STATE OF NEW YORK

7568

2021-2022 Regular Sessions

IN ASSEMBLY

May 14, 2021

Introduced by M. of A. LUPARDO -- (at request of the Department of Agriculture and Markets) -- read once and referred to the Committee on Agriculture

AN ACT to amend the agriculture and markets law and the real property tax law, in relation to bee health and the beekeeping industry; and to repeal certain provisions of the agriculture and markets law relating thereto

The People of the State of New York, represented in Senate and Assembly, do enact as follows:

Section 1. Section 169-d of the agriculture and markets law is REPEALED.

§ 2. Article 15 of the agriculture and markets law, as added by chapter 166 of the laws of 1925, sections 173, 174, 175 and 175-b as amended by chapter 430 of the laws of 1985, subdivision 9 of section 174 as added by chapter 276 of the laws of 2000, section 175-c as amended by chapter 310 of the laws of 1962 and section 175-d as added by chapter 398 of the laws of 1938, is amended to read as follows:

ARTICLE XV

BEE DISEASES

Section 173. **Apiary industry advisory committee.**
173-a. Definitions.
173-b. Eradication of bee diseases and certain insects affecting bees.
173-c. Cooperative honey bee health improvement program.
174. Keeping of diseased and banned bees prohibited; existence of disease to be reported.
175. [~~Transportation of bees and bee material.~~ ~~175-b.~~] Rules and regulations.
[~~175-c~~] **175-a**. Review by court.
[~~175-d.~~] **175-b.** Violations; remedies.

§ 173. **Apiary industry advisory committee. 1. There is hereby established within the department an apiary industry advisory committee which**

EXPLANATION--Matter in *italics* (underscored) is new; matter in brackets [-] is old law to be omitted.

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shall consist of no more than fifteen members to be appointed by the commissioner based on their experience and expertise in the apiary industry. Of the members so appointed, at least two members shall represent each of the three sectors of the apiary industry, commercial beekeepers, part-time beekeepers and hobbyist beekeepers; at least one member shall represent the horticulture or vegetable industry and one member shall be an officer or employee of the Cornell cooperative extension service or the New York state college of agriculture and life sciences at Cornell university. Members shall be appointed for a term of three years and may serve until their successors are chosen provided, however, that of the members first appointed, five shall serve for a term of one year, five shall serve for a term of two years, and five shall serve for a term of three years. Members shall serve without salary. The commissioner or his or her designee shall be the chairperson of the committee.

2. The duties and responsibilities of the apiary industry advisory committee shall include providing advice, comments and recommendations to the commissioner regarding state government plans, policies and programs affecting the apiary industry and such other matters as the commissioner may request in relation to this article.

3. The advisory committee shall meet at least once annually, at times and places set by the commissioner.

4. The commissioner may ask other individuals to attend the committee's meetings or work with it as needed.

§ 173-a. Definitions. When used in this article:

1. "Apiary" shall mean any location used for raising honey bees or producing honey or other bee related products.

2. "Colony" shall mean any production unit of bees.

3. "Nucleus colony or nucs" shall mean a starter colony, consisting of a laying queen and up to five frames of brood and bees.

4. "Beekeeper" shall mean any individual or entity that maintains managed honey bees for profit, research, recreational, or educational purposes.

5. "Queen" shall mean the single reproductive female in a colony of honey bees.

6. "Brood comb" shall mean the beeswax structure of cells where the queen bee lays eggs in which immature bees are reared.

§ 173-b. Eradication of bee diseases and certain insects affecting bees. The commissioner may cause inspections to be made of apiaries in the state for the discovery of infectious, contagious or communicable diseases and for the discovery of insects and parasitic organisms adversely affecting bees, and for the discovery of species or subspecies of bees which have been determined by him to cause injury, directly or indirectly, to this state's [~~useful~~] managed bee population, crops, or other plants. [~~He~~] The commissioner shall provide a beekeeper or such beekeeper's designated agent with reasonable advance notice of any inspection of an apiary. The commissioner may also cause investigations to be made as to the best method for the eradication of diseases of bees, insects or parasitic organisms adversely affecting bees, or for the eradication of species or subspecies of bees which have been determined by [~~him~~] the commissioner to cause injury, directly or indirectly, to this state's [~~useful~~] managed bee population, crops, or other plants and [~~he~~] the commissioner may plan and execute appropriate methods for such eradication.

The commissioner shall have access to all apiaries, structures, appliances, buildings, vehicles, airplanes, vessels or premises where bees or

honey or comb used in apiaries may be[~~. He~~] and may open any hive, colony, package or receptacle of any kind containing or which [~~he~~] the commissioner has reason to believe contains any bees, comb, bee products, used beekeeping appliances, or anything else which is capable of transmitting contagious or infectious diseases of bees or which is capable of harboring insects or parasitic organisms adversely affecting bees, or species or subspecies of bees which have been determined by [~~him~~] the commissioner to cause injury, directly or indirectly, to this state's [~~useful~~] managed bee population, crops, or other plants.

§ 173-c. Cooperative honey bee health improvement program. 1. In support of the duties outlined in this article, as well as the goals and objectives for pollinator protection; the commissioner shall create a cooperative honey bee health improvement program which will require that:

(a) All beekeepers shall provide to the commissioner the number of managed colonies; the county in which each of these colonies is located; and current contact information of the individual or individuals responsible for the care of these bees. All beekeepers shall also indicate whether they intend to sell nucleus colonies. This information shall be updated and provided to the commissioner on an annual basis.

(b) The department shall use this information to communicate the incidence of infectious diseases and parasites at the county level to beekeepers and bee clubs and to notify beekeepers of the potential need for the department to prohibit the movement or selling of diseased or infested bees or require the destruction of such bees. The department shall also use this information to establish the boundaries of disease and parasite infestations in the area surrounding a confirmed disease or parasite infestation.

(c) Any individual or business that intends to sell nucs or queens produced within and offered for sale to other persons in New York must first have an inspection of its apiaries, as authorized by section one hundred seventy-three-b of this article, by the department which inspections shall continue on an annual basis, so long as nucs or queens are offered for sale. These inspections shall ascertain whether such beekeeper's apiaries are free from American Foulbrood and whether levels of other infectious diseases and parasites in the operation render the nucs or queens unfit for sale. Any individual or business whose nucs or queen rearing colonies are found to be infested with American Foulbrood, after laboratory confirmation, shall be prohibited from selling nucs and queens until the affected apiaries are reinspected and found to be free from American Foulbrood. If upon re-inspection, symptoms of American Foulbrood are found to persist, the prohibition from selling nucs and queens shall continue, and the department shall take samples for laboratory testing for the continued presence of American Foulbrood. Should the laboratory test results show the samples free from American Foulbrood, the department shall promptly notify the individual or business of the test results and the termination of the prohibition of the sale of nucs and queens.

(d) No person shall knowingly transport, move, buy, sell, possess, barter, offer for sale or barter, deliver, or offer for transportation any species or subspecies of bees which have been determined by the commissioner to cause injury, directly or indirectly, to the public health or welfare or to this state's managed bee population, crops, or other plants; provided, however, that the commissioner may, at his or her discretion, exempt the transportation, sale, possession, movement,

or delivery of such bees used for scientific or educational purposes under such safeguards as deemed necessary by the commissioner.

(e) Every shipment of live bees in cages or packages without comb into this state from another state or foreign country, shall be accompanied by a permit issued by the commissioner, or by a certificate of freedom from disease executed by an official of such state or foreign country recognized by the commissioner.

(f) Every shipment of a colony of bees, used brood comb, used beekeeping equipment, or live bees on comb into this state from another state or foreign country, shall be accompanied by a permit issued by the commissioner or by a certificate of freedom from diseases and parasitic organisms adversely affecting bees and from species or subspecies of bees which have been determined by the commissioner to cause injury directly or indirectly, to the public safety or to the state's managed bee population, crops, or other plants; and certifying that a proper inspection was made not earlier than sixty days preceding the date of shipment. Such certificate shall be executed by the certifying official of such state or foreign country. A duplicate of such certificate must be received by the department before any such shipment enters the state. Every transportation company that knowingly receives such shipment shall immediately notify the commissioner thereof, giving the name and address of the consignor or consignee.

2. The goals of the cooperative honey bee health improvement program shall be to:

(a) document the health of the state's managed pollinator population, including the presence of parasites, diseases, and environmental threats to the state's population of managed pollinators;

(b) provide information on honey bee health to beekeepers, stakeholders and academia to inform research and best management practices related to pollinator health;

(c) document the annual population of managed pollinators in each county within New York state; and

(d) collect contact information for each beekeeper to allow for better communication among the department and beekeepers relating to the incidence of parasites, disease and other health threats that could be transmitted within the flight range of managed pollinators.

3. There shall be no fee or other registration cost for participation in the cooperative honey bee health improvement program.

4. A beekeeper required to submit information to the commissioner pursuant to this section may request that such information be exempted from disclosure pursuant to subdivision five of section eighty-nine of the public officers law.

§ 174. Keeping of diseased and banned bees prohibited; existence of disease to be reported. 1. No person shall keep in [~~his~~] such person's possession or under [~~his~~] such person's care any colony of bees affected with a contagious or infectious disease or infested by [~~insects~~] disease or parasitic organisms adversely affecting bees, or by species or subspecies of bees which have been determined by the commissioner to cause injury, directly or indirectly, to the public safety or to this state's [~~useful~~] managed bee population, crops, or other plants. Any person who knows that any bees owned or controlled by [~~him are affected with, or have been exposed to, any contagious or infectious disease, insects or parasitic organisms adversely affecting bees, or by species or subspecies of bees which have been determined by the commissioner to cause injury, directly or indirectly, to this state's useful bee population, crops, or other plants,~~] such person exceed disease or parasite

tolerances or are a species or subspecies of bees that have been determined by the commissioner to cause injury, directly or indirectly, to the public health or welfare or to this state's managed bee population, crops, or other plants, such tolerances and determinations to be established in regulation by the commissioner, shall at once report such fact to the commissioner, stating all facts known to [~~him~~] such person with reference to said contagion, infection, or exposure. Information regarding allowable disease and parasite tolerances and species and subspecies of bees shall be made available on the department's website.

2. No person shall hide or conceal any bees or used beekeeping equipment from [~~the inspector~~] department apiary inspectors or give false information in any manner pertaining to this article. No person shall resist, impede or hinder the commissioner or [~~his~~] the commissioner's duly authorized representatives in the discharge of his or her or their duties.

3. Whenever the commissioner or [~~his~~] the commissioner's duly authorized representatives shall determine that any colony of bees, bee material, structures or appliances is infected with, or has been exposed to, contagious or infectious diseases of bees, or is infested with or has been exposed to insects or parasitic organisms adversely affecting bees, or to species or subspecies of bees which have been determined by the commissioner to cause injury, directly or indirectly, to this state's [~~useful~~] managed bee population, crops, or other plants, said colonies of bees and material, structures or appliances shall be immediately placed under quarantine and a written notice thereof shall be served on the owner or caretaker. No person shall move, tamper with, handle, or otherwise disturb or molest or cause to be moved, tampered with, handled, or otherwise disturbed or molested any colonies, materials, or appliances so quarantined without a written permit from the commissioner or [~~his~~] the commissioner's duly authorized representatives.

4. (a) All species and subspecies of bees which have been determined by the commissioner to cause injury, directly or indirectly, to the public health or welfare shall be destroyed per commissioner order.

(b) A beekeeper who received notification that he or she is prohibited from selling nucs or queens as they have been deemed unfit for sale by laboratory confirmation of American Foulbrood, may be ordered by the commissioner to destroy such colonies.

(c) During the time specified in either such order authorized by this subdivision, the quarantined colonies and equipment shall not be removed, molested or tampered with except by written permission of the commissioner or the commissioner's duly authorized representative. No damage shall be awarded to the owner for the loss of any apiary, bees, hives, apiary appliance or bee product destroyed under the provisions of this section or a regulation or order made in pursuance thereof.

4-a. All species and subspecies of bees determined by the commissioner to cause injury to this state's [~~useful~~] managed bee population, crops, or other plants and all bees, beehives, bee fixtures or appurtenances infected with, or exposed to, contagious or infectious diseases of bees, or infested with, or exposed to, insects or parasitic organisms adversely affecting bees, or with or to species or subspecies of bees which have been determined by [~~him~~] the commissioner to cause injury, directly or indirectly, to this state's [~~useful~~] managed bee population, crops, or other plants, are hereby declared to be nuisances to be abated as hereinafter described.

5. If any inspection made by the commissioner or [~~his~~] the commissioner's duly authorized representative discloses that any apiary, appli-

ances, structures, colonies or comb constitute a nuisance within the meaning of this section, the commissioner or [~~his~~] **the commissioner's** duly authorized representatives may with the co-operation and consent of the owner or person in charge immediately proceed to abate the nuisance by destroying or treating such colonies and equipment, or he **or she** may order the owner or person in charge to destroy or treat such colonies or equipment as may be deemed advisable. In case the owner or person in charge will not consent to the abatement of the nuisance by immediate destruction or treatment, the commissioner or [~~his~~] **the commissioner's** duly authorized representative shall notify [~~in writing~~] the owner, occupant or person in charge of the premises **in writing** that such nuisance exists and order that the same be abated within five days after a date which shall be specified in said order. Such order shall **also** contain directions setting forth the method or methods which shall be taken to abate the nuisance and shall be served upon the owner, occupant or person in charge of the premises either personally or by registered or certified mail.

6. [~~If the~~] **Any person believed to have violated any provision of this article shall receive written notice of such alleged violation and an opportunity to be heard to dispute such alleged violation. A beekeeper who receives an** order **that** directs the destruction **or treatment** of any bees, hives, fixtures or appurtenances [~~and the owner thereof considers himself to be aggrieved thereby, he~~] **deemed a nuisance or notification that such beekeeper is prohibited from selling nucs and queens pursuant to paragraph (c) of subdivision one of section one hundred seventy-three-c of this article** may, within five days from the receipt of the order[~~, present to the commissioner a request for a review. Written notice of such request must be served by mail upon the commissioner~~] **or notification, request a hearing thereon. The order or notification shall advise the beekeeper of the right to such hearing, the procedure to be followed and the manner in which the request may be made to the commissioner**. Upon receipt of such [~~notice~~] **request**, the commissioner shall [~~cause an investigation to be made~~] **give the beekeeper ten days' notice in writing of a hearing for the beekeeper to show cause why the destruction, treatment or prohibition on selling by the order or notification is not appropriate. The hearing shall be held on the record**. The request for a [~~review~~] **hearing** shall act to stay all proceedings until [~~the matter has been investigated and~~] a final determination rendered by the commissioner. During the time specified in the order and during any extended time [~~permitted by reason of such review~~]**, pending such final determination,** the quarantined colonies and equipment shall not be removed, molested or tampered with except by written permission of the commissioner or [~~his~~] **the commissioner's** duly authorized representative. No damage shall be awarded to the owner for the loss of any apiary, bees, hives, apiary appliance, or bee product destroyed under the provisions of this section or any regulation or order made in pursuance thereof.

7. Persons keeping bees shall keep them in hives of such construction that the frames and combs may be easily removed without damaging them for examination of the brood for the purpose of determining whether disease exists in the brood.

8. No person shall **knowingly** expose in any place to which bees have access any bee product, hive or other apiary appliance in such manner that contagious or infectious diseases of bees may be disseminated therefrom.

9. The commissioner may promulgate rules and regulations to establish appropriate tolerance levels for [~~insects~~] **diseases** or parasitic organisms adversely affecting bees within hives, fixtures, structures or appurtenances. Beehives conforming with such established tolerance levels shall not be considered nuisances under this section. If upon inspection a hive is found to exceed such tolerance levels, the commissioner may consider such apiary to be a nuisance and may order the destruction or treatment of the apiary as set forth in subdivisions four, **four-a,** five and six of this section.

§ 175. [~~Transportation of bees and bee material. 1. No person shall transport, move, sell, barter, offer for sale or barter, deliver, or offer for transportation any colony of bees, used comb, used beekeeping material, or live bees unless it be within the beekeeper's own premises without a permit from the commissioner, except that colonies of bees and used beekeeping equipment which are not infected with or have not been exposed to bee disease, and which are not infested with and have not been exposed to insects or parasitic organisms adversely affecting bees, or to species or subspecies of bees which have been determined by the commissioner to cause injury, directly or indirectly, to this state's useful bee population, crops, or other plants may be moved or transported without a permit provided that the commissioner has been notified in writing of such intention not less than ten days before the bees and equipment are moved.~~

~~2. No person shall transport, move, buy, sell, possess, barter, offer for sale or barter, deliver, or offer for transportation any species or subspecies of bees which have been determined by the commissioner to cause injury, directly or indirectly, to this state's useful bee population, crops, or other plants, provided, that the commissioner may at his discretion exempt the transportation, sale, possession, movement, or delivery of such bees for scientific or educational purposes under such safeguards as he may deem necessary.~~

~~3. Every shipment of live bees in cages or packages without comb into this state from another state or foreign country, shall be accompanied by a permit issued by the commissioner, or by a certificate of freedom from disease executed by an official of such state or foreign country recognized by the commissioner.~~

~~4. Every shipment of a colony of bees, used comb, used beekeeping equipment, or live bees on comb into this state from another state or foreign country, shall be accompanied by a permit issued by the commissioner or by a certificate of freedom from disease, from insects and parasitic organisms adversely affecting bees and from species or subspecies of bees which have been determined by the commissioner to cause injury directly or indirectly, to this state's useful bee population, crops or other plants and certifying that a proper inspection was made not earlier than sixty days preceding the date of shipment. Such certificate shall be executed by an official of such state or foreign country recognized by the commissioner. A duplicate of such certificate shall be mailed to the commissioner before any such shipment enters this state. Every transportation company upon receipt of such shipment shall immediately notify the commissioner thereof, giving the name and address of the consignor and consignee.~~

~~§ 175-b.~~] Rules and regulations. The commissioner is hereby authorized, after public hearing, to adopt, promulgate and issue such rules and regulations as [~~he~~] **the commissioner** may deem necessary to carry out and give full force and effect to the provisions of this article, including, but not limited to, the designation of species or subspecies

of bees determined by him **or her** to cause injury, directly or indirectly, to **the public safety or to** this state's [~~useful~~] **managed** bee population, crops, or other plants. Such rules and regulations shall be filed and open for public inspection at the principal office of the department and shall have the force and effect of law.

[~~§ 175-c.~~] **§ 175-a.** Review by court. The [~~action~~] **final determination** of the commissioner on a [~~request for review~~] **hearing** as authorized by **subdivision six of** section one hundred [~~seventy-five herein~~] **seventy-four of this article** may be reviewed in the manner provided by article seventy-eight of the civil practice law and rules, provided, however, that a stay shall not be granted by the court or a justice thereof pending final determination of the matter except on notice to the commissioner. The [~~decision~~] **determination** of the commissioner **after the opportunity for a hearing and any hearing** shall be final unless within thirty days from the receipt of written notice thereof a proceeding is instituted to review the same.

[~~§ 175-d.~~] **§ 175-b.** Violations; remedies. The commissioner may institute such action at law or in equity as may be necessary to enforce compliance with any provision of this article or of any rule or regulation promulgated thereunder and in addition to any other remedy prescribed in article three of this chapter or otherwise may apply for relief by injunction if necessary to protect the public interest or abate a nuisance as defined in this article without alleging or proving that an adequate remedy at law does not exist. Such application may be made to the supreme court in any district or county as provided [~~by the civil practice act~~] **civil practice law and rules** and the rules of practice of the court, or to the supreme court in the third judicial district.

§ 3. The subdivision heading and paragraph c of subdivision 9 of section 301 of the agriculture and markets law, the subdivision heading as amended by chapter 440 of the laws of 1993 and paragraph c as amended by chapter 536 of the laws of 2008, are amended to read as follows:

"Gross sales [~~value~~]" means the proceeds from the sale of:

c. Honey**, royal jelly, bee pollen, propolis** and beeswax produced by bees in hives located on [~~an otherwise qualified farm operation but which does not independently satisfy the gross sales requirement~~] **land used in agricultural production in conjunction with the same or an otherwise qualified farm operation**;

§ 4. Paragraph (e) of subdivision 2 of section 483 of the real property tax law, as amended by chapter 35 of the laws of 2016, is amended to read as follows:

(e) structures and buildings used in the production of honey**, royal jelly, bee pollen, propolis** and beeswax including those structures and buildings used for the storage of bees. For purposes of this section, this shall not include those structures or buildings and portions thereof used for the sale of maple syrup or sale of honey and beeswax. The term "structures and buildings" shall not include silos, bulk milk tanks or coolers, or manure storage, handling and treatment facilities as such terms are used in section four hundred eighty-three-a of this title.

§ 5. This act shall take effect on the one hundred eightieth day after it shall have become a law. Effective immediately, the addition, amendment and/or repeal of any rule or regulation necessary for the implementation of this act on its effective date are authorized to be made and completed on or before such effective date.