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CHAPTER 10

Boll Weevil Eradication

**SECTION 46‑10‑10.** Short title.

 This chapter may be cited as the “South Carolina Boll Weevil Eradication Act”.

HISTORY: 1976 Act No. 649 Section 11.

**SECTION 46‑10‑20.** Definitions.

 The following terms as used in this chapter shall mean:

 (1) Commission: The State Crop Pest Commission, as designated by the Board of Trustees of Clemson University, or any officer or employee of the commission to whom authority to act in its stead has been or hereafter may be delegated.

 (2) Pest: Anthonomus grandis Boheman, boll weevil in any stage of development.

 (3) Host: Any plant or plant product upon which a pest is dependent for completion of any portion of its life cycle.

 (4) Infested: Actually infested or infected with a pest or so exposed to infestation that it would be reasonable to believe that an infestation exists.

 (5) Person: Any individual, corporation, company, society, association or other business entity.

 (6) Move: To ship, offer for shipment, receive for transportation, carry or otherwise transport, move or allow to be moved.

 (7) Regulated article: Any article of any character as described in the quarantine carrying or capable of carrying the plant pest against which the quarantine is directed.

 (8) Certificate: A document issued or authorized by the commission indicating that a regulated article is not contaminated with a pest.

 (9) Permit: A document issued or authorized by the commission to provide for the movement of regulated articles to restricted destinations for limited handling, utilization or processing.

 (10) Commercial Cotton Producer: Any person who grew cotton and received direct income from the sale of the crop during the year preceding the referendum provided for in Section 46‑10‑120 as certified by the Agricultural Stabilization and Conservation Service of the United States Department of Agriculture.

 (11) Director: The Director, Division of Regulatory and Public Service Programs, College of Agricultural Sciences, Clemson University.

 (12) Division: The Division of Regulatory and Public Service Programs, College of Agricultural Sciences, Clemson University.

HISTORY: 1976 Act No. 649 Section 1; 1982 Act No. 281, Section 1; 1983 Act No. 36 Sections 1, 2.

**SECTION 46‑10‑30.** Administration of chapter; rules and regulations.

 The commission shall administer the provisions of this chapter. The commission may assign functions provided for in this chapter to any unit of the commission and delegate any authority provided for in this chapter to any officer or employee thereof, to be exercised under its general supervision. The commission shall promulgate such rules and regulations as are necessary for the efficient execution of the provisions in this chapter.

 This chapter is subject to all the provisions of the Administrative Procedures Act (Sections 1‑23‑10 et seq.).

HISTORY: 1976 Act No. 649 Section 2; 1983 Act No. 36 Section 3.

**SECTION 46‑10‑40.** Powers of commission.

 The commission, 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, may carry out operations or measures to locate, suppress, control or eradicate, or to prevent or retard the spread of pests.

HISTORY: 1976 Act No. 649 Section 3; 1983 Act No. 36 Section 4.

**SECTION 46‑10‑50.** Quarantines; hearings and notice.

 The commission may quarantine this State or any portion thereof when it shall determine that such action 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 whenever it determines that a pest exists therein and that such action is necessary to prevent or retard its spread into this State. Before promulgating its determination that a quarantine is necessary, the commission shall, after due notice to interested parties, hold a public hearing under such rules as it shall promulgate, at which hearing any interested party may appear and be heard either in person or by attorney. The commission may impose a temporary quarantine for a period not to exceed ninety days during which time a public hearing, as provided herein, shall be held if it appears that a quarantine for more than the ninety‑day period will be necessary to prevent or retard the spread of the pest. The commission shall give notice of the establishment of the quarantine in such newspapers in the quarantined area as it may select. The commission 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 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 it may select or by direct written notice to those concerned.

 Following establishment of the quarantine, no person shall 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 by the commission. Notice of the regulations shall be published in such newspapers in the quarantined area as the commission may select.

 The regulations 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 impose such inspection, disinfection, certification or permit and other requirements as the commission deems necessary to effectuate the purposes of this chapter.

HISTORY: 1976 Act No. 649 Section 4.

**SECTION 46‑10‑60.** Additional powers of commission.

 Whenever the commission finds any article that is infested or reasonably believed to be infested or a host or pest exists on any premises or is in transit in this State, it may, upon giving notice to the owner or his agent in possession thereof, seize, quarantine, treat or otherwise dispose of such pest, host or article in such manner as the commission deems necessary to suppress, control, eradicate or to prevent or retard the spread of a pest, or the commission may order such owner or agent to so treat or otherwise dispose of the pest, host or article. The owner of any property destroyed or ordered to be treated or otherwise disposed of under this section may, in an action against this State in the appropriate court for the county in which he resides or the property was located, recover just compensation for any property so destroyed or the reasonable costs of disposal of any property so ordered if he establishes that the property was not a pest, host or infested article.

HISTORY: 1976 Act No. 649 Section 5.

**SECTION 46‑10‑70.** Inspections.

 To effectuate the purposes of this chapter, the commission may with a warrant or the consent of the owner make reasonable inspection of any premises in this State and any property therein or thereon and may without a warrant stop and inspect, in a reasonable manner, any means of conveyance moving within this State upon probable cause to believe it contains or carries any pest, host or other article subject to this chapter and may make any other reasonable inspection of any premises or means of conveyance for which, under the Constitution of the United States and the Constitution of this State, no warrant is required.

 The courts of this State shall have authority to issue warrants for such inspections upon a showing by the commission that there is probable cause to believe that there exists in or on the property to be inspected a pest, host or other article subject to this chapter.

HISTORY: 1976 Act No. 649 Section 6.

**SECTION 46‑10‑80.** Cooperation with federal and adjacent state agencies.

 (1) The commission may cooperate with any agency of the federal government in such operations and measures as is deemed 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 commission may cooperate with agencies of adjacent states in such operations and measures as it deems necessary to locate; to suppress, control or eradicate; or to prevent or retard the spread of any pest. The use of funds appropriated to carry out this chapter for operations in adjacent states must be approved in advance by the Governor or his designee.

HISTORY: 1976 Act No. 649 Section 7.

**SECTION 46‑10‑85.** Certification of cotton growers’ organization; eligibility requirements; certifying resolution; revocation.

 (A) The commission may certify a cotton growers’ organization for the purpose of entering into agreements with the State of South Carolina, other states, and federal agencies as may be necessary to carry out the purposes of this chapter.

 A cotton growers’ organization may apply to the commission for certification. In order to be eligible for certification by the commission, an organization must demonstrate to the satisfaction of the commission that:

 (1) It is a nonprofit organization and may qualify as a tax exempt organization under Section 501(a) of the Internal Revenue Code of 1954 [26 USC 501(a)];

 (2) Membership in the organization is open to all cotton growers in this State;

 (3) The organization has only one class of members with each member entitled to only one vote;

 (4) The organization’s board of directors is composed of five cotton growers from this State being appointed by the commission on recommendation of the Director, and in accordance with the grower organization’s bylaws, for a one year term. Their successors shall be elected for two year terms by the members of the approved cotton growers’ organization. The Director or his designee shall also serve on the board;

 (5) All books and records of account and minutes of proceedings of the organization are available for inspection or audit by the Director or his representative at any reasonable time;

 (6) Employees or agents of the growers’ organization who handle funds of the organization are adequately bonded.

 (B) Upon determination by the commission that the organization meets the requirements of subsection (A), the commission must adopt a resolution certifying the organization as the official boll weevil eradication organization.

 The commission may certify only one organization but may revoke the certification of the organization if at any time the organization fails to meet the requirements of this chapter.

HISTORY: 1983 Act No. 36 Section 5.

**SECTION 46‑10‑90.** Treatment or destruction of cotton.

 The commission or its authorized agent may destroy or in its discretion treat with pesticides, volunteer or other noncommercial cotton, and establish procedures by regulation for the purchase and destruction of commercial cotton when such action is deemed necessary to implement the purposes of this chapter.

HISTORY: 1976 Act No. 649 Section 8; 1983 Act No. 36 Section 6.

**SECTION 46‑10‑100.** Penalties.

 (A) A person who violates Section 46‑10‑60 or who alters, forges, counterfeits, or uses without authority a certificate, a permit, or other document provided for in this chapter or in regulations of the commission is guilty of a misdemeanor and, upon conviction, must be fined not more than one thousand dollars or imprisoned not more than one year, or both, in the discretion of the court.

 (B) A person who knowingly moves a regulated article into this State from a quarantined area of another state which has not been treated or handled under provisions of the quarantine and regulations in effect at the point of origin is guilty of a misdemeanor and, upon conviction, must be punished as in subsection (A).

HISTORY: 1976 Act No. 649 Section 9; 1983 Act No. 36 Section 7; 1985 Act No. 13, Section 1; 1991 Act No. 66, Section 1, eff May 22, 1991.

Effect of Amendment

The 1991 amendment designated the first two paragraphs of the section as (A) and (B), and deleted the third and fourth paragraphs setting forth penalties for failure to pay assessments and for destruction of cotton plants as a nuisance.

**SECTION 46‑10‑110.** Caution in use of pesticides or in eradication methods.

 The commission shall use all means necessary to insure that the pesticides used or the methods employed to eradicate the pest will not harm organisms other than the pest habitating the treatment area or surrounding areas.

 The commission may regulate the pasturage of livestock, entrance by unauthorized persons, and location of honey bee colonies in any quarantined area or in any field which has been or is to be treated with pesticides, or otherwise treated to cause the eradication of the pest.

 Extreme caution shall be employed by the commission to guard against the spread of any harmful substances used in the eradication of the boll weevil to areas other than the treatment area.

HISTORY: 1976 Act No. 649 Section 10.

**SECTION 46‑10‑120.** Cotton producer referendum.

 The Boll Weevil Eradication Program, as provided for under this chapter, must be implemented for a specified time determined by the commission if it determines that the federal government and the commercial cotton producers of this State, as determined by referendum conducted by the commission, shall cooperate and provide for the cost of carrying out the provisions of this chapter for the specified time. The cotton producer referendum must receive the favorable vote of two‑thirds of the producers casting votes. All commercial cotton producers in South Carolina shall receive ballots and are eligible to vote.

 Upon termination of the time specified in the last referendum, the commission shall establish an assessment, not to exceed ten dollars an acre, to cover suppression and containment costs on all cotton acreage within the eradication area as long as a containment program is necessary. This assessment and program duration is subject to change when petitioned by ten percent of the commercial cotton producers of this State.

HISTORY: 1982 Act No. 281, Section 2; 1985 Act No. 13, Section 2; 1988 Act No. 554, Section 1, eff May 29, 1988; 1990 Act No. 491, Section 3, eff May 29, 1990.

Effect of Amendment

The 1988 amendment made grammatical changes in the first paragraph, and rewrote the second paragraph deleting provisions providing for referenda to continue the program for additional periods and providing that the referenda specify the maximum annual payment or indicate that state funds were to be utilized, and adding provisions providing for changes in the assessment and the duration of the program upon petition of ten percent of the commercial cotton producers.

The 1990 amendment substituted “ten dollars” for “eight dollars”, in the second paragraph.

**SECTION 46‑10‑130.** Assessments and penalties against cotton growers.

 (A) Each commercial cotton grower in this State is assessed an annual uniform fee determined by the commission not to exceed ten dollars an acre subject to change as provided in Section 46‑10‑120. The assessment must be utilized by the commission to carry out this chapter. The funds must be remitted promptly to the organization certified according to this chapter under terms and conditions the commission considers necessary to ensure that the assessments are used in a sound program of eradication or suppression of the boll weevil or other cotton pests. The certified organization shall provide to the division an annual audit of its accounts performed by a certified public accountant. The assessments collected by the commission under this chapter are not state funds.

 (B) A cotton grower who fails to pay when due and upon reasonable notice an assessment levied under this chapter is subject to a penalty of not more than twenty‑five dollars an acre, established in the commission regulations, in addition to the assessment.

 (C) A cotton grower who fails to pay an assessment including penalties within fifteen days of notice of a penalty shall destroy cotton plants growing on his acreage which are subject to the assessment. Cotton plants not destroyed are a public nuisance. The director may apply to a court of competent jurisdiction to abate and prevent the nuisance. The director is not required to file a bond. Upon judgment and order of the court, the nuisance is condemned and must be destroyed in the manner it directs. This injunctive relief is available to the director in addition to and does not preclude other legal remedies.

 (D) For a first delinquency, an assessment and penalties not paid by the cotton grower within thirty days of the notice of a penalty automatically operate as a lien upon crops growing upon the land, or otherwise in the possession, of the grower until the assessment and penalties are paid in full. For a subsequent delinquency or for an unsatisfied crop lien, an assessment and penalties not paid by the grower within thirty days of the notice of a penalty automatically operate as a lien upon the real property he owns. These liens are of equal dignity with liens for taxes in favor of the State. The director may issue executions for collection of assessments in the manner executions are issued for ad valorem property taxes due the State. Sheriffs and deputies, upon request of the director, shall levy and collect executions and return them to the director in the manner tax executions are levied and returned to county tax collectors and tax commissioners.

 (E) The cotton grower is liable for court costs, fees, and other reasonable expenses incurred in the enforcement of this section.

HISTORY: 1982 Act No. 281, Section 2; 1983 Act No. 36 Section 8; 1985 Act No. 13, Section 3; 1988 Act No. 554, Section 2, eff May 29, 1988; 1989 Act No. 31, Section 1, eff March 31, 1989; 1990 Act No. 491, Section 4, eff May 29, 1990; 1991 Act No. 66, Section 2, eff May 22, 1991.

Effect of Amendment

The 1988 amendment replaced the provision providing that the assessment not exceed the amount specified in the referendum with an amount not to exceed eight dollars an acre subject to change as provided in Section 46‑10‑120, and made grammatical changes.

The 1989 amendment replaced “applicator” with “cotton grower” in the first sentence, and replaced “must” with “shall” in the fourth sentence.

The 1990 amendment substituted “ten dollars” for “eight dollars”.

The 1991 amendment designated the existing text as subsection (A), and added subsections (B) through (E).