WEST VIRGINIA LEGISLATURE
REGULAR SESSION, 1976

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ENROLLED

HOUSE BILL No. 1279

(By Mr. Molnar & Mr. Milhouse)

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PASSED March 13, 1976

In Effect ninety days from Passage

FILE IN THE OFFICE OF
SECRETARY OF STATE OF
WEST VIRGINIA

THIS DATE 3/31/76
ENROLLED

H. B. 1279
(By Mr. Moler and Mr. Milleson)

[Passed March 13, 1976; in effect ninety days from passage.]

AN ACT to amend chapter nineteen of the code of West Virginia, one thousand nine hundred thirty-one, as amended, by adding thereto a new article, designated article twelve-d, relating to the suppression and control of noxious weeds; title; declaration of purpose; legislative findings; definitions; administration of article; promulgation of regulations; surveys for noxious weeds; quarantines; prohibited acts; permits; authority to stop sale or delivery; cooperation; right of entry; legal recourse; violations and penalties.

Be it enacted by the Legislature of West Virginia:

That chapter nineteen of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be amended by adding thereto a new article, designated article twelve-d, to read as follows:

ARTICLE 12D. WEST VIRGINIA NOXIOUS WEED ACT.

§19-12D-1. Title.

1 This article shall be known by the short title of “The West Virginia Noxious Weed Act of 1976.”

§19-12D-2. Declaration of purpose, legislative findings.

1 The purpose of this article is to provide for the suppression or control of noxious weeds which have proven to be or which scientific evidence indicates may become detrimental factors affecting the public health or economy of the state. 2 The Legislature finds that certain plant species may spread to
the extent they become detrimental to agricultural crops, other
desirable plants, livestock, waterways, land, public health and/
or the general economy and that certain noxious weeds, not
yet known to occur in West Virginia, may be inadvertently
introduced and that procedures for locating and eliminating
such infestations need to be established. Therefore, it is deemed
necessary, in the public interest, to provide authority for the
surveillance of, suppression and control of noxious weeds.

§19-12D-3. Definitions.

1 As used in this article:

2 (a) “Certificate” means a document issued by the comissioner indicating a regulated article is free of noxious weeds.

3 (b) “Commissioner” means the commissioner of agriculture of the state of West Virginia and his duly authorized representatives.

4 (c) “Infested” means the establishment of a noxious weed or exposure to such weed in a way creating reasonable certainty that establishment will occur.

5 (d) “Move” means to ship, offer for shipment, receive for transportation, carry, or otherwise transport, move or allow to be moved.

6 (e) “Noxious weed” means any living plant, or part thereof, declared by the commissioner, after public hearing, to be detrimental to crops, other desirable plants, waterways, livestock, land or other property, or to be injurious to public health or the economy.

7 (f) “Permit” means a document issued by the commissioner to provide for movement of regulated articles to restricted destinations for limited handling, utilization, processing, or for scientific purposes.

8 (g) “Person” means any individual or combination of individuals, partnership, corporation, company, society, association, firm, or other business entity and each officer, agent or employee thereof; the state and federal government and any department, agency, or subdivision thereof; or any other entity.
(h) "Quarantine" means a legal declaration by the commissioner specifying:

(1) The common and scientific name of the noxious weed.
(2) The articles to be regulated.
(3) The conditions governing movement.
(4) Exemptions.

(i) "Regulated article" means any article of any character which is transporting or which is capable of transporting any noxious weed.

(j) "Reasonable notification" means at least forty-eight hours.

§19-12D-4. Administration of article; promulgation of regulations.

(a) The commissioner shall administer and enforce the provisions of this article and shall have authority to issue regulations after a public hearing following due notice to all interested persons in conformance with the provisions of the state administrative procedures set forth in chapter twenty-nine-a of this code.

(b) In issuing such regulations, the commissioner shall give consideration to pertinent research findings and recommendations of other agencies of the state, the federal government, and other reliable sources.

§19-12D-5. Surveys for noxious weeds; multiflora rose.

(a) The commissioner shall make surveys for noxious weeds and when it is determined that an infestation exists within the state he may, by regulation after public hearing held in accordance with procedures set forth in chapter twenty-nine-a of this code, declare the weed to be noxious.

(b) Multiflora rose, Rosa multiflora, is a detriment to agriculture in West Virginia and is hereby declared to be a noxious weed.

§19-12D-6. Quarantines.

When a plant is declared to be noxious under section five of this article, the commissioner shall, subsequent to the decla-
ration of a quarantine, limit the application of rules and regulations pertinent to such quarantine to the infested portion of the state and appropriate environs, which would be known as the regulated area and may, without further hearing, extend the regulated area to include additional portions of the state upon publication of a notice to that effect in a newspaper distributed in the extended area or by direct written notice to those concerned.

§19-12D-7. Prohibited acts; permits; authority to stop sale or delivery.

(a) No person shall violate any provision of this law or any rule promulgated thereunder.

(b) No person shall move, transport, deliver, ship or offer for shipment into or within this state any noxious weed without first obtaining a permit from the commissioner and such permit shall be issued only after it has been determined that the noxious weed is generally present throughout the state or is for scientific purposes subject to prescribed safeguards.

(c) The commissioner, in order to prevent the introduction or dissemination of noxious weeds, is hereby authorized to stop delivery, stop sale, seize, destroy, treat, or order returned to the point of origin, at the owner's expense, any noxious weed, article or substance, whatsoever, if it is being transported or moved within this state, or if it exists on any premises within the state, or if it is being brought into this state from any place outside thereof, if such is found by him to be infested with any noxious weed subject to this article.


(a) The commissioner is authorized to cooperate in any way with any person in order to prevent the establishment of noxious weeds in this state.

(b) The commissioner is authorized to cooperate in any way with any person in programs designed to suppress or control noxious weeds already widely distributed in the state without first declaring a quarantine.

(c) The commissioner may, upon request, cooperate with federal and state agencies and political subdivisions in the
enforcement of the narcotic laws to the extent of preventing
the spread of and destroying marihuana or hemp, Cannabis
spp., or other plants which produce drugs which have been
condemned for destruction under the narcotics laws: Pro-
vided, That nothing herein shall authorize the commissioner
to participate in a criminal investigation or prosecution under
the controlled substances act or federal narcotic laws. Such
drug producing plants are hereby declared noxious.

§19-12D-9. Right of entry.

To effectuate the purpose of this article, the commissioner
is hereby invested with authority to enter upon any public or
private premises, except private residences, and the curtilage
thereof, at reasonable times, after reasonable notification to the
owner and tenant or agent in order to examine and sample all
plants and trees, soil, articles, and substances which are sus-
pected of being infested with a noxious weed in discharge of
the duties prescribed by this article.

§19-12D-10. Legal recourse.

Any person aggrieved by any action of the commissioner
may obtain a review thereof by filing in a court of competent
jurisdiction, within thirty days of notice of the action, a writ-
ten petition praying that the action of the commissioner be
enjoined or set aside. A copy of such petition shall forthwith be
delivered to the commissioner and within thirty days thereafter
the commissioner shall certify and file in the court a transcript
of any record pertaining thereto, including a transcript of evi-
dence received, whereupon the court shall have jurisdiction to
affirm, set aside, or modify the action of the commissioner,
except that the findings of the commissioner as to the facts, if
supported by substantial evidence shall be conclusive.


Any person violating any of the provisions of this article,
or the rules and regulations adopted thereunder, shall be
deemed guilty of a misdemeanor, and, upon conviction thereof,
shall be fined not less than ten dollars nor more than one
hundred dollars.
It shall be the duty of the prosecuting attorney of the county in which the violation occurred to represent the commissioner, to institute proceedings and to prosecute the person charged with such violation. In the event a county or prosecuting attorney refuses to act on behalf of the commissioner, the attorney general shall so act.
The Joint Committee on Enrolled Bills hereby certifies that the foregoing bill is correctly enrolled.

James L. Slone
Chairman Senate Committee

Chas. W. Christie
Chairman House Committee

Originated in the House.
Takes effect ninety days from passage.

J. O. Hillou, Jr.
Clerk of the Senate

C. Blankenship
Clerk of the House of Delegates

W. A. Hare
President of the Senate

Lewis F. W. Mann
Speaker House of Delegates

The within approved this the 29th day of March, 1976.

Anna J. Moore
Governor
PRESENTED TO THE GOVERNOR

Date 3/24/76
Time 3:45 p.m.