WEST VIRGINIA LEGISLATURE
REGULAR SESSION, 1967

ENROLLED
SENATE BILL NO. 167

(By Mr. Baker)

PASSED March 5, 1967
In Effect Passage

FILED IN THE OFFICE
ROBERT D. BAILEY
SECRETARY OF STATE
THIS DATE 3-20-67
AN ACT to repeal article twelve, chapter nineteen of the code of West Virginia, one thousand nine hundred thirty-one, as amended, and to enact in lieu thereof a new article twelve, relating to the protection of agriculture and horticulture, including all field crops, vegetables, trees, shrubs, vines, florist and nursery stock and all other plants and parts, or products thereof, by preventing the introduction into and dissemination within the state of insect pests and plant diseases and by providing for their repression and control; revising, consolidating and changing the law relating thereto; defining the powers and duties of the commissioner of agriculture relating thereto; providing penalties; and repealing present laws.
Be it enacted by the Legislature of West Virginia:

That article twelve, chapter nineteen of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be repealed and that a new article twelve be enacted in lieu thereof to read as follows:

ARTICLE 12. THE PROTECTION OF AGRICULTURE AND HORTICULTURE BY PREVENTING THE INTRODUCTION INTO AND DISSEMINATION WITHIN THE STATE OF INSECT PESTS AND PLANT DISEASES AND BY PROVIDING FOR THEIR REPRESSION AND CONTROL.

§19-12-1. Title.

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

§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) "Department" means the department of agriculture of the state of West Virginia.
(b) "Commissioner" means the commissioner of agriculture of the state of West Virginia and his duly authorized representatives.

(c) "Agent" means any person soliciting orders for nursery stock under the partial or full control of a nurseryman or dealer.

(d) "Dealer" means any person not a grower of nursery stock, who buys, receives on consignment or otherwise acquires and has in his possession nursery stock for the purpose of offering or exposing for sale, reselling, reshipping or distributing same. Each separate location shall constitute a dealership.

(e) "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.

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

(g) "Nursery Stock" means all trees, shrubs and
woody vines, including ornamentals, bush fruits, grape-vines, 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 regulation to be so included whenever he 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.

(h) "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.

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

(j) "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, which can directly or indirectly injure or cause disease or damage in any plants or parts thereof, or any processed, manufactured or other products of plants.

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

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

(m) "Certificate" means a document issued or authorized by the commissioner indicating that a regulated article is not contaminated with a pest.
70 (n) "Permit" means a document issued or authorized
71 by the commissioner to provide for a movement of regu-
72 lated articles to restricted destinations for limited handl-
73 ing, utilization or processing.

§19-12-3. Commissioner to enforce article; rules and regula-
    tions.

(a) It shall be the duty of the commissioner to exercise
2 the powers and duties imposed upon him by this article
3 for the purpose of protecting agricultural, horticultural
4 and other interests of the state from plant pests or other
5 insects and for this purpose he is hereby authorized and
6 empowered to promulgate such rules and regulations as
7 are necessary to effectively eradicate, suppress or control
8 plant pests or other insects or to retard the dissemination
9 of plant pests or other insects as far as may be practical
10 and to employ or contract with such persons as may be
11 appropriate.

(b) The commissioner is hereby authorized and em-
12 powered to cooperate with the federal government and
13 any agencies, departments and instrumentalities thereof,
14 the state of West Virginia and any agencies, departments
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.

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

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

§19-12-5. Rules and regulations of commissioner for eradica-
tion, etc., of plant pests and other insects; penalties;
injunctions.

The commissioner may promulgate rules and regula-
tions under which he may proceed to eradicate or sup-
press and prevent the dissemination of plant pests or
4 other insects as far as may be practical and such rules
5 and regulations as are necessary to carry out the purpose
6 of this article. Any person violating any of the provisions
7 of this article or any rules or regulations promulgated
8 thereunder may be enjoined from continuing such viola-
9 tion or violations upon proper application to the circuit
10 court of any county, and a judge thereof shall not require
11 a bond as a condition precedent to the issuance of the
12 injunction.

§19-12-6. Quarantines, other orders, rules and regulations.

The commissioner shall have power to establish and
2 maintain quarantines and to adopt other orders and rules
3 and regulations concerning the planting, exposing, sale
4 and transportation of all plants or plant products and
5 regulated articles capable of carrying plant pests of a
6 highly injurious nature in any living stage within this
7 state. The commissioner shall also have the power to
8 prescribe like rules and regulations pertaining to all
9 plants or plant products entering this state. The commis-
10 sioner shall have the authority to rescind quarantines
11 and other orders when he determines the need or prac-
12 ticability no longer exists.
§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 is in violation of any part of this article whether or not there is attached a valid certificate of inspection.

§19-12-8. Right of entry on premises.

To 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 in discharge of the duties prescribed by this article. No person shall obstruct or hinder him in the discharge of his duties.
§19-12-9. Certificate of registration required of nurserymen, dealers, or agents to sell, etc., nursery stock.

It shall be unlawful for any nurseryman, dealer or agent 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 and regulations governing the sale of nursery stock within this 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 ten dollars ($10.00) for each nurseryman, twenty dollars ($20.00) for each dealer and two dollars ($2.00) for each agent of such nurseryman or dealer. All certificates or registration shall expire on the thirtieth day of June next after issue.

§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 oftener 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 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.

§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 de-
deliver, ship, send or bring any such nursery stock into this
state from any place outside thereof, unless there is at-
tached to each carload, truckload, box, bale, package or
item, in a conspicuous place, a valid certificate of inspec-
tion 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 in-
spection.

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

§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 ex-
pended by the commissioner for the enforcement of this
article.
§19-12-13. Commissioner may inspect plants, etc., on request.

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 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.

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

No person shall 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 in any living stage without first obtaining a permit from the commissioner. Such permit shall be issued only after it has been determined that the plant pests or other insects are not injurious, are generally present already or are for scientific purposes subject to specified safeguards.
§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.

§19-12-16. Penalty for violation of article, rules and regulations.

Any person violating any of the provisions of this article, or the rules or regulations adopted thereunder, shall be deemed guilty of a misdemeanor and upon conviction thereof, shall be fined not less than ten dollars ($10.00) nor more than one hundred dollars ($100.00).

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

William Tompkins
Chairman Senate Committee

Clayto C. Davidson
Chairman House Committee

Originated in the Senate.

To take effect from passage.

Howard T. W. Carson
Clerk of the Senate

Clerk of the House of Delegates

Howard T. Carson
President of the Senate

N. F. S. White
Speaker House of Delegates

The within approved this the 17th day of March, 1967.

Hulett C. Smith
Governor