

ment of said Superior Court of the State of Washington as in other civil actions.

Passed the House February 6, 1941.

Passed the Senate February 19, 1941.

Approved by the Governor February 27, 1941.

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## CHAPTER 20.

[H. B. 181]

### HORTICULTURAL PESTS.

AN ACT relating to horticultural pests; providing for horticultural boards, charging state and county officials and the Superior Court with certain duties; authorizing the Director of Agriculture to establish necessary rules and regulations; amending section 2 of chapter 71 of the Laws of 1937 (section 2849-2 of Remington's Revised Statutes; section 2717-B of Pierce's Code), and declaring an emergency.

*Be it enacted by the Legislature of the State of Washington:*

SECTION 1. It is hereby declared to be the purpose of the legislature to provide facilities whereby infested horticultural property that is a menace to adjacent properties may be abated or the infestation removed with the least possible delay. Purpose.

SEC. 2. The term "nuisance" whenever used in this act shall be and include any plants, produce or property upon which may be found any pest or diseases recognized under section 5, chapter 37, Laws of 1923 (section 2843 of Remington's Revised Statutes; section 2711 of Pierce's Code), which pest, pests or disease is found on any property in commercial area as herein defined and which pest, pests or disease is a source of infestation to other properties. Definitions.

SEC. 3. Any property or properties upon which are located any pest, pests or disease as recognized

Property  
nuisance  
per se.

under section 5, chapter 37, Laws of 1923 (section 2843 of Remington's Revised Statutes; section 2711 of Pierce's Code), that will or is likely to cause damage or infestation to other properties are hereby defined as a "nuisance per se."

Commercial  
area.

SEC. 4. The term "commercial area" when used in this act shall be any district where any horticultural product is being produced to the extent that any producer is dependent in part or in whole upon that horticultural product or products for a livelihood.

Inspector to  
investigate  
and report.

SEC. 5. In the event that a horticultural inspector, after examination of any premises or property as provided in section 10, chapter 166, Laws of 1915, as amended (section 2847 of Remington's Revised Statutes; section 2715 of Pierce's Code), finds such premises or property infested, he shall immediately report said findings in writing to the horticultural inspector-at-large in his district. Said written report shall state the disease and/or infestation found, an estimate of the amount thereof, and whether in his opinion the said disease or infestation is or will be a nuisance. Upon receipt of said report, the inspector-at-large shall forthwith appoint some person who is engaged in the growing of a horticultural product that could become infested from the alleged infested premises and who resides within three (3) miles of said infested premises, and said appointed person, together with either the inspector-at-large or some person delegated by him from his department, shall forthwith appoint a third person who is likewise engaged in the growing of an agricultural product that could become infested from the infestation upon the infested premises, which persons shall be known as an inspection board. It shall be the duty of said inspection board to forthwith examine said infested premises aforementioned in such a manner as to be able to determine whether the same or any part thereof is infested with any of the pest, pests or dis-

Inspection  
board of 3 to  
examine.

eases set forth in section 5, chapter 37, Laws of 1923 (section 2843 of Remington's Revised Statutes; section 2711 of Pierce's Code).

SEC. 6. Said inspection board shall make a report of the inspection of said premises, which shall state: (1) whether or not said premises or any part thereof is infested; (2) if infested, the nature of the infestation and the amount thereof; (3) if infested, whether the same constitutes a nuisance as in this act provided.

Inspection board to report.

Contents of report.

SEC. 7. Said report shall be in writing and signed by a majority of the board under oath before a notary public or any officer authorized to take an oath under the laws of this state. Said written report shall be forthwith handed to the inspector-at-large. The members of the inspection board shall be compensated at the rate of four dollars (\$4.00) per day to be paid from the county current expense budget of the county horticultural department. Said inspection board shall have the same rights and be authorized and empowered to enter upon any premises at any time for the purpose of performing its duties to the same extent as is provided for the Director of Agriculture, the assistant director and all horticultural inspectors in section 10, chapter 166, Laws of 1915, as amended (section 2847 of Remington's Revised Statutes; section 2715 of Pierce's Code).

Compensation of board.

Power of board.

SEC. 8. If and in the event the report of the inspection board finds that plants, produce or property upon said premises are infested and constitute a nuisance, said inspector-at-large shall forthwith transmit said findings of the inspector and the report of the inspection board to the Prosecuting Attorney of the county wherein such property is situated. Said Prosecuting Attorney shall, within five (5) days thereafter, present to the Superior Court a petition signed and verified by him in the manner and form now required for signing and verifying a complaint

Report to Prosecuting Attorney.

Petition to court.

Contents of  
petition.

in a civil action. Said petition shall describe with reasonable certainty the property or premises sought to be declared a nuisance, the name of the owner or owners, encumbrancers, or other persons interested in such property or premises so far as the same can be ascertained from the public records, together with

Proceedings.

a recital of the proceedings had under section 5 of this act; sections 10 and 11, chapter 166, Laws of 1915, as amended (sections 2847 and 2849 of Remington's Revised Statutes; sections 2715 and 2717 of Pierce's Code), and praying that the court enter an order declaring such premises or property a public nuisance and directing the immediate destruction of such plants, products or property upon said premises. There shall be attached thereto as an exhibit and as a part of said petition the report of the inspection board.

Amend-  
ments.

SEC. 9. Section 2, chapter 71, Laws of 1937 (section 2849-2 of Remington's Revised Statutes; section 2717-B of Pierce's Code), is hereby amended to read as follows:

Notice to  
owner.

Section 2. A notice, stating briefly the objects and purposes of the petition, and containing a description of the premises or property, and stating the time and place when and where the same will be presented to the court, shall be served upon each person named in the petition as owner, owners, encumbrancer, or otherwise interested therein, at least five (5) days prior to the time designated in such notice for the presentation of such petition. Such notice shall be worded as nearly as possible in the manner now provided by law for the service of summons in civil actions: *Provided*, In the event service is had by publication, the period of publication required hereunder shall be shortened to two weekly publications in a newspaper published or of general circulation within the county, and such service by publication shall be deemed complete upon the ex-

Contents of  
notice.

Notice by  
publication.

piration of fifteen (15) days from and after the date of the first publication of such notice. Due proof of the service of such notice may be made by affidavit of the person serving the same or by proper affidavit of publication, as the case may be, which shall be filed with the clerk of such Superior Court before or at the time of the presentation of such petition.

SEC. 10. Upon the hearing of said petition by the Superior Court, said court shall, if notice has been given as provided in section 9 of this act, and the inspection board report states that said premises are infested and constitute a nuisance, such report shall be accepted as prima facie evidence and if there is no showing that said inspection board acted in a capricious, arbitrary, unfair manner, said court shall accept the recommendation of said inspection board and shall forthwith decree said plants, produce or property upon said premises to be a nuisance and order the inspector-at-large of the district in which said property is located, and the Board of County Commissioners of said county to forthwith destroy the plants, produce or property located upon said premises, and upon said destruction shall tax the costs thereof, as well as the costs of any proceedings had hereunder against the parties defendant in said petition.

Hearing and judgment.

SEC. 11. If appeal is taken from a decision of the Superior Court rendered in pursuance of this act, the court shall require of the appellant a bond in an amount sufficient to cover possible damages to neighboring properties due to delay in carrying out the order of the court, and in no event shall such bond be less than one thousand dollars (\$1,000).

Appeal by defendant.

Appeal bond.

SEC. 12. Notice of appeal from the decision of the Superior Court shall be filed not later than ten (10) days after the issuance of the order by the Superior Court to destroy the infested property or abate the source of infestation involved in the suit.

Notice of appeal.

Director  
may issue  
proclama-  
tion.

SEC. 13. Whenever the Director of Agriculture determines that a particular pest cannot be eradicated or effectively controlled by recognized ordinary means, or that it is impractical to eradicate or control such pest without the destruction in whole or in part of uninfected or uninfested host plants, the director may issue a proclamation determining and setting out the host free period or host free district, or both, describing the host or hosts and the district wherein planting, growing, cultivating or maintenance in any manner of any plants or products capable of continuing the particular pests is prohibited during a specified period of time and until the menace therefrom no longer exists.

Unlawful  
to dump  
infested  
product.

SEC. 14. It shall be illegal for any property owner to permit the piling or dumping, or for any person or persons to pile or dump any infested product on properties where the dumping of the infested products might constitute a menace or source of infestation to growers of horticultural products.

Director  
to pro-  
mulgate  
rules.

SEC. 15. The Director of Agriculture is hereby authorized to promulgate and adopt such rules and regulations as are necessary or will facilitate the carrying out of the provisions of this and of other horticultural laws, which he is directed and authorized to administer or enforce.

Partial  
invalidity  
of act.

SEC. 16. If any section, portion or provision of this act shall be adjudged to be invalid or unconstitutional, such adjudication shall not affect the validity of the act as a whole, nor any section, sentence, phrase, or word thereof not adjudged to be invalid or unconstitutional: *Provided*, That if any provision in this act superseding or invalidating existing laws on the same subject is adjudged unconstitutional, such superseded or invalidated provisions will thereby be automatically restored to full force and effect.

Effective im-  
mediately.

SEC. 17. This act is necessary for the preservation of the peace, health and safety of this state and

the support of the state government of the State of Washington and its existing institutions and shall take effect immediately.

Passed the House February 20, 1941.

Passed the Senate February 19, 1941.

Approved by the Governor February 27, 1941.

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## CHAPTER 21.

[S. B. 169.]

### AIRPORTS AND AIRPORT SITES.

AN ACT relating to airports and airport sites; empowering cities, towns, counties and port districts to acquire, maintain, and operate such facilities, either alone or in conjunction with other municipalities and to condemn property for such purposes; repealing chapter 3, Laws of 1933, Extraordinary Session (section 905-1, Remington's Revised Statutes), and declaring that this act shall take effect immediately.

*Be it enacted by the Legislature of the State of Washington:*

SECTION 1. Any city, town, port district or county is hereby authorized and empowered by and through their appropriate corporate authorities to acquire, maintain and operate, within or without the boundaries of the counties in which such city, town or port district is situated, sites and other facilities for landings, terminals, housing, repair and care of dirigibles, airplanes, and seaplanes, and seaplanes for the aerial transportation of persons, property and mail or for use of military and naval aircraft, either jointly with another city, town, port district, county, the State of Washington, or the United States of America or severally, and the same is hereby declared to be a municipal purpose and a public use.

Municipalities may acquire airports.

SEC. 2. Such municipalities may also acquire by purchase, condemnation or lease, lands and other

Power of eminent domain.