 within this state shall secure a dealer's certificate by furnish-
4 ing a sworn affidavit that he will buy and sell only stock
5 which has been duly inspected and certified by an official state
6 inspector, and that he will maintain with the commissioner
7 a list of all sources from which he secures his stock, accom-
8 panied by a fee of five dollars from all resident dealers in
9 nursery stock for each store or place of business operated; all
10 other dealers shall pay a fee of fifteen dollars for each regis-
11 tration. Such certificate shall expire and become null and void
12 June thirtieth next succeeding the date of issuance thereof.

Sec. 27. *Salesmen; Certificates of Authority.* Any person
2 growing or dealing in nursery stock, before receiving such
3 certificate of registration, shall file with the commissioner
4 the names and addresses of all traveling salesmen or agents
5 representing such person in this state, and shall subsequently
6 file with the commissioner the names and addresses of any
7 other traveling salesmen or agents when so employed. The
8 commissioner shall issue an agent's permit to such repre-
9 sentatives upon the payment of one dollar, and it shall be
10 unlawful for any party to solicit orders without such a permit.
11 All permits shall expire and become null and void June
12 thirtieth next succeeding the issuance thereof, but may be
13 revoked by the commissioner for cause. For the purpose of
14 this section the term "agent" shall mean any person who
15 solicits orders for nursery stock but who does not keep the
16 nursery stock on hands for which an order is written; those
17 having nursery stock in their possession and making direct
18 sales therefrom shall be classed as dealers in nursery stock,
19 and shall be subject to the provisions of section twenty-six.
20 Any person, firm or corporation acting as an agent for an-
21 other in the sale of nursery stock in this state shall carry

22 with him, at all times when engaged in selling such stock,
23 a certificate in writing signed by his principal, and properly
24 acknowledged, and his agent's permit showing his authority
25 to act as such an agent, and upon request shall exhibit the
26 same to the purchaser and shall leave with the purchaser a
27 copy of the purchase contract.

Sec. 32. *Dealers Furnish Tags; Cost of Tags.* Certificates
2 or permits required to be attached to each parcel of nursery
3 stock delivered or given away by a nurseryman as provided
4 in section twenty-four, and official tags required to be attached
5 to all shipments of nursery stock from without the state, as
6 provided in the same section, shall refer to a tag, the forms
7 of which shall be prescribed and furnished by the commis-
8 sioner, as provided in sections twenty-four and twenty-five,
9 and shall be furnished for the fees prescribed by the com-
10 missioner but at no time shall such fees exceed two and
11 one-half cents for each tag so issued. Shipping tags may be
12 issued without cost for single non-commercial shipments or
13 for commercial shipments passing through the state. Ship-
14 ments consigned to the commissioner, however, do not need
15 such authorization as herein provided.

16 It shall be unlawful for any dealer in nursery stock to de-
17 liver or give away plants commonly known as nursery stock
18 which do not carry plainly attached to each lot a similar tag
19 as required of nurserymen in section twenty-four.

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

E. O. Wiseman

Chairman Senate Committee

Wm. B. Baker

Chairman House Committee

Originated in the *House of Delegates*

Takes effect *ninety days from* passage.

Abner J. Miller

Clerk of the Senate

Wm. S. Hall

Clerk of the House of Delegates

Wm. M. Brown

President of the Senate

James H. Thomas

Speaker House of Delegates

The within *approved* this the *16th*

day of *March*, 1939.

James H. Thomas

Governor.



Filed in the office of the Secretary of State of West Virginia. **MAR 17 1939**

Wm. S. O'BRIEN, Secretary of State