

Inconsistent
acts repealed.

Section 9. All acts and parts of acts inconsistent herewith are hereby repealed.

APPROVED—The 21st day of April, A. D. 1937.

GEORGE H. EARLE

No. 90

AN ACT

Relating to the protection of agriculture and horticulture, including all field crops, vegetables, trees, shrubs, vines, florist and nursery stock and all other plants and parts, or products thereof, from plant pests; and revising, consolidating, and changing the law relating thereto; defining the powers and duties of the Department of Agriculture relating thereto; providing penalties; and repealing present laws.

“Pennsylvania
Plant Pest Act
of 1937.”

Section 1. Be it enacted, &c., That this act shall be known by the short title of “The Pennsylvania Plant Pest Act of 1937.”

Definitions.

Section 2. For the purpose of this act, the following terms shall be construed respectively to mean:

(a) The singular and plural forms of any word or term in this act shall be interchangeable and equivalent within the meaning of the act.

(b) The word “person” shall include corporations, companies, societies, associations, partnerships or any individual or combination of individuals. When construing and enforcing the provisions of this act, the act, omission or failure of any officer, agent, servant or other individual acting for or employed by any person, as above defined, within the scope of his employment or office, shall in every case be deemed to be the act, omission or failure of such person, as well as that of the officer, agent, servant or other employe.

(c) The terms “Department” and “Secretary” shall mean, respectively, the Pennsylvania Department of Agriculture and the secretary of said department.

(d) The term “plant or plant product” shall mean any plant, or portion thereof, including trees, shrubs, and vines, their fruits and seeds, whether living or dead.

(e) The term “plant pests” shall mean insects, plant diseases or any organisms causing or capable of causing injury or damage to plants or plant products.

(f) Regardless of where the material may have been grown or is growing, the term “nursery stock” shall include the following: All trees, shrubs, brambles, woody vines, and woody florist stock, their roots, cuttings, grafts, scions, buds, fruit pits and other seeds, and parts thereof, for propagation; herbaceous perennials and other plants and plant products for propagation as ornamentals, except bulbs, field crop seeds, vegetable seeds

and vegetable plants, flower seeds, bedding and other annual herbaceous plants, and parts thereof.

(g) The term "nursery" shall be construed to mean any grounds or premises on or in which nursery stock is 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.

(h) The term "nurseryman" shall mean the person who owns, leases, manages or is in charge of a nursery.

(i) The term "dealer" shall be construed to apply to any person, not primarily a grower of nursery stock, who buys or receives on consignment, or otherwise, nursery stock for the purpose of reselling or reshipping independently of any control of a nursery.

(j) The term "nursery agent" shall be construed as applying to any person soliciting orders for, or selling, nursery stock under the partial or full control of a nurseryman or of a dealer or other nursery agent. This term shall also apply to any person engaged with a nurseryman, dealer or nursery agent in handling nursery stock on a cooperative basis.

(k) The terms "agent," "inspector" or "deputy" shall mean any person duly authorized or appointed by the secretary to act as the representative of the department in carrying out any of the provisions or purposes of this act.

Section 3. The department is hereby authorized and empowered to enforce all the provisions of this act, and shall have the power to prescribe, modify, and enforce such reasonable rules, regulations, and orders as may be needed to carry out the provisions of this act; to issue such permits and certificates as, in the judgment of the secretary, may be required; to print, publish, post, distribute, and otherwise make available to the public, any and all rules, regulations, orders or information relating to any of the provisions of or duties imposed by this act.

Section 4. The secretary, or any of his duly authorized agents, inspectors or deputies, in carrying out the provisions of this act shall have free access, within reasonable hours, to any land, premises, building, vehicle, vessel, car or other place which it may be necessary or desirable for him or them to enter, and shall have the power to open any bundle, package or other container of plants or plant products. It shall be unlawful to deny such access to the secretary or any agent, inspector or deputy, or to hinder, thwart or defeat such inspection or other necessary activity by misrepresentation or concealment of facts or conditions, or otherwise.

The secretary, or any of the authorized agents, inspectors, and deputies of the department, the State po-

Department empowered to enforce the act and to issue rules.

Secretary or agents to have access to any lands, buildings, vessels, etc.

Secretary and agents may make arrests.

lice, or any other officer whose duty it is to preserve the peace of the Commonwealth, may arrest without a warrant any person caught in the act of violating the provisions of this act.

Department
to inspect
nurseries at least
once each year.

Section 5. The department, through its agents, inspectors or deputies shall, at least once each year, inspect all nurseries and other places in which nursery stock is stored, kept or offered for sale. It shall also have the authority to inspect or reinspect, at any time or place, any nursery stock shipped or moved in or into the State, and to treat it as hereinafter provided.

Department,
after inspection,
to issue a cer-
tificate.

Section 6. The department shall cause to be issued to nurserymen in this State, after the nursery stock in their nurseries has been officially inspected as provided in this act, and found to be apparently free from any plant pests, a certificate of inspection, setting forth the fact of such inspection and the number of acres, or fraction thereof inspected. Said certificate shall be valid, not to exceed one year from October first, and shall not be transferable or used to cover uninspected, infested or infected nursery stock from any source.

Section 7. It shall be unlawful for any person intentionally to make a false declaration of acreage, or to cause any concealment of nursery stock from inspection.

Whenever agent
finds plant pest,
he shall notify
owner of the
nursery, and he
shall prescribe
treatment.

Section 8. In case any agent, inspector or deputy of the department shall find present on any nursery or dealer's premises, or on any packing ground, or in any cellar or building or other place used for storage or sale of nursery stock, any plant pests, he shall notify the owner or person having charge of the premises in writing to that effect, prescribing necessary treatment, and the department shall withhold a certificate of inspection until it is notified by the owner or person having charge of the premises, and is satisfied, that the premises are freed from such plant pests. If the agent, inspector or deputy shall find that part of a nursery is infested or infected with any plant pests, and that the remainder of it is not so infested or infected, the department may prescribe in writing such measures or precautions, or may make in writing such conditions as to the use of the certificate of inspection as may, in its judgment, be necessary; and it may withhold the certificate of inspection until such conditions have been accepted in writing by the owner of said nursery. The use of such certificate of inspection without taking such measures or precautions or observing such conditions shall be regarded as a violation of this act.

Nurserymen,
dealers and
agents shall
make applica-
tion for an
inspection.

Section 9. Nurserymen, dealers and nursery agents selling or delivering nursery stock in this State, except as herein otherwise provided, shall make application in writing before July first of each year to the department

for inspection of their nursery stock growing in this State, or failing to give such notice, such nurserymen, dealers or agents shall be liable for any additional expense of inspection of said nursery stock.

Section 10. Every dealer located either within or without the State, engaged in or about to engage in selling or soliciting orders for nursery stock within this State, shall secure a dealer's certificate by furnishing a sworn affidavit that he will buy and sell only stock which has been duly inspected and certified by an official State or Federal inspector, and he shall furnish the inspector on demand a list of all sources from which he secures his stock.

Dealer must secure a dealer's certificate.

Section 11. Nurserymen, dealers or other persons residing or doing business outside the State desiring to solicit orders for nursery stock in the State, shall, upon filing with the department a certified copy of their original current resident State certificate, together with a statement setting forth the exact acreage owned by the applicants and the acreage being grown for them on contract, be entitled to a certificate permitting such persons to solicit orders for nursery stock in this State.

Nurserymen, etc., from outside of the State must file certified copy of their certificate from their resident state.

Section 12. (a) All nursery agents selling nursery stock or soliciting orders for nursery stock for any nurseryman or dealer located within the State or outside the State, shall be required to secure and carry a nursery agent's certificate bearing a copy of the certificate held by the principal. Said agent's certificate shall be issued by the department only to persons authorized by their principal, or upon request of their principal. Names and addresses of such agents shall not be divulged by the department or any of its agents.

Nursery agents must secure a nursery agent's certificate.

(b) Every person selling nursery stock in the State shall, if requested, furnish the department with copies of his order forms, contracts, and agreements with his customers, which are furnished for the use of nursery agents or customers, or both.

Section 13. The department shall, at any time, have the power to revoke any certificate for sufficient cause, including any violation of this act or nonconformity with any rule or regulation promulgated under this act, or if it shall find at any time that a certificate of inspection, issued or accepted pursuant to the provisions of this act, is being used in connection with plants or plant products which are infested or infected with any plant pest, or is being used in connection with plants or other property which have not been inspected and certified as aforesaid.

Department shall have power to revoke any certificate.

Section 14. Each person who shall engage in the selling, delivering or transporting of nursery stock in the State is hereby required to attach, on the outside of each package, box, bale, truck load or carload lot sold or

Each person selling or delivering goods must attach to the goods a copy of the certificate.

delivered, a tag or poster on which shall appear an exact printed copy of his valid certificate. The use of tags or posters bearing an invalid or altered certificate and the misuse of any valid certificate tag is hereby prohibited.

Goods received from foreign countries must be inspected before opening.

Section 15. Every person receiving, directly or indirectly, any nursery stock from foreign countries shall immediately notify the department or an inspector of the arrival of such shipment, the contents thereof, and the name of the consignor, and shall hold such shipment unopened until duly inspected or released by the inspector, who shall make such inspection with reasonable promptness. In case any infested or infected stock is discovered in such shipment, the shipment shall be subject to the provisions of this act.

Goods brought into the State must be marked.

Section 16. It shall be unlawful for any person to bring or cause to be brought into the Commonwealth from any other state, territory, district or country any nursery stock unless there is plainly and legibly marked thereon or affixed thereto, or on or to the car or other vehicle carrying, or on the bundle, package or other container of the same, in a conspicuous place, a statement or tag or other device showing the names and addresses of the consignor or shipper and the consignee or the person to whom shipped, the general nature of the contents, together with a certificate of inspection of the proper official of the state, territory, district or country from which it was brought or shipped, showing that such nursery stock was found or believed to be free from plant pests. In case any nursery stock is shipped or transported into the Commonwealth from another state, territory, district or country without a valid certificate plainly affixed as aforesaid, the fact must be promptly reported to the department or an inspector by the person carrying the same, or the person receiving the same, together with the names of the consignor and consignee and the nature of the shipment; and such person carrying or receiving such stock shall immediately return such stock to the consignor, or shall hold such stock subject to inspection by or instructions from the department, and while awaiting such inspection or instruction shall not remove such stock from the original box, bundle, package or other container.

Department may make reports and surveys.

Section 17. The department through its inspectors and deputies may make inspections and surveys to determine the existence or prevalence of, or damage done by, plant pests; may make reports on the same; may collect specimens for study and determination, may establish, in connection with plant products, standards of freedom from plant pests; may issue certificates or statements setting forth the condition of plants and plant products, or other material in relation to plant pests;

may make investigations of plants and plant pests; may prescribe methods for treatment or control of plant pests. If the department determines that a serious plant pest situation exists in any part of the Commonwealth and that the public interest justifies it, it may undertake through inspectors, deputies or agents eradication or control measures against said pests, and in such cases and after due notice, by the department in writing, to the owner or person in charge of any property involved any inspector, deputy or agent is hereby given authority to enter premises during reasonable hours and carry out such eradication and control measures as may be considered necessary under the circumstances.

Department may undertake control measures.

Section 18. (a) If the department or any inspector, deputy or agent shall find in or on any land, premises, buildings, vehicle, vessel, car or other place, plants, plant products or other material infested or infected with any plant pest, or has reason to believe that such infestation or infection exists, and the department does not believe conditions justify the procedure provided for in section seventeen, it may notify in writing the owner or person having charge of such land, premises, building, vehicle, vessel, car or other place, or both of them, to that effect, stating whether the infestation or infection be capable of successful treatment; and the owner or person having charge shall, within ten days after receipt of such notice or within such longer or shorter period as the notice may state, cause the removal or destruction of such plants, plant products or other material if incapable of successful treatment, otherwise cause them to be treated as the department or notice may direct. From receipt of such notice and until the destruction or treatment as specified has been completed to the satisfaction of the department or an inspector, deputy or agent, such land, premises, building, vehicle, vessel, car or other place shall be considered under quarantine. Except as hereinafter provided, no damages shall be awarded to the owner for the loss or destruction of plants, plant products or other material under this act. Such plants, plant products or other material shall be deemed to be a public nuisance.

Department may notify owner of land, vessel, etc., containing plants which are infested, stating whether infestation may be treated.

Owner shall remove or treat the plants.

(b) In case the owner or person in charge shall refuse or neglect to comply with the provisions of paragraph (a) of this section within the time specified, he shall be deemed guilty of a violation of this act, and thereafter any inspector, under the direction of the department, may proceed to treat or destroy, or cause to be treated or destroyed, the plants, plant products or other material. The expense thereof, or such portion of it as the department may direct, shall be collected or obtained from the person or persons so refusing or neglecting in an action or actions brought against him or them, either

In case owner refuses to comply with the instructions of department, department may destroy or treat the plants.

jointly or severally, in the same manner as debts of like amount are now recoverable. The amount of such expense, when collected, shall be paid into the State Treasury: Provided, That such portion of the amount so collected and paid into the State Treasury as shall represent the expenditures thereon by the United States Government in cooperation with the department as provided hereafter in this act, shall be paid to the United States Government, and for such purposes any such moneys paid into the State Treasury are hereby specifically appropriated.

Compensation allowed in certain cases.

(c) If, under the provisions of this act, the department shall require or cause to be destroyed or removed any growing and living plant or plants of the common red cedar (*Juniperus Virginiana*), or cultivated currants and gooseberries (*Ribes* species), other than nursery stock, upon any land the grower of which was in no way responsible for the existence of the condition, which, in the opinion of the department necessitated such destruction or removal, the department shall, in so far as funds are provided, and upon claim duly filed and approved by it, pay to such grower, or other person entitled thereto, compensation for such plants so required, or caused to be removed or destroyed, in an amount not in excess of seventy per centum of the value of the plants as determined by the department.

Department may declare certain pests a public nuisance.

Section 19. When the department shall determine with reference to any plant pest that it is dangerous or destructive to the agriculture or horticulture of the Commonwealth, it may declare it to be a public nuisance. It shall be unlawful for any person knowingly to permit any plant pest so declared to exist in or on his premises or to sell or offer for sale or give away any plant, plant products or other material infected or infested therewith.

Department may establish quarantines.

Section 20. (a) Whenever the department believes it necessary for the protection of the agriculture and horticulture of the Commonwealth to prevent the dissemination within the Commonwealth of plant pests which are or may become injurious to plants or plant products, or which are new to or not heretofore widely prevalent or distributed or abundant within and throughout the Commonwealth, or to provide for the control or eradication of such plant pests, it is authorized and directed to establish quarantines and quarantine restrictions covering any portion or portions of the Commonwealth in which such plant pest is found, and areas adjacent thereto, and adopt, issue and enforce rules and regulations relative to such quarantine and for the control, limitation or eradication of such plant pest. The department shall give due notice of the establishment of such quarantines and of the rules and regulations to be

issued under them to public carriers and other persons in interest, either directly in writing or by publication in at least two newspapers having general circulation in the areas affected. Under such quarantine, the department may prohibit and prevent, without inspection, the movement, shipment or transportation of any plant or plant product or any other material of any character whatsoever, capable of carrying or harboring such plant pest in any state of its development; and further, it may, under such quarantine, intercept, stop, and detain for inspection any person, car, vessel, truck, automobile, wagon or other vehicle (including the opening of said conveyances) or container suspected or known to carry any plant or plant product or other material in violation of any quarantine or any official rule or regulations thereunder established by authority of this act; and may seize, possess, treat or destroy, or cause or order to be treated or destroyed when such treatment or destruction is necessary to prevent the spread of such plant pest, any plant or plant product, or other material of any character whatsoever, moved, shipped or transported in violation of such quarantine or any rules or regulations thereunder; and may regulate the planting, growing, and harvesting, and may undertake (as provided for in section seventeen of this act), order or require the destruction, treatment or other disposition of any plant or plant product or other material infested or infected by such plant pest, or liable to become infested or infected, or capable of harboring or disseminating such plant pest, under such quarantine, rule or regulation.

When treatment, destruction or other disposition of such plants or plant products or other materials is ordered or is to be undertaken by the department, it shall give notice thereof in writing to the owner or person having charge of the lands, premises, buildings, vehicle, vessel, car or other place where such plants or plant products or other materials may be, and, unless the procedure provided for in section seventeen is to be followed, the owner or person having charge as aforesaid, shall, within such time as shall be specified in such notice, treat, destroy or otherwise dispose of such plants or plant products as required by said notice. In case the owner or person having charge shall refuse or neglect to comply with the provisions of this section with respect to the treatment, destruction or other disposition of such plants, plant products or other materials, or interfere with or obstruct the procedure prescribed in the notice of the department, he shall be deemed guilty of a violation of this act, and thereafter the department may proceed to treat, destroy or cause to be treated or destroyed or otherwise dispose of such plants, plant products or other materials. The expense so incurred,

or such portion thereof as the department may direct, shall be collected or obtained in accordance with the procedure provided for in paragraph (b), section eighteen of this act for the collection of expenses incurred in the destruction of infested plants, plant products and other materials, and be paid into the State Treasury, and disbursed therefrom in the same way and upon the same conditions as the funds under said paragraph (b), section eighteen are required to be disbursed.

(b) Whenever the department shall find or have reason to believe there exists in any other state, territory or district, or part thereof, any dangerous plant pest, and believes that, in order to safeguard plants and plant products in this Commonwealth, its introduction should be prevented, it is hereby authorized to establish and to enforce, by appropriate rules and regulations, a quarantine prohibiting or restricting the transportation into or through the Commonwealth, or any portion thereof, from such other state, territory or district of any nursery stock, plants or plant product, or other articles of any character whatsoever capable of carrying such plant pest.

(c) The department is authorized to make rules and regulations for the seizure, inspection, disinfection, destruction or other disposition of any nursery stock or plant or plant product, or other article of any character whatsoever, carrying, or capable of carrying, any dangerous plant pest with respect to which a quarantine shall have been established by the Secretary of the United States Department of Agriculture, and which have been transported to, into or through the Commonwealth in violation of such quarantine.

Penalties.

Section 21. Any person, copartnership, association or corporation violating, neglecting or failing to comply with any provision or requirement of this act, or any quarantine, rule or regulation made or of any notice given pursuant thereto, or who shall forge, alter, counterfeit, deface, destroy or wrongfully use any permit or certificate, or copy thereof, offered or used in lieu of any original valid permit or certificate provided for in this act, or in any order, rule or regulation made pursuant thereto, upon conviction thereof in summary proceeding, shall be subject to a fine of not more than one hundred dollars for each offense, and in case of non-payment of said fine and costs to undergo an imprisonment in the county jail of the county in which such conviction takes place for a period of one day for each dollar of fine imposed: Provided, That any person so convicted shall have the right of appeal as in other cases of summary conviction. The fines collected under this act shall be paid to the department, and by it shall be paid

into the State Treasury, through the Department of Revenue.

Section 22. The department is authorized, whenever it deems such action advisable and necessary to carry out the purposes of this act, to cooperate with individuals, organizations, cities, and boroughs or with the United States Department of Agriculture.

Section 23. This act shall not be so construed or enforced as to conflict in any way with any act of Congress regulating movement of plants or plant products in interstate or foreign commerce.

Section 24. If any section or part of a section of this act shall for any cause be held unconstitutional at any time, such decision shall not affect the remainder of this act. It is hereby declared as the legislative intent that this act would have been adopted had such unconstitutional provisions not been included therein.

Constitutional Provision.

Section 25. The following acts are hereby repealed absolutely:

Repeals.

The act approved the tenth day of March, one thousand nine hundred and twenty-seven (Pamphlet Laws, twenty-seven), entitled "An act relating to the protection of agriculture and horticulture from plant pests, and amending, revising, consolidating, and changing the law relating thereto; defining the powers and duties of the Department of Agriculture relating thereto; providing penalties, and repealing present laws," and the amendments thereto.

All other acts and parts of acts inconsistent with this act are hereby repealed.

Inconsistent acts repealed.

Section 26. All quarantines, inspections, permits and certificates in force at the time of approval of this act, under the acts specified in section twenty-five of this act, shall be continued in the same manner and with like authority as if the aforesaid acts had not been repealed.

Section 27. This act shall become effective immediately upon final enactment.

When effective.

APPROVED—The 21st day of April, A. D. 1937.

GEORGE H. EARLE

No. 91

AN ACT

Regulating the recording of assignments of mortgages in counties of the second class; fixing the fees therefor; and imposing certain powers and duties on the recorders of deeds of such counties.

Section 1. Be it enacted, &c., That hereafter no assignment of any mortgage shall be entered of record in any county of the second class, unless such assignment

Assignments of mortgages must be in writing and acknowledged.