

No. 1992-162

AN ACT

HB 1781

Providing for the protection of agriculture and horticulture from plant pests, including all field crops, vegetables, trees, shrubs, vines, florist and nursery stock and all other plants and parts, or their products; revising, consolidating and changing the law relating thereto; defining the powers and duties of the Department of Agriculture relating thereto; establishing and funding special testing and certification procedures and programs; providing penalties; and making a repeal.

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The General Assembly of the Commonwealth of Pennsylvania hereby enacts as follows:

Section 1. Short title.

This act shall be known and may be cited as the Plant Pest Act.

Section 2. Definitions.

The following words and phrases when used in this act shall have the meanings given to them in this section unless the context clearly indicates otherwise:

“Agent,” “inspector” or “deputy.” A representative of the Department of Agriculture duly appointed by the Secretary of Agriculture to carry out the provisions of this act.

“Control.” The reduction of the population of a plant pest to an acceptable level as determined by the Secretary of Agriculture or his agents.

“Dealer.” A person, not primarily a grower of nursery stock, who buys or receives on consignment nursery stock for the purpose of reselling or reshipping, independent of any control of a nurseryman.

“Department.” The Department of Agriculture of the Commonwealth.

“Eradication.” The elimination or removal of a pest from a defined geographic area.

“Fruit Tree Improvement Program.” A program to provide for the establishment of standards and testing of fruit tree nursery stock for freedom from plant pests.

“Host-free area.” A geographically defined area where a specific plant or plant variety is prohibited from becoming established.

“Nursery.” A greenhouse, 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, stored or otherwise prepared or offered for sale or movement to other localities.

“Nursery agent.” A person soliciting orders for or selling nursery stock under the partial or full control of a nurseryman, dealer or other nursery agent. The term also applies to any person engaged with a nurseryman, dealer or nursery agent in handling nursery stock on a cooperative basis.

“Nurseryman.” A person who owns, leases, manages or is in charge of a nursery.

“Nursery stock.” All trees, shrubs, brambles, woody vines, woody florist stock, herbaceous perennials, vegetable plants, bedding and other annual herbaceous plants, their roots, cuttings, grafts, scions, buds, fruit pits, seeds and their parts for propagation, except bulbs, field crop seeds, vegetable seeds, flower seeds, regardless of where the material may have been grown or is growing.

“Person.” An individual, corporation, association, partnership or any other entity.

“Plant” or “plant product.” A plant or portion thereof whether living or dead.

“Plant pest.” An organism, including other plants, causing or capable of causing injury or damage to plants or plant products.

“Plant quarantine.” Legal action intended to prevent or delay the establishment of a pest of plants or crops.

“Principal.” A person who has the controlling authority over a nursery agent.

“Secretary.” The Secretary of Agriculture of the Commonwealth.

“Stop-sale order.” A written notice, issued by an inspector to the owner or custodian of a plant or plant product, which prohibits the sale or movement of plants or plant products.

“Treatment order.” A written document specifying certain measures to be taken to control or eradicate a plant pest, including destruction of appropriate plants or plants products.

Section 3. Enforcement.

The department is authorized and empowered to enforce all the provisions of this act and shall promulgate, modify and enforce reasonable regulations and orders as may be needed to carry out provisions of this act, to issue licenses, permits and certificates as in the judgment of the secretary may be required and by regulation to establish and collect fees.

Section 4. Inspection of land and building.

(a) **General rule.**—The secretary or his agents, 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 and shall have the power to open, inspect and sample any bundle, package or other container of plants or plant products. It shall be unlawful to deny access to any agent or to hinder, thwart or defeat inspection or other necessary activity by misrepresentation or concealment of facts or conditions.

(b) **Authority to arrest.**—The secretary or his agents, the Pennsylvania State Police or any other officer whose duty it is to preserve the peace of this Commonwealth may arrest without a warrant any person found violating any of the provisions of this act.

Section 5. Inspection of nurseries.

The department, through its agents, 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 this Commonwealth. In addition to inspection, the department may collect samples for testing to detect plant pests. A nursery shall furnish the inspector, on request, a list of any or all sources from which nursery stock was obtained. No nursery stock shall be removed, transported, sold or offered for sale which has not been inspected and approved by an agent of the department. Following the inspection, a report of inspection will be issued.

Section 6. Certificate of inspection.

(a) **General rule.**—The department shall issue, upon completion of the inspection provided for in section 5, a certificate of inspection setting forth the fact of the inspection and identifying the stock and area actually inspected. The certificate shall be valid, shall not exceed one year and shall not be transferable or used to cover uninspected, infested or infected nursery stock from any source.

(b) **Authority of department.**—Should the inspection or any tests reveal that a plant pest or pests exceed any established pest tolerance, the depart-

ment may order any necessary treatment, including destruction. The department may establish procedures to provide for the propagation or production of plants or plant products which are free from or within established pest tolerances.

Section 7. False declaration.

It shall be unlawful for any person to make a false declaration of acreage, square feet or any growing area or to cause any concealment of nursery stock from inspection.

Section 8. Proceedings on finding pests.

(a) General rule.—When any agent shall find plant pests present on any nursery or dealer's premises, he shall notify the owner or person having charge of the premises by issuing a written inspection report and may issue a stop-sale order, listing plant pests found and prescribing treatment or control action to be taken.

(b) Stop-sale orders.—Plants under stop-sale order shall remain so until the agent is notified by the owner or person having charge of the premises that the prescribed treatment or action has been taken and a reinspection of the premises indicates the treatment has been effective.

(c) Partial infestation or infection.—If the agent finds 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 stipulate in writing such conditions for the use of the certificate of inspection as may, in its judgment, be necessary, and it may withhold the certificate of inspection until the conditions have been accepted in writing by the owner of the nursery.

(d) Violation.—Using the certificate of inspection without taking appropriate measures or precautions or observing the conditions shall be regarded as a violation of this act.

Section 9. Application for inspection.

Except as otherwise provided in this act, nurserymen, dealers and nursery agents selling or delivering nursery stock in this Commonwealth shall make application in writing by the date established in regulations and pay a fee established by regulation to the department. The department may establish in regulations minimum standards for inspecting nursery stock, including, but not limited to, size of the nursery or number of plants being grown or offered for sale. Nurserymen and dealers failing to make application to the department shall be liable for any additional expense of inspection. Fees for the Fruit Tree Improvement Program shall be established by the department through regulations developed in cooperation with a committee of fruit tree nurserymen. Fees for special inspection, phytosanitary export certification and other inspections and testing programs will be established in regulations.

Section 10. Dealer's certificate.

Every dealer located either within or outside this Commonwealth engaged in or about to engage in selling or soliciting orders for nursery stock within this Commonwealth shall secure a dealer's certificate which will verify that he will buy and sell only stock that has been duly inspected and certified by an official Federal or State inspector.

Section 11. Nurseries and dealers outside this Commonwealth.

Nurserymen, dealers or other persons residing or doing business outside this Commonwealth who desire to solicit orders for nursery stock in this Commonwealth shall be entitled to solicit orders in this Commonwealth, provided they are certified or licensed and their name appears on the official State Directories of Registered Nurseries and Nursery Dealers issued annually from the state in which their business is conducted.

Section 12. Agent's certificate.

All nursery agents selling nursery stock or soliciting orders for nursery stock for any nurseryman or dealer located within or outside this Commonwealth shall be required to secure and carry a nursery agent's certificate bearing a copy of the certificate held by the principal. The agent's certificate shall be issued by the department only to persons authorized by their principal or upon request of their principal.

Section 13. Records.

Every person selling nursery stock in this Commonwealth shall maintain and make available upon request by the department all records pertaining to the distribution or sale of nursery stock covered by this act.

Section 14. Revocation of certificate.

The department shall have the power to revoke or deny any certificate for sufficient cause, including, but not limited to, a violation of this act or of a rule or regulation promulgated hereunder or a finding by the department that a certificate of inspection issued or accepted under 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 in connection with plants or other property which have not been inspected and certified.

Section 15. Tagging packages.

Each person who engages in the selling, delivering or transporting of nursery stock in this Commonwealth is required to attach on the outside of each package, box, bale, truckload or carload lot sold or delivered a tag or poster on which shall appear an exact printed copy of his valid certificate or license. The use of tags or posters bearing an invalid or altered certificate or license or the misuse of any valid certificate or license tag is prohibited.

Section 16. Notice of receipt of uncertified stock.

When nursery stock is transported into this Commonwealth without a valid certificate of inspection issued by the proper out-of-State authority, the persons receiving the nursery stock must notify the department immediately. The nursery stock must be returned to the consignor or shipper or held for inspection as directed by the department.

Section 17. Imported stock requirements; transporting plant pests.

(a) Imported stock.—It is unlawful to transport or cause to be transported plants into this Commonwealth from other states, territories or countries unless accompanied by a valid certificate and a statement containing the names and addresses of the consignor and consignee and the nature of the contents. Any person who receives plants from foreign countries without a certification of inspection must notify the department immediately.

(b) Transportation of pests.—It is unlawful to transport any plant pest into this Commonwealth for research or any other purpose without first applying to and receiving prior approval from the department.

Section 18. Surveys to determine existence of pests.

The department may make surveys to determine the existence, distribution and severity of damage caused by plant pests, may collect and transport samples of plants or plant products which are capable of harboring plant pests, may conduct studies relating to the control of plant pests, may make other investigations necessary to protect Pennsylvania agriculture and horticulture from certain plant pests, may prescribe treatment for control of plant pests and may report the results of plant pest investigations.

Section 19. Treatment orders.

(a) General rule.—If the secretary determines that a serious pest situation exists in any part of this Commonwealth, any necessary eradication or control measures may be taken. Prior to carrying out any treatment procedures, the department shall notify the property owner in writing. Any agent of the department is authorized to enter the premises during reasonable hours to carry out the eradication or control measures.

(b) Treatment orders.—If the department finds a pest situation that does not justify the procedures specified in subsection (a), it may issue, in writing to the owner or person in charge, a treatment order. The treatment order shall describe the pest situation that exists and prescribe the required control or eradication measures and the date by which control must be completed. The premises shall be under quarantine until the control or eradication measures as specified have been completed and approved by the department. The department may issue a treatment order if any abandoned crops or noncultivated plants constitute a reservoir for the pest.

(c) Noncompliance.—If the owner or person in charge does not comply with the treatment order, the person having received the treatment order shall be in violation of this act. The department may carry out the control measures, and all expenses associated with the treatment shall be paid to the department by the person failing to comply with the treatment order.

Section 20. Pests declared public nuisance.

When the department determines a plant pest to be dangerous or destructive to the agriculture, horticulture or forests of this Commonwealth, the pest may be declared a public nuisance. It shall be unlawful for any person knowingly to permit any plant pest so declared to exist on his premises or to sell, offer for sale, give away or move any plants, plant products or other material capable of harboring the pest.

Section 21. Quarantines.

(a) General rule.—The department may establish quarantines as specified in this act or under its regulations to prevent the dissemination of plant pests within this Commonwealth. When a pest or pests that have the potential to cause serious damage to agriculture are found in any geographic area, the area and any adjacent areas as the department deems necessary shall be quarantined. After a quarantine has been established, the department shall issue such conditions or restrictions as it considers necessary to prevent or reduce the movement of the pest or pests from the quarantine area.

(b) Notice.—The department shall give notice of the establishment of a quarantine and any regulations to be issued, either in writing or by publication in at least one newspaper of general circulation in the areas affected. Under the quarantine, the department may prohibit, without inspection, the movement, shipment or transportation of any plant or plant product or other material capable of carrying the plant pest from the area under quarantine.

(c) Prevention or delay.—The department may establish a quarantine to prevent or delay the introduction of any plant pest into this Commonwealth from any country, state or territory.

(d) Vehicles.—The department may quarantine any vehicle or means of conveyance that is suspected of carrying the quarantined pest. If the pest is detected in or on any vehicle or other means of conveyance, the department may order such treatment as may be necessary to eradicate the pest.

(e) Special requirements.—The department may regulate the planting, growing or harvesting of any crop that serves as a host or reservoir for the pest within the quarantined area. The regulations may include prohibiting the establishment of a specific crop, variety or cultivar within a specific geographic area or during a specified time period. If any crop is suspected of harboring the pest, the department may require the treatment or destruction of the crop.

Section 22. Violations.

It shall be unlawful to violate or fail to comply with any provision of this act or regulations adopted under the provisions of this act.

Section 23. Criminal penalties.

Any person engaging in unlawful conduct under this act commits a summary offense and, upon conviction, shall be sentenced to pay a fine of not more than \$300 for each offense or to undergo imprisonment for a term of not more than 90 days, or both.

Section 24. Civil penalties.

In addition to any other remedy available at law or in equity for a violation of a provision of this act, a regulation promulgated under authority of this act or an order issued under this act, the secretary may assess a civil penalty upon the person responsible for the violation. The civil penalty assessed shall not exceed \$20,000 and shall be payable to the Commonwealth and collectible in any manner now or hereafter provided at law for the collection of debt.

Section 25. Injunctive relief.

In addition to any other remedies provided for in this act, the Attorney General, at the request of the secretary, may initiate, in the Commonwealth Court or the court of common pleas of the county in which the defendant resides or has his place of business, an action in equity for an injunction to restrain violations of this act or the regulations promulgated hereunder or an order issued under this act from which no timely appeal has been taken or which has been sustained on appeal. In any such proceeding, the court shall, upon motion of the Commonwealth, issue a preliminary injunction if it finds that the defendant is engaging in unlawful conduct under this act or is

engaging in conduct which is causing immediate or irreparable harm to the public. The Commonwealth shall not be required to furnish bond or other security in connection with the proceedings. In addition to an injunction, the court, in equity proceedings, may levy civil penalties as provided in section 24.

Section 26. Cooperation by department.

The department is authorized to cooperate, receive grants-in-aid and enter into agreements with any individual, organization or Federal, State or county agency for the purpose of implementing the provisions of this act. The department shall also have the authority to assist in the enforcement of any Federal quarantine established under Federal acts or regulations.

Section 27. Disposition of funds.

Fees so collected as well as moneys derived from registration, licensing and fines and civil penalties shall be paid into a special restricted account in the General Fund to be known as the Plant Pest Management Account for use by the department in administering this act. All moneys placed in the account under the provisions of this section are hereby made available immediately and are hereby specifically appropriated to the department for the purpose of improving and enhancing the administration of the program specified in this act and not to replace general revenues heretofore appropriated for this purpose.

Section 28. Repeal.

The act of April 21, 1937 (P.L.318, No.90), known as The Pennsylvania Plant Pest Act of 1937, is repealed.

Section 29. Effective date.

This act shall take effect in 60 days.

APPROVED—The 16th day of December, A. D. 1992.

ROBERT P. CASEY