

SENATE BILL No. 1043

February 9, 2006, Introduced by Senators VAN WOERKOM, KUIPERS, BIRKHOLZ, JELINEK and ALLEN and referred to the Committee on Agriculture, Forestry and Tourism.

A bill to amend 1945 PA 72, entitled

"An act to prevent the importation from other states, and the spread within this state, of all serious insect pests and contagious plant diseases and to provide for their repression and control, imposing certain powers and duties on the commissioner of agriculture; to prescribe penalties for the violation of the provisions of this act; and to repeal certain acts and parts of acts,"

by amending the title and sections 1, 2, 3, 4, 5, 6, 7, 9, and 10 (MCL 286.251, 286.252, 286.253, 286.254, 286.255, 286.256, 286.257, 286.259, and 286.260), the title and section 9 as amended and section 10 as added by 2005 PA 52 and section 5 as amended by 2002 PA 175, and by adding section 1a; and to repeal acts and parts of acts.

THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

TITLE

1

1 An act to prevent the importation from other states, and the
 2 spread within this state, of all serious insect pests and
 3 contagious plant diseases; ~~and~~ to provide for their ~~repression~~
 4 **ABATEMENT** and control; ~~—, imposing~~ **TO PROVIDE FOR** certain powers
 5 and duties ~~on~~ **OF** the ~~commissioner~~ **DEPARTMENT** of agriculture; to
 6 prescribe **REMEDIES AND** penalties for the violation of ~~the~~
 7 ~~provisions of~~ this act; and to repeal ~~certain~~ acts and parts of
 8 acts.

9 Sec. 1. (1) ~~It shall be the duty of the commissioner of~~
 10 ~~agriculture whenever~~ **A PERSON SHALL NOT MAINTAIN A PUBLIC**

11 **NUISANCE. ALL OF THE FOLLOWING ARE CONSIDERED A PUBLIC NUISANCE:**

12 (A) ANY PREMISES, ARTICLE, CONVEYANCE, PLANT, OR OTHER THING
 13 THAT IS INFECTED OR INFESTED WITH ANY PLANT PEST, OR WHERE ANY
 14 PLANT PEST IS FOUND, INCLUDING, BUT NOT LIMITED TO, ANY ABANDONED
 15 OR NEGLECTED PLANT, ORCHARD, OR CROP.

16 (B) ANY PLANT THAT MAY BECOME INFECTED OR INFESTED WITH AND
 17 SERVE TO SPREAD A PLANT PEST IN THIS STATE AS DETERMINED BY ORDER
 18 OF THE DEPARTMENT ISSUED UNDER SECTION 5.

19 (C) ANY HOST PLANT DESIGNATED BY THE DIRECTOR. THE DIRECTOR
 20 MAY ISSUE AN ORDER DESIGNATING A PLANT AS A HOST PLANT. THE ORDER
 21 MAY BE LIMITED TO A CERTAIN GEOGRAPHIC AREA.

22 (2) **WHENEVER** it comes to ~~his~~ **THE** attention **OF THE DEPARTMENT**
 23 that any ~~of the dangerous insects or infectious diseases exist or~~
 24 ~~are supposed to exist~~ **PLANT PEST EXISTS** within this state, ~~to~~
 25 **THE DEPARTMENT SHALL** proceed, ~~without delay~~ **WITHIN 5 BUSINESS**
 26 **DAYS,** to examine the ~~trees, shrubs, vines, plants —, or fruits~~
 27 supposed to be infested or infected and all other such ~~trees,~~

1 ~~shrubs, vines, plants, or fruit as he may deem~~ **AS CONSIDERED**
2 advisable.

3 (3) If, upon examination, ~~destructive insects or dangerously~~
4 ~~infectious diseases are~~ **A PLANT PEST IS** found to exist, ~~a~~
5 ~~distinguishing mark shall be placed on~~ **THE DEPARTMENT SHALL**
6 **DESIGNATE** the ~~trees, shrubs, vines, or~~ plants **AS A PUBLIC**
7 **NUISANCE** and **SHALL SEND** a written notice ~~shall be served upon~~ **TO**
8 the owner or his **OR HER** agent with recommendations **FOR ABATEMENT OF**
9 **THAT PUBLIC NUISANCE WITHIN 5 DAYS AFTER RECEIPT OF THE NOTICE.**

10 When the owner or his **OR HER** agents cannot be found, ~~it shall be~~
11 ~~the duty of the commissioner of agriculture or his deputies to~~ **THE**
12 **DEPARTMENT SHALL** give general notice ~~in the following manner~~ to
13 every owner, possessor, or occupier of land and to ~~every~~ **ANY**
14 person ~~or persons, firm or corporation~~ having charge of any land
15 in this state ~~, whereon~~ **UPON WHICH** neglected, abandoned, or
16 ~~semi-abandoned fruit trees~~ **SEMIABANDONED PLANTS** are growing, to
17 **ABATE THE PLANT PEST OR** cut and destroy such plants. ~~THE NOTICE~~
18 **REQUIRED UNDER THIS SUBSECTION SHALL INCLUDE, BUT NOT BE LIMITED**
19 **TO,** 4 notices each not less than 1 foot square ~~shall be~~ printed
20 in clear readable type and posted 1 in each of 4 conspicuous places
21 in the area, at least 1 to be **LOCATED** on the property. The posting
22 of such notices shall take place at least ~~15~~ 5 days ~~prior to the~~
23 ~~date upon which the trees must be cut~~ **AFTER THE DEPARTMENT**
24 **DETERMINES THAT THE OWNER OR HIS OR HER AGENTS CANNOT BE FOUND.** At
25 the time of posting ~~said~~ **OF THE** notices, a copy ~~of the same~~
26 shall be mailed to every owner, possessor, or occupant or occupier
27 of **THE** land and to every person ~~or persons, firm or corporation~~

1 ~~financially interested therein, or having charge of any lands in~~
 2 ~~this state, whereon neglected or abandoned trees are growing, whose~~
 3 ~~postoffice address is known~~ **THE LAND.**

4 ~~(4) In case the AN owner refuses to accept~~ **WHO DISAGREES**
 5 **WITH** the opinion of the ~~inspector or inspectors,~~ **DEPARTMENT**
 6 regarding the nature of ~~an insect or a disease,~~ **A PLANT PEST** or
 7 the remedy ~~that shall be employed he~~ **FOR ABATING THE PLANT PEST**
 8 may appeal, within ~~10~~ **5** days, to the ~~commissioner of agriculture~~
 9 **DIRECTOR** by ~~serving~~ **FILING** a written notice of ~~such~~ **THE** appeal.
 10 The ~~commissioner of agriculture~~ **DIRECTOR** shall as soon as
 11 practicable investigate the matter, **HOLD AN ADMINISTRATIVE HEARING,**
 12 and order ~~the proper treatment~~ **ABATEMENT,** ~~and his opinion or~~
 13 ~~orders~~ **IF APPLICABLE. THE ORDER OF THE DIRECTOR** shall be final. In
 14 cases where the owner appeals ~~to the commissioner of agriculture,~~
 15 and the findings of the original inspector ~~or inspectors~~ are
 16 ~~approved~~ **AFFIRMED,** the expense incurred as a result of appeal
 17 shall be paid by the owner.

18 **SEC. 1A. AS USED IN THIS ACT:**

19 **(A) "DEPARTMENT" MEANS THE DEPARTMENT OF AGRICULTURE AND ANY**
 20 **AGENTS OR INSPECTORS, WHETHER AN EMPLOYEE OR INDEPENDENT CONTRACTOR**
 21 **HIRED BY THE DEPARTMENT.**

22 **(B) "DIRECTOR" MEANS THE DIRECTOR OF THE MICHIGAN DEPARTMENT**
 23 **OF AGRICULTURE.**

24 **(C) "HOST PLANT" MEANS ANY PLANT INFECTED OR INFESTED WITH A**
 25 **PLANT PEST.**

26 **(D) "PERSON" MEANS ANY INDIVIDUAL, CORPORATION, FIRM, OR OTHER**
 27 **LEGAL ENTITY.**

1 (E) "PLANT" MEANS ANY TREE, SHRUB, VINE, PLANT, CROP, OR
2 FRUIT.

3 (F) "PLANT PEST" MEANS AN ORGANISM OR DISEASE INJURIOUS TO
4 PLANTS AND INCLUDES, BUT IS NOT LIMITED TO, INSECTS, MITES, SNAILS,
5 NEMATODES, FUNGI, VIRUSES, BACTERIA, MYCOPLASMA-LIKE ORGANISMS,
6 WEEDS, PLANTS, OR PARASITIC PLANTS.

7 Sec. 2. In case the owner ~~—~~ or person in charge of the
8 ~~trees, shrubs, vines or~~ plants ~~—~~ **INFECTED OR** infested with a
9 ~~destructive insect or dangerously contagious disease, —~~ **PLANT PEST**
10 refuses or neglects to carry out the **DEPARTMENT'S** orders ~~of the~~
11 ~~commissioner of agriculture~~ within ~~the period stated in the~~
12 ~~notice served upon him~~ **21 DAYS**, the ~~commissioner of agriculture~~
13 **DEPARTMENT** shall employ such aid as may be necessary to carry out
14 ~~his own~~ **THE** orders.

15 Sec. 3. ~~Any and all neglected or abandoned trees, vines,~~
16 ~~shrubs, plants or parts thereof, which because of the existence~~
17 ~~therein or thereon of injurious or destructive insect pests, or~~
18 ~~plant diseases or other conditions which may constitute a menace to~~
19 ~~the horticulture or agriculture of the county, district, or~~
20 ~~vicinity or which are host plants of or provide a favorable and~~
21 ~~likely harbor for such pests or diseases, which, if they become~~
22 ~~established upon such neglected or abandoned host plants or crops,~~
23 ~~would be a menace to agriculture or horticulture, are hereby~~
24 ~~expressly declared to be public nuisances, and it shall be unlawful~~
25 ~~to maintain the same, and all remedies which are or may be given~~
26 ~~for the prevention or abatement of the nuisance shall apply~~
27 ~~thereto.~~ **THE DIRECTOR SHALL CHARGE THE OWNER FOR THE COST OF**

1 ABATING THE NUISANCE. IF THE OWNER FAILS TO PAY THE CHARGE WITHIN
 2 30 DAYS, THE DIRECTOR SHALL CERTIFY THE AMOUNT OF THE CHARGE, PLUS
 3 10% PER ANNUM INTEREST ACCRUING TO THAT CHARGE, TO THE LOCAL
 4 ASSESSING OFFICER AND THE LOCAL ASSESSING OFFICER SHALL ASSESS THAT
 5 AMOUNT AGAINST THE PROPERTY WHERE THE ABATEMENT TOOK PLACE. IN
 6 ADDITION, THE DIRECTOR MAY COLLECT THE CHARGE BY ANY MEANS
 7 AUTHORIZED BY LAW.

8 Sec. 4. (1) Whenever the ~~commissioner of agriculture shall~~
 9 ~~determine~~ **DEPARTMENT DETERMINES** by inspection that there exists on
 10 any property or premises within his jurisdiction any ~~trees, vines,~~
 11 ~~shrubs, plants, or parts thereof, which~~ **THAT** are ~~or have been~~
 12 neglected or abandoned ~~, which because of the existence therein or~~
 13 ~~thereon of injurious or destructive insect~~ **AND ARE INFESTED OR**
 14 **INFESTED WITH PLANT** pests ~~or plant diseases, or other conditions~~
 15 **OTHERWISE** constitute a menace to the horticulture or agriculture of
 16 the county, district, or vicinity, ~~he~~ **IT** shall ~~make~~ **ISSUE** a
 17 complete report of ~~his~~ **THE** inspection, setting forth ~~in such~~
 18 ~~report~~ a description of the ~~property or premises upon which the~~
 19 neglected or abandoned pest host exists, naming **LOCATION OF** the
 20 **PLANT** pest or ~~pests or other conditions which in his opinion are~~
 21 **INFECTION OR INFESTATION CONSIDERED** dangerous to the horticulture
 22 or agriculture of the county, district, or vicinity and ~~, if in~~
 23 ~~his judgment the findings justify, he shall state in such report~~
 24 ~~that~~ **WHETHER** the removal or destruction of the neglected or
 25 abandoned ~~trees, vines, shrubs, plants, or parts thereof,~~ will
 26 provide the best means for the elimination of ~~such menace~~ **THE**
 27 **PLANT PEST** to the horticulture and agriculture of the county,

1 district, or vicinity.

2 (2) IN THE CASE WHERE THE OWNER OF THE PROPERTY OR PREMISES
3 CHOOSES TO ABATE THE PLANT PEST, THE OWNER OF THE PREMISES SHALL
4 CONSULT WITH AND HAVE THE ABATEMENT VERIFIED BY A CERTIFIED CROP
5 ADVISER FOR AT LEAST 3 YEARS AFTER THE ABATEMENT.

6 Sec. 5. The ~~director of the department of agriculture and~~
7 ~~his or her inspectors, deputies, assistants, and employees~~ may
8 enter upon any premises **OR LAND** in the state for the purpose of
9 examining ~~trees, shrubs, vines, and~~ plants for the presence of
10 ~~destructive insects or diseases,~~ **PLANT PESTS** and, if any ~~such~~
11 ~~insects or diseases~~ are found, may ~~, under the provisions of this~~
12 ~~act,~~ take the steps as may be necessary to ~~exterminate them~~
13 **ORDER THEIR ABATEMENT.** ~~No damage~~ **DAMAGES** shall **NOT** be awarded for
14 the destruction of **OR INJURY TO** any ~~trees, shrubs, vines,~~ plants
15 ~~, or fruit or for injury to same~~ if done by the ~~director of the~~
16 ~~department of agriculture or his or her authorized inspectors and~~
17 ~~assistants,~~ in accordance with the provisions of this act ~~, and~~
18 **IF** the ~~director~~ **DEPARTMENT** considers it necessary in order to
19 ~~suppress dangerous insects and diseases, when the trees, shrubs,~~
20 ~~vines, and plants~~ **ABATE PLANT PESTS THAT** have ~~already been~~
21 ~~attacked by dangerous insects or diseases~~ **INFESTED OR INFECTED ANY**
22 **PLANTS.** Whenever any ~~dangerous~~ plant ~~disease, or destructive~~
23 ~~insect~~ **PEST**, which is new to or ~~which~~ has not become widely
24 prevalent or distributed through or within the state, is found upon
25 any ~~trees, shrubs, vines, or~~ plants, ~~in case it is considered~~
26 ~~necessary in order to prevent the spread and the dissemination of~~
27 ~~said insect, or disease,~~ the ~~director of the~~ department ~~of~~

1 ~~agriculture~~ may cause any ~~tree, shrub, vine, or~~ plant likely to
 2 be attacked by such ~~insect or disease~~ **PLANT PEST**, and which ~~are~~
 3 **IS** growing within 3,000 feet of where the ~~dangerous insect or~~
 4 ~~disease~~ **PLANT PEST** has been found, to be ~~treated with approved~~
 5 ~~remedies, or, if this is not feasible, to be destroyed~~ **ABATED**.
 6 However, if it becomes necessary to destroy any ~~trees, shrubs,~~
 7 ~~vines, or~~ plants ~~which have~~ not already ~~become~~ attacked
 8 **INFESTED OR INFECTED** by ~~said~~ **THE** new ~~and dangerous insect or~~
 9 ~~disease~~ **PLANT PEST**, the owner shall be ~~recompensed~~ **COMPENSATED**
 10 for ~~their~~ **THE** actual value, the amount to be fixed by 3 parties,
 11 1 to be selected by the owner, another by the ~~director of the~~
 12 ~~department, of agriculture,~~ and the third party to be selected by
 13 the ~~other 2 so selected~~ **DEPARTMENT AND THE OWNER**. The amount
 14 awarded ~~, when~~ **SHALL BE** approved by the director ~~of the~~
 15 ~~department of agriculture, shall be certified to the state~~
 16 ~~treasurer, who shall draw a warrant on the state treasurer for the~~
 17 ~~payment of the same~~ from the general fund of the state.

18 Sec. 6. ~~The commissioner of agriculture is hereby authorized~~
 19 ~~to make such rules and regulations and establish such quarantines~~
 20 ~~as he shall deem necessary for the proper enforcement of this act,~~
 21 ~~and all orders, rules and regulations promulgated by the~~
 22 ~~commissioner of agriculture pursuant to the act shall have the~~
 23 ~~force and effect of law.~~ **THE DIRECTOR MAY PROMULGATE RULES UNDER**
 24 **THE ADMINISTRATIVE PROCEDURES ACT OF 1969, 1969 PA 306, MCL 24.201**
 25 **TO 24.328, TO ENFORCE AND ADMINISTER THIS ACT.**

26 Sec. 7. In construing and enforcing ~~provisions of~~ this act,
 27 the act, omission, or failure of any official, agent, or other

1 person acting for, or employed by, any association, partnership, or
2 corporation within the scope of his **OR HER** employment or office,
3 shall in every case also be ~~deemed~~ **CONSIDERED** the act, omission,
4 or failure of ~~such~~ **THE** association, partnership, or corporation,
5 as well as of the person.

6 Sec. 9. (1) Subject to subsection (2), a person who maintains
7 a public nuisance in violation of section ~~3~~ **1** or otherwise
8 violates this act is guilty of a misdemeanor punishable by a fine
9 of not less than \$25.00 or more than \$100.00 or by imprisonment for
10 not more than 90 days, or both.

11 (2) Beginning September 1, 2005, subsection (1) does not apply
12 to a violation described in section 10.

13 Sec. 10. (1) A person who violates a rule promulgated or order
14 issued under this act that requires the destruction of plants is
15 responsible for a state civil infraction and shall be fined not
16 more than \$1,000.00 plus expenses incurred by the department in
17 destroying the plants.

18 (2) A person who violates a quarantine rule promulgated or
19 quarantine order issued under this act is responsible for a state
20 civil infraction and shall be fined not less than \$1,000.00 or more
21 than \$10,000.00. However, if the person voluntarily reported the
22 violation to the department before it was otherwise known to the
23 department or the person had reason to believe the violation was
24 about to become known to the department, the person shall be fined
25 not more than \$500.00.

26 (3) Beginning September 1, 2005, a person who knowingly
27 violates a quarantine rule promulgated or quarantine order issued

1 under this act is guilty of a misdemeanor and may be imprisoned for
2 not more than 1 year and shall be fined not less than \$1,000.00 or
3 more than \$10,000.00.

4 (4) Beginning September 1, 2005, a person who intentionally
5 violates a quarantine rule promulgated or quarantine order issued
6 under this act, for the purpose of causing damage to plants,
7 natural resources, or agricultural, silvicultural, or horticultural
8 products or resources, is guilty of a felony punishable by
9 imprisonment for not more than 5 years or a fine of not more than
10 \$250,000.00, or both.

11 (5) A person who violates a quarantine rule promulgated or
12 quarantine order issued under this act is liable for any damages to
13 plants, natural resources, or agricultural, silvicultural, or
14 horticultural products or resources resulting from the violation,
15 including, but not limited to, costs incurred to investigate,
16 monitor, prevent, or minimize such damages.

17 **(6) THE REMEDIES UNDER THIS ACT ARE INDEPENDENT AND**
18 **CUMULATIVE. THE USE OF 1 REMEDY BY A PERSON SHALL NOT BAR THE USE**
19 **OF OTHER LAWFUL REMEDIES ALLOWED BY LAW.**

20 Enacting section 1. 1929 PA 86, MCL 286.81 to 286.87, is
21 repealed.