

By: Flores

H.B. No. 2320

A BILL TO BE ENTITLED

AN ACT

relating to the authority of the Texas Department of Agriculture to manage an in-state quarantine.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

SECTION 1. Section 71.008, Agriculture Code, is amended as follows:

Sec. 71.008. CONTROL OR ERADICATION ZONE. (a) On request of the commissioners court of any county, the department shall investigate whether a certain insect pest or plant disease exists in the county. Based on that investigation, the department shall make a written report to the commissioners court stating:

(1) the nature of the infestation, if any;

(2) the best known method of controlling or eradicating the pest or disease;

(3) the treatment or method necessary to be applied in each case; and

(4) a detailed description of the method of making, procuring, and applying the recommended preparation or treatment and the time and duration of the treatment.

(b) After receiving the report of the department, the commissioners court may conduct a public hearing on the report. The commissioners court may publish the text of the report and notice of the hearing for two consecutive weeks in a newspaper of general circulation in each area under consideration. The commissioners

1 court shall hold the hearing not less than 15 days after the first
2 day of published notice. Any interested person is entitled to be
3 heard at the hearing.

4 (c) After the hearing, the commissioners court shall make a
5 written report of its conclusions to the department. If the
6 commissioners court approves the recommendations of the department
7 and determines that the recommended measures should be applied in
8 the area under consideration, the commissioners court by order
9 entered in its minutes shall request that the department establish
10 a control zone or an eradication zone in each applicable area.

11 (d) If requested to establish a control or eradication zone
12 under Subsection (c) of this section, the department shall issue a
13 proclamation designating the appropriate area a control zone or an
14 eradication zone, as applicable, and shall adopt rules governing
15 the control or eradication of the pest or disease within the zone.
16 No person may commit an act prohibited by the rules or refuse to
17 perform an act as required by the rules.

18 (e) A commissioners court may appropriate funds from the
19 general revenue of the county and employ aid as necessary to carry
20 out this section.

21 (f) The provisions of this section shall not be construed to
22 restrict the department's authority to establish an eradication
23 program within a quarantined area on its own initiative in order to
24 protect the state's agricultural resources.

25 SECTION 2. Section 71.092, Agriculture Code is amended by
26 adding Section 71.0092 to read as follows:

27 Sec. 71.0092. Treatment, Handling, Seizure, and

1 Destruction of Non-Infested Host Materials Within A Quarantined
2 Zone (a) For purposes of this section, a "quarantined article" is
3 any motor vehicle, railcar, or other conveyance that has been
4 recently used for the transport or production of, is being used for
5 the transport or production of, or is intended for use in the
6 transport or production of another controlled article listed in
7 this subsection, or any plant, plant product, plant material,
8 substance, or item capable of hosting or facilitating the
9 dissemination of an insect pest or plant disease subject to a
10 quarantine established by the department under this subchapter.

11 (b) The department may by rule establish treatment and
12 handling requirements for quarantined articles found within a
13 quarantined area in order to:

14 (1) prevent dissemination of a dangerous insect pest
15 or plant disease outside the quarantined area or into a pest-free
16 area within the state;

17 (2) prevent infestation of non-infested quarantined
18 articles by a dangerous insect pest or plant disease that is subject
19 to a quarantine established by the department under this
20 subchapter;

21 (3) suppress the level of occurrence within this
22 state, or a quarantined area of this state, of a dangerous insect
23 pest or plant disease that is subject to a quarantine established by
24 the department under this subchapter; or

25 (4) facilitate the eradication of a dangerous insect
26 pest or plant disease that is subject to a quarantine established by
27 the department under this subchapter.

1 (c) A person in possession or control of a quarantined
2 article located within a quarantined area shall comply with
3 department rules and orders regarding treatment and handling of
4 quarantined articles.

5 (d) If the person in possession or control of a quarantined
6 article located within a quarantined area fails to comply with a
7 department rule or order under this section, the department may, at
8 the expense of the owner or other person in possession or control of
9 the article:

10 (1) seize the quarantined article and, as appropriate
11 to the nature of the article seized and available department
12 resources and subject to Section 71.010 of this subchapter:

13 (A) isolate the quarantined article in a location
14 and under conditions sufficient to prevent the propagation or
15 dissemination of the dangerous insect pest or plant disease until
16 such time as the article no longer represents a danger of such
17 propagation or dissemination or until such time as the person in
18 possession or control agrees to comply with the rule or order;

19 (B) treat the quarantined article to eliminate
20 the danger of propagation or dissemination of the dangerous insect
21 pest or plant disease; or

22 (C) destroy the quarantined article; or

23 (2) seek an injunction from a district court in Travis
24 County ordering the person in possession or control of the
25 quarantined article to, subject to civil or criminal contempt of
26 court:

27 (A) comply with the department's rule or order;

1 or

2 (B) surrender possession of the quarantined
3 article to the department for disposition under Subsection (d)(1)
4 of this section.

5 (e) If the owner of a quarantined article seized under this
6 section is unknown to the department, the department shall publish
7 or post notice that, not earlier than the fifth day after the first
8 day on which notice is published or posted, the department may
9 destroy, treat, or isolate the quarantined article at the owner's
10 expense. The department shall publish the notice for three
11 consecutive days in a newspaper of general circulation in the
12 county in which the quarantined article was located at the time it
13 was seized. The notice shall describe the quarantined article
14 seized.

15 (1) If the owner claims the quarantined article before
16 the date for destruction set by the notice and agrees in writing to
17 treat or handle the article in the manner provided by department
18 rule or order, the department shall deliver the quarantined article
19 to the owner at the owner's expense.

20 (2) If the owner does not claim the quarantined
21 article before the date the notice specifies that destruction is
22 permitted, the department may destroy or arrange for the
23 destruction of the quarantined article or continue to isolate or
24 treat the quarantined article at the owner's expense.

25 (3) If the owner refuses to agree in writing to comply
26 with the department's rule or order regarding treatment or handling
27 of the quarantined article, the department may destroy or arrange

1 for the destruction of the quarantined article or continue to
2 isolate or treat the quarantined article at the owner's expense,
3 subject to the provisions of Section 71.010 of this subchapter.

4 (f) In enforcing the provisions of this section, the
5 department may seek the assistance of the Department of Public
6 Safety, as provided by Section 71.0101 of this subchapter, or any
7 law enforcement officer of the county in which the quarantined
8 article is located, and the Department of Public Safety or local law
9 enforcement officer shall cooperate with the department and provide
10 any assistance necessary to give effect to the provisions of this
11 section and abate the nuisance.

12 (g) The owner of a quarantined article treated, isolated, or
13 destroyed by the department under this section is liable to the
14 department for the costs of treatment, isolation or destruction,
15 and the department may sue to collect those costs.

16 (h) The Attorney General is entitled to court costs and
17 reasonable attorneys fees in any suit brought on behalf of the
18 department under this section, including any suit for an
19 injunction.

20 (i) The department may enter into an agreement with a
21 private entity to obtain assistance in defraying the cost of
22 implementing this section.

23 Section 3. This Act takes effect immediately if it receives
24 a vote of two-thirds of all the members elected to each house, as
25 provided by Section 39, Article III, Texas Constitution. If this
26 Act does not receive the vote necessary for immediate effect, this
27 Act takes effect September 1, 2003.