

1-1 By: Hinojosa S.B. No. 1561
1-2 (In the Senate - Filed March 8, 2007; March 20, 2007, read
1-3 first time and referred to Subcommittee on Agriculture, Rural
1-4 Affairs and Coastal Resources; April 23, 2007, reported favorably
1-5 from Committee on Natural Resources by the following vote:
1-6 Yeas 10, Nays 0; April 23, 2007, sent to printer.)

1-7 A BILL TO BE ENTITLED
1-8 AN ACT

1-9 relating to the seizure and destruction of certain plants; creating
1-10 an offense.

1-11 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

1-12 SECTION 1. Section 71.007, Agriculture Code, is amended to
1-13 read as follows:

1-14 Sec. 71.007. RULES. (a) In addition to other rules
1-15 necessary for the protection of agricultural and horticultural
1-16 interests, the department may adopt rules that:

1-17 (1) prevent the selling, moving, or transporting of
1-18 any plant, plant product, or substance that is found to be infested
1-19 or found to be from a quarantined area;

1-20 (2) provide for the destruction of trees or fruits;

1-21 (3) provide for the cleaning or treatment of orchards;

1-22 (4) provide for methods of storage;

1-23 (5) prevent entry into a pest-free zone of any plant,
1-24 plant product, or substance found to be dangerous to the
1-25 agricultural and horticultural interests of the zone;

1-26 (6) provide for the maintenance of a host-free period
1-27 in which certain fruits are not allowed to ripen; ~~or~~

1-28 (7) provide for specific treatment of a grove or
1-29 orchard or of infested or infected plants, plant products, or
1-30 substances; or

1-31 (8) provide for a program to manage or eradicate
1-32 exotic citrus diseases, including citrus canker and citrus
1-33 greening.

1-34 (b) Rules adopted under Subsection (a)(8) must:

1-35 (1) establish, based on scientific evidence, when a
1-36 healthy but suspect citrus plant must be destroyed; and

1-37 (2) provide for compensation to an owner of a plant
1-38 destroyed under Subdivision (1).

1-39 SECTION 2. Subchapter A, Chapter 71, Agriculture Code, is
1-40 amended by adding Section 71.0083 to read as follows:

1-41 Sec. 71.0083. AGRICULTURE WARRANTS. (a) In addition to
1-42 vehicle inspections authorized under Section 71.0081, the
1-43 department may seek an agriculture warrant with respect to a plant
1-44 pest or plant disease identified in the application for the warrant
1-45 to:

1-46 (1) conduct an inspection;

1-47 (2) set a trap;

1-48 (3) examine records; or

1-49 (4) test, treat, identify, quarantine, take samples
1-50 of, seize, or destroy infected plants.

1-51 (b) An agriculture warrant may be issued only by a
1-52 magistrate authorized to issue a search warrant under Chapter 18,
1-53 Code of Criminal Procedure, on application by the department
1-54 accompanied by a supporting affidavit that establishes probable
1-55 cause for the issuance of the warrant. The warrant must describe:

1-56 (1) the street address and municipality or the parcel
1-57 number and county of each place or premises subject to the warrant;
1-58 and

1-59 (2) each type of plant pest or disease that is the
1-60 subject of the warrant.

1-61 (c) In determining the existence of probable cause for the
1-62 issuance of an agriculture warrant, it shall be sufficient to show
1-63 only that:

1-64 (1) the place or premises described in the application

2-1 for the warrant are located in an area subject to a quarantine
2-2 established by the department with respect to the plant pest or
2-3 disease that is the subject of the warrant; or

2-4 (2) there is a reasonable probability the place or
2-5 premises contain a plant pest or disease or are located in an area
2-6 that is reasonably suspected of being infected with a plant pest or
2-7 disease because of its proximity to a known infestation.

2-8 (d) A single application and affidavit is sufficient for the
2-9 issuance of multiple agriculture warrants if the application for
2-10 the warrant describes the location of each place or premises
2-11 subject to the warrant and all those places or premises are located
2-12 in the same county.

2-13 (e) The department is entitled to an ex parte hearing on an
2-14 application for an agriculture warrant. The warrant may be served
2-15 and executed by a department employee and shall authorize
2-16 department employees to undertake any action authorized by the
2-17 warrant.

2-18 (f) At the time the warrant is executed, a copy of the
2-19 warrant shall be:

2-20 (1) delivered to a person 18 years of age or older who
2-21 is occupying or living in the place or premises subject to the
2-22 warrant; or

2-23 (2) attached to the place or premises in a conspicuous
2-24 location.

2-25 (g) An agriculture warrant is valid until the 61st day after
2-26 the date the warrant is issued and authorizes multiple executions
2-27 of the warrant before the date the warrant expires. A warrant may
2-28 be renewed or extended by the magistrate who issued the original
2-29 warrant if the magistrate determines there is probable cause for
2-30 the warrant to be reissued or extended. The agriculture warrant
2-31 must be returned to the issuing magistrate before the warrant
2-32 expires.

2-33 (h) An agriculture warrant may not:

2-34 (1) be executed between 7 p.m. and 7 a.m. of the
2-35 following day or on a state holiday;

2-36 (2) authorize the entry into or inspection of the
2-37 interior of any occupied dwelling; or

2-38 (3) be issued in blank.

2-39 (i) A person commits an offense if the person intentionally
2-40 interferes with the execution of an agriculture warrant. An
2-41 offense under this subsection is a Class B misdemeanor.

2-42 (j) This section does not restrict the authority of this
2-43 state or a political subdivision of this state to otherwise conduct
2-44 an inspection with or without a warrant as authorized by other law.

2-45 SECTION 3. Section 71.0091, Agriculture Code, is amended by
2-46 amending Subsections (a), (b), (c), and (e) and adding Subsection
2-47 (e-1) to read as follows:

2-48 (a) The department may seize a citrus plant, citrus plant
2-49 product, or citrus substance that the department determines:

2-50 (1) is transported or carried from a quarantined area
2-51 in violation of a quarantine order; ~~or~~

2-52 (2) is infected with a disease or insect pest
2-53 dangerous to a citrus plant, citrus plant product, or citrus
2-54 substance, without regard to whether the citrus plant, citrus plant
2-55 product, or citrus substance comes from an area known to be
2-56 infested; or

2-57 (3) is located within proximity to a plant infected by
2-58 a disease dangerous to any agricultural or horticultural product
2-59 and is determined by the department to likely be infected by that
2-60 disease, regardless of whether the plant currently exhibits
2-61 symptoms of the disease.

2-62 (b) If a citrus plant, citrus plant product, or citrus
2-63 substance is seized under Subsection (a)(1) ~~[of this section]~~, the
2-64 department immediately shall notify the owner that the citrus
2-65 plant, citrus plant product, or citrus substance is a public
2-66 nuisance and that it must be destroyed, treated, or, if feasible,
2-67 returned to its point of origin. If a citrus plant, citrus plant
2-68 product, or citrus substance is seized under Subsection (a)(2) or
2-69 (3) ~~[of this section]~~, the department immediately shall notify the

owner that the citrus plant, citrus plant product, or citrus substance is a public nuisance and must be destroyed or treated.

(c) If the owner of a citrus plant, citrus plant product, or citrus substance seized under Subsection (a)(1) or (2) [~~(a) of this section~~] is unknown to the department, the department shall publish or post notice that, not earlier than the fifth day after the first day on which notice is published or posted, the department may destroy the citrus plant, citrus plant product, or citrus substance. The department shall publish the notice for three consecutive days in a newspaper of general circulation in the county in which the citrus plant, citrus plant product, or citrus substance is located or post the notice in the immediate vicinity of the area in which the citrus plant, citrus plant product, or citrus substance is located. The notice must describe the citrus plant, citrus plant product, or citrus substance seized. If the owner claims the citrus plant, citrus plant product, or citrus substance before the date for destruction set by the notice, the department shall deliver the citrus plant, citrus plant product, or citrus substance to the owner at the owner's expense. If the owner does not claim the citrus plant, citrus plant product, or citrus substance before the date the notice specifies that destruction is permitted, the department may destroy or arrange for the destruction of the citrus plant, citrus plant product, or citrus substance.

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

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

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

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