

Sec. 3. This act shall take effect and be in force from and after its passage.

Approved April 1, 1927.

CHAPTER 108—S. F. No. 430

An act providing for the inspection of nurseries and other premises, nursery stock and other plants, plant products and articles; providing for the placing of dangerous plants or plant products or articles in isolation or quarantine; providing for the protection of horticulture and agriculture against injurious infestation or infection and preventing the introduction into this State of insect or animal pests or plant diseases; providing for the issuance of rules and regulations; providing for co-operation with the Federal Government; prescribing penalties and repealing all acts and parts of acts inconsistent herewith.

Be it enacted by the Legislature of the State of Minnesota:

Section 1. **Inspector of nurseries—fees.**—The state entomologist employed by the Commissioner of Agriculture is hereby designated as state inspector of nurseries and is authorized, either himself or by deputies duly appointed by him, to inspect all premises in Minnesota where nursery stock is grown or held for sale, and further to inspect all orchards or any premises whatsoever within the state, where he has reason to suspect the presence of injurious insects or injurious and contagious plant diseases. Nursery stock shall be regarded as including all field-grown plants (except herbaceous annuals) of any kind, also trees, field-grown shrubs, vines, cuttings, buds, grafts and scions. For this purpose he or his deputy or deputies shall have free access to any field, ground, packing ground, buildings, cellars, orchard, garden, elevator, warehouse, freight or express office or car, freight yard, vehicle, vessel, boat, container, and other places where the carrying out of the provisions of this act shall make necessary. The state inspector of nurseries is empowered and required to grant certificates upon request to such nurseries as he may find free from injurious insects and contagious plant diseases. Such certificates shall be good for one year unless revoked by him. This inspection of nurseries shall take place between May 1st and September 30th and at such other times as may be necessary to comply with the provisions of this act. Nursery-men or others having stock to inspect shall make application to the state nursery inspector for the inspection of stock so far as practicable on or before May 1st of each year. It shall be the duty of the inspector or his deputy to make the inspection as soon thereafter as possible.

For inspection of nurseries the fee shall be \$10.00 per annum for inspection of strawberry plants, evergreens, herbaceous plants, bulbs and roots; \$15.00 for inspection of other small fruit plants together with any or all of the plants mentioned heretofore; \$25.00 for inspection of general nursery stock including any or all of the plants mentioned heretofore. The determination of the charge or fee as per above schedule by the state inspector shall be conclusive on the question of amount of fee that shall be paid. The fee for inspection shall be paid at time of inspection or not later than April first following the date when inspection is completed and before a certificate is granted. If a dangerous insect pest or plant disease is found by the inspector on the premises inspected, and if in his judgment such pest or disease can be eradicated, he may direct the owner or his representative in writing what means shall be employed; in case any trees, shrubs or plants are so infested that treatment would be ineffectual he may direct the owner or his representative to have them destroyed. Said order shall be issued in writing. If the order be not obeyed within ten days after service thereof, the state inspector shall cause the work to be done and render to the owner or persons in charge an itemized bill of the cost; and if such cost shall not be paid within sixty days thereafter the bill shall be reported to the county attorney, who shall forthwith collect same in a civil action in the name of the state and shall turn same over to the state treasurer to be credited to the inspection fund.

Sec. 2. Inspector may cause plants to be destroyed.—When any tree, shrub or plant, not itself diseased or infested, which is a host for any organism inducing a plant disease, new to or not heretofore widely prevalent or distributed within or throughout this state, or host for any destructive insect, new to or not heretofore widely prevalent or widely distributed throughout this state is situate within three thousand feet of any tree, plant or shrub which is infested with any such organism or insect, the state inspector of nurseries may for the purpose of preventing the spreading of such organism or insect cause such tree, plant or shrub not itself so diseased or infected, to be destroyed as hereinafter provided:

(a) No tree, plant or shrub not itself diseased, shall be ordered destroyed without the approval in writing of the order therefor signed by a majority of a committee consisting of the experiment station entomologist, president of the Minnesota Horticultural Society and the director of the Minnesota Agricultural Experiment Station and by the plant pathologist of the Minnesota Agricultural Experiment Station if a plant disease is concerned, or without opportunity being given to owner of

such trees, plants or shrubs for an open hearing if he objects to such action on the part of the inspector.

(b) When the destruction of any such trees, plants, or shrubs is determined upon, the state inspector of nurseries shall by notice in writing, approved as provided for in subdivision (a) of this section, direct the owner or lessee of the land on which such plants, trees or shrubs are situate to destroy as many of such plants as the state inspector may deem necessary, within such period of time as shall be therein specified, provided, however, such tree, plant or shrub shall not be required to be destroyed until the value thereof shall have been appraised as hereinafter provided.

(c) Immediately upon the issuance by the state inspector of nurseries of an order for the destruction of any trees, plants or shrubs, other than trees especially valuable for lumber, he shall designate three or more persons to be selected from the list of appraisers hereinafter provided for in subdivision (h) of this section, to appraise the value of such trees, plants or shrubs.

(d) In case the order issued by the state inspector of nurseries directs the destruction of any tree, or trees chiefly valuable for timber purposes the same shall be appraised as hereinafter provided for by the commissioner of forestry, the assistant commissioner of forestry or such suitable employe of the state forestry department as shall be designated in writing by the commissioner of forestry.

(e) It shall be the duty of the appraisers so appointed to forthwith take and subscribe an oath to fairly and honestly determine the value of the trees, plants or shrubs so ordered to be destroyed and determine the fair cash value thereof at the place and in the condition the same may be in at the time of the issuance of the order. The appraisers so appointed shall receive as compensation for their services such sum, not to exceed six dollars per day, as shall be fixed by the state inspector of nurseries, for each day necessarily employed in the performance of their duties, together with the necessary traveling expenses and hotel bill, incurred in the performance of their duties, provided, however, that no officer or employe of the state shall receive any compensation for the performance of the duties herein imposed, but shall be reimbursed for his actual and necessary expenses. Such compensation and expenses, when approved by the state inspector of nurseries shall be audited and paid by the state auditor from the appropriation made for the purposes of this act.

(f) The appraisers so appointed shall forthwith give notice to the owner or lessee of the land on which the trees, plants or shrubs ordered to be destroyed are situate of the time when they will visit the premises for the purpose of making their appraisal.

Such owner or lessee shall at the time so specified, be given a full opportunity to be heard on the question of the value of the trees, plants and shrubs so ordered to be destroyed. The appraisers shall thereupon determine, as hereinbefore provided, the cash value of such trees, plants and shrubs and make and file with the state inspector of nurseries a report in duplicate of their appraisal and shall also give a copy thereof to the owner or lessee. The said reports shall each be signed by the appraisers. One of the copies thereof filed with such inspector shall be attached to a voucher, which voucher after approval by the state inspector of nurseries, shall be transmitted to the state auditor for audit and after allowance by him the amount therein specified shall be paid from the money appropriated for the purposes of this act to the owner of the trees, plants or shrubs ordered to be destroyed. The state inspector of nurseries shall attach to the voucher approved by him a certificate that the trees, plants and shrubs so appraised and specified in the voucher and appraisal have been destroyed in accordance with the order. The oath of the appraisers hereinbefore specified shall be attached to and filed with the copy of the appraisers' report filed with the state inspector of nurseries.

(g) Upon the delivery to him of the appraisers' report the owner or lessee of the land on which the trees, plants or shrubs ordered to be destroyed are situate, shall forthwith destroy the same in the manner directed by the state inspector of nurseries, and within the time as specified in subdivision (b), and any owner or lessee who fails so to do within a period of five days after the expiration of said time specified in subdivision (b) shall be guilty of a felony and in addition to such criminal liability, the state inspector of nurseries may, after the failure of the owner or lessee for said five days to so destroy the same, cause the said trees, plants or shrubs to be destroyed at the expense of the owner, in the manner and as provided for in Section 1 of this act, and such expense in such case shall be deducted from the amount payable to the owner. Provided, that said owner, lessee or representative shall not be guilty of felony if within five days after receiving the notice for the destruction of such trees, plants and shrubs as provided for in subdivision (b) he shall notify said state inspector of nurseries in writing that he prefers to have said state inspector of nurseries destroy such trees, plants and shrubs as provided in this section.

(h) It shall be the duty of the executive board of the State Horticultural Society and the director of the experiment station each to furnish to the state inspector of nurseries a list of five practical horticulturists residing in several parts of the state who possess knowledge of the value of trees, plants and shrubs, from each of which the appraising committee is chosen.

(i) The state inspector of nurseries is hereby authorized and empowered to prohibit by proclamation, quarantine order, rules and regulations supplemental thereto, the importation into this state or transportation from any area within this state of any plant, tree, shrub, plant product, or other material liable to be infested, which has been grown or propagated in any state, province or county, or any place where it shall be determined by said state inspector of nurseries after due investigation, that there exists and is prevalent to a dangerous extent, white pine blister rust or any other plant disease, or any destructive insect which is liable to or capable of spreading to, and infecting the plants, trees, and shrubs of this state, and which may be carried and transported on or in trees, plants, shrubs, plant products, or other material there grown. It shall be the duty of the state inspector of nurseries upon the making and promulgation by him of any such proclamation, quarantine order or rules and regulations supplemental thereto, to forthwith mail a copy thereof to each certified nurseryman and to each railroad company doing business in this state, and to publish a copy thereof in a newspaper published at the city of Duluth and at the city of St. Paul, and any person, firm, or corporation, or common carrier which shall after thirty days from the date of said proclamation, quarantine order, rule or regulation, introduce or transport any tree, plant, shrub, plant product, or other material grown or propagated in the territory described in such proclamation, or in any other manner fail to comply with the terms, provisions, and conditions of such proclamation, quarantine order, rules and regulations, shall be guilty of a gross misdemeanor, and in case the offender be a corporation shall be punished by a fine of not less than \$25.00 nor more than \$1,000.00 for each shipment so introduced, made or transported. For the purpose of enforcing any such proclamation, quarantine order, or rule or regulation, the state inspector of nurseries or any duly appointed deputy inspector may intercept, stop and detain for official inspection any person, car, vessel, boat, truck, automobile, aircraft, wagon or other vehicles or carriers, whether air, land or water, or any container believed or known to be carrying any plant, tree, shrub, plant product, or other material designated by said proclamation, quarantine order, rule or regulation and may seize, possess and destroy any such plant, tree, shrub, plant product or other material moved, shipped or transported in violation thereof.

(j) When the state inspector of nurseries finds or determines that there exists in any other state, territory, or district, or any part thereof, any dangerous plant disease or insect infestation with reference to which the secretary of agriculture of the United States has not determined that a quarantine is

necessary and the state inspector of nurseries has duly established such quarantine, such state inspector of nurseries is hereby authorized to promulgate and to enforce by appropriate rules and regulations, a quarantine prohibiting or restricting the transportation into or through the state, or any portion thereof, from such other state, territory, or district, of any class of nursery stock, plant, fruit, seed, or other article of any character whatsoever capable of carrying such plant diseases or insect infestation.

(k) The state inspector of nurseries is hereby authorized to make rules and regulations for the seizure, inspection, disinfection, destruction, or other disposition of any nursery stock, plant, fruit, seed or other article of any character whatsoever capable of carrying any dangerous plant disease or insect infestation, whether or not a quarantine with respect to which shall have been established by the secretary of agriculture of the United States.

Sec. 3. Nursery stock must be inspected.—No person shall bring into the state for sale or use therein or re-shipment any trees, plants, vines, cuttings, or buds or other "nursery stock" unless it be accompanied on the outside of each package by the certificate from the inspector or other proper official of the state from which it came, that it has been inspected and found free from any of the pests or diseases referred to. Such certificates shall be prima facie evidence of the facts therein stated but the state inspector of nurseries may if deemed necessary, inspect such stock and proceed with respect thereto as provided for in Section 1.

Sec. 4. Certificate of inspection to be filed.—A copy of the state inspection certificate granted to any firm or firms in any other state, territory, or the District of Columbia, shall be on file with the Minnesota inspector before any such firm or firms shall make shipment of nursery stock to be sold or distributed in the State of Minnesota.

Sec. 5. Certificates must accompany shipments.—All nursery stock transported from any point or points in the State of Minnesota to other points within the state must be accompanied by certificate of inspection on the outside of each package.

Sec. 6. Railroad companies must not accept shipments without certificates.—Railroad and express companies are hereby prohibited from accepting stock not tagged with certificate as above stated and must promptly notify the shipper. If the shipper does not furnish a certificate, such companies shall report said fact with the name and address of party offering said stock for shipment to the state inspector.

Sec. 7. Foreign grown stock must be inspected.—Foreign grown stock imported into Minnesota under the provisions of

the Federal Quarantine Law is regarded as coming under the definition of nursery stock and must be inspected at points of destination. It shall be unlawful for any party or parties to open any package containing such stock from a foreign country unless the inspector or deputy is present. It shall be the duty of the inspector to be present in person or by deputy when notified at least forty-eight hours in advance of the opening of such package.

Sec. 8. Outside growers must secure dealer's certificate.—Any person, firm or corporation before offering for sale nursery stock not grown by said person, firm or corporation must obtain from the state inspector of nurseries a dealer's certificate unless otherwise granted a regular certificate of inspection, such dealer's certificate to be granted to such person, firm or corporation for nursery stock purchased from any inspected nursery or for foreign nursery stock inspected in this state. The fee for issuing dealer's certificate as provided herein shall be on the same basis as for inspection of nurseries as provided in Section 1 of this act and shall not be less than \$10.00 nor more than \$25.00 per annum.

Provided, that before such certificate is granted, the person, firm or corporation requesting the same shall furnish a sworn affidavit that said person, firm or corporation will buy and sell only nursery stock which has been inspected by an official state inspector and that said person, firm or corporation will maintain with the state inspector of nurseries a list of all sources from which nursery stock is secured.

Sec. 9. Violation a misdemeanor.—Every person who shall violate any of the provisions of this act or of any quarantine order, rule or regulation issued hereunder, or who shall neglect or refuse to comply therewith, or with any notice issued hereunder, shall, except as hereinbefore otherwise provided, be guilty of a misdemeanor.

Sec. 10. Provisions severable.—If any section, subsection, sentence, clause or phrase of this act is for any reason held to be unconstitutional or invalid, such decision shall not affect the validity of any remaining portion of this act.

Sec. 11. State inspectors to co-operate with United States Department of Agriculture.—The state inspector of nurseries is hereby authorized, whenever he deems such action advisable and necessary in carrying out the purposes of this act, to co-operate with the United States Department of Agriculture in connection with any quarantine order or regulation promulgated under or by authority of the provisions of the United States Plant and Quarantine Act of 1912 and the amendments thereto.

Sec. 12. Rules and regulations to be recorded and published.—All rules and regulations promulgated by the state

inspector of nurseries, under authority of this act, shall be recorded in the minute book kept for that purpose and one week's published notice thereof shall be given.

Sec. 13. **Annual report.**—The state inspector of nurseries shall be required on or before December 1 of each year to submit a report and financial statement to the Commissioner of Agriculture, covering the year's work.

Sec. 14. **Fees re-appropriated.**—All fees collected hereunder shall be paid into the State Treasury and are hereby appropriated for the purpose of carrying out the provisions of this act.

Sec. 15. **Laws repealed.**—Chapter 206, Laws 1913, Chapter 244, Laws 1915, Chapter 361, Laws 1917, and Chapter 294, Laws 1925, and all other acts or parts of acts inconsistent with the provisions of this act, are hereby repealed.

Approved April 2, 1927.

CHAPTER 109—S. F. No. 569

An act amending Section 52, Chapter 415, General Laws of Minnesota, 1925, relating to subdivision of ditch liens.

Be it enacted by the Legislature of the State of Minnesota:

Section 1. **Liens to be subdivided in certain cases.**—That Section 52, Chapter 415, General Laws of Minnesota, 1925, be amended so as to read as follows:

"In all cases in which a lien has been established against any tract or tracts of land by reason of benefits assessed thereon in any drainage ditch proceeding and no installment of such assessment or interest thereon shall be in default, any person or corporation having an interest in said land, or any part thereof, may petition the district court of the county wherein such land is situated to have such lien apportioned between or among specified portions of such tract or tracts. Upon the filing of such petition the court shall, by its order fix a time and place at which said petition shall be heard and requiring personal service of a notice of such hearing to be served upon the county auditor, the occupants of such premises and on all parties having an interest in said premises as shown by the records in the office of the register of deeds of such county at least ten days before such hearing; or if for any reason personal service cannot be made upon all of such persons, notice shall be given by two weeks' publication in a legal newspaper published at the county seat of such county in lieu of personal service. At the time and place appointed by the court for a hearing upon such a petition or at the time to which such hearing may have been adjourned, the court shall hear any