

# WEST VIRGINIA LEGISLATURE

REGULAR SESSION, 1990



# ENROLLED

HOUSE BILL No. 4349

(By Mr. *Del Stemple & Mazzatosta*)



Passed *Feb. 15,* 1990

In Effect *90 Days From* Passage

**ENROLLED**  
**H. B. 4349**

(By DELEGATES STEMPLE and MEZZATESTA)

[Passed February 15, 1990; in effect ninety days from passage.]

AN ACT to amend and reenact sections two and sixteen, article twelve, chapter nineteen of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to providing an additional definition for the word "dealer", and increasing the penalty for violations of this article.

*Be it enacted by the Legislature of West Virginia:*

That sections two and sixteen, 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 interpre-  
2 tation and enforcement of this article. All words shall  
3 be construed to import either the plural or the singular,  
4 as 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  
8 agriculture of the state of West Virginia and his duly  
9 authorized 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 who buys, receives on  
14 consignment or otherwise acquires and has in his  
15 possession nursery stock which that person has not  
16 grown from propagative material such as tissue culture  
17 plants, cuttings, liners, seeds or transplanted nursery  
18 stock for the purpose of offering or exposing for sale,  
19 reselling, reshipping or distributing same. Each separ-  
20 ate location shall constitute a dealership.

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

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

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

46 (h) "Person" means any individual or combination of  
47 individuals, partnership, corporation, company, society,  
48 association, governmental organization, or other busi-  
49 ness entity and each officer, agent or employee thereof.

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

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

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

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

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

75 (n) "Permit" means a document issued or authorized  
76 by the commissioner to provide for a movement of  
77 regulated articles to restricted destinations for limited  
78 handling, utilization or processing.

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

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

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

- 90 (1) The noxious weeds.
- 91 (2) The articles to be regulated.
- 92 (3) Conditions governing movement.
- 93 (4) The area or areas quarantined.
- 94 (5) Exemptions.

**§19-12-16. Penalty for violation of article, rules and regulations; duties of prosecuting attorney.**

1 Any person violating any of the provisions of this  
2 article, or the rules or regulations adopted thereunder,  
3 shall be deemed guilty of a misdemeanor and, upon  
4 conviction thereof, shall be fined not less than one  
5 hundred dollars nor more than five hundred dollars.

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  
9 to prosecute the person charged with such violation.

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

*Fredrick L. Parker*  
Chairman Senate Committee

*Bernard V. Kelley*  
Chairman House Committee

Originating in the House.

Takes effect ninety days from passage.

*Harrell E. Nelson*  
Clerk of the Senate

*Donald T. Kapp*  
Clerk of the House of Delegates

*Will Bennett*  
President of the Senate

*W. W. [Signature]*  
Speaker of the House of Delegates

The within *is approved* this the *23rd* day of *February* 1990.

*Yaston Caperton*  
Governor

PRESENTED TO THE

GOVERNOR

Date 2/22/90

Time 2:34 PM

FILED

1930 FEB 23 PM 2:47

OFFICE OF THE ATTORNEY  
SECRETARY OF STATE