

WEST VIRGINIA LEGISLATURE

REGULAR SESSION, 1991

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SECRETARY OF STATE

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Committee Substitute for
SENATE BILL NO. 150

(By Senator Hawse)

PASSED March 7, 1991

In Effect 90 days from Passage

ENROLLED
COMMITTEE SUBSTITUTE
FOR
Senate Bill No. 150
(BY SENATOR HAWSE, *original sponsor*)

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[Passed March 7, 1991; in effect ninety days from passage.]

AN ACT to amend and reenact sections two, three, fourteen and sixteen, article twelve, chapter nineteen of the code of West Virginia, one thousand nine hundred thirty-one, as amended; and to further amend said article by adding thereto a new section, designated section eighteen, all relating to plant pests; defining and redefining certain terms; setting forth duties of the commissioner of agriculture; authorizing commissioner to enter into compliance agreements; requiring persons to obtain a state or federal permit; when state permit required; increasing criminal penalties upon a second and subsequent offense; authorizing commissioner to assess civil penalties; providing for the collection of such penalties; mandating commissioner to promulgate legislative rules; making trade secrets confidential; and setting forth exceptions.

Be it enacted by the Legislature of West Virginia:

That sections two, three, fourteen and sixteen, article twelve, chapter nineteen of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be amended and reenacted; and that said article be further

amended by adding thereto a new section, designated section eighteen, all 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:

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

8 (b) "Certificate" means a document issued or authorized by the commissioner indicating that a regulated article is not contaminated with a pest.

11 (c) "Commissioner" means the commissioner of agriculture of the state of West Virginia and his or her duly authorized representatives.

14 (d) "Compliance agreement" means a written agreement between the department and any person engaged in growing, handling or moving articles, plants or plant products regulated under this article, wherein the person agrees to comply with stipulated requirements.

20 (e) "Dealer" means any person who buys, receives on consignment or otherwise acquires and has in his or her possession nursery stock which that person has not grown from propagative material such as tissue culture plants, cuttings, liners, seeds or transplanted nursery stock for the purpose of offering or exposing for sale, reselling, reshipping or distributing same. Each separate location shall constitute a dealership.

28 (f) "Department" means the department of agriculture of the state of West Virginia.

30 (g) "Genetically modified organism" means any organism altered or produced through genetic modification from a donor, vector or recipient organism

33 using modern molecular techniques.

34 (h) "Host" means any plant or plant product upon
35 which a pest is dependent for completion of any
36 portion of its life cycle.

37 (i) "Infested area" means any area of uncontrolled
38 growth of insects, plant diseases, noxious weeds or
39 other plant pests.

40 (j) "Noxious weed" means any living plant, or part
41 thereof, declared by the commissioner, after public
42 hearing, to be detrimental to crops, other desirable
43 plants, waterways, livestock, land or other property, or
44 to be injurious to public health or the economy.

45 (k) "Nursery" means any grounds or premises on or
46 in which nursery stock is being propagated or grown
47 for sale or distribution, including any grounds or
48 premises on or in which nursery stock is being
49 fumigated, treated, packed or stored or otherwise
50 prepared or offered for sale or movement to other
51 localities.

52 (l) "Nurseryman" means and includes any person
53 who owns, leases, manages or is in charge of a
54 nursery.

55 (m) "Nursery stock" means all trees, shrubs and
56 woody vines, including ornamentals, bush fruits,
57 grapevines, fruit trees and nut trees, whether culti-
58 vated, native or wild, and all buds, grafts, scions, fruit
59 pits and cuttings from such plants. It also means sod,
60 including sod plugs and sod-producing plants, and such
61 herbaceous plants, including strawberry plants, narcis-
62 sus plants and narcissus bulbs as the commissioner
63 declares by rule to be so included whenever he or she
64 considers control of the movement of such plants and
65 bulbs necessary for the control of any destructive
66 plant pest. Florists' or greenhouse plants for inside
67 culture or use, unless declared otherwise by the
68 commissioner, as herein authorized, shall not be
69 considered nursery stock, except that all woody plants,
70 whether greenhouse or field grown, if for outside
71 planting, are hereby defined as nursery stock.

72 (n) "Permit" means a document issued or autho-
73 rized by the commissioner to provide for a movement
74 of regulated articles to restricted destinations for
75 limited handling, utilization or processing.

76 (o) "Person" means any individual or combination
77 of individuals, partnership, corporation, company,
78 society, association, governmental organization or
79 other business entity and each officer, agent or
80 employee thereof.

81 (p) "Plant and plant products" means trees, shrubs,
82 vines; forage, fiber, cereal plants and all other plants;
83 cuttings, grafts, scions, buds and lumber and all other
84 parts of plants and plant products; and fruit, vegeta-
85 bles, roots, bulbs, seeds, and wood.

86 (q) "Plant pest" means any living stage of: Any
87 insects, mites, nematodes, slugs, snails, protozoa or
88 other invertebrate animals, bacteria, fungi, other
89 parasitic plants or reproductive parts thereof, viruses
90 or any organisms similar to or allied with any of the
91 foregoing, or any infectious substances, and any
92 genetically modified organisms for which there is
93 reason to believe may directly or indirectly injure or
94 cause disease or damage in any plants or parts thereof,
95 or any processed, manufactured or other products of
96 plants.

97 (r) "Quarantine" means a legal declaration by the
98 commissioner which specifies:

- 99 (1) The plantpestor noxious weeds.
100 (2) The articles to be regulated.
101 (3) Conditions governing movement.
102 (4) The area or areas quarantined.
103 (5) Exemptions.

104 (s) "Regulated article" means any article of any
105 character, as described in quarantine or other order of
106 the commissioner carrying or capable of carrying a
107 pest.

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

1 (a) It shall be the duty of the commissioner to
2 exercise the powers and duties imposed upon him or
3 her by this article for the purpose of protecting
4 agricultural, horticultural and other interests of the
5 state from plant pests or other insects and noxious
6 weeds and for this purpose the commissioner is hereby
7 authorized and empowered to promulgate such legisla-
8 tive rules, in accordance with the provisions of chapter
9 twenty-nine-a of this code, as are necessary to effec-
10 tively eradicate, suppress or control plant pests or
11 other insects or noxious weeds or to retard the
12 dissemination of plant pests or other insects or noxious
13 weeds as far as may be practical and to employ or
14 contract with such persons as may be appropriate.

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

24 (c) The commissioner is empowered to enter into
25 compliance agreements with any person engaged in
26 growing, handling or moving articles, plants or plant
27 products regulated by the provisions of this article.

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

1 No person may sell, barter, expose, offer for sale or
2 move, transport, deliver, ship or offer for shipment
3 into or within this state any plant pest or other insects
4 or noxious weeds in any living stage without first
5 obtaining either a federal permit, where applicable, or
6 a state permit from the commissioner. A state permit
7 may be issued only after it has been determined that
8 the plant pests or other insects or noxious weeds are
9 not injurious, are generally present already or are for

10 scientific purposes subject to specified safeguards. If a
11 permit, which addresses environmental safety, has
12 been issued by the appropriate federal regulatory
13 agency in consultation with the commissioner, no state
14 permit is required. If the appropriate federal regula-
15 tory agency determines that a permit is unnecessary,
16 the commissioner may, if he or she deems it necessary
17 to protect West Virginia's agricultural interests,
18 require a state permit.

**§19-12-16. Criminal penalties; civil penalties; duties of the
prosecuting attorney.**

1 (a) *Criminal penalties.* — Any person violating any
2 of the provisions of this article, or the rules adopted
3 hereunder, is 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 for the first offense; and for the second offense, shall
7 be fined not less than five hundred dollars nor more
8 than one thousand dollars, or confined in the county
9 jail not more than six months, or both.

10 (b) *Civil penalties.* —

11 (1) Any person violating a provision of this article or
12 rules adopted hereunder may be assessed a civil
13 penalty by the commissioner. In determining the
14 amount of any civil penalty, the commissioner shall
15 give due consideration to the history of previous
16 violations of any person, the seriousness of the viola-
17 tion, including any irreparable harm to the environ-
18 ment, any hazards to the health and safety of the
19 public and any economic damages to the public and
20 the demonstrated good faith of any person charged in
21 attempting to achieve compliance with the article
22 before and after written notification of the violation.

23 (2) The commissioner may assess a penalty of not
24 more than five hundred dollars for each first offense
25 or nonserious violation, and not more than one thou-
26 sand dollars for a serious violation, or for a repeat or
27 intentional violation.

28 (3) The civil penalty is payable to the state of West

29 Virginia and is collectible in any manner now or
 30 hereafter provided for collection of debt. If any person
 31 liable to pay the civil penalty neglects or refuses to pay
 32 the same, the amount of the civil penalty, together
 33 with interest at ten percent, is a lien in favor of the
 34 state of West Virginia upon the property, both real and
 35 personal, of such a person after the same has been
 36 entered and docketed to record in the county where
 37 such property is situated. The clerk of the county,
 38 upon receipt of the certified copy of such, shall enter
 39 same to record without requiring the payment of costs
 40 as a condition precedent to recording.

41 (4) The commissioner shall promulgate legislative
 42 rules, in accordance with the provisions of chapter
 43 twenty-nine-a of this code, to provide for the imple-
 44 mentation and assessment of civil penalties pursuant
 45 to subsection (b) of this section.

46 (5) The commissioner shall promulgate legislative
 47 rules, in accordance with the provisions of chapter
 48 twenty-nine-a of this code, to permit consent agree-
 49 ments or negotiated settlements for the civil penalties
 50 which may be assessed pursuant to the provisions of
 51 this section.

52 (c) No state court may allow for the recovery of
 53 damages for any administrative action taken, if the
 54 court finds that there was a probable cause for such
 55 action.

56 (d) It shall be the duty of the prosecuting attorney
 57 of the county in which the violation occurred to
 58 represent the department of agriculture, to institute
 59 proceedings and to prosecute the person charged with
 60 such violation.

§19-12-18. Confidentiality of trade secrets.

1 The commissioner may not make public information
 2 which contains or relates to trade secrets, commercial
 3 or financial information obtained from a person which
 4 is privileged or confidential information: *Provided*,
 5 That when the information is necessary to carry out
 6 the provisions of this article, this information may be

7 revealed, subject to a protective order, to any federal,
8 state or local agency consultant; or, may be revealed,
9 subject to a protective order, at a closed hearing or in
10 findings of fact issued by the commissioner.

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

Former Heck
.....
Chairman Senate Committee

Ernest C. Mader
.....
Chairman House Committee

Originated in the Senate.

In effect ninety days from passage.

Samuel E. Holmes
.....
Clerk of the Senate

Donald G. Kopp
.....
Clerk of the House of Delegates

Will Finster
.....
President of the Senate

Bob Schell
.....
Speaker House of Delegates

The within *is approved* this the *20th*
day of *March*, 1991.

Gaston Caperton
.....
Governor

PRESENTED TO THE

GOVERNOR

Date

3/14/91

Time

4:10 pm