

SENATE BILL 1782  
By Burchett

AN ACT to amend Tennessee Code Annotated, Title 43, Chapter 6, relative to the eradication of the southern pine beetle.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF TENNESSEE:

SECTION 1. Tennessee Code Annotated, Title 43, Chapter 6, is amended by adding the following as a new Part 5:

Section 43-6-501.

The general assembly has found and determined and does hereby declare that the southern pine beetle is a public nuisance, a pest and a menace to the pine industry. Due to the interstate nature of southern pine beetle infestation, it is necessary to secure the cooperation of pine growers and other state and federal governments to carry out a program of southern pine beetle suppression or eradication. The purpose of this part is to secure the suppression or eradication of the southern pine beetle and to provide for certification of a pine grower's organization to cooperate with state and federal agencies in the administration of cost-sharing programs for the suppression or eradication of the southern pine beetle.

Section 43-6-502.

As used in this part, unless the context otherwise requires:

(1) "Southern pine beetle" means *Dendroctonus frontalis* Zimmermann (Coleoptera: Scolytidae) in any stage of development;

(2) "Certificate" means a document issued or authorized by the commissioner indicating that a regulated article is not contaminated with southern pine beetles;

(3) "Commissioner" means the commissioner of agriculture or the commissioner's designated representative;

(4) "Pine" means any pine tree or pine tree product upon which the southern pine beetle is dependent for completion of any portion of its life cycle;

(5) "Pine grower" means any person who is engaged in and has an economic risk in the business of producing, or causing to be produced, pine trees for market;

(6) "Department" means the Tennessee department of agriculture;

(7) "Host" means any pine tree or pine tree product upon which the southern pine beetle is dependent for completion of any portion of its life cycle;

(8) "Infested" means actually infested with a southern pine beetle, or so exposed to infestation that it would be reasonable to believe that an infestation exists;

(9) "Permit" means a document issued or authorized by the commissioner to provide for the movement of regulated articles to

restricted designations for limited handling, utilization, or processing;

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

(11) "Regulated article" means any article of any character carrying or capable of carrying the southern pine beetle, including, but not limited to, pine trees, pine bark, other hosts, pine trash and mechanical pine pickers.

Section 43-6-503.

The commissioner shall carry out programs to destroy and eliminate southern pine beetles in this state. The commissioner may cooperate with any agency of the federal government, any state, any other agency in this state, or any person engaged in growing, processing, marketing, handling pine, or any group of such persons in this state in programs, to effectuate the purposes of this part, 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 part, and may include other provisions generally to effectuate the purposes of this part.

Section 43-6-504.

The commissioner may enter pine forests and other premises in order to carry out such activities, including, but not limited to, treatment with pesticides, and monitoring as may be necessary to carry out the provisions of this part. The commissioner may inspect any pine forests or premises in this state and any property located therein or thereon for the purpose of determining whether such property is infested. Such inspection and other activities may be conducted at any reasonable hours falling between sunrise and sunset.

Section 43-6-505.

Every person growing pine in this state shall furnish to the commissioner, on forms supplied by the commissioner, such information as the commissioner may require, concerning the size and location of all commercial pine forests and of noncommercial patches of pine grown as ornamentals or for other purposes.

Section 43-6-506.

Whenever the commissioner determines that such action is necessary, or reasonably appears necessary, to prevent or retard the spread of the southern pine beetle, the commissioner may promulgate rules 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 commissioner may also promulgate rules governing the movement of regulated articles from other states or portions thereof into this state when such state is known to be infested.

Section 43-6-507.

The commissioner may designate by rule one (1) or more areas of this state as "elimination zones" where southern pine beetle eradication programs will be undertaken. The commissioner may promulgate reasonable rules regarding areas where pine cannot be planted within an elimination zone when there is reason to believe it will jeopardize the success of the program or present a hazard to public health or safety. The commissioner may issue rules prohibiting the planting of noncommercial pine in such elimination zones, and requiring that all growers of commercial pine in the elimination zones participate in a program of southern pine beetle eradication, including cost-sharing as prescribed in the rules. Notice of such 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. The commissioner may set by rule a reasonable schedule of penalty fees to be assessed when growers in designated "elimination zones" do not meet the requirements of rules issued by the commissioner with respect to reporting of acreage and participation in cost-sharing as prescribed by rule. Such penalty fee shall not exceed a charge of fifty dollars (\$50.00) per acre. When a grower fails to meet the requirements of rules promulgated by the commissioner, the commissioner is authorized in elimination zones to destroy pine not in compliance with such rules. Costs incurred by the commissioner may be assessed against the grower.

Section 43-6-508.

The commissioner may destroy or, in the commissioner's discretion, treat with pesticides volunteer or other noncommercial pine, and may establish procedures for the purchase and destruction of commercial pine in elimination zones when the commissioner deems such action necessary to effectuate the purposes of this part. No payment shall be made by the commissioner to the owner or lessee for the destruction or injury of any pine which was planted in an elimination zone after publication of notice as provided in this part, or was otherwise handled in violation of this part, or the rules adopted pursuant thereto. However, the commissioner shall pay for losses resulting from the destruction of pine which was planted in such zones prior to publication of such notice.

Section 43-6-509.

(a) The commissioner may promulgate rules restricting entry by persons, and location of honeybee colonies in any premises in an elimination zone which have been or are to be treated with pesticides, or otherwise treated to cause the eradication of the southern pine beetle, or in any other area that may be affected by such treatments.

(b)

(1) The commissioner may also adopt such other rules and regulations as the commissioner deems necessary to further effectuate the purposes of this part.

(2) All rules under this part shall be promulgated in accordance with the provisions of the Uniform Administrative Procedures Act, compiled in Title 4, Chapter 5.

Section 43-6-510.

(a) Any person who violates any of the provisions of this part or the rules promulgated hereunder, or who alters, forges or counterfeits, or uses without authority, any certificate or permit or other document provided for in this part or in the rules promulgated hereunder, commits a Class A misdemeanor.

(b) Any person who, except in compliance with the rules of the commissioner, moves any regulated article into this state from any other state which the commissioner has determined in such rules is infested, commits a Class A misdemeanor.

Sections 43-6-511 - 43-6-520. [Reserved.]

Section 43-6-521.

(a) The commissioner may certify a pine growers' organization for the purpose of entering into agreements with the state of Tennessee, other states, the federal government and other parties as may be necessary to carry out the purposes of this part.

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

(1) It is a non-profit organization and could qualify as a tax exempt organization under § 501(a) of the Internal Revenue Code of 1954 [26 USCS § 501(a)];

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

(3) The organization shall have only one (1) class of members with each member entitled to only one (1) vote; and

(4) The organization's board of directors shall be comprised as follows:

(A) Four (4) Tennessee pine growers to be appointed by the commissioner;

(B) One (1) representative from each pine producer organization certified as a producer organization by a national pine producers organization designated by the commissioner; and

(C) One (1) representative of state government from this state to be appointed by the commissioner.

(c) All books and records of account and minutes of proceedings of the organization shall be available for inspection or audit by the commissioner at any reasonable time.

(d) 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 commissioner.

(e) If the commissioner finds that the growers' organization meets the requirements set forth in subsection (b), the commissioner shall certify the organization in writing, for the purposes of this part only, and such certification shall not affect any other organization of pine growers established for other purposes. The commissioner shall certify only one (1) such organization; provided, that the commissioner may revoke the certification of the organization if at any time the organization fails to meet the requirements of this part.

Section 43-6-522.

(a) The certified pine growers' organization shall be:

(1) A public corporation and may contract and be contracted with, implead and be impleaded, and complain and defend in all courts; and

(2) Governed by a board of directors which shall name its chair, vice chair, and secretary, and determine a quorum for the transaction of its business.

(b) The certified pine growers' organization may appoint advisory boards, special committees, legal counsel, and technical and clerical personnel to advise, aid, and assist the organization in the performance of its duties, and fix, if necessary, any compensation for such services.

(c) The members, officers, and employees of the certified pine growers' organization operating under this part shall not be held individually responsible to any grower or other person for errors in judgment, mistakes, or other acts of omission or commission, other than their own acts of dishonesty or crime. No member, officer, or employee shall be held individually responsible for any act of omission of any other member of such organization. The liability of the members of the certified pine growers' organization shall be several and not joint, and no member shall be liable for the default of any other member.

(d) The certified pine growers' organization may borrow money or otherwise incur indebtedness, and may expend the moneys so acquired for the purpose of destroying and eradicating the southern pine beetle in Tennessee. Any indebtedness created pursuant to this subsection shall be repaid from the assessments on the pine growers provided for in § 43-6-523 or from other funds available to the pine growers' organization, and shall not constitute a debt of the state or any department, agency, political subdivision, official, or employee of the state. Funds borrowed under this subsection may be expended by the certified pine growers' organization for the purpose of reducing the annual assessment or increasing the number of years over which pine growers are required to pay assessments under this part.

Section 43-6-523.

(a) Upon the request of the certified pine growers' organization, the commissioner shall authorize a referendum among pine growers upon the question of whether an assessment shall be levied upon pine growers in the state to offset, in whole or in part, the cost of southern pine beetle or other pine pest suppression or eradication programs authorized by this part or by any other law of this state.

(b) The assessment levied under this part shall be based upon the number of acres of pine planted. The amount of the assessment, the period of time for which it is levied, and the geographical area to be covered by the assessment shall be determined by the commissioner, upon recommendation by the board of directors of the pine growers' organization.

(c) All affected pine growers shall be entitled to vote in any such referendum, and the commissioner shall determine any questions of eligibility to vote.

(d) Passage of such referendum shall require a two-thirds (2/3) majority of those eligible pine growers voting.

(e) The assessments collected by the department under this part, less such amounts as may be authorized in the general appropriations act for administration of this part, shall be promptly remitted to the certified pine growers' organization under such terms and conditions as the commissioner may deem necessary to ensure that such assessments are used in a sound program of eradication or suppression of the southern pine beetle or other pine pests.

(f) There is hereby created within the state treasury a fund known as the "certified pine growers' organization fund." All funds received, appropriated or otherwise coming under this part shall be deposited into the state treasury to the credit of the certified pine growers' organization. The commissioner shall administer the fund and make payments from the fund in the same manner as other state agencies for the administration and implementation of the purposes of this part. Amounts in the fund at the end of any fiscal year shall not revert to the general fund but shall remain available to the organization for the purposes as set forth in this part. Should the eradication program be discontinued or certification of the pine growers' organization be revoked by the commissioner, any funds remaining in its hands at such time may be paid out by the commissioner for existing obligations and for closing the affairs of the certified pine growers' organization. Any funds remaining over and above those required for completing the business of the pine growers' organization shall be paid by the commissioner to the contributing growers on a pro rata basis.

(g) The commissioner, with the approval of the board of directors of the certified pine growers' organization, may grant waivers of timely payments of assessments, when a grower can show that assessments will cause an undue

financial burden or bankruptcy. Such waivers shall not exceed six (6) months in length, and shall be subject to an equitable rate of interest.

(h) Records maintained by the commissioner on behalf of the certified pine growers' organization shall be audited at least annually by the comptroller of the treasury or the comptroller's designated representative.

Section 43-6-524.

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

Section 43-6-525.

(a) If any referendum conducted under this part fails to receive the required number of affirmative votes, the certified organization may, with the consent of the commissioner, call other referenda.

(b) After the passage of any referendum, the eligible voters shall be allowed, by subsequent referenda, at least every ten (10) years, to vote on whether to continue their assessments. All of the requirements for an initial referendum shall be met in subsequent referenda.

Section 43-6-526.

(a) A pine grower who fails to pay, when due and upon reasonable notice, any assessment levied under this part, shall be subject to a per acre penalty as established in the commissioner's rules, in addition to the assessment.

(b) A pine grower who fails to pay all assessments, including penalties, within thirty (30) days of notice of penalty, shall destroy any pine trees growing on such pine grower's acreage which is subject to the assessment. Any such pine trees which are not destroyed shall be deemed to be a public nuisance, and

such public nuisance may be abated in the same manner as any public nuisance. The commissioner, with the approval of the attorney general and reporter and upon the relation of the attorney general and reporter, may apply to the circuit court of the judicial district in which the public nuisance is located to have such nuisance condemned and destroyed, with all costs of destruction to be taxed against the grower. This injunctive relief shall be available to the commissioner, notwithstanding the existence of any other legal remedy, and the commissioner shall not be required to file a bond.

(c) Whenever a pine grower fails to pay all assessments, penalties, and costs associated with the treatment and/or destruction of pines, the commissioner may recover the amount due from the buyer of the grower's pines, equal to, but not exceeding, the amount the buyer paid for the pines. Notice of the commissioner's claim shall be given in writing to the grower and the buyer. The buyer shall pay the commissioner's claim before payment for the pines is made to the grower. Beginning on the date written notice is received by the buyer, the commissioner's claim shall apply to any pines grown by the grower, including future plantings, until the commissioner's claim is paid in full. The buyer shall be liable for making such payment to the commissioner; however, any buyer of pine shall take free of the commissioner's claim if such buyer has not received written notice of the claim by the date the grower receives payment for the pines.

(d) If the grower's pine holdings are not sufficient to pay the commissioner's claim as provided for in subsection (c), the commissioner shall have a lien of equal dignity with other liens for moneys owed to the state against all real and personal property owned or subsequently acquired by the grower in accordance with the provisions of § 67-1-1403. The commissioner shall cause a

notice of a lien for payment of such claim to be recorded in the office of the appropriate county register of deeds as provided for in § 67-1-1403.

(e) The commissioner may promulgate rules as may be necessary to file a lien to accomplish the purposes of this part.

Sections 43-6-527 - 43-6-530. [Reserved.]

Section 43-6-531.

The provisions of this part are declared to be remedial in nature, and shall be liberally construed to effectuate its purposes.

SECTION 2. The commissioner of agriculture is authorized to promulgate rules and regulations to effectuate the purposes of this act. All such rules and regulations shall be promulgated in accordance with the provisions of Title 4, Chapter 5.

SECTION 3. For the purpose of promulgating rules and regulations, this act shall take effect upon becoming a law, the public welfare requiring it. For all other purposes, this act shall take effect July 1, 2001, the public welfare requiring it.