

2-16-601. Title.

This subchapter shall be known as the "Arkansas Boll Weevil Suppression Eradication Act".

HISTORY: Acts 1991, No. 710, § 1.

2-16-602. Declaration of policy -- Purpose -- Construction.

(a) The General Assembly has found and determined and does hereby declare that the boll weevil is a public nuisance, a pest, and a menace to the cotton industry. Due to the interstate nature of the boll weevil infestation, it is necessary to secure the cooperation of cotton growers and other state and federal governments to carry out a program of boll weevil suppression or eradication.

(b) The purpose of this subchapter is to secure the suppression or eradication of the boll weevil and to provide for certification of a cotton growers' organization to cooperate with state and federal agencies in the administration of any available cost-sharing programs for the suppression or eradication of the boll weevil.

(c) This subchapter should be liberally construed to achieve the purposes provided in this section.

HISTORY: Acts 1991, No. 710, § 2; 1997, No. 330, § 1.

2-16-603. Definitions.

As used in this subchapter:

(1) (A) "Assessment" means the amount charged to each cotton grower to finance, in whole or part, a program to suppress or eradicate the boll weevil in this state.

(B) The grower's charge will be calculated on a per-acre basis;

(2) "Boll weevil" means *Anthonomus grandis* Boheman in any state of development;

(3) "Certificate" means a document issued or authorized by the State Plant Board indicating that a regulated article is not contaminated with boll weevils;

(4) "Cotton" means any cotton plant or cotton plant product upon which the boll weevil is dependent for completion of any portion of its life cycle;

(5) "Cotton grower" means any person, other than a cash rent landlord, who is engaged in or has an economic risk in the business of producing, or causing cotton to be produced, for market;

(6) "Host" means any plant or plant product upon which the boll weevil is dependent for completion of any portion of its life cycle;

(7) "Infested" means actually infested with a boll weevil or so exposed to infestation that it would be reasonable to believe that an infestation exists;

(8) "Permit" means a document issued or authorized by the board to provide for the movement of regulated articles to restricted designations for limited handling, utilization, or processing;

(9) "Person" means any individual, partnership, corporation, company, society, or association, or other business entity;

(10) "Regulated article" means any article of any character carrying or capable of carrying the boll weevil, including, but not limited to, cotton plants, seed cotton, cottonseed, other hosts, gin trash, gin equipment, mechanical cotton pickers, and other equipment associated with cotton production, harvesting, or processing; and

(11) "State Plant Board" means the agricultural plant regulatory agency of the State of Arkansas.

HISTORY: Acts 1991, No. 710, § 3; 1997, No. 330, § 2.

2-16-604. Criminal penalties.

(a) Any person who shall violate any of the provisions of this subchapter or the regulations promulgated hereunder, or who shall alter, forge, or counterfeit, or use without authority any certificate or permit or other document provided for in this subchapter or in the regulations promulgated hereunder, shall be guilty of a Class C misdemeanor.

(b) Any person who shall, except in compliance with the regulations of the State Plant Board, move any regulated article into this state from any other state which the board found in the regulations is infested by the boll weevil shall be guilty of a Class C misdemeanor.

HISTORY: Acts 1991, No. 710, § 11.

2-16-605. Rules and regulations.

(a) (1) The State Plant Board may promulgate regulations restricting the pasturage of livestock, entry by persons, and location of honeybee colonies, or other activities affecting the boll weevil eradication program in any premises in an eradication 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.

(2) The board may also adopt such other rules and regulations as it deems necessary to further effectuate the purposes of this subchapter.

(b) All rules and regulations promulgated pursuant to this subchapter shall be reviewed by the House Interim Committee on Agriculture, Forestry, and Economic Development and the Senate Interim Committee on Agriculture, Forestry, and Economic Development or appropriate subcommittees of the House Interim Committee on Agriculture, Forestry, and Economic Development and the Senate Interim Committee on Agriculture, Forestry, and Economic Development.

HISTORY: Acts 1991, No. 710, §§ 10, 18; 1997, No. 317, § 2.

2-16-606. Cooperative programs authorized.

The State Plant Board is hereby authorized to carry out programs to suppress or eradicate the boll weevil in this state. The board is authorized to cooperate with any agency of the federal government, any 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 subchapter and may enter into written agreements to effectuate such purposes. Such agreements may provide for cost sharing and for division of duties and responsibilities under this subchapter and may include other provisions generally to effectuate the purposes of this subchapter.

HISTORY: Acts 1991, No. 710, § 4.

2-16-607. Entry of premises -- Suppression or eradication activities -- Inspections.

(a) The State Plant Board, or its authorized representatives, shall have authority to enter cotton fields, cotton processing facilities, and other premises in order to carry out suppression or eradication activities, including, but not limited to, treatment with pesticides, monitoring, and destruction of growing cotton or other host plants, as may be necessary to carry out the provisions of this subchapter.

(b) The board 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. Such inspection and other activities may be conducted in a reasonable manner without a warrant at any reasonable daylight hour falling between sunrise and sunset.

(c) Any judge of this state will, within his or her jurisdiction, and upon proper cause shown, issue a warrant giving the board the right of entry to any premises for the purpose of carrying out the provisions of this section or other activities authorized by this subchapter.

HISTORY: Acts 1991, No. 710, § 5; 1993, No. 854, § 1.

2-16-608. Reports.

Every person growing cotton in this state shall furnish to the State Plant Board, or its designated representative, on forms supplied by the board or its cooperators, such information as the board may require concerning the size and location of all commercial cotton fields and of noncommercial patches of cotton grown as ornamentals or for other purposes.

HISTORY: Acts 1991, No. 710, § 6; 1993, No. 854, § 2.

2-16-609. Quarantine.

(a) The State Plant Board is authorized to promulgate regulations quarantining this state, or any portion thereof, and governing the storage or other handling in the quarantined areas of regulated articles and the movement of regulated articles into or from such areas. The board shall determine when such action is necessary, or appears reasonably necessary, to prevent or retard the spread of the boll weevil.

(b) The board is also authorized to promulgate regulations governing the movement of regulated articles from other states or portions thereof into this state when such state is known to be infested with the boll weevil. The promulgation of these regulations shall conform in all aspects to the Arkansas Administrative Procedure Act, § 25-15-201 et seq., as amended, and sound principles of quarantines.

HISTORY: Acts 1991, No. 710, § 7.

2-16-610. Designation of eradication zones -- Prohibition of planting of cotton -- Participation in suppression eradication program -- Penalties.

(a) The State Plant Board may designate by regulation one (1) or more areas of this state as eradication zones where boll weevil eradication programs will be undertaken.

(b) (1) The board may promulgate reasonable regulations regarding areas where cotton cannot be planted within an eradication zone when there is reason to believe it will jeopardize the success of the program or present a hazard to public health or safety.

(2) The board may issue regulations prohibiting the planting of noncommercial cotton in such eradication zones, and requiring that all growers of commercial cotton in the eradication zones participate in a program of boll weevil eradication including cost sharing as prescribed in the regulations.

(c) Notice of the 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.

(d) (1) The board may set by regulation a reasonable schedule of penalty fees to be assessed when growers in designated eradication zones do not meet the requirements of regulations issued by the board with respect to reporting of acreage and participation in cost sharing as prescribed by regulation.

(2) The penalty fees shall not exceed a charge of twenty-five dollars (\$25.00) per acre per year. Any such penalty is in addition to any assessments otherwise due, which assessments shall also remain payable.

(e) (1) When a grower fails to meet the requirements of regulations promulgated by the board, the board in eradication zones may destroy cotton not in compliance with such regulations.

(2) Cost incurred by the board shall be assessed against the grower.

HISTORY: Acts 1991, No. 710, § 8; 1997, No. 330, §§ 3, 4.

2-16-611. Destruction or treatment of volunteer or other noncommercial cotton in eradication zones -- Liability.

(a) The State Plant Board shall have authority to destroy, or, at its discretion, cause to be treated with pesticides, volunteer or other noncommercial cotton and to establish procedures for the purchase and destruction of commercial cotton in eradication zones when the board deems such action necessary to effectuate the purposes of this subchapter.

(b) (1) No payment shall be made by the board to the owner or lessee for the destruction or injury of any cotton which was planted in an eradication zone after publication of notice as provided in this subchapter, or was otherwise handled in violation of this subchapter, or the regulations adopted pursuant thereto.

(2) However, the board shall pay for losses resulting from the destruction of cotton which was planted in such zones prior to promulgation of such notice.

HISTORY: Acts 1991, No. 710, § 9.

2-16-612. Certification of cotton growers' organization -- Requirements.

(a) The State Plant Board may certify a cotton growers' organization for the purpose of entering into agreements with the State of Arkansas, other states, the federal government, and such other parties as may be necessary to carry out the purposes of this subchapter.

(b) (1) In order to be eligible for certification by the board, the cotton growers' organization must demonstrate to the satisfaction of the board that:

(A) It is a nonprofit organization and could qualify as a tax-exempt organization under § 501(a) of the Internal Revenue Code of 1986, as amended.

(B) Membership in the organization will consist of all cotton growers in an eradication zone.

(2) The organization shall have only one (1) class of members with each member entitled to only one (1) vote.

(c) The organization's board of directors shall be composed as follows:

(1) Two (2) Arkansas cotton growers recommended by the board, to be appointed by the Governor;

(2) Three (3) Arkansas cotton growers recommended by the Arkansas Farm Bureau Federation, to be appointed by the Governor;

(3) Three (3) Arkansas cotton growers recommended by the Agricultural Council of Arkansas, to be appointed by the Governor;

(4) One (1) representative of state government from this state recommended by the board, to be appointed by the Governor; and

(5) The cochairs of the University of Arkansas Boll Weevil Eradication Technical Advisory Committee will serve as ex officio members of the cotton growers' organization board to serve in an advisory capacity.

(d) (1) All books and records of accounts and minutes of proceedings of the organization shall be available for inspection or audit by the board at any reasonable time.

(2) Employees or agents of the growers' organization who handle funds of the organization shall be adequately bonded in an amount to be determined by the board.

(e) (1) In addition to any authority granted the certified cotton growers' organization, the organization may borrow funds from any bona fide lender, including any state entity or authority, instruct the Arkansas Development Finance Authority to issue bonds pursuant to § 15-5-101 et seq., or to issue bonds in any other appropriate manner, any of which credit arrangements may be secured by a pledge of funds derived from assessments against cotton grower members of the organization.

(2) (A) Any funds borrowed and any funds derived from the sale of bonds shall be used exclusively for funding a boll weevil suppression or eradication program.

(B) Funds derived from assessments against cotton grower members of the organization shall be used to pay the operating expenses of the boll weevil suppression or eradication program and to repay any loans or obligations incurred by the boll weevil suppression or eradication program.

(f) (1) Upon being certified as the certified cotton growers' organization under this subchapter, the certified cotton growers' organization and its board of directors are granted all the immunities and protections allowed under § 16-120-101 et seq., notwithstanding the requirements of § 16-120-102(a).

(2) The certified cotton growers' organization may indemnify its directors against liability incurred in connection with their duties as board members.

(g) (1) In order for a cotton growers' organization to maintain certification by the board, it shall provide that its board of directors serve four-year terms of office except that on July 1, 2004, the terms shall be staggered so that, to the extent possible, an equal number of members' terms shall expire each year.

(2) Members of the board of directors may succeed themselves.

(3) (A) Within the parameters of subdivision (g)(3)(B) of this section, the cotton growers' organization shall ensure that the five (5) eradication zones as they existed on January 1, 2003, are represented on the board of directors in proportion to the number of acres of cotton planted in each zone using the prior three (3) years' average acreage to determine the proportional representation.

(B) Beginning July 1, 2004, the cotton growers' organization shall cause its board of directors to be composed of:

(i) At least one (1) member but no more than (2) members who reside within the Southeast Boll Weevil Eradication Zone as it existed on January 1, 2003;

(ii) At least one (1) member but no more than (2) members who reside within the Southwest Boll Weevil Eradication Zone as it existed on January 1, 2003;

(iii) At least one (1) member but no more than (2) members who reside within the Central Boll Weevil Eradication Zone as it existed on January 1, 2003;

(iv) At least one (1) member but no more than (2) members who reside within the Northeast Ridge Boll Weevil Eradication Zone as it existed on January 1, 2003; and

(v) At least one (1) member but no more than (2) members who reside in the Northeast Boll Weevil Eradication Zone as it existed on January 1, 2003.

(4) As vacancies occur, they shall be filled in a manner that will, to the extent possible, ensure the proportional representation required in subdivision (g)(3)(A) of this section.

HISTORY: Acts 1991, No. 710, § 12; 1993, No. 854, § 3; 1995, No. 529, § 1; 1997, No. 330, §§ 5, 6; 2003, No. 1726, § 1.

2-16-613. Certification of cotton growers' organization -- Revocation.

(a) (1) Upon determination by the State Plant Board that the organization meets the requirements of § 2-16-612, the board shall certify the organization as the official cotton growers' organization.

(2) Such certification shall be for the purposes of this subchapter only and shall not affect other organizations or associations of cotton growers established for other purposes.

(b) The board shall certify only one (1) such organization and may revoke the certification of the organization if at any time the organization shall fail to meet the requirements of this subchapter.

(c) The debts of this organization, should there be any, shall not become the liability of the board.

HISTORY: Acts 1991, No. 710, § 13.

2-16-614. Referendum -- Assessments.

(a) (1) At the request of the certified cotton growers' organization, the State Plant Board shall authorize a referendum among cotton growers in a designated region on the question of whether an assessment shall be levied upon cotton growers in that region to offset, in whole or in part, the cost of boll weevil suppression, preeradication, eradication, or maintenance programs authorized by this subchapter or any other law of this state.

(2) The program shall be designed on a regional basis to reflect the differences in boll weevil infestation and the relative costs of financing boll weevil suppression and eradication programs in the respective regions.

(b) (1) The assessment levied under this subchapter shall be based upon the number of acres of cotton planted in the eradication area.

(2) The amount of the assessment, the period of time for which it shall be levied, how it shall be levied, when it shall be paid, and the geographical area to be covered by the assessment shall be determined by the board and established by regulations pursuant to this section.

(3) The annual assessment shall not exceed fifty dollars (\$50.00) per acre.

(c) (1) All affected cotton growers shall be entitled to vote in any such referendum; provided, however, that the affected cotton growers produced a cotton crop for harvest, or had an interest therein, in the designated region conducting the referendum in the crop year immediately preceding the year in which the referendum is conducted.

(2) A cotton grower may vote through a power of attorney evidenced in writing, including, but not limited to, a power of attorney recognized by the Farm Service Agency or its successor. The board or its cooperators shall determine any questions of eligibility to vote.

(3) Each person who is eligible to vote in the referendum shall be mailed a ballot upon which to cast a vote for or against the boll weevil suppression and eradication program.

(4) Passage of the referendum shall require an affirmative vote of two-thirds (2/3) of those voting in the referendum.

(d) (1) The assessments approved under this subchapter shall be collected by the certified cotton growers' organization or such other agency or entity designated by the board from the affected cotton growers.

(2) The assessments collected by the board or such other agency or entity designated by the board under this subchapter shall be promptly remitted to the certified cotton growers' organization under such terms and conditions as the board shall deem necessary to ensure that the assessments are used in a sound program of eradication or suppression of the boll weevil.

(e) The certified organization shall provide to the board an annual audit of its accounts performed by a certified public accountant.

(f) The assessments collected by the board under this subchapter shall not be state funds.

(g) (1) In addition to the authority granted in this section for a referendum among cotton growers, the board may conduct a separate referendum among cotton growers in the southwest corner of the state, within boundaries to be defined by the board, on the question of whether an assessment shall be levied upon cotton growers in the defined area to provide funds to fund in whole or in part the cost of a boll weevil suppression or eradication program.

(2) Any such regional referendum shall be conducted in the same manner as any other referendum authorized in this section, and any assessments levied pursuant to such a referendum shall be subject to the same uses and limitations and shall be made, collected, and remitted in the same manner as assessments levied pursuant to any other referenda conducted under this subchapter.

HISTORY: Acts 1991, No. 710, § 14; 1993, No. 854, § 4; 1995, No. 529, § 2; 1997, No. 330, § 7.

2-16-615. Conduct of referendum.

The arrangements for and management of any referendum held under this subchapter shall be under the direction of the certified organization. The organization shall bear all expenses incurred in conducting the referendum, to include furnishing the ballots and arranging for the necessary poll holders.

HISTORY: Acts 1991, No. 710, § 15.

2-16-616. Subsequent referenda.

(a) In the event any referendum conducted under this subchapter fails to receive the required number of affirmative votes, the certified organization may call other referenda, with the consent of the State Plant Board.

(b) (1) After the passage of any referendum, the eligible voters shall be allowed by subsequent referenda to be held upon recommendation of the certified cotton growers' organization to vote on whether to eliminate or modify the program.

(2) Upon petition by one-third (1/3) of the cotton growers within a designated region established under § 2-16-614, the certified cotton growers' organization shall be required to conduct a subsequent referendum on whether to eliminate or modify the program, provided that the certified cotton growers' organization is required to hold no more than one (1) petitioned referendum for each designated region during any given calendar year.

(3) Passage of the question called in the subsequent referendum requires that a two-thirds (2/3) majority of those voting approve the subsequent referendum.

(4) All the requirements for an initial referendum must be met in subsequent referenda.

(c) If an approved eradication program is discontinued for any reason, or the certified cotton growers' organization is abolished or loses its certification for any reason, assessments approved, levied, or otherwise collectible under this subchapter on the date of the event remain valid as necessary to pay the financial obligations of the certified cotton growers' organization.

HISTORY: Acts 1991, No. 710, § 16; 1993, No. 854, § 5; 1997, No. 330, § 8.

2-16-617. Failure to pay assessments -- Extensions -- Exemption.

(a) (1) A cotton grower who fails to pay when due and upon reasonable notice any assessment levied under this subchapter shall be subject to a per-acre penalty as established in the State Plant Board's regulations in addition to the assessment.

(2) A cotton grower who fails to pay all assessments, including penalties, within thirty (30) days' notice of penalty shall destroy any cotton plants growing on his or her acreage which is subject to the assessment. Any such cotton plants which are not destroyed shall be deemed to be a public nuisance, and the public nuisance may be abated in the same manner as any public nuisance.

(b) The board may petition the circuit court of the judicial circuit in which the public nuisance is located to have the nuisance condemned and destroyed, with all costs of destroying to be levied against the grower. This injunctive relief shall be available to the board notwithstanding the existence of any other legal remedy, and the board shall not be required to file a bond.

(c) (1) In addition to any other remedies for the collection of assessments, including penalties, the board may secure a lien upon cotton subject to the assessments.

(2) (A) If the cotton was grown on a cost-share basis, the lien may be perfected on the landowner's share and the grower's share of the cotton.

(B) Any buyer of cotton shall take free of the lien if he or she has not received written notice of the lien from the board or if he or she has paid for the cotton by a check in which the board is named as joint payee.

(3) The amount of the lien on the cotton shall reflect the landowner's and grower's proportionate share of the assessment.

(d) (1) (A) No gins in the State of Arkansas shall gin any cotton for any cotton grower from Arkansas or from any other state unless and until that grower files with the respective gin a certificate of compliance issued by the board certifying that the grower has paid all fees, assessments, penalties, and costs imposed and required pursuant to this subchapter, unless a grower has been granted an extension by the board in compliance with subsection (e) of this section.

(B) It is the responsibility of each grower to procure a certificate of compliance or proof that an exemption for compliance has been granted from the board by September 1 of each successive crop year and to file same with a gin.

(2) (A) Any gin that gins cotton for any cotton grower who has not filed a current valid certificate of compliance issued by the board shall be assessed a penalty to be established by board regulations.

(B) Any cotton grower will be subject to having a lien placed on the following year's crop for any unpaid assessments or penalties incurred in the previous year.

(e) (1) The board shall by regulation establish a procedure in which a cotton grower can apply for exemption from payment of any assessment or penalty imposed in this section, on the basis that the payment of the assessment or the penalty will impose undue financial hardship on the grower, and shall

prescribe the criteria to be used in determining undue financial hardship.

(2) (A) Any cotton grower who wishes to request an exemption from payment of the assessment, or the penalty, or both, shall apply for the exemption on forms prescribed by the board.

(B) A separate application must be filed for each calendar year for which the cotton grower seeks an exemption, and each such application shall contain information on which the grower relies to justify an exemption on the basis of undue financial hardship.

(C) The application form shall include an oath or affirmation of the applicant as to the truth of all information contained in or accompanying the application.

(3) (A) The board shall forward each completed exemption application form and any information accompanying the form to the cotton growers' organization certified pursuant to § 2-16-612.

(B) The certified cotton growers' organization shall determine whether each applicant qualifies for a hardship exemption based on the information contained in or accompanying the application form.

(4) If the certified organization determines that the payment of the assessment or the penalty, or both, would impose undue financial hardship on a cotton grower who has applied for an exemption, the organization may:

(A) Exempt the cotton grower from payment of the assessment or the penalty, or both; or

(B) Permit the cotton grower to pay the assessment or penalty, or both, on an installment payment plan and prescribe the payment schedule.

(5) Upon making a determination on any application for exemption, the certified organization shall notify the board of its determination, which shall be binding on the applicant.

(6) Upon receipt of notice of a determination by the organization, the board shall promptly notify the affected cotton grower of the determination.

(7) If an exemption is denied, the assessment and penalties for the year in which the application is made will be due at the time they would otherwise have been due if the application had not been filed or within thirty (30) days after the date the notice of the adverse determination is received by the cotton grower, whichever is later.

HISTORY: Acts 1991, No. 710, § 17; 1993, No. 854, § 6; 1995, No. 529, §§ 3, 4; 2003, No. 1726, § 2.