

As Engrossed: 2/28/91 3/1/91 3/15/91

1 **State of Arkansas**
2 **78th General Assembly**
3 **Regular Session, 1991**
4 **By: Representatives Schexnayder and McGinnis**

A BILL ACT 710 OF 1991
HOUSE BILL 1705

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7 **For An Act To Be Entitled**

8 "AN ACT TO PROVIDE METHODS AND PROCEDURES TO BE USED FOR
9 BOLL WEEVIL ERADICATION IN COTTON; TO PROVIDE DEFINITIONS;
10 TO ALLOW ENTERING INTO COOPERATIVE AGREEMENTS; TO ALLOW
11 INSPECTIONS OF PREMISES; TO REQUIRE REPORTS; TO ALLOW THE
12 ESTABLISHMENTS OF QUARANTINES AND ERADICATION ZONES AND TO
13 PROVIDE FOR TREATMENT OF COTTON IN ERADICATION ZONES TO
14 INCLUDE DESTRUCTION; TO ALLOW ADOPTION OF RULES AND
15 REGULATIONS AND PENALTIES FOR THEIR VIOLATION; TO PROVIDE
16 FOR CERTIFICATION OF A COTTON GROWERS ORGANIZATION AND FOR
17 A REFERENDUM TO BE CONDUCTED BY SAID ORGANIZATION; TO
18 PROVIDE FOR ASSESSMENTS TO BE PAID BY GROWERS AND
19 PENALTIES FOR FAILURE TO PAY ASSESSMENTS; TO PROVIDE FOR
20 THE PROMULGATION OF REGULATIONS."

21

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

23

24 SECTION 1. Short Title. This act shall be known as the "Arkansas Boll
25 Weevil Suppression Eradication Act".

26

27 SECTION 2. Declaration of Policy. The legislature has found and
28 determined and does hereby declare that the boll weevil is a public nuisance,
29 a pest and a menace to the cotton industry. Due to the interstate nature of
30 the boll weevil infestation, it is necessary to secure the cooperation of
31 cotton growers, and other state and federal governments to carry out a program
32 of boll weevil suppression and/or eradication. The purpose of this act is to
33 secure the suppression or eradication of the boll weevil and to provide for
34 certification of a cotton grower's organization to cooperate with state and
35 federal agencies in the administration of cost-sharing programs for the
36 suppression or eradication of the boll weevil. This act should be liberally

1 construed to achieve these above purposes.

2

3 SECTION 3. Definitions. As used in this act, the following words shall
4 have the meaning stated below, unless the context requires otherwise:

5 (1) Boll Weevil. *Anthonomus grandis* Boheman in any state of
6 development.

7 (2) Person. Any individual, partnership, corporation, company,
8 society, or association, or other business entity.

9 (3) Cotton Grower. Any person who is engaged in and has an economic
10 risk in the business of producing or causing to be produced, for market,
11 cotton and will share equitably in expenses of the potential boll weevil
12 eradication program.

13 (4) State Plant Board. The Agricultural Plant Regulatory Agency of
14 the State of Arkansas, hereinafter referred to as the Plant Board.

15 (5) Cotton. Any cotton plant or cotton plant product upon which the
16 boll weevil is dependent for completion of any portion of its life cycle.

17 (6) Host. Any plant or plant product upon which the boll weevil is
18 dependent for completion of any portion of its life cycle.

19 (7) Infested. Actually infested with a boll weevil or so exposed to
20 infestation that it would be reasonable to believe that an infestation exists.

21 (8) Regulated Article. Any article of any character carrying or
22 capable of carrying the boll weevil, including but not limited to, cotton
23 plants, seed cotton, cottonseed, other hosts, gin trash, gin equipment,
24 mechanical cotton pickers, and other equipment associated with cotton
25 production, harvesting or processing.

26 (9) Certificate. A document issued or authorized by the Plant Board
27 indicating that a regulated article is not contaminated with boll weevils.

28 (10) Permit. A document issued or authorized by the Plant Board to
29 provide for the movement of regulated articles to restricted designations for
30 limited handling, utilization, or processing.

31 (11) Assessment. The amount charged to each cotton grower to finance,
32 in whole or part, a program to suppress or eradicate the boll weevil in this
33 state. The grower's charge will be calculated on a per acre basis.

34

35 SECTION 4. Cooperative Programs Authorized. The Plant Board is hereby
36 authorized to carry out programs to suppress and/or eradicate the boll weevil

1 in this state. The Plant Board is authorized to cooperate with any agency of
2 the federal government, any state, any other agency in this state, or any
3 person engaged in growing, processing, marketing, handling cotton, or any
4 group of such persons in this state in programs to effectuate the purposes of
5 this act, and may enter into written agreements to effectuate such purposes.
6 Such agreements may provide for cost sharing, and for division of duties and
7 responsibilities under this act and may include other provisions generally to
8 effectuate the purposes of this act.

9

10 SECTION 5. Entry of Premises: Suppression Eradication Activities;
11 Inspections. The Plant Board, or its authorized representatives, shall have
12 authority to enter cotton fields, cotton processing facilities, and other
13 premises in order to carry out suppression or eradication activities,
14 including but not limited to, treatment with pesticides, monitoring, and
15 destruction of growing cotton and/or other host plants, as may be necessary to
16 carry out the provisions of this act. The Plant Board shall have authority to
17 make inspection of any fields or premises in this state and any property
18 located therein or thereon for the purpose of determining whether such
19 property is infested with the boll weevil. Such inspection and other
20 activities may be conducted in a reasonable manner without a warrant at any
21 reasonable daylight hours falling between sunrise and sunset. Any judge of
22 this state may, within his jurisdiction, and upon proper cause shown, issue a
23 warrant giving the Plant Board the right of entry to any premises for the
24 purpose of carrying out the provisions of this section or other activities
25 authorized by this act.

26

27 SECTION 6. Reports. Every person growing cotton in this state shall
28 furnish to the Plant Board on forms supplied by the Plant Board, or its
29 cooperators, such information as the Plant Board may require, concerning the
30 size and location of all commercial cotton fields and of noncommercial patches
31 of cotton grown as ornamentals or for other purposes.

32

33 SECTION 7. Quarantine. The Plant Board is authorized to promulgate
34 regulations, quarantining this state, or any portion thereof, and governing
35 the storage or other handling in the quarantined areas of regulated articles
36 and the movement of regulated articles into or from such areas, the Plant

1 Board shall determine when such action is necessary, or appears reasonably
2 necessary, to prevent or retard the spread of the boll weevil. The Plant
3 Board is also authorized to promulgate regulations governing the movement of
4 regulated articles from other states or portions thereof into this state when
5 such state is known to be infested with the boll weevil. The promulgation of
6 these regulations shall conform in all aspects to the Administrative
7 Procedures Act, 434 of 1967, as amended, and sound principles of quarantines.

8
9 SECTION 8. Authority to Designate Eradication Zones; Authority to
10 Prohibit Planting of Cotton and to Require Participation in a Suppression
11 Eradication Program. The Plant Board is authorized to designate by regulation
12 one or more areas of this state as "eradication zones" where boll weevil
13 eradication programs will be undertaken. The Plant Board is authorized to
14 promulgate reasonable regulations regarding areas where cotton cannot be
15 planted within an eradication zone when there is reason to believe it will
16 jeopardize the success of the program or present a hazard to public health or
17 safety. The Plant Board is authorized to issue regulations prohibiting the
18 planting of noncommercial cotton in such elimination zones, and requiring that
19 all growers of commercial cotton in the eradication zones participate in a
20 program of boll weevil eradication including cost sharing as prescribed in the
21 regulations. Notice of such prohibition and requirement shall be given by
22 publication for one day each week for three successive weeks in a newspaper
23 having general circulation in the affected area. The Plant Board is
24 authorized to set by regulation a reasonable schedule of penalty fees to be
25 assessed when growers in designated "eradication zones" do not meet the
26 requirements of regulations issued by the Plant Board with respect to
27 reporting of acreage and participation in cost-sharing as prescribed by
28 regulation. Such penalty fees shall not exceed a charge of *twenty-five*
29 *dollars (\$25.00)* per acre. When a grower fails to meet the requirements of
30 regulations promulgated by the Plant Board, the Board shall have authority in
31 eradication zones to destroy cotton not in compliance with such regulations.
32 Cost incurred by the Board shall be assessed against the grower.

33
34 SECTION 9. Authority for Destruction or Treatment of Cotton in
35 Eradication Zones; When Compensation Payable. The Plant Board shall have
36 authority to destroy, or at its discretion, cause to be treated with

1 pesticides, volunteer or other noncommercial cotton and to establish
2 procedures for the purchase and destruction of commercial cotton in
3 eradication zones when the Plant Board deems such action necessary to
4 effectuate the purposes of this act. No payment shall be made by the Plant
5 Board to the owner or lessee for the destruction or injury of any cotton which
6 was planted in an eradication zone after publication of notice as provided in
7 this act, or was otherwise handled in violation of this act, or the
8 regulations adopted pursuant thereto. However, the Plant Board shall pay for
9 losses resulting from the destruction of cotton which was planted in such
10 zones prior to promulgation of such notice.

11

12 SECTION 10. Authority to Promulgate Regulations. (a) The Board is
13 authorized to promulgate regulations restricting the pasturage of livestock,
14 entry by persons, and location of honeybee colonies or other activities
15 affecting the boll weevil eradication program in any premises in an
16 eradication zone which have been or are to be treated with pesticides or
17 otherwise treated to cause the eradication of the boll weevil, or in any other
18 area that may be affected by such treatments.

19 (b) The Board shall also have authority to adopt such other rules and
20 regulations as it deems necessary to further effectuate the purposes of this
21 act.

22

23 SECTION 11. Criminal Penalties. (a) Any person who shall violate any
24 of the provisions of this act or the regulations promulgated hereunder, or who
25 shall alter, forge or counterfeit, or use without authority, any certificate
26 or permit or other document provided for in this act or in the regulations
27 promulgated hereunder, shall be guilty of a Class C misdemeanor.

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

32

33 SECTION 12. Certification by Plant Board Requirements. (a) The Plant
34 Board may certify a cotton growers' organization for the purpose of entering
35 into agreements with the State of Arkansas, other states, the federal

1 government and other parties as may be necessary to carry out the purposes of
2 this act.

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

5 (1) It is a nonprofit organization and could qualify as a tax-
6 exempt organization under Section 501 (a) of the Internal Revenue Code of 1954
7 [(26 USC 501(a)];

8 (2) Membership in the organization shall be open to all cotton
9 growers in this state;

10 (3) The organization shall have only one class of members with
11 each member entitled to only one vote;

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

14 (1) Two Arkansas cotton growers recommended by the Arkansas
15 Plant Board, to be appointed by the Governor.

16 (2) Three Arkansas cotton growers recommended by the Arkansas
17 Farm Bureau Federation, to be appointed by the Governor.

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

20 (4) One representative of state government from this state
21 recommended by the Plant Board, to be appointed by the Governor.

22 (5) The co-chairman of the University of Arkansas Boll Weevil
23 Eradication Technical Advisory Committee will serve as ex-officio members of
24 the Cotton Grower Organization Board to serve in an advisory capacity.

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

28 (e) Employees or agents of the growers' organization who handle funds
29 of the organization shall be adequately bonded in an amount to be determined
30 by the Plant Board.

31

32 SECTION 13. Certification; Revocation. Upon determination by the Plant
33 Board that the organization meets the requirements of the preceding section,
34 the Plant Board shall certify the organization as the official cotton growers'
35 organization. Such certification shall be for the purposes of this act only,

1 and shall not affect other organizations or associations of cotton growers
2 established for other purposes.

3 The Plant Board shall certify only one such organization and may revoke
4 the certification of the organization if at any time the organization shall
5 fail to meet the requirements of this act. The debts of this organization,
6 should there be any, shall not become the liability of the Plant Board.

7

8 *SECTION 14. Referendum; Assessments. (a) At the request of the*
9 *certified organization, the State Plant Board shall authorize a statewide*
10 *referendum among cotton growers on the question of whether an assessment shall*
11 *be levied upon cotton growers in the state to offset, in whole or in part, the*
12 *cost of boll weevil suppression or eradication programs authorized by this act*
13 *or any other law of this state. Such program shall be designed on a regional*
14 *basis so as to reflect the differences in boll weevil infestation and the*
15 *relative cost of financing a boll weevil suppression and eradication program*
16 *in the respective regions.*

17 (b) The assessment levied under this act shall be based upon the
18 number of acres of cotton planted in the eradication area. The amount of the
19 assessment, the period of time for which it shall be levied, how it shall be
20 levied, when it shall be paid and the geographical area to be covered by the
21 assessment shall be determined by the Plant Board and established by
22 regulations pursuant to this section.

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

26 (d) *Each eligible cotton grower shall be mailed a ballot upon which to*
27 *cast a vote for or against the boll weevil suppression and eradication*
28 *program.*

29 (e) If at least two-thirds of those voting vote in favor of the
30 assessment, then the assessment shall be collected by the agency designated by
31 the Plant Board from the affected cotton growers.

32 (f) The assessments collected by the Plant Board under this act shall
33 be promptly remitted to the certified organization under such terms and
34 conditions as the Plant Board shall deem necessary to ensure that such
35 assessments are used in a sound program of eradication and/or suppression of

1 the boll weevil.

2 (g) The certified organization shall provide to the Plant Board an
3 annual audit of its accounts performed by a certified public accountant.

4 (h) The assessments collected by the Plant Board under this act shall
5 not be "state" funds.

6

7 SECTION 15. Conduct of Referendum. The arrangements for and management
8 of any referendum held under this act shall be under the direction of the
9 certified organization. The organization shall bear all expenses incurred in
10 conducting the referendum, to include furnishing the ballots and arranging for
11 the necessary poll holders.

12

13 SECTION 16. Subsequent Referendums. (a) In the event any referendum
14 conducted under this act fails to receive the required number of affirmative
15 votes, the certified organization may, with the consent of the Plant Board, be
16 authorized to call other referendums.

17 (b) After the passage of any referendum, the eligible voters shall be
18 allowed, by the subsequent referendums, at least every five years, to vote on
19 whether to continue their assessments. All the requirements for an initial
20 referendum must be met in subsequent referendums.

21

22 SECTION 17. Failure to Pay Assessments. (a) A cotton grower who fails
23 to pay, when due and upon reasonable notice, any assessment levied under this
24 act, shall be subject to a per acre penalty as established in the Plant
25 Board's regulations, in addition to the assessment.

26 (b) A cotton grower who fails to pay all assessments, including
27 penalties, within 30 days of notice of penalty, shall destroy any cotton
28 plants growing on his acreage which is subject to the assessment. Any such
29 cotton plants which are not destroyed shall be deemed to be a public nuisance,
30 and said public nuisance may be abated in the same manner as any public
31 nuisance. The Plant Board may petition the Circuit Court of the judicial
32 circuit in which the public nuisance is located to have said nuisance
33 condemned and destroyed with all costs of destroying to be levied against the
34 grower. This injunctive relief shall be available to the Plant Board
35 notwithstanding the existence of any other legal remedy and the Plant Board

1 shall not be required to file a bond.

2 (c) In addition to any other remedies for the collection of
3 assessments, including penalties, the Plant Board may secure a lien upon
4 cotton subject to such assessments. Provided, that any buyer of cotton shall
5 take free of such lien if he has not received written notice of the lien from
6 the Plant Board or if he has paid for such cotton by a check in which the
7 Plant Board is named as joint payee.

8
9 SECTION 18. All rules and regulations promulgated pursuant to this act
10 shall be reviewed by the Joint Interim Committee on Agriculture and Economic
11 Development or an appropriate subcommittee thereof.

12
13 SECTION 19. All provisions of this act of a general and permanent
14 nature are amendatory to the Arkansas Code of 1987 Annotated and the Arkansas
15 Code Revision Commission shall incorporate the same in the Code.

16
17 SECTION 20. If any provision of this act or the application thereof to
18 any person or circumstance is held invalid, such invalidity shall not affect
19 other provisions or applications of the act which can be given effect without
20 the invalid provision or application, and to this end the provisions of this
21 act are declared to be severable.

22
23 SECTION 21. All laws or parts of laws in conflict with this act are
24 hereby repealed.

25
26 SECTION 22. Emergency. It is hereby found and determined by the
27 General Assembly that the boll weevil is not only a pest but that it threatens
28 the growth of cotton in this state and costs many thousands of dollars in
29 damages annually; that the purpose of this act is to establish a program to
30 control the boll weevil and should be given effect immediately. Therefore, an
31 emergency is hereby declared to exist and this act being necessary to the
32 public peace, health and welfare shall be in effect from the date of its
33 passage and approval.

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/s/ C. Schexnayder and B. McGinnis

APPROVED: 3-22-91