

AMENDED IN SENATE APRIL 28, 2009

AMENDED IN SENATE APRIL 15, 2009

SENATE BILL

No. 140

Introduced by Senator Corbett

February 11, 2009

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 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. 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 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 Huanglongbing, exists in many parts
21 of the world, including Mexico. Citrus variegated chlorosis and
22 leprosis are present in South America and have devastated citrus
23 production in parts of the region. Citrus tristeza virus is a

1 quarantine pest in California. Other pathogens now present in
2 California are detrimental to the citrus industry and must be
3 officially controlled as regulated nonquarantine pests.

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

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

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

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

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

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

31
32 Article 3. Citrus Nursery Stock Pest Cleanliness Program
33

34 6941. (a) The department shall develop and establish the Citrus
35 Nursery Stock Pest Cleanliness Program to protect citrus nursery
36 stock from harmful diseases, pests, and other risks and threats.
37 This program shall be administered by the secretary.

38 (b) The secretary shall consider input from interested parties as
39 to the feasibility, cost, justification, and effectiveness of the
40 program when developing components of the program.

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

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

8 (2) Establish inspection requirements and testing standards,
9 including retesting and other measures to ensure the accuracy and
10 timeliness of test results.

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

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

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

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

24 6942. (a) There are important diseases and pathogens that
25 currently cannot be included in the program because valid and
26 reliable testing methods and practical testing protocols do not exist
27 for determining their absence from citrus trees intended for use as
28 registered sources of citrus propagative stock. Important diseases
29 and pathogens that threaten the citrus industry shall be included
30 in the program within 45 days after valid and reliable diagnostic
31 protocols have been developed and proven to be efficient and
32 effective for the purpose of ensuring that citrus trees registered as
33 sources of citrus propagative stock are tested free of the diseases
34 and pathogens.

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

1 6943. (a) The department may designate the following types
2 of entities to perform the required disease and pathogen diagnostic
3 testing and analysis under the program:

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

6 (2) Entities that are associated with a California public
7 university.

8 (3) Private entities with expertise in plant disease diagnostics
9 that meet standards adopted by the secretary to ensure integrity of
10 the sampling methods and results.

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

14 (c) An entity authorized pursuant to this section shall be subject
15 to reapproval by the department pursuant to regulations adopted
16 as authorized by this title.

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

19 6944. The secretary may issue orders establishing rates or
20 prices to cover the department's costs for its administration, testing,
21 inspection, private laboratory approval and accreditation, and other
22 services under the program established pursuant to this article,
23 subject to both of the following:

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

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

31 6945. This article shall be construed liberally to effectuate the
32 Legislature's intent that an effective citrus nursery stock pest
33 cleanliness program in the department be established and
34 administered by the secretary.

35 6946. The secretary may adopt regulations and issue orders as
36 authorized by this article. ~~The adoption, amendment, or repeal of~~
37 ~~a regulation, and the issuance of an order, establishing rates or~~
38 ~~prices under this article, or establishing diseases to be inspected~~
39 ~~under Section 6942, shall be exempt from the rulemaking~~
40 ~~provisions of the Administrative Procedure Act (Chapter 3.5~~

~~(commencing with Section 11340) of Part 1 of Division 3 of Title 2 of the Government Code). However, the secretary shall transmit those regulations and orders to the Office of Administrative Law for filing with the Secretary of State and publication in the California Code of Regulations.~~

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

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