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STATE OF OKLAHOMA

2nd Session of the 43rd Legislature (1992)

COMMITTEE SUBSTITUTE
FOR ENGROSSED
HOUSE BILL NO. 2460

BY: BENSON and COTNER of the HOUSE

and

KERR of the SENATE

COMMITTEE SUBSTITUTE

(AGRICULTURE - BOLL WEEVIL ERADICATION ACT - EMERGENCY)

SECTION 1. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 3-50.1 of Title 2, unless there is created a duplication in numbering, reads as follows:

This act shall be known and may be cited as the "Boll Weevil Eradication Act".

SECTION 2. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 3-50.2 of Title 2, unless there is created a duplication in numbering, reads as follows:

The Anthonomus grandis Boheman, known as the boll weevil, is hereby declared to be a public nuisance, a pest, and a menace to the cotton industry. Due to the interstate nature of boll weevil infestation, it is necessary to secure the cooperation of cotton growers, other state governments, and agencies of the federal government in order to carry out a program of boll weevil suppression and eradication. The purpose of this act is to secure

the eradication of the boll weevil and to provide for the certification of a cotton growers' organization to cooperate with state and federal agencies in the administration of cost-sharing programs for the eradication and suppression of the boll weevil and other cotton pests.

SECTION 3. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 3-50.3 of Title 2, unless there is created a duplication in numbering, reads as follows:

As used in the Boll Weevil Eradication Act:

1. "Board" means the State Board of Agriculture;

2. "Boll weevil" means the insect Anthonomus grandis Boheman, in any stage of development, including the egg, larval, pupal and adult stages;

3. "Certificate" means a document issued or authorized by the Department of Agriculture indicating a regulated article is not contaminated with the boll weevil;

4. "Commissioner" means the Commissioner of the Department of Agriculture, or his designee;

5. "Cotton" means a cotton plant or any part of it including bolls, stalk, flowers, root, or leaves or cotton products such as seed cotton, cottonseed, and hulls;

6. "Cotton grower" means any person who is engaged in or who has an economic interest in the business of producing cotton;

7. "Department" means the State Department of Agriculture;

8. "Host" means any plant or plant product in which the boll weevil is capable of completing any portion of its life cycle;

9. "Infested" means the presence of the boll weevil in any life stage or the existence of circumstances that make it reasonable to believe that the boll weevil is present;

10. "Permit" means a document issued or authorized by the Department to provide for the movement of regulated articles to restricted designations for limited handling, use, or processing;

11. "Person" means any individual, corporation, company, society, association, or other business entity; and

12. "Regulated article" means any article carrying or capable of carrying the boll weevil, including but not limited to cotton plants, seed cotton, gin trash, other hosts, or mechanical cotton pickers.

SECTION 4. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 3-50.4 of Title 2, unless there is created a duplication in numbering, reads as follows:

The Commissioner is hereby authorized and directed to carry out programs to destroy and eliminate boll weevils in this state. The Commissioner is authorized to cooperate with any agency of the federal government, any state contiguous to this state, any other agency in this state, or any person engaged in growing, processing, marketing, or handling cotton, or any group of such persons, in this state, in programs to effectuate the purposes of this act, and may enter into written agreements to effectuate such purposes. The agreements may provide for cost sharing, for division of duties and responsibilities under this act and may include other provisions generally to effectuate the purposes of this act.

SECTION 5. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 3-50.5 of Title 2, unless there is created a duplication in numbering, reads as follows:

The Commissioner shall have authority, as provided in this section, to enter cotton fields and other premises in order to carry out activities, including but not limited to treatment with pesticides, monitoring, and destruction of growing cotton and other host plants, as may be necessary to carry out the provisions of this act. The Commissioner shall have authority to make inspection of any fields or premises in this state and any property located therein or thereon for the purpose of determining whether such property is infested with the boll weevil. The inspection and other

activities may be conducted at any hour with the permission of the owner or person in charge. If permission is denied the Commissioner, the inspection and other activities may be conducted without a warrant with respect to any outdoor premises, if conducted in a reasonable manner between the hours of sunrise and sunset. The inspections and other activities may be conducted in a reasonable manner, with a warrant, with respect to any premises. Any judge of this state may, within his territorial jurisdiction, and upon proper cause to believe that any cotton or other regulated article is in or upon any premises in this state, issue warrants for the purpose of conducting administrative inspections and other activities authorized by this act.

SECTION 6. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 3-50.6 of Title 2, unless there is created a duplication in numbering, reads as follows:

Every person growing cotton in this state shall furnish to the Commissioner, on forms supplied by the Commissioner, such information as the Commissioner may require concerning the size and location of all commercial cotton fields and of noncommercial patches of cotton grown as ornamentals of for other purposes.

SECTION 7. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 3-50.7 of Title 2, unless there is created a duplication in numbering, reads as follows:

The Department is authorized to promulgate rules and regulations for quarantining this state, or any portion thereof, and for governing the storage or other handling in the quarantined areas of regulated articles and the movement of regulated articles into or from such areas, when he shall determine that such action is necessary, or reasonably appears necessary, to prevent or retard the spread of the boll weevil. The Department is also authorized to promulgate regulations governing the movement of regulated articles from any other state or portion thereof into this state when such

state is known to be infested with the boll weevil. Before quarantining any area, the Commissioner shall hold a public hearing under such rules as he shall determine, at which hearing any interested party may appear and be heard either in person or by attorney. Provided however, the Department may promulgate regulations, imposing a temporary quarantine for a period not to exceed sixty (60) days, during which time a public hearing, as herein provided, shall be held if it appears that a quarantine for more than sixty (60) days will be necessary to prevent or retard the spread of the boll weevil. It shall be unlawful for any person to store or handle any regulated article in a quarantined area, or to move into or from a quarantined area any regulated article, except under such conditions as may be prescribed by the regulations promulgated by the Commissioner.

SECTION 8. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 3-50.8 of Title 2, unless there is created a duplication in numbering, reads as follows:

The Department is authorized to designate by rule and regulation one or more areas of this state as "elimination zones" where boll weevil eradication programs will be undertaken. The Department is authorized to promulgate reasonable regulations regarding areas where cotton cannot be planted within an elimination zone when he has reason to believe it will jeopardize the success of the program or present a hazard to public health or safety. The Department is authorized to issue regulations prohibiting the planting of noncommercial cotton in such elimination zones, and requiring that all growers of commercial cotton in the elimination zones participate in a program of boll weevil eradication including cost sharing as prescribed in the regulations. Notice of such prohibition and requirement shall be given by publication for one (1) day each week for three (3) successive weeks in a newspaper having general circulation in the affected area. The Department is

authorized to set by rule and regulation a reasonable schedule of penalty fees to be assessed when growers in designated elimination zones do not meet the requirements of Section 7 of this act and participation in cost sharing as prescribed by regulation. The penalty fees shall not exceed a charge of Twenty-five Dollars ($25.00) per acre. When a grower fails to meet the requirements of regulations promulgated by the Department, the Commissioner shall have authority in elimination zones to destroy cotton not in compliance with such regulations.

SECTION 9. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 3-50.9 of Title 2, unless there is created a duplication in numbering, reads as follows:

The Commissioner shall have authority to destroy, or in his discretion to treat with pesticides, volunteer or other noncommercial cotton and to establish procedures for the purchase and destruction of commercial cotton in elimination zones when the Commissioner deems such action necessary to effectuate the purposes of this act. No payment shall be made by the Commissioner to the owner or lessee for the destruction or injury of any cotton which was planted in an elimination zone after publication of notice as provided in Section 8 of this act, or which was otherwise handled in violation of this act or the regulations adopted pursuant thereto. However, the Commissioner shall pay for losses resulting from the destruction of cotton which was planted in such zones prior to promulgation of such notice.

SECTION 10. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 3-50.10 of Title 2, unless there is created a duplication in numbering, reads as follows:

The Department is authorized to promulgate regulations restricting the pasturage of livestock, entry by persons, and location of honeybee colonies in any premises in an elimination zone which have been or are to be treated with pesticides or otherwise

treated to cause the eradication of the boll weevil, or in any other area that may be affected by such treatments.

SECTION 11. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 3-50.11 of Title 2, unless there is created a duplication in numbering, reads as follows:

A. Any person who shall violate any of the provisions of Sections 1 through 9 of this act or the regulations promulgated therein, or who shall alter, forge, counterfeit, or use without authority any certificate or permit or other document provided for in this act or in the regulations promulgated hereunder, shall be guilty of a misdemeanor and shall, upon conviction thereof, be punished by a fine of not less than Fifty Dollars ($50.00) nor more than One Thousand Dollars ($1,000.00).

B. Any person who shall, except in compliance with the regulations of the Department, move any regulated article into this state from any other state which the Department found in such regulations is infested by the boll weevil shall be guilty of a misdemeanor and shall be subject to the penalty provided in subsection A of this section.

SECTION 12. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 3-50.13 of Title 2, unless there is created a duplication in numbering, reads as follows:

A. The Board may certify a cotton growers' organization for the purpose of entering into agreements with the State of Oklahoma, other states, the federal government and other parties as may be necessary to carry out the purposes of this act.

B. In order to be eligible for certification by the Board, the cotton growers' organization must demonstrate to the satisfaction of the Board that:

1. It is a nonprofit organization and could 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 shall be open to all cotton growers in this state;

3. The organization shall have only one class of members with each member entitled to only one vote;

4. The organization's board of directors shall be composed of:

a. two cotton growers from this state being appointed by the Governor, and

b. one representative of state government from this state, appointed by the Governor;

5. All books and records of account and minutes of proceedings of the organization shall be available for inspection or audit by the Commissioner at any reasonable time; and

6. Employees or agents of the growers' organization who handle funds of the organization shall be adequately bonded.

SECTION 13. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 3-50.14 of Title 2, unless there is created a duplication in numbering, reads as follows:

A. Upon determination by the Board that the organization meets the requirements of Section 13 of this act, the Board shall certify the organization as the official cotton growers' organization. The certification shall be for the purposes of this act only, and shall not affect other organizations or associations of cotton growers established for other purposes.

B. The Board shall certify only one such organization, provided that the Board may revoke the certification of the organization if at any time the organization shall fail to meet the requirements of this act.

SECTION 14. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 3-50.15 of Title 2, unless there is created a duplication in numbering, reads as follows:

A. At the request of the certified organization, the Board shall authorize a referendum among cotton growers upon the question

of whether an assessment shall be levied upon cotton growers in the state to offset, in whole or in part, the cost of boll weevil or other cotton pest eradication and suppression programs authorized by this act or by any other law of this state. Provided that if such an assessment is not requested and passed as required herein, the Department shall not be under any obligation for a boll weevil eradication program as provided in this act.

B. The assessment levied under this act shall be based upon the number of acres of cotton planted. The amount of the assessment, the period of time for which it shall be levied, and the geographical area to be covered by the assessment shall be determined by the Board.

C. All affected cotton growers shall be entitled to vote in any such referendum and the Board shall determine any questions of eligibility to vote.

D. If at least two-thirds (2/3) of those voting vote in favor of the assessment, then the assessment shall be collected by the Department from the affected cotton growers.

E. The assessments collected by the Department under this act shall be promptly remitted to the certified organization under such terms and conditions as the Commissioner shall deem necessary to ensure that such assessments are used in a sound program of eradication or suppression of the boll weevil or other cotton pests.

F. The certified organization shall provide to the Department an annual audit of its accounts performed by a certified public accountant.

G. The assessments collected by the Department under this act shall not be "state funds".

SECTION 15. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 3-50.17 of Title 2, unless there is created a duplication in numbering, reads as follows:

A. A cotton grower who fails to pay when due and upon reasonable notice any assessment levied under this act shall be subject to a penalty of not more than Twenty-five Dollars ($25.00) per acre, as established in the Board's regulations.

B. A cotton grower who fails to pay all assessments, including penalties, within thirty (30) days of notice of penalty shall destroy any cotton plants growing on his acreage which is subject to the assessment. Any such cotton plants which are not destroyed shall be deemed to be a public nuisance. The Commissioner may apply to a court of competent jurisdiction to abate and prevent such nuisance. Upon judgment and order of the court, such nuisance shall be condemned and destroyed in the manner directed by the court. The grower shall be liable for all court costs and fees, and other proper expenses incurred in the enforcement of this section.

SECTION 16. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 3-50.18 of Title 2, unless there is created a duplication in numbering, reads as follows:

The Department shall have authority to adopt such other rules and regulations as he deems necessary to further effectuate the purposes of this act. Any rules and regulations issued under this act shall be adopted and published in accordance with any additional requirements prescribed in this act.

SECTION 17. It being immediately necessary for the preservation of the public peace, health and safety, an emergency is hereby declared to exist, by reason whereof this act shall take effect and be in full force from and after its passage and approval.

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