

By: Hinojosa

S.B. No. 1561

A BILL TO BE ENTITLED

AN ACT

relating to the seizure and destruction of certain plants; creating an offense.

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

SECTION 1. Section 71.007, Agriculture Code, is amended to read as follows:

Sec. 71.007. RULES. (a) In addition to other rules necessary for the protection of agricultural and horticultural interests, the department may adopt rules that:

(1) prevent the selling, moving, or transporting of any plant, plant product, or substance that is found to be infested or found to be from a quarantined area;

(2) provide for the destruction of trees or fruits;

(3) provide for the cleaning or treatment of orchards;

(4) provide for methods of storage;

(5) prevent entry into a pest-free zone of any plant, plant product, or substance found to be dangerous to the agricultural and horticultural interests of the zone;

(6) provide for the maintenance of a host-free period in which certain fruits are not allowed to ripen; ~~or~~

(7) provide for specific treatment of a grove or orchard or of infested or infected plants, plant products, or substances; or

(8) provide for a program to manage or eradicate

1 exotic citrus diseases, including citrus canker and citrus
2 greening.

3 (b) Rules adopted under Subsection (a)(8):

4 (1) must establish, based on scientific evidence, when
5 a healthy but suspect citrus plant must be destroyed; and

6 (2) may provide for a plan for compensating an owner of
7 a plant destroyed under a rule adopted in accordance with
8 Subdivision (1).

9 SECTION 2. Subchapter A, Chapter 71, Agriculture Code, is
10 amended by adding Section 71.0083 to read as follows:

11 Sec. 71.0083. AGRICULTURE WARRANTS. (a) In addition to
12 vehicle inspections authorized under Section 71.0081, the
13 department may seek an agriculture warrant with respect to a plant
14 pest or plant disease identified in the application for the warrant
15 to:

16 (1) conduct an inspection;

17 (2) set a trap;

18 (3) examine records; or

19 (4) test, treat, identify, quarantine, take samples
20 of, seize, or destroy infected or exposed plants.

21 (b) An agriculture warrant may be issued only by a
22 magistrate authorized to issue a search warrant under Chapter 18,
23 Code of Criminal Procedure, on application by the department
24 accompanied by a supporting affidavit that establishes probable
25 cause for the issuance of the warrant. The warrant must describe:

26 (1) the street address and municipality or the parcel
27 number and county of each place or premises subject to the warrant;

1 and

2 (2) each type of plant pest or disease that is the
3 subject of the warrant.

4 (c) In determining the existence of probable cause for the
5 issuance of an agriculture warrant, it shall be sufficient to show
6 only that:

7 (1) the place or premises described in the application
8 for the warrant are located in an area subject to a quarantine
9 established by the department with respect to the plant pest or
10 disease that is the subject of the warrant; or

11 (2) there is a reasonable probability the place or
12 premises contain a plant pest or disease or are located in an area
13 that is reasonably suspected of being infected with a plant pest or
14 disease because of its proximity to a known infestation.

15 (d) A single application and affidavit is sufficient for the
16 issuance of multiple agriculture warrants if the application for
17 the warrant describes the location of each place or premises
18 subject to the warrant and all those places or premises are located
19 in the same county.

20 (e) The department is entitled to an ex parte hearing on an
21 application for an agriculture warrant. The warrant may be served
22 and executed by a department employee and shall authorize
23 department employees to undertake any action authorized by the
24 warrant.

25 (f) At the time the warrant is executed, a copy of the
26 warrant shall be:

27 (1) delivered to a person 18 years of age or older who

1 is occupying or living in the place or premises subject to the
2 warrant; or

3 (2) attached to the place or premises in a conspicuous
4 location.

5 (g) An agriculture warrant is valid until the 61st day after
6 the date the warrant is issued and authorizes multiple executions
7 of the warrant before the date the warrant expires. A warrant may
8 be renewed or extended by the magistrate who issued the original
9 warrant if the magistrate determines there is probable cause for
10 the warrant to be reissued or extended. The agriculture warrant
11 must be returned to the issuing magistrate before the warrant
12 expires.

13 (h) An agriculture warrant may not:

14 (1) be executed between 7 p.m. and 7 a.m. of the
15 following day or on a state holiday;

16 (2) authorize the entry into or inspection of the
17 interior of any occupied dwelling; or

18 (3) be issued in blank.

19 (i) A person commits an offense if the person intentionally
20 interferes with the execution of an agriculture warrant. An
21 offense under this subsection is a Class B misdemeanor.

22 (j) This section does not restrict the authority of this
23 state or a political subdivision of this state to otherwise conduct
24 an inspection with or without a warrant as authorized by other law.

25 SECTION 3. Section 71.0091, Agriculture Code, is amended by
26 amending Subsections (a), (b), (c), and (e) and adding Subsection
27 (e-1) to read as follows:

1 (a) The department may seize a citrus plant, citrus plant
2 product, or citrus substance that the department determines:

3 (1) is transported or carried from a quarantined area
4 in violation of a quarantine order; ~~or~~

5 (2) is infected with a disease or insect pest
6 dangerous to a citrus plant, citrus plant product, or citrus
7 substance, without regard to whether the citrus plant, citrus plant
8 product, or citrus substance comes from an area known to be
9 infested; or

10 (3) is located within proximity to a plant infected by
11 a disease dangerous to any agricultural or horticultural product
12 and is determined by the department to likely be infected by that
13 disease, regardless of whether the plant currently exhibits
14 symptoms of the disease.

15 (b) If a citrus plant, citrus plant product, or citrus
16 substance is seized under Subsection (a)(1) ~~[of this section]~~, the
17 department immediately shall notify the owner that the citrus
18 plant, citrus plant product, or citrus substance is a public
19 nuisance and that it must be destroyed, treated, or, if feasible,
20 returned to its point of origin. If a citrus plant, citrus plant
21 product, or citrus substance is seized under Subsection (a)(2) or
22 (3) ~~[of this section]~~, the department immediately shall notify the
23 owner that the citrus plant, citrus plant product, or citrus
24 substance is a public nuisance and must be destroyed or treated.

25 (c) If the owner of a citrus plant, citrus plant product, or
26 citrus substance seized under Subsection (a)(1) or (2) ~~[(a) of this~~
27 ~~section]~~ is unknown to the department, the department shall publish

1 or post notice that, not earlier than the fifth day after the first
2 day on which notice is published or posted, the department may
3 destroy the citrus plant, citrus plant product, or citrus
4 substance. The department shall publish the notice for three
5 consecutive days in a newspaper of general circulation in the
6 county in which the citrus plant, citrus plant product, or citrus
7 substance is located or post the notice in the immediate vicinity of
8 the area in which the citrus plant, citrus plant product, or citrus
9 substance is located. The notice must describe the citrus plant,
10 citrus plant product, or citrus substance seized. If the owner
11 claims the citrus plant, citrus plant product, or citrus substance
12 before the date for destruction set by the notice, the department
13 shall deliver the citrus plant, citrus plant product, or citrus
14 substance to the owner at the owner's expense. If the owner does
15 not claim the citrus plant, citrus plant product, or citrus
16 substance before the date the notice specifies that destruction is
17 permitted, the department may destroy or arrange for the
18 destruction of the citrus plant, citrus plant product, or citrus
19 substance.

20 (e) The owner of a citrus plant, citrus plant product, or
21 citrus substance treated or destroyed under Subsection (a)(1) or
22 (2) by the department under this section is liable to the department
23 for the costs of treatment or destruction, and the department may
24 sue to collect those costs.

25 (e-1) The owner of a citrus plant, citrus plant product, or
26 citrus substance destroyed under Subsection (a)(3) is entitled to
27 compensation from the department for the destruction of the plant,

1 product, or substance.

2 SECTION 4. This Act takes effect September 1, 2007.