

AMENDED IN SENATE APRIL 15, 2009

**SENATE BILL**

**No. 140**

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**Introduced by Senator Corbett**

February 11, 2009

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An act to add Article 3 (commencing with Section 6941) to Chapter 2 of Part 3 of Division 4 of the Food and Agricultural Code, relating to nurseries, and declaring the urgency thereof, to take effect immediately.

LEGISLATIVE COUNSEL'S DIGEST

SB 140, as amended, Corbett. Citrus Nursery Stock Pest Cleanliness Program.

Existing law authorizes the Secretary of Food and Agriculture to, by regulation, provide for periodic inspections of nurseries and prescribe standards of cleanliness for nursery stock which is produced or sold within the state.

This bill would require the Department of Food and Agriculture to develop and establish the Citrus Nursery Stock Pest Cleanliness Program to protect citrus nursery stock from harmful diseases, pests, and other risks and threats. The Secretary of Food and Agriculture would be required to administer the program and ~~to hold fact finding meetings throughout the state by July 31, 2010,~~ to receive information from interested parties for consideration in the development of the program. The bill would specify what the program is to include, including the requirement that a person who, by any method of propagation, produces any citrus nursery stock shall comply with all agricultural practices, application specifications and deadlines, eligibility, inspection, notification, pest control, records maintenance and availability, registration, sanitation, testing, and other lawful orders issued by the secretary. ~~The testing for certain~~ *Testing for important* diseases and

pathogens would be required to be included in the program within 45 days after valid and reliable diagnostic protocols have been developed and proven to be efficient and effective for the testing of those diseases and pathogens. The bill would authorize the department to designate specified types of entities to perform the disease and pathogen diagnostic testing and analysis under the program, as provided. The bill would authorize the secretary to ~~establish~~ *adopt* and enforce regulations necessary to carry out the purposes of the program, and to issue orders establishing rates or prices to cover the department's costs for its administration, testing, inspection, and other services under the program, as provided.

This bill would declare that it is to take effect immediately as an urgency statute.

Vote:  $\frac{2}{3}$ . Appropriation: no. Fiscal committee: yes.  
State-mandated local program: no.

*The people of the State of California do enact as follows:*

1 SECTION 1. (a) The Legislature finds and declares all of the  
2 following:

3 (1) Citrus is a very significant part of California's agricultural  
4 industry. The annual farm gate value of citrus fruit produced in  
5 the state exceeds \$1 billion. The estimated annual farm gate value  
6 of citrus trees produced by California's citrus nurseries is \$25  
7 million. The total combined economic impact, using an economic  
8 multiplier of three, is more than \$3 billion annually.

9 (2) Losses resulting from the establishment of new, devastating  
10 diseases like citrus canker and citrus greening in California would  
11 result from direct damage and mortality to citrus trees, reduced  
12 yields and quality, and increased production costs. Indirect costs  
13 would result from market disruptions and losses, increased costs  
14 for planting materials, regulatory compliance, and other such costs.

15 (3) Current international plant health standards define  
16 "quarantine pests" and "regulated nonquarantine pests."

17 (4) Serious, quarantine pests of citrus exist in other parts of the  
18 world. Citrus canker and citrus greening present an imminent  
19 threat, as they already exist in the State of Florida. The Asian citrus  
20 psyllid, an active vector for ~~greening~~ *Huanglongbing*, exists in  
21 many parts of the world, including Mexico. Citrus variegated  
22 chlorosis and leprosis are present in South America and have

1 devastated citrus production in parts of the region. Citrus tristeza  
2 virus is a quarantine pest in California. Other pathogens now  
3 present in California are detrimental to the citrus industry and must  
4 be officially controlled as regulated nonquarantine pests.

5 (5) The active enforcement of mandatory phytosanitary  
6 regulations and the application of mandatory phytosanitary  
7 procedures with the objective of eradication or containment of  
8 quarantine pests or for the management of regulated nonquarantine  
9 pests constitute official control.

10 (6) Official control is subject to the principles of plant quarantine  
11 as related to international trade, in particular, the principles of  
12 nondiscrimination, transparency, equivalence, and risk analysis.

13 (7) The presence of certain pathogens or nonpathogen disorders  
14 in citrus nursery stock, including plants that are used as the sources  
15 of citrus propagative stock, present a clear and present danger to  
16 the agricultural industry of the state. Management and mitigation  
17 of these risks and potential harm requires the Department of Food  
18 and Agriculture to develop, establish, and administer programs  
19 that reduce the associated danger and potential harm to an  
20 acceptable level.

21 (8) Participation in governmentally administered official control  
22 programs for pest cleanliness must be mandatory to ensure the  
23 effective management and mitigation of the risks and potential  
24 harm associated with citrus pathogens, citrus disorders, and other  
25 citrus pests.

26 (b) It is therefore the intent of the Legislature to create the Citrus  
27 Nursery Stock Pest Cleanliness Program within the Department  
28 of Food and Agriculture.

29 SEC. 2. Article 3 (commencing with Section 6941) is added  
30 to Chapter 2 of Part 3 of Division 4 of the Food and Agricultural  
31 Code, to read:

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33 Article 3. Citrus Nursery Stock Pest Cleanliness Program

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35 6941. (a) The department shall develop and establish the Citrus  
36 Nursery Stock Pest Cleanliness Program to protect citrus nursery  
37 stock from harmful diseases, pests, and other risks and threats.  
38 This program shall be administered by the secretary.

39 (b) ~~The secretary shall, by July 31, 2010, hold fact finding~~  
40 ~~meetings in various parts of the state to receive information from~~

1 interested parties for consideration in the development of the  
2 program. The secretary shall consider input from interested parties  
3 as to the feasibility, cost, justification, and effectiveness of the  
4 program when developing components of the program.

5 (c) The program shall include all of the following:

6 (1) Require that a person who, by any method of propagation,  
7 produces any citrus nursery stock shall comply with all agricultural  
8 practices, application specifications and deadlines, eligibility,  
9 inspection, notification, pest control, records maintenance and  
10 availability, registration, sanitation, testing, and other lawful orders  
11 issued by the secretary.

12 (2) Establish inspection requirements and testing standards,  
13 including retesting and other measures to ensure the accuracy and  
14 timeliness of test results.

15 (3) Specify phase-in periods or effective dates for the regulations  
16 and for various requirements specified in the regulations.

17 (4) Define relevant terms. All relevant terms, including, but not  
18 limited to, “person,” “sale,” “nursery stock,” and “plant” that are  
19 listed and defined in this code shall apply to the program.

20 (5) Comply with all applicable federal and state quarantine  
21 requirements, with regulations establishing pest cleanliness  
22 standards for pests other than pathogens or nonpathogenic  
23 disorders, and with disclaimer of warranties and financial  
24 responsibility requirements specified in Section 3069 of Title 3 of  
25 the California Code of Regulations.

26 (d) The secretary may also adopt and enforce regulations that  
27 are necessary to carry out the purposes of this article.

28 6942. (a) ~~Several~~ *There are* important diseases and pathogens;  
29 including, but not limited to, stubborn disease, caused by  
30 *Spiroplasma citri*; citrus leprosis, caused by citrus leprosis  
31 rhabdovirus; citrus variegated chlorosis, caused by pathovar of  
32 *Xylella fastidiosa*; and Huanglongbing, caused by *Candidatus*  
33 *Liberobacter asiaticus* or *Candidatus Liberobacter africanum*, *that*  
34 currently cannot be included in the program because valid and  
35 reliable testing methods and practical testing protocols do not exist  
36 for determining their absence from citrus trees intended for use as  
37 registered sources of citrus propagative stock. ~~These specified~~  
38 ~~diseases and pathogens and any other serious citrus disease or~~  
39 ~~pathogen that threatens~~ *Important diseases and pathogens that*  
40 *threaten* the citrus industry shall be included in the program within

1 45 days after valid and reliable diagnostic protocols have been  
2 developed and proven to be efficient and effective for the purpose  
3 of ensuring that citrus trees registered as sources of citrus  
4 propagative stock are tested free of the diseases and pathogens  
5 described in this subdivision.

6 (b) Criteria relative to the proven efficiency and effectiveness  
7 of disease diagnostics for the pathogens described in subdivision  
8 (a) shall include adequate diagnostics capacity to perform the  
9 required testing and its economic feasibility and practicality.

10 6943. (a) The department may designate the following types  
11 of entities to perform the required disease and pathogen diagnostic  
12 testing and analysis under the program:

13 (1) Entities that have responsibilities associated with the citrus  
14 industry and that derive their authority from this code.

15 (2) Entities that are associated with a California public  
16 university.

17 (3) *Private entities with expertise in plant disease diagnostics*  
18 *that meet standards adopted by the secretary to ensure integrity*  
19 *of the sampling methods and results.*

20 (b) An entity authorized pursuant to subdivision (a) shall be  
21 proficient in the protocols for which it is approved by the  
22 department.

23 (c) An entity authorized pursuant to this section shall be subject  
24 to reapproval by the department ~~every three years under the same~~  
25 ~~criteria set forth in subdivisions (a) and (b).~~ *pursuant to regulations*  
26 *adopted as authorized by this title.*

27 (d) The department shall have no liability for any errors or  
28 omissions of an entity authorized pursuant to this section.

29 6944. The secretary may issue orders establishing rates or  
30 prices to cover the department's costs for its administration, testing,  
31 inspection, *private laboratory approval and accreditation*, and  
32 other services under the program established pursuant to this article,  
33 subject to both of the following:

34 (a) The rates or prices shall take into consideration departmental  
35 cost savings associated with economy of scale factors.

36 (b) The nursery stock license fees received by the department  
37 pursuant to Chapter 1 (commencing with Section 6701) and the  
38 costs of the administrative functions of the program shall be  
39 factored into the calculation of the rates or prices for the services  
40 provided by the department under this program.

1 6945. This article shall be construed liberally to effectuate the  
2 Legislature’s intent that an effective citrus nursery stock pest  
3 cleanliness program in the department be established and  
4 administered by the secretary.

5 6946. The secretary may adopt regulations and issue orders as  
6 authorized by this ~~title~~ *article*. The adoption, amendment, or repeal  
7 of a regulation, and the issuance of an order, establishing rates or  
8 prices under this ~~title~~ *article*, or establishing diseases to be  
9 inspected under Section 6942, shall be exempt from the rulemaking  
10 provisions of the Administrative Procedure Act (Chapter 3.5  
11 (commencing with Section 11340) of Part 1 of Division 3 of Title  
12 2 of the *Government Code*). However, the secretary shall transmit  
13 those regulations and orders to the Office of Administrative Law  
14 for filing with the Secretary of State and publication in the  
15 California Code of Regulations.

16 SEC. 3. This act is an urgency statute necessary for the  
17 immediate preservation of the public peace, health, or safety within  
18 the meaning of Article IV of the Constitution and shall go into  
19 immediate effect. The facts constituting the necessity are:

20 In order to protect the citrus nursery stock, citrus crops, and their  
21 associated industries by preventing the introduction and  
22 establishment of pests and diseases, it is necessary that this act  
23 take effect immediately.