WEST VIRGINIA LEGISLATURE
REGULAR SESSION, 1972

ENROLLED

HOUSE BILL No. 594

(By Mr. Burke)

PASSED FEBRUARY 23, 1972

In Effect 90 DAYS FROM Passage
AN ACT to amend and reenact sections two, three, four, five, seven, eight, ten, thirteen and fourteen, article twelve, chapter nineteen of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to insect pests, plant diseases and noxious weeds.

Be it enacted by the Legislature of West Virginia:

That sections two, three, four, five, seven, eight, ten, thirteen and fourteen, article twelve, chapter nineteen of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be amended and reenacted to read as follows:

ARTICLE 12. INSECT PESTS, PLANT DISEASES AND NOXIOUS WEEDS.

§19-12-2. Definitions.

1 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:

2 (a) "Department" means the department of agriculture of the state of West Virginia.

3 (b) "Commissioner" means the commissioner of agri-
culture 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, re-shipping 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, 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 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 lumber 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.

(n) "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.

(o) "Noxious weed" means rosa multiflora commonly known as multiflora rose or parts thereof; cannabis sativa L. commonly known as marihuana or any parts thereof and opium poppy or any parts thereof.

(p) "Infected area" means any area of uncontrolled growth of plant pests, other insects or noxious weeds, and any area of cultivated or controlled growth of cannabis sativa L., commonly known as marihuana, or of opium poppy.

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

(1) The noxious weeds.

(2) The articles to be regulated.

(3) Conditions governing movement.

(4) The area or areas quarantined.

(5) Exemptions.
§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 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 he is hereby authorized and empowered to promulgate such rules and regulations 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 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 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.

§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.

§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.

§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 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.

§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 commis-
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.

§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.

§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 or noxious weeds 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 or noxious weeds are not injurious, are generally present already or are for scientific purposes subject to specified safeguards.
The Joint Committee on Enrolled Bills hereby certifies that the foregoing bill is correctly enrolled.

[Signature]
Chairman Senate Committee

[Signature]
Chairman House Committee

Originated in the House.

In effect ninety days from passage.

[Signature]
Clerk of the Senate

[Signature]
Clerk of the House of Delegates

[Signature]
President of the Senate

[Signature]
Speaker House of Delegates

The within _______ approved this the ______th day of ________, 1972.

[Signature]
Governor