CHAPTER 9

State Crop Pest Commission

**SECTION 46‑9‑10.** Commission established; duties and responsibilities; membership of commission.

The State Crop Pest Commission is established. It shall execute this chapter, Section 46‑1‑140, Chapters 10, 13, 25, 26, 33, 35, and 37 of this title and other duties and responsibilities assigned by law. The commission consists of no less than three members of the Agriculture and Natural Resources Committee of the Clemson University Board of Trustees, or the committee's successor, as designated by the board.

HISTORY: 1962 Code Section 3‑101; 1952 Code Section 3‑101; 1942 Code Section 3254; 1932 Code Section 3254; Civ. C. '22 Section 960; Civ. C. '12 Section 875; Civ. C. '02 Section 741; 1901 (23) 703; 1903 (24) 22; 1912 (27) 748; 1992 Act No. 389, Section 1, eff May 15, 1992.

**SECTION 46‑9‑15.** Definitions.

As used in this chapter:

(1) "Commission" means the State Crop Pest Commission or an officer or employee of the commission to whom authority to act in its stead is granted.

(2) "Director" means the Director of Regulatory and Public Service Programs, Clemson University.

(3) "Division" means the Division of Regulatory and Public Service Programs, Clemson University, and its employees, agents, and officials.

(4) "Genetically engineered organism" means an organism altered or produced through genetic modification from a donor, vector, or recipient organism using recombinant DNA techniques.

(5) "Plant pest" means a living stage of insects, mites, nematodes, slugs, animals, protozoa, snails or other invertebrate animals, bacteria, weeds, fungi, other parasite plants or their reproductive parts, or viruses, or organisms similar to or allied with the foregoing, including genetically engineered organisms or infectious substances which directly or indirectly may injure or cause disease or damage in plants or their parts or processed, manufactured, or other products of plants, and which may be a serious agricultural threat to the State, as determined by the director.

(6) "Quarantine" means limitations placed upon the free movement of plant pests, animals, plants, equipment, machinery, goods, genetically engineered organisms, or means of transportation, or all of the foregoing, considered reasonably necessary to prevent the spread of a plant pest.

(7) "Quarantine area" means that geographic area of the State including as a minimum the infested area and the regulated area to which a quarantine applies.

(a) "Infested area" means that geographic area of the State in which the presence of a plant pest has been confirmed and in which primary remediation efforts will be applied.

(b) "Regulated area" means that geographic area of the State adjacent, but not necessarily contiguous, to the infested area and in which efforts are designed to prevent further movement and spread of a plant pest.

HISTORY: 1992 Act No. 389, Section 1, eff May 15, 1992.

**SECTION 46‑9‑20.** Appointment of State Entomologist and State Plant Pathologist.

The commission may appoint an entomologist, known as the State Entomologist, and a plant pathologist, known as the State Plant Pathologist, who serve at the pleasure of the commission. The entomologist and pathologist shall advise, within their respective areas of expertise, the commission in the performance of its duties.

HISTORY: 1962 Code Section 3‑102; 1952 Code Section 3‑102; 1942 Code Section 3255; 1932 Code Section 3255; Civ. C. '22 Section 961; Civ. C. '12 Section 877; Civ. C. '02 Section 743; 1901 (23) 703; 1903 (24) 22; 1912 (27) 748; 1992 Act No. 389, Section 1, eff May 15, 1992.

**SECTION 46‑9‑30.** Confidentiality of business information; penalties for unlawful disclosure or use of information.

The commission by regulation shall establish procedures dealing with confidential business information. It is unlawful for an authorized representative of the commission in an official capacity to disclose under this chapter or another applicable chapter of this title information entitled to protection as confidential business information or as a trade secret. This information includes, but is not limited to, research information or new techniques, procedures, or products whether so denominated under federal or state law or regulation. It is unlawful also for the representative to use the information for personal gain or to reveal it to an unauthorized person if the confidential business information or trade secret clearly is delineated as such. A person who violates this section must be fined not more than two hundred dollars or imprisoned not more than thirty days. He also may be dismissed from his position.

HISTORY: 1962 Code Section 3‑103; 1952 Code Section 3‑103; 1942 Code Section 3256; 1932 Code Section 3256; Civ. C. '22 Section 962; Civ. C. '12 Section 878; Civ. C. '02 Section 744; 1901 (23) 703; 1903 (24) 22; 1912 (27) 748; 1992 Act No. 389, Section 1, eff May 15, 1992.

**SECTION 46‑9‑35.** Licensing exams and questions confidential; applicant review of failed exam.

(A) Licensing examinations and licensing examination questions maintained or administered, or both, by the commission, its agents, or employees are confidential and are exempt from public disclosure.

(B) The commission shall within twenty‑one days after receipt of a written request from an applicant who failed the licensing examination, arrange a meeting between a commission agent and the applicant to review the applicant's licensing examination answers. Such a meeting must be held in the commission office nearest the applicant's residence.

HISTORY: 2002 Act No. 206, Section 1, eff April 22, 2002.

**SECTION 46‑9‑40.** Authority to promulgate and enforce regulations; other powers of commission.

The commission, in accordance with the Administrative Procedures Act, may promulgate and enforce reasonable regulations as in the judgment of the commission may be necessary to eradicate or prevent the introduction, spread, or dissemination of plant pests, including genetically engineered plants or plant pest organisms, and prevent fraud or misrepresentation in the sale and dissemination of fruit trees, nut trees, shade and ornamental trees, vines, shrubs, plants, bulbs, and roots for propagation purposes. The commission may regulate or prohibit the shipment within, or the importation into, this State of plants, farm products, or other articles of any nature or character from a state, territory, or foreign country when, in the opinion of the commission, the regulation or prohibition is necessary to prevent the introduction or dissemination of plant pests.

The commission may carry out operations, including quarantines or measures to locate, suppress, control, or eradicate or to prevent or retard the spread of plant pests, independently or in cooperation with counties or their political subdivisions, municipalities, farmers' associations or similar organizations, individuals, federal agencies, or agencies of other states, by regulation, compliance agreement, judicial action, or other appropriate means.

HISTORY: 1962 Code Section 3‑104; 1952 Code Section 3‑104; 1942 Code Section 3257; 1932 Code Section 3257; Civ. C. '22 Section 963; Civ. C. '12 Section 876; Civ. C. '02 Section 742; 1901 (23) 703; 1903 (24) 22; 1912 (27) 748; 1922 (32) 975; 1992 Act No. 389, Section 1, eff May 15, 1992.

**SECTION 46‑9‑50.** Delegation of duties of commission to director; powers and duties of director.

The commission shall delegate the duties provided in this chapter and other applicable chapters of this title to the director who may administer and enforce the provisions and promulgate related regulations.

The director is the final decision authority in approving releases or the introduction of genetically engineered organisms for agricultural use in this State. The director may hold public hearings at appropriate geographical locations, after thirty days' public notice in at least one newspaper of general circulation within the area. In making a final decision the director may rely on the findings of federal or state agencies involved.

The director may promulgate regulations designating plant pests. In the designation he may rely upon prior determinations by federal authorities and in effect in Title 7, Code of Federal Regulations. If prior determinations have not been made, the director shall comply with the Administrative Procedures Act.

HISTORY: 1962 Code Section 3‑105; 1961 (52) 261; 1992 Act No. 389, Section 1, eff May 15, 1992.

**SECTION 46‑9‑60.** Powers and duties of commission upon finding or suspecting infestation; quarantines; effect of quarantines.

(A) When the commission finds an article infested or reasonably believed to be infested or a host or plant pest existing on premises or in transit in this State, upon giving notice to the owner or the person in possession, it may seize, quarantine, treat, or otherwise dispose of the plant pest, host, or article in a manner the commission considers necessary to suppress, control, or eradicate or to prevent or retard the spread of the plant pest, or the commission may order the owner or person in possession to treat or otherwise dispose of the plant pest, host, or article. The owner of property destroyed or ordered to be treated or otherwise disposed of under this section, in an action against this State in the appropriate court for the county in which the property was located, may recover just compensation for property destroyed or the reasonable costs of disposal if he establishes that the property was not a pest, host, or infested article. The State has a lien, equal in dignity to a tax lien, on property treated to the extent of the value of the treatment provided, exclusive of the salary costs of commission employees.

(B) The commission may quarantine the State or a portion of it when it determines that the action is necessary to prevent or retard the spread of a plant pest within or from this State and quarantine another state or portion of it whenever it determines a plant pest exists in it and that the action is necessary to prevent or retard its spread into this State. In quarantining in this State the commission is bound by the Administrative Procedures Act. In quarantining in another state the commission may rely upon a similar quarantine imposed by the appropriate agency of that state's government or the federal government, and the implementing regulation is exempt from submission to the General Assembly. However, the regulation automatically expires thirty days after the date of expiration of the quarantine upon which it was based. The commission may quarantine the entire State or may limit the quarantine to the infested area and the regulated area and without further hearing may extend or decrease the infested or the regulated areas, whether or not the new area is contiguous to the old, upon discovery of the plant pest in a new location. The action is effective upon publication of a notice to that effect in newspapers it selects in the newly‑affected area or by direct written notice to those concerned. In delineating geographic areas under this section, the commission shall consider those geographic districts established by Section 22‑2‑190.

(C) Following establishment of the quarantine, no person may move a regulated article described in the quarantine or move the plant pest against which the quarantine is established within, from, into, or through this State contrary to regulations promulgated by the commission. Notice of the regulations must be published in newspapers in the quarantined area the commission selects. The regulations may restrict the movement of the plant pest and 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 impose inspection, disinfection, certification, or permit and other requirements the commission considers necessary to effectuate the purposes of this chapter.

HISTORY: 1962 Code Section 3‑107; 1952 Code Section 3‑107; 1942 Code Section 3258; 1932 Code Section 3258; Civ. C. '22 Section 964; Civ. C. '12 Section 879; Civ. C. '02 Section 745; 1901 (23) 703; 1903 (24) 22; 1912 (27) 748; 1992 Act No. 389, Section 1, eff May 15, 1992.

**SECTION 46‑9‑70.** Police powers of commission, assistants, deputies, and agents; violations reported to commission.

The members of the commission and their assistants, deputies, and agents have police power in executing this chapter and as otherwise provided by law. Every person shall report violations to the commission.

HISTORY: 1962 Code Section 3‑109; 1952 Code Section 3‑109; 1942 Code Section 3261; 1932 Code Section 3265; Civ. C. '22 Section 971; 1912 (27) 748; 1992 Act No. 389, Section 1, eff May 15, 1992.

**SECTION 46‑9‑80.** Penalties for interfering with commission, director, deputies, assistants, or agents.

A person who seeks to prevent an inspection under the direction of the commission, the director, or his deputies, assistants, or agents or who otherwise interferes with the director or his assistants, deputies, or agents, while in the performance of their duties under this chapter and other chapters of this title assigned to the jurisdiction of the commission, is guilty of a misdemeanor and, upon conviction, must be fined not less than fifty nor more than two hundred dollars or imprisoned not less than ten nor more than thirty days, or both, for a first offense and for a second offense in the discretion of the court.

HISTORY: 1962 Code Section 3‑110; 1952 Code Section 3‑110; 1942 Code Section 3260; 1932 Code Section 3264; Civ. C. '22 Section 970; Cr. C. '22 Section 275; 1912 (27) 748; 1992 Act No. 389, Section 1, eff May 15, 1992.

**SECTION 46‑9‑90.** Penalties for violating chapter or regulations; denial, suspension, revocation, or modification of license or certificate; civil penalties; hearing on suspension; judicial appeal not to act as stay of penalty; authority of commission to enforce its ordinances and regulations in court.

(A) A person violating this chapter or chapters assigned to or regulations of the commission is guilty of a misdemeanor and, upon conviction, must be fined not less than fifty nor more than five hundred dollars or imprisoned not less than ten nor more than thirty days for a first offense and for a second offense in the discretion of the court.

(B) The director after opportunity for a hearing may deny, suspend, modify, or revoke a license or certificate for a violation of state or federal law or regulation. In addition to denial, suspension, revocation, or modification of a license or certificate or other penalty set forth in this chapter, any person subject to this chapter who violates this chapter or another chapter under the cognizance of the commission may be assessed a civil penalty by the director of not more than one thousand dollars for each violation. Each day a violation continues constitutes a separate violation. The director may suspend a license or certificate against which a civil penalty has been imposed if the license or certificate holder has not satisfied the penalty within thirty days after the license or certificate holder receives notification of the final decision of the director to impose the penalty. The license or certificate holder is entitled to a hearing on the suspension, but the suspension remains in effect pending the hearing and the decision of the director. Matters considered by the hearing officer are limited to whether a duly issued final order of the director existed, whether the license or certificate holder had notice of the final order, and whether the assessed penalty was paid within thirty days of the notice. A determination by the director is final unless within thirty days after the receipt of the notice of final determination the person adversely affected appeals to the Administrative Law Court as provided in Sections 1‑23‑380(B) and 1‑23‑600(D). The filing of a judicial appeal does not act as an automatic stay of enforcement of the civil penalty or of the suspension.

(C) The commission may enforce its ordinances and regulations in a court of competent jurisdiction by civil as well as criminal proceedings. If it is necessary to issue a writ of injunction, no court of this State has the right previous to a trial upon the merits to set aside the writ on bond. The commission may utilize its own counsel or call upon the Attorney General or the appropriate solicitor, or all of the foregoing. The commission and its agents in the discharge of the duties and in the enforcement of the powers delegated in this chapter may administer oaths and hear witnesses, and to that end the sheriffs in the State shall serve all summonses and other papers upon the request of the commission.

HISTORY: 1962 Code Section 3‑111; 1952 Code Section 3‑111; 1942 Code Section 3259; 1932 Code Section 3259; Civ. C. '22 Section 965; Cr. C. '22 Section 274; 1912 (27) 748; 1992 Act No. 389, Section 1, eff May 15, 1992; 1995 Act No. 23, Section 1, eff April 4, 1995; 2005 Act No. 39, Section 1, eff April 15, 2005; 2006 Act No. 387, Section 24, eff July 1, 2006.

Editor's Note

2006 Act No. 387, Section 53, provides as follows:

"This act is intended to provide a uniform procedure for contested cases and appeals from administrative agencies and to the extent that a provision of this act conflicts with an existing statute or regulation, the provisions of this act are controlling."

2006 Act No. 387, Section 57, provides as follows:

"This act takes effect on July 1, 2006, and applies to any actions pending on or after the effective date of the act. No pending or vested right, civil action, special proceeding, or appeal of a final administrative decision exists under the former law as of the effective date of this act, except for appeals of Department of Health and Environmental Control Ocean and Coastal Resource Management and Environmental Quality Control permits that are before the Administrative Law Court on the effective date of this act and petitions for judicial review that are pending before the circuit court. For those actions only, the department shall hear appeals from the administrative law judges and the circuit court shall hear pending petitions for judicial review in accordance with the former law. Thereafter, any appeal of those actions shall proceed as provided in this act for review. For all other actions pending on the effective date of this act, the action proceeds as provided in this act for review."

**SECTION 46‑9‑100.** Fines deposited to credit of State Treasury.

Fines resulting from prosecutions under this chapter and other chapters of this title assigned to the commission must be paid to the State Treasurer and deposited to the credit of the State Treasury.

HISTORY: 1962 Code Section 3‑112; 1952 Code Section 3‑112; 1942 Code Section 3262; 1932 Code Section 3266; Civ. C. '22 Section 972; 1912 (27) 748; 1992 Act No. 389, Section 1, eff May 15, 1992.

**SECTION 46‑9‑110.** Local ordinances void.

Local ordinances pertaining to the subject matter assigned by law to the commission, whether or not in conflict, are void.

HISTORY: 1992 Act No. 389, Section 1, eff May 15, 1992.

**SECTION 46‑9‑120.** Reporting of agricultural product diseases caused by chemical or other terrorism.

Every farmer, agriculturalist, county extension agent, agricultural products processor, crop advisor, or other person working in agriculture, or person having responsibility for agricultural production or processing must report agricultural products having or suspected of having any disease or infection from any crop pest whatsoever that may be caused by chemical terrorism, bioterrorism, radiological terrorism, epidemic or pandemic disease, or novel and highly infectious agents and which might cause serious agricultural threat to the State. The report must be made by telephone, in writing, or by compatible electronic format within twenty‑four hours to the Director, Regulatory and Public Service Programs, Clemson University, and must include as much of the following information as is available: the geographic location of the agricultural product and/or its origin; the name and address of any known owner, the name and address of any known shipper; the name and address of the owner of the point of origin; and the name and address of the reporting individual. The director must report to the Department of Health and Environmental Control any incidents which affect public health, or which create a public health emergency, as defined in Section 44‑4‑130. For purposes of this section, the terms chemical terrorism, bioterrorism, and radiological terrorism have the same meanings as provided in Section 44‑4‑130.

HISTORY: 2002 Act No. 339, Section 28, eff July 2, 2002.