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Sixty-fifth
Legislative Assembly
of North Dakota

FIRST DRAFT:
Prepared by the Legislative Council staff for the
Agriculture and Natural Resources Committee
May 2016

Introduced by

A BILL for an Act

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 4-33-01 of the North Dakota Century Code is amended and reenacted as follows:

~~4-33-01~~4.1-23-01. Definitions.

In this chapter, unless the context or subject matter otherwise requires:

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

NOTE: This definition uses "contaminated." "Contaminated" is not defined but "infested" is defined.

2. "Commissioner" means the agriculture commissioner or the commissioner's authorized representative.
3. "Host" means any plant or plant product upon which a pest is dependent for completion of any portion of its life cycle.
4. "Infested" means ~~actually infested or~~ infected with a ~~pest~~quantity of pests or so exposed to ~~infestation~~a quantity of pests that it would be reasonable to believe that ~~an infestation~~potential for harm or threat to the health of the host nursery stock exists.

NOTE: The existing definition used only forms of the defined word.

5. "Move" means to ship, offer for shipment, receive for transportation, carry, or otherwise transport, ~~move,~~ or allow to be ~~moved~~transported.
6. "Permit" means a document issued or authorized by the commissioner to provide for the movement of regulated articles to restricted destinations for limited handling, utilization, or processing.

7. "Person" means any individual, corporation, limited liability company, company, society, or association, or other business entity.
8. "Pest" means any invertebrate animal, pathogen, parasitic plant, or similar organism ~~which~~that can cause damage to a plant or part ~~thereof~~of a plant or any processed, manufactured, or other product of plants.
9. "Phytosanitary certificate" means an international document issued or authorized by the commissioner stating that a plant or plant product is considered free from quarantine pests and practically free from injurious pests and that ~~they are~~the plant or plant product is considered to conform with the current phytosanitary regulations of the importing country.
10. "Plant" means any part of a plant, tree, aquatic plant, plant product, plant material, shrub, vine, fruit, rhizome, vegetable, seed, bulb, stolon, tuber, corm, pip, cutting, scion, bud, graft, fruit pit, or agricultural commodity.
11. "Regulated article" means any article of any character as described in ~~the~~a quarantine carrying or capable of carrying the plant pest against which the quarantine is directed.

SECTION 2. AMENDMENT. Section 4-33-02 of the North Dakota Century Code is amended and reenacted as follows:

~~4-33-02~~4.1-23-02. Administration - Rulemaking authority.

The commissioner shall administer this chapter. The commissioner shall employ an individual who has a baccalaureate degree in entomology, plant pathology, or biological sciences. The commissioner may adopt rules to carry out this chapter.

SECTION 3. AMENDMENT. Section 4-33-03 of the North Dakota Century Code is amended and reenacted as follows:

~~4-33-03~~4.1-23-03. Authority for ~~voluntary~~control measures.

The commissioner, ~~either~~ independently or in cooperation with ~~counties or~~ political subdivisions ~~thereof, cities, towns~~, farmers' associations or similar organizations, individuals, federal agencies, or agencies of other states, is authorized to carry out operations or measures to locate~~; to~~, suppress, control, ~~or~~ eradicate~~; or to~~, prevent, or retard the spread of pests with the consent of the owners of the property involved.

SECTION 4. AMENDMENT. Section 4-33-04 of the North Dakota Century Code is amended and reenacted as follows:

~~4-33-04~~4.1-23-04. Authority for plant quarantine.

The commissioner is authorized to quarantine this state or any portion ~~thereof~~of the state when the commissioner determines that ~~such action~~quarantine is necessary to prevent or retard the spread of a pest within or from this state, and to quarantine any other state or portion ~~thereof~~of another state whenever the commissioner determines that a pest exists ~~therein~~in another state and that ~~such action~~quarantine is necessary to prevent or retard ~~its~~the spread of the pest into this state. Before ~~promulgating the determination~~determining that a quarantine is necessary, the commissioner shall, after due notice to interested parties, hold a public hearing under such rules as the commissioner ~~shall promulgate, at which hearing any~~adopts.

Any interested party may appear and be heard either in person or by attorney at the public hearing, provided, the commissioner may impose a temporary quarantine for a period not to exceed ninety days during which time a public hearing, as provided ~~herein~~for in this section, must be held if it appears that ~~a~~the quarantine ~~for~~may require more than the ninety-day period ~~will be necessary~~ to prevent or retard the spread of the pest. The commissioner shall give notice of the ~~establishment of the~~ quarantine in such newspapers in the quarantined area as the commissioner selects. The commissioner may limit the application of the quarantine to the infested portion of the quarantined area and appropriate environs, to be known as the regulated area, and ~~may~~, without further hearing, may extend the regulated area to include additional portions of the quarantined area upon publication of a notice ~~to that effect~~ in such newspapers in the quarantined area as the commissioner selects or by direct written notice to those concerned.

Following establishment of the quarantine, ~~no~~a person may not move any regulated article described in the quarantine or move the pest against which the quarantine is established, within, from, into, or through this state contrary to ~~regulations promulgated~~rules adopted by the commissioner. Notice of the ~~regulations~~rules must be published in such newspapers in the quarantined area as the commissioner may select.

The ~~regulations~~rules may restrict the movement of the pest and any regulated articles from the quarantined or regulated area in this state into or through other parts of this state or other states and from the quarantined or regulated area in other states into or through this state ~~and shall~~. The rules may impose ~~such inspection~~inspections, ~~disinfection~~disinfections,

~~certification~~certifications, ~~or permit~~permits, and other requirements as the commissioner deems necessary to effectuate the purposes of this chapter.

SECTION 5. AMENDMENT. Section 4-33-05 of the North Dakota Century Code is amended and reenacted as follows:

~~4-33-05~~4.1-23-05. Authority for abatement and emergency measures.

~~Whenever~~If the commissioner finds any article that is infested or reasonably believed to be infested or a host or pest exists on any premise or is in transit in this state, the commissioner ~~may~~, upon giving notice to the owner or the owner's agent in possession ~~thereof~~of the host or pest, may seize, quarantine, treat, or otherwise dispose of such pest, host, or article in ~~such~~the manner ~~as~~ the commissioner deems necessary to suppress, control, eradicate, or to prevent or retard the spread of ~~a~~the pest~~, or the~~. The commissioner may order ~~such~~the owner or agent to ~~so~~ treat or ~~otherwise~~ dispose of the pest, host, or article. If large areas or metropolitan areas, involving many people, are to be treated, notice may be ~~by means of~~given through newspaper, radio, or other news media. ~~Such~~A notice must prominently appear, at least ten days prior to treatment, in at least three issues of a daily paper having local coverage.

SECTION 6. AMENDMENT. Section 4-33-06 of the North Dakota Century Code is amended and reenacted as follows:

~~4-33-06~~4.1-23-06. Authority for inspections - Warrants.

~~To effectuate the purposes of this chapter, the~~The commissioner may with a warrant or the consent of the owner make reasonable inspection of any premises in this state and any property ~~therein~~in or ~~thereon~~on the premises and may without a warrant with the assistance of any law enforcement agency provided for in this code stop and inspect, in a reasonable manner, any means of ~~conveyance~~transportation moving ~~within~~in this state upon probable cause to believe it contains or carries any pest, host, or other article subject to this chapter~~, and~~. The commissioner may make any other reasonable inspection of any premises or means of ~~conveyance~~transportation for which~~,~~ no warrant is required under the Constitution of the United States and the Constitution of North Dakota~~, no warrant is required~~.

~~The appropriate district~~District courts in this state may issue warrants for ~~such~~ inspections of property or transportation upon a showing by the commissioner that there is probable cause to believe that there exists in or on the property or transportation to be inspected a pest, host, or other article subject to this chapter.

SECTION 7. AMENDMENT. Section 4-33-07 of the North Dakota Century Code is amended and reenacted as follows:

~~4-33-07~~4.1-23-07. Cooperation.

1. The commissioner is authorized to cooperate with any agency of the federal government in ~~such~~ operations and measures ~~as~~ the commissioner deems necessary to suppress, control, eradicate, ~~or to~~ prevent, or retard the spread of any plant pest including the right to expend state funds on federal lands.
2. The commissioner is authorized to cooperate with agencies of adjacent states in ~~such~~ operations and measures ~~as~~ the commissioner deems necessary to locate; to suppress, control, ~~or~~ eradicate; ~~or to~~ prevent, or retard the spread of any pest, provided, that the use of funds appropriated to carry out this chapter, for operations in adjacent states, must be approved in advance by the governor or the governor's designee.

SECTION 8. AMENDMENT. Section 4-33-08 of the North Dakota Century Code is amended and reenacted as follows:

~~4-33-08~~4.1-23-08. Penalties.

~~Any~~It is a class A misdemeanor for:

1. Any person ~~who violates~~to violate any ~~of the provisions~~provision of this chapter or who uses without authority any certificate or permit or other document provided for in this chapter or in the ~~regulations~~rules of the commissioner provided for in this chapter~~, is deemed guilty of a class A misdemeanor. Any~~;
2. Any person ~~who has~~to knowingly ~~moved~~move any regulated article into this state from any quarantined area of any other state, ~~which~~when the article has not been treated or handled under provisions of the quarantine and ~~regulations, in effect~~rules at the point of origin~~, shall be guilty of a class A misdemeanor~~.

In addition to criminal sanctions, a person found guilty of violating this chapter or ~~regulations~~rules is subject to a civil penalty not to exceed five thousand dollars for each violation. The civil penalty may be adjudicated by the courts or by the commissioner through an administrative hearing pursuant to chapter 28-32. The commissioner may~~, in accordance with the laws of North Dakota,~~ maintain an appropriate civil action in the name of the state against any person violating this chapter.

SECTION 9. AMENDMENT. Section 4-33-09 of the North Dakota Century Code is amended and reenacted as follows:

~~4-33-09~~4.1-23-09. Authority for compensation.

The commissioner~~, when determined necessary to fulfill the objectives of this chapter,~~ may authorize the payment of reasonable compensation to growers in infested areas for not planting host crops pursuant to instructions issued by the commissioner prior to the planting season, for losses resulting from the destruction of any regulated articles~~, provided, no~~. A payment may not be authorized for the destruction of regulated articles moved in violation of any ~~regulation~~rule or any host planted contrary to instructions issued by the commissioner~~, and further provided, that any~~. Any compensation payment program authorized by the commissioner must be approved by the ~~state~~ legislative assembly.

SECTION 10. AMENDMENT. Section 4-33-10 of the North Dakota Century Code is amended and reenacted as follows:

~~4-33-10~~4.1-23-10. Authority for local pest control and regulations.

The governing body of any political subdivision of North Dakota, by ordinance or resolution, may adopt and enforce regulations to control and prevent the spread of pests. If state ~~regulations~~rules are in effect, any similar local regulations must be approved by the commissioner. State ~~regulations shall~~rules must be in effect if the commissioner finds that adequate measures are not being taken by the political subdivision. The commissioner shall notify the appropriate officials of the political subdivision before any action is taken by the commissioner. ~~Such regulations~~The rules may authorize appropriate officers and employees to enter and inspect any public or private place which might harbor pests.

SECTION 11. AMENDMENT. Section 4-33-11 of the North Dakota Century Code is amended and reenacted as follows:

~~4-33-11~~4.1-23-11. Authority for financing local control programs - County pest coordinator.

1. The board of county commissioners may appropriate money for the control of pests under this chapter. If state funds are involved, the money must be expended according to control plans approved by the commissioner. The board of county commissioners shall determine the portion, if any, of control program costs to be paid by the county. Costs of the control program may be paid from revenues derived from general fund

levy authority of the county or from the county noxious weed control levy authority under section 4.1-47-14.

2. The board of county commissioners for any county shall designate an individual to serve as county pest coordinator. ~~The county weed control officer may serve in that capacity if approved by the board of county commissioners.~~ The county pest coordinator shall administer local and private funds in cooperation with state and federal pest control programs. When state funds are involved, the county pest coordinator shall submit county and township control plans to the agriculture commissioner for approval.

SECTION 12. AMENDMENT. Section 4-33-12 of the North Dakota Century Code is amended and reenacted as follows:

~~4-33-12~~4.1-23-12. Authority for domestic and export certification.

The commissioner may inspect and certify any plant and plant product, when offered for export or shipment from within the state ~~and to certify~~, to shippers and interested parties as to the freedom of ~~such~~the products from injurious pests according to the phytosanitary requirements of other states and foreign countries. Authority for inspection and certification under this section is not limited to plants defined in section ~~4-33-01~~4.1-23-01. The commissioner may make reasonable charges and use any means necessary to accomplish this objective. A portion of the fees collected may be deposited in the commissioner's operating fund equivalent to the amount that the United States department of agriculture assesses the department for federal plant export certificates issued by the commissioner. A certificate may be withheld or not issued if the product does not meet phytosanitary or import requirements and if all North Dakota licensing and bonding requirements have not been met. Consignee names and addresses on phytosanitary certificates are confidential.