

WEST VIRGINIA LEGISLATURE

REGULAR SESSION, 1972

ENROLLED

HOUSE BILL No. 594

(By Mr. BURKE)

PASSED FEBRUARY 23, 1972

In Effect 90 DAYS FROM Passage



FILED IN THE OFFICE
JOHN D. HOSKINS, JR.
SECRETARY OF STATE
THIS DATE 3-2-72

594

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House Bill No. 594

(By MR. BURKE)

[Passed February 23, 1972; in effect ninety 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 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 autho-
9 rized representatives.

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

13 (d) "Dealer" means any person not a grower of nur-
14 sery 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 shall
18 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 on
22 or in which nursery stock is being fumigated, treated,
23 packed or stored or otherwise prepared or offered for sale
24 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 woody
28 vines, including ornamentals, bush fruits, grapevines, fruit
29 trees and nut trees, whether cultivated, native or wild,
30 and all buds, grafts, scions, fruit pits and cuttings from
31 such plants. It also means sod, including sod plugs and
32 sod-producing plants, and such herbaceous plants, includ-
33 ing strawberry plants, narcissus plants and narcissus
34 bulbs as the commissioner declares by regulation to be so
35 included whenever he considers control of the movement
36 of such plants and bulbs necessary for the control of any
37 destructive plant pest. Florists' or greenhouse plants for
38 inside culture or use, unless declared otherwise by the
39 commissioner, as herein authorized, shall not be consider-
40 ed nursery stock, except that all woody plants, whether
41 greenhouse or field grown, if for outside planting, are
42 hereby defined as nursery stock.

43 (h) "Person" means any individual or combination of
44 individuals, partnership, corporation, company, society, as-
45 sociation, 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 lumber and all other

50 parts of plants; and fruit, vegetables, roots, bulbs, seeds,
51 wood, lumber and all other parts of plants and plant pro-
52 ducts.

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

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

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

68 (m) "Certificate" means a document issued or autho-
69 rized by the commissioner indicating that a regulated
70 article is not contaminated with a pest.

71 (n) "Permit" means a document issued or authorized
72 by the commissioner to provide for a movement of reg-
73 ulated articles to restricted destinations for limited han-
74 dling, utilization or processing.

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

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

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

- 86 (1) The noxious weeds.
- 87 (2) The articles to be regulated.
- 88 (3) Conditions governing movement.
- 89 (4) The area or areas quarantined.
- 90 (5) Exemptions.

§19-12-3. Commissioner to enforce article; powers and duties generally.

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

13 (b) The commissioner is hereby authorized and em-
14 powered to cooperate with the federal government and
15 any agencies, departments and instrumentalities thereof,
16 the state of West Virginia and any agencies, departments
17 or political subdivisions thereof and any other state or
18 commonwealth and any agencies, departments or political
19 subdivisions thereof, in order to carry out the effective
20 administration of this article.

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

1 The commissioner shall cause detection and abundance
2 surveys to be made for plant pests or other insects or
3 noxious weeds of a highly injurious nature that may be
4 present in the state to determine the necessity for estab-
5 lishing control practices. When the commissioner deter-
6 mines that a new and dangerous plant pest or other insect
7 or noxious weed exists within the state or that an estab-
8 lished pest or weed requires control and the nature of the
9 pest or weed dictates immediate action, he shall proceed
10 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.

1 The commissioner may promulgate rules and regula-
2 tions under which he may proceed to eradicate or suppress

3 and prevent the dissemination of plant pests or other in-
4 sects or noxious weeds as far as may be practical and such
5 rules and regulations as are necessary to carry out the
6 purpose of this article. Any person violating any of the
7 provisions of this article or any rules or regulations pro-
8 mulgated thereunder may be enjoined from continuing
9 such violation or violations upon proper application to the
10 circuit court of any county, and a judge thereof shall not
11 require a bond as a condition precedent to the issuance of
12 the injunction.

§19-12-7. Infected or infested nursery stock, articles or materials subject to seizure, etc.

1 The commissioner is hereby authorized to stop the de-
2 livery 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 into
6 this state from any place outside thereof, if such nursery
7 stock, article or material is found by him to be infested or
8 infected with any dangerous plant pest or other insect or
9 noxious weed or is in violation of any part of this article
10 whether or not there is attached a valid certificate of in-
11 spection.

§19-12-8. Right of entry on premises.

1 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 sam-
5 ple 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 or noxious weeds
8 in discharge of the duties prescribed by this article. No
9 person shall obstruct or hinder him in the discharge of
10 his duties.

§19-12-10. Inspection of nurseries; orders of commissioner as to eradication or control of infestation.

1 All stock in custody of any dealer or person shall be
2 subject to inspection. It shall be the duty of the commis-

3 sioner to provide for the annual inspection, or more often
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 nursery material, article or host plants, in-
8 cluding soil, to take such necessary measures as will
9 eradicate or control the said infestation or infection as he
10 may deem necessary or proper. Such owner or person in
11 charge shall carry out the order of the commissioner
12 within the period of time designated in the order. If such
13 owner or person in charge shall refuse or fail to carry out
14 any such order, the commissioner may cause to be per-
15 formed such eradication or control measures as are re-
16 quired by the order which shall be at the expense of the
17 owner or person in charge.

**§19-12-13. Inspection of plants, etc., by commissioner upon re-
quest; certificate stating results of inspection.**

1 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 or
5 noxious weeds which might prevent the movement or
6 use of same. The expenses incurred in making the inspec-
7 tion shall be paid by the person making such request.
8 The commissioner may comply with such request and
9 shall issue to the person requesting an inspection a cer-
10 tificate stating the results of the inspection.

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

1 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 or
4 noxious weeds in any living stage without first obtaining
5 a permit from the commissioner. Such permit shall be
6 issued only after it has been determined that the plant
7 pests or other insects or noxious weeds are not injurious,
8 are generally present already or are for scientific purposes
9 subject to specified safeguards.

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

James M. Bruce

Chairman Senate Committee

Phyllis Rutledge

Chairman House Committee

Originated in the House.

In effect ninety days from passage.

Howard E. Carson

Clerk of the Senate

C. A. Blankenship

Clerk of the House of Delegates

Edw. Keast

President of the Senate

Lewis R. H. Harris

Speaker House of Delegates

The within *approved* this the *29th*
day of *February*, 1972.

Rich A. Shaver Jr.

Governor



2/25/72

10:55 a.m.

MAR 23 33 PM '72

OFFICE OF
SECRETARY OF STATE
STATE OF WEST VIRGINIA