WEST VIRGINIA LEGISLATURE
REGULAR SESSION, 1991

ENROLLED
Committee Substitute for
SENATE BILL NO. 150

(By Senator Hawse)

PASSED March 7, 1991
In Effect 90 days from Passage

In Effect 90 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.

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:

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

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

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

(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.

(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.

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

(g) "Genetically modified organism" means any organism altered or produced through genetic modification from a donor, vector or recipient organism.
using modern molecular techniques.

(h) “Host” means any plant or plant product upon which a pest is dependent for completion of any portion of its life cycle.

(i) “Infested area” means any area of uncontrolled growth of insects, plant diseases, noxious weeds or other plant pests.

(j) “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.

(k) “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.

(l) “Nurseryman” means and includes any person who owns, leases, manages or is in charge of a nursery.

(m) “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 rule to be so included whenever he or she 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.
(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) "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.

(p) "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 plant products; and fruit, vegetables, roots, bulbs, seeds, and wood.

(q) "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, and any genetically modified organisms for which there is reason to believe may directly or indirectly injure or cause disease or damage in any plants or parts thereof, or any processed, manufactured or other products of plants.

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

1. The plant pest or noxious weeds.
2. The articles to be regulated.
3. Conditions governing movement.
4. The area or areas quarantined.
5. Exemptions.

(s) "Regulated article" means any article of any character, as described in quarantine or other order of the commissioner carrying or capable of carrying a pest.
§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 or her 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 the commissioner is hereby authorized and empowered to promulgate such legislative rules, in accordance with the provisions of chapter twenty-nine-a of this code, 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, divisions 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.

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

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

No person may 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 either a federal permit, where applicable, or a state permit from the commissioner. A state permit may 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
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
Virginia and is collectible in any manner now or
hereafter provided for collection of debt. If any person
liable to pay the civil penalty neglects or refuses to pay
the same, the amount of the civil penalty, together
with interest at ten percent, is a lien in favor of the
state of West Virginia upon the property, both real and
personal, of such a person after the same has been
entered and docketed to record in the county where
such property is situated. The clerk of the county,
upon receipt of the certified copy of such, shall enter
same to record without requiring the payment of costs
as a condition precedent to recording.

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

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

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

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


1 The commissioner may not make public information
which contains or relates to trade secrets, commercial
or financial information obtained from a person which
is privileged or confidential information: Provided,
That when the information is necessary to carry out
the provisions of this article, this information may be
revealed, subject to a protective order, to any federal, state or local agency consultant; or, may be revealed, subject to a protective order, at a closed hearing or in findings of fact issued by the commissioner.
The Joint Committee on Enrolled Bills hereby certifies that the foregoing bill is correctly enrolled.

Chairman Senate Committee

Chairman House Committee

Originated in the Senate.

In effect ninety days from passage.

Clerk of the Senate

Clerk of the House of Delegates

President of the Senate

Speaker House of Delegates

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

Governor