

WEST VIRGINIA LEGISLATURE

REGULAR SESSION, 1967

ENROLLED

SENATE BILL NO. 167

(By Mr. S. Barker)

PASSED March 8 1967

In Effect June Passage

FILED IN THE OFFICE
ROBERT D. BAILEY
SECRETARY OF STATE
THIS DATE 3-20-67

#167

ENROLLED

Senate Bill No. 167

(By MRS. BAKER)

[Passed March 9, 1967; in effect from passage.]

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article twelve, chapter nineteen of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be repealed and that a new article twelve be enacted in lieu thereof to read as follows: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

§19-12-2. Definitions.

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

5 (a) "Department" means the department of agricul-
6 ture of the state of West Virginia.

7 (b) "Commissioner" means the commissioner of agri-
8 culture of the state of West Virginia and his duly au-
9 thorized representatives.

10 (c) "Agent" means any person soliciting orders for
11 nursery stock under the partial or full control of a nurs-
12 eryman or dealer.

13 (d) "Dealer" means any person not a grower of nurs-
14 ery stock, who buys, receives on consignment or other-
15 wise acquires and has in his possession nursery stock for
16 the purpose of offering or exposing for sale, reselling, re-
17 shipping or distributing same. Each separate location
18 shall constitute a dealership.

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

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

27 (g) "Nursery Stock" means all trees, shrubs and

28 woody vines, including ornamentals, bush fruits, grape-
29 vines, fruit trees and nut trees, whether cultivated, native
30 or wild, and all buds, grafts, scions, fruit pits and cuttings
31 from such plants. It also means sod, including sod plugs
32 and sod-producing plants, and such herbaceous plants,
33 including strawberry plants, narcissus plants and narcis-
34 sus bulbs as the commissioner declares by regulation to be
35 so included whenever he considers control of the move-
36 ment of such plants and bulbs necessary for the control
37 of any destructive plant pest. Florists' or greenhouse
38 plants for inside culture or use, unless declared other-
39 wise by the commissioner, as herein authorized, shall not
40 be considered nursery stock, except that all woody plants,
41 whether greenhouse or field grown, if for outside plant-
42 ing, are hereby defined as nursery stock.

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

47 (i) "Plant and Plant Products" means trees, shrubs,
48 vines; forage, fiber, cereal plants and all other plants;

49 cuttings, grafts, scions, buds and all other parts of plants;
50 and fruit, vegetables, roots, bulbs, seeds, wood, lumber
51 and all other parts of plants and plant products.

52 (j) "Plant Pest" means any living stage of: **Any in-**
53 sects, mites, nematodes, slugs, snails, protozoa or other
54 invertebrate animals, bacteria, fungi, other parasitic
55 plants or reproductive parts thereof, viruses or any or-
56 ganisms similar to or allied with any of the foregoing,
57 or any infectious substances, which can directly or in-
58 directly injure or cause disease or damage in any plants
59 or parts thereof, or any processed, manufactured or other
60 products of plants.

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

64 (l) "Regulated article" means any article of any char-
65 acter, as described in the quarantine or other order of the
66 commissioner carrying or capable of carrying a pest.

67 (m) "Certificate" means a document issued or author-
68 ized by the commissioner indicating that a regulated ar-
69 ticle 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.

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

16 or political subdivisions thereof and any other state or
17 commonwealth and any agencies, departments or political
18 subdivisions thereof, in order to carry out the effective
19 administration of this article.

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

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

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

The commissioner may promulgate rules and regulations under which he may proceed to eradicate or suppress 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
2 delivery of, destroy, stop sale, to seize, to treat or to order
3 returned to point of origin, at the owner's expense, any
4 nursery stock or any article or material whatsoever trans-
5 ported or moved within this state or being transported
6 into this state from any place outside thereof, if such
7 nursery stock, article or material is found by him to be
8 infested or infected with any dangerous plant pest or other
9 insect or is in violation of any part of this article whether
10 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 commis-
2 sioner is hereby invested with authority, during reason-
3 able working hours, to enter upon any public or private
4 premises, except private residences, to examine and
5 sample all plants and trees, soil, articles, and substances
6 which are suspected of being infested or infected with
7 dangerous plant pests or other insects in discharge of the
8 duties prescribed by this article. No person shall obstruct
9 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
2 agent to expose or offer for sale, sell, deliver or give away
3 any plants or parts of plants commonly known as nursery
4 stock unless such person shall have first secured from the
5 commissioner a certificate of registration. The commis-
6 sioner may refuse, suspend or cancel any certificate upon
7 satisfactory evidence that any of the provisions of this
8 article or rules and regulations governing the sale of nurs-
9 ery stock within this state have been violated. The com-
10 missioner shall for each certificate of registration issued
11 and for each renewal thereof, collect an annual registra-
12 tion fee in the amount of ten dollars (\$10.00) for each
13 nurseryman, twenty dollars (\$20.00) for each dealer and
14 two dollars (\$2.00) for each agent of such nurseryman or
15 dealer. All certificates or registration shall expire on the
16 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

2 subject to inspection. It shall be the duty of the com-
3 missioner to provide for the annual inspection, or oftener
4 if necessary, of all nurseries within the state.

5 The commissioner may order the owner or any person
6 in charge of any infested or infected nursery stock or
7 other material, article or host plants, including soil, to
8 take such necessary measures as will eradicate or control
9 the said infestation or infection as he may deem neces-
10 sary or proper. Such owner or person in charge shall
11 carry out the order of the commissioner within the period
12 of time designated in the order. If such owner or person
13 in charge shall refuse or fail to carry out any such order,
14 the commissioner may cause to be performed such eradi-
15 cation or control measures as are required by the order
16 which shall be at the expense of the owner or person in
17 charge.

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

It shall be unlawful to deliver, transport or ship within
2 this state, nursery stock which has not been inspected in
3 accordance with the provisions of this article and which

4 does not carry an inspection certificate attached to each
5 carload, truckload, box, bale, package or item, or to de-
6 liver, ship, send or bring any such nursery stock into this
7 state from any place outside thereof, unless there is at-
8 tached to each carload, truckload, box, bale, package or
9 item, in a conspicuous place, a valid certificate of inspec-
10 tion issued by the proper official of the state, territory,
11 district or country from which it was shipped, sent or
12 brought, showing that such nursery stock, including soil,
13 was found to be free from plant pests at the time of in-
14 spection.

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

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

The commissioner shall deposit all fees collected by him
2 under the provisions of this article, into the state treasury
3 to the credit of a special fund, which funds shall be ex-
4 pended by the commissioner for the enforcement of this
5 article.

§19-12-13. Commissioner may inspect plants, etc., on request.

Any person growing or possessing any plants or plant
2 products or any other substance, material or thing may
3 apply to the commissioner for a special inspection for the
4 purpose of determining the presence of plant pests which
5 might prevent the movement or use of same. The ex-
6 penses incurred in making the inspection shall be paid
7 by the person making such request. The commissioner
8 may comply with such request and shall issue to the per-
9 son requesting an inspection a certificate stating the re-
10 sults of the inspection.

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

No person shall sell, barter, expose, offer for sale or
2 move, transport, deliver, ship or offer for shipment into
3 or within this state any plant pest or other insects in any
4 living stage without first obtaining a permit from the com-
5 missioner. Such permit shall be issued only after it has
6 been determined that the plant pests or other insects are
7 not injurious, are generally present already or are for
8 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
2 plants or plant products or articles or substances sus-
3 pected of being infested or infected with dangerous pests
4 in his possession to present same for inspection and to
5 give full information as to the origin, number and destina-
6 tion of same, and it shall be a misdemeanor for such per-
7 son to refuse to give the information upon request or to
8 allow inspection.

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

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

6 It shall be the duty of the prosecuting attorney of the
7 county in which the violation occurred to represent the
8 department of agriculture, to institute proceedings and to
9 prosecute the person charged with such violation.

§19-12-17. Severability.

If any provision of this article or the application thereof
2 to any person or circumstance is held invalid, such in-
3 validity shall not affect other provisions or applications
4 of the article which can be given effect without the in-
5 valid provision or application and to this end the pro-
6 visions of this article are declared to be severable.

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

William Tompa
Chairman Senate Committee

Clayton C. Davidson
Chairman House Committee

Originated in the Senate.

To take effect from passage.

Howard Myers
Clerk of the Senate

A. Blankenship
Clerk of the House of Delegates

Howard W. Carson
President of the Senate

H. L. White
Speaker House of Delegates

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

Hubert C. Smith
Governor



PRESENTED TO THE
GOVERNOR

Date 3/17/67

Time 9:30 am