

1 **State of Arkansas**
2 **80th General Assembly**
3 **Regular Session, 1995**

A Bill

ACT 529 OF 1995
HOUSE BILL 1579

4 **By: Representatives McGinnis, Schexnayder, Simmons, Fletcher, Choate, Wagner, Beatty,**
5 **Northcutt, Angel, Jordan, Johnson, Thomas, and Ferguson**

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For An Act To Be Entitled

9 "AN ACT TO AMEND ARKANSAS CODE 2-16-612, 2-16-617(b) AND
10 2-16-617(e), TO CLARIFY AND STRENGTHEN THE ARKANSAS BOLL
11 WEEVIL SUPPRESSION ERADICATION ACT; AND FOR OTHER
12 PURPOSES."

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Subtitle

15 "TO CLARIFY AND STRENGTHEN THE ARKANSAS
16 BOLL WEEVIL SUPPRESSION ERADICATION
17 ACT."

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19 BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF ARKANSAS:

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21 SECTION 1. Arkansas Code 2-16-612 is amended to read as follows:

22 "2-16-612. Certification of cotton growers' organizations -
23 Requirements.

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

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

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

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

36 (2) The organization shall have only one (1) class of members with

1 each member entitled to only one (1) vote.

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

3 (1) Two (2) Arkansas cotton growers recommended by the Plant Board,
4 to be appointed by the Governor;

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

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

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

11 (5) The cochairmen of the University of Arkansas Boll Weevil
12 Eradication Technical Advisory Committee will serve as ex officio members of
13 the cotton grower organization board to serve in an advisory capacity.

14 (d) (1) All books and records of account and minutes of proceedings of
15 the organization shall be available for inspection or audit by the Plant Board
16 at any reasonable time; and

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

20 (e) In addition to any authority granted the certified cotton grower
21 association, such association is hereby authorized to borrow funds or to
22 instruct the Arkansas Development Finance Authority to issue bonds pursuant to
23 Arkansas Code 15-5-101 et seq., or to issue bonds in any other appropriate
24 manner, any of which may be secured by a pledge of funds derived from
25 assessments against cotton grower members of the association. Any funds
26 borrowed and any funds derived from the sale of bonds shall be used
27 exclusively for funding a boll weevil suppression or eradication program."
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29 SECTION 2. Arkansas Code 2-16-614 is amended to read as follows:

30 "2-16-614. Referendum - Assessments.

31 (a) At the request of the certified organization, the Plant Board shall
32 authorize a statewide referendum among cotton growers on the question of
33 whether an assessment shall be levied upon cotton growers in the state to
34 offset, in whole or in part, the cost of boll weevil suppression or
35 eradication programs authorized by this subchapter or any other law of this

1 state. Such program shall be designed on a regional basis so as to reflect
2 the differences in boll weevil infestation and the relative cost of financing
3 a boll weevil suppression and eradication program in the respective regions.

4 (b) The assessment levied under this subchapter shall be based upon the
5 number of acres of cotton planted in the eradication area. The amount of the
6 assessment, the period of time for which it shall be levied, how it shall be
7 levied, when it shall be paid, and the geographical area to be covered by the
8 assessment shall be determined by the State Plant Board and established by
9 regulations pursuant to this section. The annual cost shall not exceed fifty
10 dollars (\$50.00) per acre.

11 (c) All affected cotton growers and landowners with a cotton base shall
12 be entitled to vote in any such referendum, and the Plant Board, or its
13 cooperators, shall determine any questions of eligibility to vote.

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

17 (2) If at least two-thirds (2/3) of those voting vote in favor of
18 the assessment, then the assessment shall be collected by the agency
19 designated by the Plant Board from the affected cotton growers.

20 (d) The assessments collected by the Plant Board under this subchapter
21 shall be promptly remitted to the certified organization under such terms and
22 conditions as the Plant Board shall deem necessary to ensure that such
23 assessments are used in a sound program of eradication or suppression of the
24 boll weevil.

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

27 (f) The assessments collected by the Plant Board under this subchapter
28 shall not be state funds.

29 (g) In addition to the authority granted above for a statewide
30 referendum among cotton growers, the Plant Board is authorized to conduct a
31 separate referendum among cotton growers in the southwest corner of the state
32 within boundaries to be defined by the Board on the question of whether an
33 assessment shall be levied upon cotton growers in the defined area to provide
34 funds to fund in whole or in part the cost of a boll weevil suppression or
35 eradication program. Any such regional referendum shall be conducted in the

1 same manner as a statewide referendum authorized above and any assessments
2 levied pursuant to such referendum shall be subject to the same uses and
3 limitations and shall be made, collected, and remitted in the same manner as
4 assessments levied pursuant to a statewide referendum."
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6 SECTION 3. Arkansas Code 2-16-617(b) is amended to read as follows:

7 "(b) The Plant Board may petition the chancery court of the chancery
8 district in which the public nuisance is located to have said nuisance
9 condemned and destroyed with all costs of destroying to be levied against the
10 grower. This injunctive relief shall be available to the Plant Board
11 notwithstanding the existence of any other legal remedy, and the Plant Board
12 shall not be required to file a bond."
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14 SECTION 4. Arkansas Code 2-16-617(e) is amended to read as follows:

15 "(e) The State Plant Board shall by regulation establish a procedure
16 whereby a cotton grower can apply for exemption from payment of any assessment
17 or penalty imposed herein, on the basis that the payment of the assessment or
18 the penalty will impose undue financial hardship on the grower, and shall
19 prescribe the criteria to be used in determining undue financial hardship.

20 Any cotton grower who wishes to request an exemption from payment of the
21 assessment or the penalty or both shall apply for the exemption on forms
22 prescribed by the Board. A separate application must be filed for each
23 calendar year for which the cotton grower seeks an exemption and each such
24 application shall contain information on which the grower relies to justify an
25 exemption on the basis of undue financial hardship. The application form
26 shall include an oath or affirmation of the applicant as to the truth of all
27 information contained in or accompanying the application.

28 The Board shall forward each completed exemption application form and
29 any information accompanying the form to the cotton growers_ organization
30 certified pursuant to Section 2-16-612. The certified cotton growers_
31 organization shall determine whether each applicant qualifies for a hardship
32 exemption based on the information contained in or accompanying the
33 application form. If the certified organization determines that the payment
34 of the assessment or the penalty or both would impose undue financial hardship
35 on a cotton grower who has applied for an exemption, the organization may (1)

1 exempt the cotton grower from payment of the assessment or the penalty or
2 both, or (2) permit the cotton grower to pay the assessment or penalty or both
3 on an installment payment plan and prescribe the payment schedule.

4 Upon making a determination on any application for exemption the
5 certified organization shall notify the State Plant Board of its
6 determination, which shall be binding on the applicant.

7 Upon receipt of notice of a determination by the organization, the Board
8 shall promptly notify the affected cotton grower of the determination.

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

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15 SECTION 5. All provisions of this act of a general and permanent nature
16 are amendatory to the Arkansas Code of 1987 Annotated and the Arkansas Code
17 Revision Commission shall incorporate the same in the Code.

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19 SECTION 6. If any provision of this act or the application thereof to
20 any person or circumstance is held invalid, such invalidity shall not affect
21 other provisions or applications of the act which can be given effect without
22 the invalid provision or application, and to this end the provisions of this
23 act are declared to be severable.

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25 SECTION 7. All laws and parts of laws in conflict with this act are
26 hereby repealed.

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28 SECTION 8. EMERGENCY. It is hereby found and determined by the General
29 Assembly that the Arkansas boll weevil suppression program has been and
30 continues to be a valuable tool in controlling the boll weevil population in
31 the state; that the boll weevil suppression program law is in need of minor
32 revisions to promote and strengthen the program; that such revisions are
33 urgently needed to assure the continued success of the program and that this
34 act is designed to effect those revisions and should be given effect
35 immediately. Therefore, an emergency is hereby declared to exist and this act

1 being necessary for the preservation of the public peace, health and safety
2 shall be in full force and effect from and after its passage and approval.

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/s/Rep. McGinnis, et al

APPROVED: 3-6-95

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