

AGRICULTURE CODE

TITLE 5. PRODUCTION, PROCESSING, AND SALE OF HORTICULTURAL PRODUCTS

SUBTITLE B. HORTICULTURAL DISEASES AND PESTS

CHAPTER 71. GENERAL CONTROL

SUBCHAPTER A. INSPECTIONS; QUARANTINES; CONTROL AND ERADICATION  
ZONES

Sec. 71.001. QUARANTINES AGAINST OUT-OF-STATE DISEASES AND PESTS. If the department determines that a dangerous insect pest or plant disease new to and not widely distributed in this state exists in any area outside the state, the department shall establish a quarantine against the infested area at the boundaries of the state or in other areas within the state.

Acts 1981, 67th Leg., p. 1151, ch. 388, Sec. 1, eff. Sept. 1, 1981.

Sec. 71.002. QUARANTINES AGAINST IN-STATE DISEASES AND PESTS. If the department determines that a dangerous insect pest or plant disease not widely distributed in this state exists within an area of the state, the department shall quarantine the infested area.

Acts 1981, 67th Leg., p. 1151, ch. 388, Sec. 1, eff. Sept. 1, 1981.

Sec. 71.003. QUARANTINES AROUND PEST-FREE AREAS. (a) If the department determines that an insect pest or plant disease of general distribution in this state does not exist in an area, the department may declare the area pest-free and quarantine surrounding areas.

(b) Venue for a case arising under this section is in a county contained in the pest-free area.

Acts 1981, 67th Leg., p. 1151, ch. 388, Sec. 1, eff. Sept. 1, 1981.

Sec. 71.004. EMERGENCY QUARANTINES. (a) The department may establish an emergency quarantine without notice and public hearing if the department determines that a public emergency exists in which there is the likelihood of introduction or dissemination of an insect pest or plant disease that is dangerous to the

interests of horticulture and agriculture in this state.

(b) The department may establish the emergency quarantine at the boundaries of the state or in other areas within the state.

(c) The emergency quarantine and rules adopted in order to prevent the introduction or spread of the pest or disease are effective immediately on establishment or adoption.

(d) An emergency quarantine shall be established in accordance with the provisions related to emergency rulemaking in Chapter 2001, Government Code.

Acts 1981, 67th Leg., p. 1151, ch. 388, Sec. 1, eff. Sept. 1, 1981.

Amended by:

Acts 2009, 81st Leg., R.S., Ch. 506 (S.B. 1016), Sec. 9.15, eff. September 1, 2009.

Sec. 71.005. MOVEMENT OF PLANTS FROM QUARANTINED AREA. (a) Except as provided by Subsection (b) of this section, the department shall prevent the movement, from a quarantined area into an unquarantined area or pest-free area, of any plant, plant product, or substance capable of disseminating the pest or disease that is the basis for the quarantine or is not found in the pest-free area.

(b) A plant, plant product, or substance prohibited from movement by a quarantine established under Section 71.001, 71.002, or 71.004 of this code may be moved into an unquarantined area if moved under safeguards considered by the department to be adequate to prevent the introduction or spread of the pest or disease into the state or an unquarantined area.

(c) The department may charge a fee, as provided by department rule, for an inspection required for the movement of plants into or out of a quarantined area.

Acts 1981, 67th Leg., p. 1152, ch. 388, Sec. 1, eff. Sept. 1, 1981.

Amended by Acts 1991, 72nd Leg., 1st C.S., ch. 5, Sec. 9.07, eff. Sept. 1, 1991; Acts 1995, 74th Leg., ch. 419, Sec. 2.26, eff. Sept. 1, 1995.

Sec. 71.006. HEARING. (a) Before quarantining an area under Section 71.001, 71.002, or 71.003 of this code, the chief

entomologist of the department and, if appointed, one or more other persons appointed by the commissioner, shall hold a public hearing in a convenient and accessible place in order to investigate the pest or disease and determine if the pest or disease is a menace to a valuable plant or plant product. The persons conducting the hearing shall take the constitutional oath of office and may administer oaths to take testimony.

(b) The persons conducting the hearing shall record the proceedings and make a written report to the department with findings, and reasons supporting the findings as to:

(1) whether the pest or disease is a menace to an agricultural or horticultural crop;

(2) whether a quarantine is necessary or desirable; and

(3) if a quarantine is necessary or desirable, the best known means of controlling or exterminating the pest or disease.

(c) Following receipt of the report under Subsection (b) of this section, the department may establish the quarantine and adopt rules as necessary to the protection of the agricultural or horticultural interests of this state.

Acts 1981, 67th Leg., p. 1152, ch. 388, Sec. 1, eff. Sept. 1, 1981.

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;

(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 exotic citrus diseases, including citrus canker and citrus greening.

(b) Rules adopted under Subsection (a)(8) shall establish, based on scientific evidence, when a healthy but suspect citrus plant must be destroyed, and may provide for compensation to an owner of a plant destroyed under this subsection.

Acts 1981, 67th Leg., p. 1152, ch. 388, Sec. 1, eff. Sept. 1, 1981.

Amended by Acts 1981, 67th Leg., 1st C.S., p. 242, ch. 22, art. II, Sec. 2, eff. Sept. 1, 1981.

Amended by:

Acts 2009, 81st Leg., R.S., Ch. 1050 (H.B. [4577](#)), Sec. 1, eff. September 1, 2009.

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

heard at the hearing.

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

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

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

(f) This section does not restrict the department's authority to establish on its own initiative an eradication program within a quarantined area to protect the state's agricultural resources.

Acts 1981, 67th Leg., p. 1153, ch. 388, Sec. 1, eff. Sept. 1, 1981.  
Amended by Acts 2003, 78th Leg., ch. 369, Sec. 7, eff. Sept. 1, 2003; Acts 2003, 78th Leg., ch. 1107, Sec. 2, eff. June 20, 2003.

Sec. 71.0081. VEHICLE INSPECTIONS FOR INSECT PESTS OR PLANT DISEASES. (a) If the department establishes a quarantine or, without establishing a quarantine, determines that there is a likelihood of introduction or dissemination of an insect pest or plant disease that is dangerous to the interests of horticulture or agriculture in this state, the department may stop and inspect vehicles entering this state or moving within this state to determine if the vehicle contains a plant, plant product, or other substance capable of introducing or disseminating the pest or disease.

(b) The department may conduct inspections under this

section on a continual or periodic basis, as the commissioner determines is necessary or effective.

(c) The department may establish checkpoints to carry out the purposes of this subchapter at entry points to the state or along any public road in the state and construct permanent road stations at the checkpoints in cooperation with other state agencies.

(c-1) The department may enter into an agreement with a corporation or other private entity to provide goods or services for the establishment and operation of checkpoints or the performance of inspections under this section.

(d) The department may adopt rules necessary to the conduct of inspections under this section.

Added by Acts 1981, 67th Leg., 1st C.S., p. 242, ch. 22, art. II, Sec. 1, eff. Sept. 1, 1981. Amended by Acts 1989, 71st Leg., ch. 1236, Sec. 1, eff. Aug. 28, 1989.

Amended by:

Acts 2005, 79th Leg., Ch. 1337 (S.B. 9), Sec. 2, eff. June 18, 2005.

Sec. 71.0082. INSPECTIONS FOR CERTAIN PESTS AND DISEASES.

(a) In addition to vehicle inspections authorized under Section 71.0081, the department and the Texas Animal Health Commission, under the direction of the department, shall jointly conduct road station and interstate shipment inspections as feasible at strategic points throughout this state and as determined to be appropriate by the department and the Texas Animal Health Commission, taking into consideration the significance of plant and animal inspections in proactively protecting this state's borders.

(b) The department may enter into an agreement with a corporation or other private entity to provide goods or services for the establishment and operation of checkpoints or the performance of inspections under this section.

Added by Acts 2005, 79th Leg., Ch. 1337 (S.B. 9), Sec. 3, eff. June 18, 2005.

Sec. 71.0083. AGRICULTURE WARRANTS. (a) In addition to

vehicle inspections authorized under Section 71.0081, the department may seek an agriculture warrant with respect to a plant pest or plant disease identified in the application for the warrant to:

- (1) conduct an inspection of:
  - (A) physical areas;
  - (B) containers;
  - (C) buildings; or
  - (D) items that are reasonably likely to contain:
    - (i) a plant pest;
    - (ii) a plant disease; or
    - (iii) an infected or potentially infected plant;
- (2) set a trap for certain plant pests;
- (3) examine records pertaining to the detection, treatment, purchase, or sale of plants; or
- (4) test, treat, identify, quarantine, take samples of, seize, or destroy infected or potentially infected plants.

(b) An agriculture warrant may be issued only by a magistrate authorized to issue a search warrant under Chapter 18, 18A, or 18B, Code of Criminal Procedure, only after the department has exercised reasonable efforts to obtain consent to conduct a search, and on application by the department accompanied by a supporting affidavit that establishes probable cause for the issuance of the warrant. The warrant must describe:

- (1) the street address and municipality or the parcel number and county of each place or premises subject to the warrant; and
- (2) each type of plant pest or disease that is the subject of the warrant.

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

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

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

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

(e) The department is entitled to an ex parte hearing on an application for an agriculture warrant. The warrant may be served and executed by a department employee and shall authorize department employees to undertake any action authorized by the warrant. On request by the department, a sheriff or constable shall accompany and assist the department employee in serving or executing the warrant.

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

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

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

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

(h) An agriculture warrant may not:

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

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

(3) be issued in blank.



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

(j) This section does not restrict the authority of this state or a political subdivision of this state to otherwise conduct an inspection with or without a warrant as authorized by other law. Added by Acts 2009, 81st Leg., R.S., Ch. 411 (H.B. 1949), Sec. 1, eff. September 1, 2009.

Amended by:

Acts 2017, 85th Leg., R.S., Ch. 1058 (H.B. 2931), Sec. 3.01, eff. January 1, 2019.

Sec. 71.009. SEIZURE, TREATMENT, AND DESTRUCTION OF PLANTS, PLANT PRODUCTS, AND OTHER SUBSTANCES. (a) The department shall seize any plant, plant product, or substance that it determines:

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

(2) is moved into or within this state and is infested with an insect pest or infected with a disease dangerous to any agricultural or horticultural product, whether or not the plant, product, or substance comes from an area known to be infested.

(b) If a plant, plant product, or substance is seized under Subsection (a)(1) of this section, the department shall immediately notify the owner that the plant, product, or substance is a public menace and that it must be destroyed, treated, or, if feasible, returned to the point of origin. If a plant, product, or substance is seized under Subsection (a)(2) of this section, the department shall immediately notify the owner that the plant, product, or substance is a public menace and that it must be destroyed or treated.

(c) If the owner of a plant, plant product, or substance seized under Subsection (a) of this section is unknown to the department, the department shall publish notice that, after a date not less than 10 days after the first day of publication, the department will destroy the plant, product, or substance. The department shall publish the notice for two consecutive weeks in a newspaper of general circulation in the county where the plant,

product, or substance is found. The notice must describe the article seized. If the owner claims the article before the date for destruction set by the notice, the department shall deliver the article to the owner at the owner's expense. If the owner does not claim the article within the allotted time, the department may destroy the article or have it destroyed.

(d) If the owner of a fruit tree or fruit condemned by the department under this subchapter fails or refuses to destroy the tree or fruit immediately after being instructed to do so by the department, the department shall abate the nuisance and immediately destroy the tree or fruit or otherwise render the tree or fruit not a nuisance. In enforcing this subsection, the department shall call on the sheriff of the county in which the tree or fruit is located, and the sheriff shall cooperate with the department and render all assistance considered necessary by the person seeking to destroy the tree or fruit.

(e) The owner of a plant, plant product, or substance treated or destroyed 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.

(f) This section does not apply to a citrus plant, citrus plant product, or other citrus substance.

Acts 1981, 67th Leg., p. 1153, ch. 388, Sec. 1, eff. Sept. 1, 1981. Amended by Acts 1981, 67th Leg., 1st C.S., p. 242, ch. 22, art. II, Sec. 3, eff. Sept. 1, 1981; Acts 1993, 73rd Leg., ch. 230, Sec. 2, eff. May 20, 1993.

Sec. 71.0091. SEIZURE, TREATMENT, AND DESTRUCTION OF A CITRUS PLANT, CITRUS PLANT PRODUCT, OR CITRUS SUBSTANCE. (a) The department may seize a citrus plant, citrus plant product, or citrus substance that the department determines:

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

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

infested; or

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

(b) If a citrus plant, citrus plant product, or citrus substance is seized under Subsection (a)(1), the department immediately shall notify the owner that the citrus plant, citrus plant product, or citrus substance is a public nuisance and that it must be destroyed, treated, or, if feasible, returned to its point of origin. If a citrus plant, citrus plant product, or citrus substance is seized under Subsection (a)(2) or (3), 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) 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.

(d) If the owner of a citrus plant, citrus plant product, or citrus substance seized by the department under this section fails or refuses to treat or destroy the citrus plant, citrus plant product, or citrus substance immediately after being instructed to do so by the department, the department may abate the nuisance by destroying the citrus plant, citrus plant product, or citrus substance or may otherwise treat the citrus plant, citrus plant product, or citrus substance so that it is no longer a nuisance. In enforcing this subsection, the department may call on the sheriff of the county in which the citrus plant, citrus plant product, or citrus substance is located, and the sheriff shall cooperate with the department and provide assistance necessary to abate the nuisance.

(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 department may provide for compensation to an owner of a citrus plant, citrus plant product, or citrus substance destroyed under Subsection (a)(3).

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

Added by Acts 1993, 73rd Leg., ch. 230, Sec. 1, eff. May 20, 1993.  
Amended by Acts 1997, 75th Leg., ch. 211, Sec. 4, eff. Sept. 1, 1997.

Amended by:

Acts 2009, 81st Leg., R.S., Ch. 1050 (H.B. [4577](#)), Sec. 2, eff. September 1, 2009.

Sec. 71.0092. SEIZURE, TREATMENT, HANDLING, AND DESTRUCTION OF CERTAIN MATERIALS WITHIN QUARANTINED AREA. (a) In this section, "quarantined article" means:

(1) a plant, plant product, substance, or other item capable of hosting or facilitating the dissemination of an insect pest or plant disease that is the subject of a quarantine

established by the department under this subchapter; or

(2) a motor vehicle, railcar, other conveyance, or equipment used for, or intended for use in, the transportation or production of an item described by Subdivision (1).

(b) The department by rule may establish treatment and handling requirements for a quarantined article found within a quarantined area. The requirements must be designed to:

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

(2) prevent infestation of a quarantined article by a dangerous insect pest or plant disease that is subject to a quarantine established by the department under this subchapter;

(3) decrease the occurrence in this state or a quarantined area of this state of a dangerous insect pest or plant disease that is subject to a quarantine established by the department under this subchapter; or

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

(c) A person in possession or control of a quarantined article located in a quarantined area shall comply with department rules and orders regarding treatment and handling of the quarantined article.

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

(1) seize the quarantined article and, subject to available department resources and Section 71.010:

(A) isolate the article in a manner designed to prevent the dissemination of the dangerous insect pest or plant disease until the article no longer represents a danger of dissemination or until the person agrees to comply with the rule or order;

(B) treat the article to eliminate the danger of dissemination of the dangerous insect pest or plant disease; or

(C) destroy the article; or

(2) seek an injunction from a district court in Travis County ordering the person to:

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

or

(B) surrender possession of the quarantined article to the department for disposition under Subdivision (1).

(e) If the owner of a quarantined article seized under this section is unknown to the department, the department shall publish notice that not earlier than the fifth day after the date on which the notice is published or posted the department may destroy, treat, or isolate the quarantined article at the owner's expense. The department must publish the notice for three consecutive days in a newspaper of general circulation in the county in which the quarantined article was seized. The notice must include a description of the quarantined article. If an owner claims the quarantined article before the date described by the notice and agrees in writing to treat or handle the article in a manner provided by department rule or order, the department shall deliver the quarantined article to the owner at the owner's expense. If an owner does not claim the quarantined article before the date described by the notice, the department may destroy or arrange for the destruction of the quarantined article or continue to isolate or treat the quarantined article at the owner's expense. If an owner refuses to agree in writing to comply with the department's rule or order regarding treatment or handling of a quarantined article, the department may destroy or arrange for the destruction of the quarantined article or continue to isolate or treat the quarantined article at the owner's expense, subject to Section [71.010](#).

(f) In enforcing this section, the department may seek the assistance of the Department of Public Safety under Section [71.0101](#), or any law enforcement officer of the county in which the quarantined article is located. The Department of Public Safety or local law enforcement officer shall cooperate with the department and provide any assistance necessary to implement this section.

(g) The owner of a quarantined article treated, isolated, or

destroyed by the department under this section is liable to the department for the costs of treatment, isolation, and destruction, and the department may bring suit to collect the costs.

(h) The attorney general is entitled to court costs and reasonable attorney's fees in any suit brought on behalf of the department under this section, including any suit for an injunction.

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

Added by Acts 2003, 78th Leg., ch. 369, Sec. 8, eff. Sept. 1, 2003; Acts 2003, 78th Leg., ch. 1107, Sec. 3, eff. June 20, 2003.

Sec. 71.010. APPEALS. (a) A person who is aggrieved and will be injured by a quarantine or whose property is to be destroyed by order of the department is entitled to appeal to the district court of any county in which the quarantine or order is established or issued. In order to appeal, the person must give written notice of appeal to the department not later than the 10th day following the date of the order or proclamation. The notice must name the district court in which the application is filed.

(b) Immediately after receipt of a notice of appeal, the department shall make a certified copy of the order or proclamation and transmit it to the district court named in the notice.

(c) On receipt of the application for appeal and copy of the order or proclamation, the clerk of the court shall docket the cause on the civil docket in the style: "\_\_\_\_\_, Commissioner of Agriculture vs. \_\_\_\_\_, defendant." The suit shall be tried in the manner provided for the trial of civil cases. The judgment of the court on final hearing shall be "that the orders and proclamations of the commissioner be approved and enforced" or "that said orders and proclamations be and are vacated and held for naught," as the court may determine.

Acts 1981, 67th Leg., p. 1154, ch. 388, Sec. 1, eff. Sept. 1, 1981. Amended by Acts 1997, 75th Leg., ch. 211, Sec. 5, eff. Sept. 1, 1997.

Sec. 71.0101. DEPARTMENT OF PUBLIC SAFETY TO COOPERATE. The Department of Public Safety shall cooperate with the department in conducting inspections and enforcing the provisions of this subchapter.

Added by Acts 1981, 67th Leg., 1st C.S., p. 243, ch. 22, art. II, Sec. 5, eff. Sept. 1, 1981.

Sec. 71.011. PROTECTION OF CARRIER FROM DAMAGES. A carrier, including a railway, steamship, motorboat, bus, or truck, is not liable to a consignor or consignee for damages for refusing to receive and transport, or refusing to deliver across or into an area protected by a quarantine, any fruit, plant, shrub, or other carrier of an insect pest or plant disease in violation of an order or rule of the department under this subchapter.

Acts 1981, 67th Leg., p. 1154, ch. 388, Sec. 1, eff. Sept. 1, 1981. Amended by Acts 1981, 67th Leg., 1st C.S., p. 243, ch. 22, art. II, Sec. 4, eff. Sept. 1, 1981.

Sec. 71.012. CIVIL PENALTY; INJUNCTION. (a) A person who violates this subchapter or a rule adopted under this subchapter is liable to the state for a civil penalty of not less than \$250 nor more than \$10,000 for each violation. Each day a violation continues may be considered a separate violation for purposes of a civil penalty assessment.

(b) On request of the department, the attorney general or the county attorney or district attorney of the county in which the violation is alleged to have occurred shall file suit to collect the penalty.

(c) A civil penalty collected under this section shall be deposited in the state treasury to the credit of the General Revenue Fund. All civil penalties recovered in suits first instituted by a local government or governments under this section shall be equally divided between the State of Texas and the local government or governments with 50 percent of the recovery to be paid to the General Revenue Fund and the other 50 percent equally to the local government or governments first instituting the suit.

(d) The department is entitled to appropriate injunctive



relief to prevent or abate a violation of this subchapter or a rule adopted under this subchapter. On request of the department, the attorney general or the county or district attorney of the county in which the alleged violation is threatened or is occurring shall file suit for the injunctive relief. Venue is in the county in which the alleged violation is threatened or is occurring.

Acts 1981, 67th Leg., p. 1155, ch. 388, Sec. 1, eff. Sept. 1, 1981. Amended by Acts 1981, 67th Leg., 1st C.S., p. 244, ch. 22, art. II, Sec. 6, eff. Sept. 1, 1981; Acts 1989, 71st Leg., ch. 230, Sec. 44, eff. Sept. 1, 1989.

Sec. 71.013. CRIMINAL PENALTIES. (a) A person commits an offense if, in violation of a rule adopted under Section 71.007 or 71.0081 of this code, the person:

(1) sells, carries, or transports a plant, plant product, or substance that is found to be infested or infected or found to be from a quarantined area;

(2) sells, carries, or transports a plant, plant product, or substance into a pest-free zone;

(3) maintains ripening fruit during the host-free period on any tree declared to be a nuisance in the quarantine order;

(4) fails or refuses to administer the treatment provided for, including specific methods of spraying, removal of diseased parts, removal and destruction of fallen or culled fruits, or removal of weeds or plants that may be hosts or carriers of insect pests or plant diseases; or

(5) fails to store products in the manner required.

(b) An offense under this section is a Class C misdemeanor.

(c) A person commits a separate offense for each plant or plant product sold or transported.

(d) An offense under this section may be prosecuted in any county in which the violation occurs.

Acts 1981, 67th Leg., p. 1155, ch. 388, Sec. 1, eff. Sept. 1, 1981. Amended by Acts 1981, 67th Leg., 1st C.S., p. 244, ch. 22, art. II, Sec. 7, eff. Sept. 1, 1981; Acts 1989, 71st Leg., ch. 230, Sec. 45, eff. Sept. 1, 1989.

## SUBCHAPTER B. INSPECTION OF NURSERY PRODUCTS AND FLORIST ITEMS

Sec. 71.041. DEFINITIONS. In this subchapter:

(1) "Florist" means a person who maintains, grows, raises, or buys and offers for sale or lease for profit florist items.

(2) "Florist item" means a cut flower, potted plant, blooming plant, inside foliage plant, bedding plant, corsage flower, cut foliage, floral decoration, or live decorative material.

(3) "Nursery product" includes a tree, shrub, vine, cutting, graft, scion, grass, bulb, or bud that is grown for, kept for, or is capable of, propagation and distribution for sale or lease.

(4) "Nursery grower" means a person who grows more than 50 percent of the nursery products or florist items that the person either sells or leases, regardless of the variety sold, leased, or grown.

(5) "Nursery stock weather protection unit" means a plant cover consisting of a series of removable, portable metal hoops, covered by nonreusable plastic sheeting, shade cloth, or other similar removable material, used exclusively for protecting nursery products from weather elements. A nursery stock weather protection unit is an implement of husbandry for all purposes, including Article VIII, Section [19a](#), of the Texas Constitution.

Acts 1981, 67th Leg., p. 1155, ch. 388, Sec. 1, eff. Sept. 1, 1981. Amended by Acts 1989, 71st Leg., ch. 230, Sec. 46, eff. Sept. 1, 1989; Acts 1993, 73rd Leg., ch. 102, Sec. 1, eff. Jan. 1, 1994; Acts 2001, 77th Leg., ch. 52, Sec. 10, eff. May 7, 2001.

Sec. 71.042. DUTY OF DEPARTMENT; RULES. The department shall enforce this subchapter and may adopt rules as necessary for the immunity and protection of plants from diseases and insect pests, including rules that:

(1) regulate the traffic, growing, shipping, selling, and leasing of nursery products;

(2) provide for the inspection and control of florist items; and

(3) relate to city, private, or public parks, or shade trees, shrubbery, and ornamentals along city streets or property or on city residences.

Acts 1981, 67th Leg., p. 1156, ch. 388, Sec. 1, eff. Sept. 1, 1981.  
Amended by Acts 1989, 71st Leg., ch. 230, Sec. 47, eff. Sept. 1, 1989.

Sec. 71.043. ANNUAL REGISTRATION. (a) A florist or nursery owner must register with the department under this section each nursery, greenhouse, orchard, garden, or other place growing for sale or lease, offering for sale or lease, or otherwise distributing a florist item or nursery product.

(b) A florist or nursery owner may apply for registration or renewal of registration by submitting an application prescribed by the department and an annual fee. The fee shall be the sum of:

(1) an amount based on the size and type of a location, as defined by department rule, where a florist or nursery owner grows for sale or lease or offers for sale or lease a florist item or nursery product; and

(2) an optional additional amount equal to 15 percent of the amount described by Subdivision (1), to fund the Texas nursery and floral account.

(b-1) The department shall allow an applicant to elect whether to pay the amount described by Subsection (b)(2). An applicant is not required to pay that amount to apply for or renew registration.

(c) Registrations under this section expire one year after issuance. A person who fails to submit a renewal fee on or before the expiration date of the registration must pay, in addition to the renewal fee, the late fee provided by Section [12.024](#) of this code.

(d) Upon receipt of the correct annual registration fee, the department shall issue a registration certificate for each location a florist or nursery owner has registered.

(e) A person may not offer for sale or lease a nursery product or florist item without a registration certificate issued

under this section.

Acts 1981, 67th Leg., p. 1156, ch. 388, Sec. 1, eff. Sept. 1, 1981.  
Amended by Acts 1989, 71st Leg., ch. 230, Sec. 48, eff. Sept. 1, 1989; Acts 1995, 74th Leg., ch. 419, Sec. 2.27, eff. Sept. 1, 1995.

Amended by:

Acts 2009, 81st Leg., R.S., Ch. 960 (H.B. [3496](#)), Sec. 2, eff. June 19, 2009.

Sec. 71.044. INSPECTION. (a) At least once every three years the department shall inspect each nursery, greenhouse, orchard, garden, florist, nursery stock weather protection unit, or other place growing for sale or lease or offering for sale or lease a nursery product, florist item, or other item of plant life in order to determine if the product, item, or premises are infected with a disease or insect pest injurious to human, animal, or plant life.

(b) The department shall perform additional inspections to the extent necessary to ensure compliance with this subchapter and quarantine agreements with the federal government and other state governments.

(c) A department inspector may examine invoices or other documents relating to the shipping and receiving of nursery/floral products for the purpose of determining the origin, transit, and chain of custody of nursery/floral items found to be:

(1) infested with pests or infected with plant disease; or

(2) shipped in violation of state or federal quarantine laws, regulations, or agreements.

(d) This section does not apply to a physical location maintained by a registrant under Section [71.043](#) who does not maintain an inventory of nursery products or florist items at the location.

Acts 1981, 67th Leg., p. 1156, ch. 388, Sec. 1, eff. Sept. 1, 1981.  
Amended by Acts 1989, 71st Leg., ch. 230, Sec. 49, eff. Sept. 1, 1989; Acts 1993, 73rd Leg., ch. 102, Sec. 2, eff. Jan. 1, 1994; Acts 2001, 77th Leg., ch. 52, Sec. 11, eff. May 7, 2001.

Sec. 71.046. TREATMENT OR DESTRUCTION OF DISEASED OR INFESTED PLANTS OR PREMISES. (a) If the department determines that any nursery product, florist item, or premises are diseased or pest infested, the department shall take action necessary to abate the nuisance and protect the public health and welfare. If the department determines that the diseased or infested product, item, or premises should be treated or destroyed, the department shall give written notice to the owner, manager, or person in control of the product, item, or premises.

(b) The department shall deliver the notice under Subsection (a) of this section in person or by registered or certified mail to the last known address of the person to whom the notice is directed. The notice shall be in a form prescribed by the department and signed by the commissioner or the commissioner's designee. The notice must:

(1) name the product, item, or premises to be treated or destroyed;

(2) give a brief statement of the facts found to exist; and

(3) give a brief statement of the reasons necessitating treatment or destruction of the product, item, or premises.

(c) Before the 11th day following the day on which notice is received, the person receiving the notice shall remove, destroy, or treat the product, item, or premises as directed by the department.

(d) For the purposes of enforcing this section, the department is entitled to enter on any premises in order to inspect, treat, or destroy any diseased or pest infested nursery product, florist item, or premises.

(e) The department is not liable for damages resulting from the exercise of duties under this section.

Acts 1981, 67th Leg., p. 1156, ch. 388, Sec. 1, eff. Sept. 1, 1981.

Sec. 71.047. EXPENSE OF TREATMENT. (a) The owner, manager, or person in charge of the nursery product, florist item, or premises is liable for all expenses of treatment or destruction under Section [71.046](#) of this code.

(b) The department or the county attorney of the county in which the premises are located may sue to recover expenses under Subsection (a) of this section. If successful, the department or county attorney is entitled to an award of all costs of suit, including attorney's fees.

Acts 1981, 67th Leg., p. 1157, ch. 388, Sec. 1, eff. Sept. 1, 1981.

Sec. 71.048. APPEAL OF NOTICE OR ORDER. (a) A person who is aggrieved by an order or notice of the department or whose property is to be destroyed under an order or notice is entitled to appeal to a district court of Travis County or to a district court of the county in which the order or notice affects the person.

(b) In order to perfect an appeal under this section, the person must file suit before the 11th day following the day on which the person received the notice or order.

(c) A court may hear and determine an appeal under this section during term or vacation.

Acts 1981, 67th Leg., p. 1157, ch. 388, Sec. 1, eff. Sept. 1, 1981.

Sec. 71.049. ENFORCEMENT OF NOTICE OR ORDER. (a) If the court decides against the appealing party under Section [71.048](#) of this code or if a party fails to perfect an appeal, the notice or order is final and the department shall enforce the notice or order and place the subject premises in compliance.

(b) On request of the department, a sheriff or constable shall accompany and assist the department in enforcement of the notice.

Acts 1981, 67th Leg., p. 1157, ch. 388, Sec. 1, eff. Sept. 1, 1981.

Sec. 71.050. CERTIFICATE TO ACCOMPANY SHIPMENT. (a) Nursery products or florist items offered for sale or lease, consigned for shipment, or shipped by freight, express, or other means of transportation shall be accompanied by a copy of the certificate of inspection issued by the department when required by foreign countries or other states for agricultural products exported from this state.

(b) A copy of the certificate of inspection shall be

attached to each car, box, bale, package, or item. If the car, box, bale, package, or item is delivered to more than one person, each portion shall also bear a copy of the certificate.

Acts 1981, 67th Leg., p. 1157, ch. 388, Sec. 1, eff. Sept. 1, 1981. Amended by Acts 1989, 71st Leg., ch. 230, Sec. 51, eff. Sept. 1, 1989; Acts 1995, 74th Leg., ch. 419, Sec. 2.28, eff. Sept. 1, 1995.

Sec. 71.051. IMPORTATION CERTIFICATES. (a) Except as otherwise provided by department rule, a person may not ship a nursery product or florist item into this state without first obtaining a certificate of inspection issued by the proper authority of the state from which the shipment originates.

(b) A certificate of inspection from another state must show:

(1) that the nursery product or florist item shipped has been examined by the inspection officers of the originating state;

(2) that the nursery product or florist item is apparently free from dangerous insect pests or contagious diseases; and

(3) if the department requires fumigation or other special treatment, that the nursery product or florist item has been properly fumigated or treated.

(c) Except as otherwise provided by department rule, each car, box, bale, or package of a nursery product or florist item shipped into this state shall bear a tag printed with a copy of the certificate of inspection from the originating state.

Acts 1981, 67th Leg., p. 1157, ch. 388, Sec. 1, eff. Sept. 1, 1981. Amended by Acts 1995, 74th Leg., ch. 419, Sec. 2.29, eff. Sept. 1, 1995; Acts 2003, 78th Leg., ch. 196, Sec. 4, eff. Sept. 1, 2003.

Sec. 71.053. INSPECTION OF SHIPMENTS. (a) The department shall inspect shipments of nursery products or florist items in this state to determine if the shipments are accompanied by the tags and certificates required by this subchapter and are free of pests or plant diseases.

(b) If the department finds that a shipment of a nursery

product or florist item is diseased or pest-infested, the department shall take action necessary to abate the nuisance and protect the public health and welfare as provided in Section 71.046 of this subchapter.

(c) If the department finds that a shipment of a nursery product or florist item is not accompanied by a required tag or certificate, the department shall treat the shipment as infected and may destroy or dispose of the shipment as provided in Section 71.046 of this subchapter.

Acts 1981, 67th Leg., p. 1158, ch. 388, Sec. 1, eff. Sept. 1, 1981.  
Amended by Acts 1989, 71st Leg., ch. 230, Sec. 53, eff. Sept. 1, 1989.

Sec. 71.054. PROTECTION OF CARRIERS FROM LIABILITY; REPORTING OF UNLAWFUL SHIPMENTS. (a) A transportation company or common carrier is not liable for damages to a consignee or consignor for refusing to receive for transportation or refusing to deliver a shipment of a nursery product or florist item that is not accompanied by a tag or certificate required under this subchapter.

(b) A transportation company or common carrier shall immediately report to the department any shipment not accompanied by a tag or certificate required under this subchapter.

Acts 1981, 67th Leg., p. 1158, ch. 388, Sec. 1, eff. Sept. 1, 1981.

Sec. 71.055. REVOCATION OF CERTIFICATE. The department may revoke a certificate issued under this subchapter if it finds that the person to whom the certificate was issued:

(1) made a false representation; or

(2) violated or refused to comply with this subchapter or a rule or instruction of the department under this subchapter.

Acts 1981, 67th Leg., p. 1159, ch. 388, Sec. 1, eff. Sept. 1, 1981.  
Amended by Acts 1989, 71st Leg., ch. 230, Sec. 50, eff. Sept. 1, 1989.

Sec. 71.056. INSPECTION FEES. (a) The department shall fix by rule and collect a fee for inspection of nursery products or florist items when the inspection is required by foreign countries



or other states for nursery products or florist items exported from this state.

(b) The department shall account for fees collected under this section in the manner and method prescribed by the comptroller.

Acts 1981, 67th Leg., p. 1159, ch. 388, Sec. 1, eff. Sept. 1, 1981. Amended by Acts 1985, 69th Leg., ch. 239, Sec. 62, eff. Sept. 1, 1985; Acts 1989, 71st Leg., ch. 230, Sec. 54, eff. Sept. 1, 1989; Acts 1989, 71st Leg., ch. 584, Sec. 116, eff. Sept. 1, 1989; Acts 1995, 74th Leg., ch. 419, Sec. 2.30, eff. Sept. 1, 1995.

Sec. 71.057. NURSERY DEALERS AND AGENTS; ANNUAL REGISTRATION. (a) A person who buys and sells or leases or offers for sale or lease a nursery product and who has facilities that maintain or preserve the nursery product and prevent that product from becoming dry, infested, or diseased is a nursery dealer.

(b) A person is a nursery agent if the person sells or leases, offers for sale or lease, or takes mail orders for the sale or lease of a nursery product and:

(1) is entirely under the control of a nursery grower or nursery dealer with whom the nursery product offered for sale or lease originates; or

(2) operates on a cooperative basis for handling a nursery product with a nursery grower or nursery dealer.

(c) A nursery agent shall possess proper credentials from the nursery grower or nursery dealer the agent represents or cooperates with. A nursery agent who fails to possess proper credentials is subject to this subchapter as a nursery dealer.

(d) A nursery dealer or nursery agent must register with the department under this section before offering for sale or lease or otherwise distributing a nursery product.

(e) A nursery dealer or nursery agent may apply for registration or renewal of registration by submitting an application prescribed by the department and an annual fee. The fee shall be the sum of:

(1) an amount based on the size and type of a location, as defined by department rule, where a nursery dealer or nursery

agent offers a nursery product for sale or lease; and

(2) an optional additional amount equal to 15 percent of the amount described by Subdivision (1), to fund the Texas nursery and floral account.

(e-1) The department shall allow an applicant to elect whether to pay the amount described by Subsection (e)(2). An applicant is not required to pay that amount to apply for or renew registration.

(f) Registrations under this section expire one year after issuance. A person who fails to submit a renewal fee on or before the expiration date of the registration must pay, in addition to the renewal fee, the late fee provided by Section [12.024](#) of this code.

(g) Upon receipt of the correct annual registration fee, the department shall issue a registration certificate for each location a florist or nursery owner has registered.

Acts 1981, 67th Leg., p. 1159, ch. 388, Sec. 1, eff. Sept. 1, 1981.  
Amended by Acts 1989, 71st Leg., ch. 230, Sec. 55, eff. Sept. 1, 1989; Acts 1995, 74th Leg., ch. 419, Sec. 2.31, eff. Sept. 1, 1995.  
Amended by:

Acts 2009, 81st Leg., R.S., Ch. 960 (H.B. [3496](#)), Sec. 3, eff. June 19, 2009.

Sec. 71.058. PENALTIES. (a) A person commits an offense if the person wilfully or negligently:

(1) violates a provision of this subchapter; or

(2) fails or refuses to comply with a notice, order, or rule of the department under this subchapter.

(b) An offense under Subsection (a) of this section is a Class C misdemeanor.

(c) Each day that a person maintains premises in a condition not in compliance with this subchapter after receiving notice by registered or certified mail under Section [71.046](#) of this code is a separate offense.

(d) Repealed by Acts 2001, 77th Leg., ch. 52, Sec. 1.  
Acts 1981, 67th Leg., p. 1159, ch. 388, Sec. 1, eff. Sept. 1, 1981.  
Amended by Acts 1989, 71st Leg., ch. 230, Sec. 56, eff. Sept. 1, 1989; Acts 2001, 77th Leg., ch. 52, Sec. 14(1), eff. May 7, 2001.

Sec. 71.059. CIVIL PENALTY; INJUNCTION. (a) A person who violates this subchapter or a rule adopted under this subchapter is liable to the state for a civil penalty of not less than \$50 nor more than \$1,000 for each violation. Each day a violation continues may be considered a separate violation for purposes of a civil penalty assessment.

(b) On request of the department, the attorney general or the county attorney or district attorney of the county in which the violation is alleged to have occurred shall file suit to collect the penalty.

(c) A civil penalty collected under this section shall be deposited in the state treasury to the credit of the General Revenue Fund. All civil penalties recovered in suits first instituted by a local government or governments under this section shall be equally divided between the State of Texas and the local government or governments with 50 percent of the recovery to be paid to the General Revenue Fund and the other 50 percent equally to the local government or governments first instituting the suit.

(d) The department is entitled to appropriate injunctive relief to prevent or abate a violation of this subchapter or a rule adopted under this subchapter. On request of the department, the attorney general or the county or district attorney of the county in which the alleged violation is threatened or is occurring shall file suit for the injunctive relief. Venue is in the county in which the alleged violation is threatened or is occurring.

Added by Acts 1989, 71st Leg., ch. 230, Sec. 57, eff. Sept. 1, 1989.

Sec. 71.060. STOP-SALE ORDER. (a) If the department has reason to believe that a florist item or nursery product is in violation of this subchapter or a rule adopted under this subchapter, the department may issue and enforce a written order to stop the sale of the florist item or nursery product. The department shall present the order to the owner or the person in control of the florist item or nursery product. The person who receives the order may not sell the florist item or nursery product until discharged by a court under Subsection (b) of this section or

until the department determines that the florist item or nursery product is in compliance with this subchapter and the rules adopted under this subchapter.

(b) The owner or the person in control of any florist item or nursery product prohibited from sale by an order of the department is entitled to sue in a court of competent jurisdiction where the florist item or nursery product is found for a judgment as to the justification of the order and for the discharge of the florist item or nursery product from the order in accordance with the findings of the court.

(c) This section does not limit the right of the department to proceed as authorized by another section of this subchapter.

Added by Acts 1989, 71st Leg., ch. 230, Sec. 58, eff. Sept. 1, 1989.

#### SUBCHAPTER C. INSPECTION OF VEGETABLE PLANTS

Sec. 71.101. DUTY OF DEPARTMENT; RULES. The department shall enforce this subchapter and may appoint inspectors and adopt rules necessary for that enforcement.

Acts 1981, 67th Leg., p. 1160, ch. 388, Sec. 1, eff. Sept. 1, 1981.

Sec. 71.102. FIELD INSPECTION. The department shall conduct field inspections of vegetable plants and certify those plants prior to the preparation for shipment in order to provide the purchaser of the plants with an honest and reliable opinion on the freedom of the plants from disease and fungus infection and insect infestation and to ensure the proper packaging and handling of certified plants.

Acts 1981, 67th Leg., p. 1160, ch. 388, Sec. 1, eff. Sept. 1, 1981.

Sec. 71.103. INSPECTION CERTIFICATE. (a) Except as provided by Subsection (b) of this section, if the department determines following field inspection that the vegetable plants inspected are apparently free of injurious pests and of the diseases and insects listed in Sections 71.104-71.109 of this code, as applicable, the department shall issue a certificate tag or stamp for those plants. Plants certified under this section shall

be known as "state certified plants."

(b) In addition to field inspections of sweet potatoes, certification of that plant shall be based on prior inspection of seed potatoes in the field, treatment, and bedding inspections that the department considers necessary to provide clean slips for sale or shipment. Application for certification of sweet potato plants shall be made prior to harvesting time of the preceding season.

(c) The certificate tag or stamp shall be firmly affixed to each container or bundle of plants at the point of origin for shipment of the plants.

Acts 1981, 67th Leg., p. 1160, ch. 388, Sec. 1, eff. Sept. 1, 1981.  
Amended by Acts 1997, 75th Leg., ch. 211, Sec. 6, eff. Sept. 1, 1997.

Sec. 71.104. TOMATO DISEASES AND INSECTS. The department shall determine that tomato plants are apparently free from the following diseases and from damaging infestation of the following pests:

	DISEASES	SCIENTIFIC NAME OF ORGANISM
knot	Nematode root	Heterodera marioni
	Early blight	Alternaria solani
wilt	Collar rot	Alternaria solani
	Grey leaf spot	Stemphyllium solani
	Late blight	Phytophthora infestans
	Fusarium wilt	Fusarium lycopersici
canker	Verticillium	Verticillium albo-atrum
	Bacterial wilt	Bacterium solanacearum
	Bacterial	Coryneil bacterium
blight		michiganense
	Bacterial spot	Xanthomonas vesicatoria
	Southern	Sclerotium rolfsii
	Mosaic	Virus
	INSECTS	SCIENTIFIC NAME OF ORGANISM

	Garden	<i>Halticus citri</i>
flea hopper		
	Thrips	Thrips tabaci and others
	Flea beetle	<i>Phyllotreta</i> spp.
	Serpentine	<i>Liriomyza pusilla</i>

leaf miner

Acts 1981, 67th Leg., p. 1160, ch. 388, Sec. 1, eff. Sept. 1, 1981.

Sec. 71.105. CRUCIFEROUS PLANT DISEASES AND INSECTS. The department shall determine that cruciferous plants, including cabbage, cauliflower, broccoli, and collards, are apparently free from the following diseases and from damaging infestation of the following insects:

	DISEASES	SCIENTIFIC NAME OF ORGANISM
	Nematode root	<i>Heterodera marioni</i>
knot		
	Black rot	<i>Bacterium campestre</i>
	Yellows	<i>Fusarium conglutinans</i>
	Blackleg	<i>Phoma lingam</i>
	INSECTS	
	Aphid	<i>Brevicoryne brassicae</i> and <i>Rhopalosiphum</i> <i>pseudobrassicae</i>

Acts 1981, 67th Leg., p. 1161, ch. 388, Sec. 1, eff. Sept. 1, 1981.

Sec. 71.106. PEPPER DISEASES. The department shall determine that pepper plants are apparently free from the following diseases:

	DISEASES	SCIENTIFIC NAME OF ORGANISM
	Nematode root	<i>Heterodera marioni</i>
knot		
	Southern	<i>Sclerotium rolfsii</i>
blight		
	Bacterial spot	<i>Xanthomonas vesicatoria</i>
	Bacterial wilt	<i>Bacterium solanacearum</i>
	Verticillium	<i>Verticillium albo-atrum</i>

wilt

Mosaic

Virus

Acts 1981, 67th Leg., p. 1161, ch. 388, Sec. 1, eff. Sept. 1, 1981.

Sec. 71.107. ONION DISEASES AND INSECTS. The department shall determine that onion plants are apparently free from the following diseases and from damaging infestation of the following insects:

DISEASES	SCIENTIFIC NAME OF ORGANISM
Pink root	Phoma terrestris
INSECTS	
Thrips	Thrips tabaci

Acts 1981, 67th Leg., p. 1162, ch. 388, Sec. 1, eff. Sept. 1, 1981.

Sec. 71.108. EGGPLANT DISEASES. The department shall determine that eggplants are apparently free from the following diseases:

DISEASES	SCIENTIFIC NAME OF ORGANISM
Nematode root knot	Heterodera marioni
Southern blight	Sclerotium rolfsii
Leaf spot and fruit rot	Phomopsis vexans
Verticillium wilt	Verticillium albo-atrum
Bacterial wilt	Bacterium solanacearum
Yellow	Virus

Acts 1981, 67th Leg., p. 1162, ch. 388, Sec. 1, eff. Sept. 1, 1981.

Sec. 71.109. SWEET POTATO DISEASES AND INSECTS. The department shall determine that sweet potato plants are apparently free from the following plant diseases and insects:

DISEASES	SCIENTIFIC NAME OF ORGANISM
Stem rot or wilt	Fusarium batatis
Black rot	Sphaeronema fimbriatum
Pox	Cystospora batata

Nematode root	Heterodera marioni
knot	
Internal cork	Virus
INSECTS	
Sweet potato	Cylas formicarius
weevil	

Acts 1981, 67th Leg., p. 1162, ch. 388, Sec. 1, eff. Sept. 1, 1981.

Sec. 71.110. TREATMENT OR DESTRUCTION OF PLANTS. (a) If, at the time of field inspection, the department finds an injurious pest or disease or insect listed in Sections 71.104-71.109, as applicable, the grower of the plants shall delimit the infection or infestation and clean the plants by use of a disinfectant.

(b) If infected or infested plants are not able to be cleaned under Subsection (a) of this section, the grower may destroy the part of the field infected or infested and the department may certify the remaining clean part of the field.

(c) The grower of the plants shall furnish all materials, labor, and supervision necessary for carrying out this section.  
Acts 1981, 67th Leg., p. 1162, ch. 388, Sec. 1, eff. Sept. 1, 1981.  
Amended by Acts 1997, 75th Leg., ch. 211, Sec. 7, eff. Sept. 1, 1997.

Sec. 71.111. CERTIFICATE FOR IMPORTED PLANTS. (a) Except as provided by Subsection (b) of this section, a plant subject to certification under this subchapter that is shipped into this state shall have attached a certificate tag or stamp issued by the department and affixed at the point of origin.

(b) If another state has a vegetable plant certification program similar to the program established by this subchapter, the department may enter into a reciprocal fee agreement with the other state under which vegetable plants with a certificate tag or stamp issued by the other state are permitted to enter this state without a certificate tag or stamp issued by this state.

Acts 1981, 67th Leg., p. 1163, ch. 388, Sec. 1, eff. Sept. 1, 1981.

Sec. 71.112. PROTECTION OF CARRIERS FROM LIABILITY. A



transportation company or common carrier is not liable for damages to the consignee or consignor for refusing to receive for transportation or refusing to deliver plants subject to certification under this subchapter that are not accompanied by a certificate tag or stamp.

Acts 1981, 67th Leg., p. 1163, ch. 388, Sec. 1, eff. Sept. 1, 1981.

Sec. 71.113. REVOCATION OF CERTIFICATE. The department may revoke a certificate tag or stamp issued to a plant grower who:

- (1) makes a false representation; or
- (2) refuses to comply with this subchapter.

Acts 1981, 67th Leg., p. 1163, ch. 388, Sec. 1, eff. Sept. 1, 1981.

Sec. 71.114. FEES. (a) A person applying for a certificate tag or stamp shall pay an inspection fee at the time of application.

(b) The department shall charge an inspection fee, as provided by rule of the department.

(c) In addition to the inspection fee, a person applying for certification of sweet potatoes shall pay a fee, as provided by department rule, for each certificate tag or stamp issued.

Acts 1981, 67th Leg., p. 1163, ch. 388, Sec. 1, eff. Sept. 1, 1981.  
Amended by Acts 1995, 74th Leg., ch. 419, Sec. 2.32, eff. Sept. 1, 1995; Acts 1997, 75th Leg., ch. 211, Sec. 8, eff. Sept. 1, 1997.

Sec. 71.115. PACKAGING AND LABELING OF CERTIFIED PLANTS.

(a) Each bundle or package of certified plants must be plainly labeled on the container with the count of the plants bundled or packaged. The actual count may not differ by more than five percent from the stated count.

(b) Sweet potato plants to be shipped must be packaged in bundles of 100 plants.

Acts 1981, 67th Leg., p. 1163, ch. 388, Sec. 1, eff. Sept. 1, 1981.

Sec. 71.116. PENALTIES. (a) A person commits an offense if the person:

(1) wilfully or negligently violates a provision of this subchapter; or

(2) makes a false representation of plants by use of a certificate tag or stamp.

(b) An offense under this section is a Class C misdemeanor.

(c) A person finally convicted of an offense under this section shall be removed from the list of certified growers for a period of 12 months.

Acts 1981, 67th Leg., p. 1163, ch. 388, Sec. 1, eff. Sept. 1, 1981.  
Amended by Acts 1989, 71st Leg., ch. 230, Sec. 59, eff. Sept. 1, 1989.

Sec. 71.117. CIVIL PENALTY; INJUNCTION. (a) A person who violates this subchapter or a rule adopted under this subchapter is liable to the state for a civil penalty of not less than \$250 nor more than \$10,000 for each violation. Each day a violation continues may be considered a separate violation for purposes of a civil penalty assessment.

(b) On request of the department, the attorney general or the county attorney or district attorney of the county in which the violation is alleged to have occurred shall file suit to collect the penalty.

(c) A civil penalty collected under this section shall be deposited in the state treasury to the credit of the General Revenue Fund. All civil penalties recovered in suits first instituted by a local government or governments under this section shall be equally divided between the State of Texas and the local government or governments with 50 percent of the recovery to be paid to the General Revenue Fund and the other 50 percent equally to the local government or governments first instituting the suit.

(d) The department is entitled to appropriate injunctive relief to prevent or abate a violation of this subchapter or a rule adopted under this subchapter. On request of the department, the attorney general or the county or district attorney of the county in which the alleged violation is threatened or is occurring shall file suit for the injunctive relief. Venue is in the county in which the alleged violation is threatened or is occurring.

Added by Acts 1989, 71st Leg., ch. 230, Sec. 60, eff. Sept. 1, 1989.

SUBCHAPTER D. NOXIOUS AND INVASIVE PLANTS

Sec. 71.151. LIST REQUIRED. (a) The department by rule shall publish a list of noxious and invasive plant species that have serious potential to cause economic or ecological harm to the state. The department may publish lists of noxious and invasive plant species organized by region.

(b) In preparing or amending a list under this section, the department shall:

(1) consult with representatives from the agriculture industry, the horticulture industry, the Texas Cooperative Extension, the Texas Department of Transportation, the State Soil and Water Conservation Board, and the Parks and Wildlife Department;

(2) consider any available scientific data and economic impact information for each plant species; and

(3) use any standard criteria established by the department.

Added by Acts 2003, 78th Leg., ch. 900, Sec. 1, eff. Sept. 1, 2003.

Amended by:

Acts 2005, 79th Leg., Ch. 618 (H.B. [2313](#)), Sec. 2, eff. September 1, 2005.

Sec. 71.152. NOXIOUS OR INVASIVE PLANT SALE, DISTRIBUTION, OR IMPORTATION PROHIBITED. (a) A person commits an offense if the person sells, distributes, or imports into the state a noxious or invasive plant species included on the department's list described under Section [71.151](#).

(b) An offense under this section is a Class C misdemeanor.

(c) A person commits a separate offense for each noxious or invasive plant item or unit sold, distributed, or imported.

Added by Acts 2003, 78th Leg., ch. 900, Sec. 1, eff. Sept. 1, 2003.

Amended by:

Acts 2005, 79th Leg., Ch. 618 (H.B. [2313](#)), Sec. 3, eff. September 1, 2005.

Sec. 71.153. LOCAL REGULATION. (a) A political subdivision

may not adopt an ordinance or rule that restricts the planting, sale, or distribution of noxious or invasive plant species.

(b) This section does not limit the preparation and distribution of educational materials relating to plants of local concern.

Added by Acts 2005, 79th Leg., Ch. 618 (H.B. [2313](#)), Sec. 4, eff. September 1, 2005.

Sec. 71.154. DISCLAIMER REQUIRED. (a) A public entity, other than the department, that produces for public distribution to commercial or residential landscapers a list of noxious or invasive terrestrial plant species that includes a species growing in this state shall provide with the list a disclaimer that states: "THIS PLANT LIST IS ONLY A RECOMMENDATION AND HAS NO LEGAL EFFECT IN THE STATE OF TEXAS. IT IS LAWFUL TO SELL, DISTRIBUTE, IMPORT, OR POSSESS A PLANT ON THIS LIST UNLESS THE TEXAS DEPARTMENT OF AGRICULTURE LABELS THE PLANT AS NOXIOUS OR INVASIVE ON THE DEPARTMENT'S PLANT LIST."

(b) A public entity, other than the department, that produces a list of noxious or invasive terrestrial plant species in printed material made for public distribution to commercial or residential landscapers, including a newspaper, trade publication, notice, circular, or Internet website, shall post the disclaimer required by Subsection (a) in at least 12-point type in a conspicuous location readily visible by persons viewing the list.

(c) The department shall adopt rules requiring a public entity to include the disclaimer required by Subsection (a) in a manner equivalent to the manner described by Subsection (b) for publication of the entity's list of noxious or invasive terrestrial plant species through media not described by Subsection (b), including billboards, radio productions, and television productions.

Added by Acts 2011, 82nd Leg., R.S., Ch. 688 (H.B. [338](#)), Sec. 1, eff. September 1, 2011.