
THE GENERAL ASSEMBLY OF PENNSYLVANIA

HOUSE BILL

No. 1781

Session of
1991

INTRODUCED BY COLE, COY, ARMSTRONG, HERSHEY, BILLOW, ARNOLD,
KREBS AND CARONE, JUNE 25, 1991

SENATOR LOEPER, RULES AND EXECUTIVE NOMINATIONS, IN SENATE, RE-
REPORTED AS AMENDED, NOVEMBER 17, 1992

AN ACT

1 Providing for the protection of agriculture and horticulture
2 from plant pests, including all field crops, vegetables,
3 trees, shrubs, vines, florist and nursery stock and all other
4 plants and parts, or their products; revising, consolidating,
5 and changing the law relating thereto; defining the powers
6 and duties of the Department of Agriculture relating thereto;
7 establishing and funding special testing and certification
8 procedures and programs; providing penalties; and making a
9 repeal.

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21 The General Assembly of the Commonwealth of Pennsylvania
22 hereby enacts as follows:

23 Section 1. Short title.

24 This act shall be known and may be cited as the Plant Pest
25 Act.

26 Section 2. Definitions.

27 The following words and phrases when used in this act shall
28 have the meanings given to them in this section unless the
29 context clearly indicates otherwise:

30 "Agent," "inspector" or "deputy." A representative of the

1 Department of Agriculture duly appointed by the Secretary of
2 Agriculture to carry out the provisions of this act.

3 "Control." The reduction of the population of a plant pest
4 to an acceptable level as determined by the Secretary of
5 Agriculture or his agents.

6 "Dealer." A person, not primarily a grower of nursery stock,
7 who buys or receives on consignment nursery stock for the
8 purpose of reselling or reshipping, independent of any control
9 of a nurseryman.

10 "Department." The Department of Agriculture of the
11 Commonwealth.

12 "Eradication." The elimination or removal of a pest from a
13 defined geographic area.

14 "Fruit Tree Improvement Program." A program to provide for
15 the establishment of standards and testing of fruit tree nursery
16 stock for freedom from plant pests.

17 "Host-free area." A geographically defined area where a
18 specific plant or plant variety is prohibited from becoming
19 established.

20 "Nursery." A greenhouse, grounds or premises on or in which
21 nursery stock is propagated or grown for sale or distribution,
22 including any grounds or premises on or in which nursery stock
23 is being fumigated, treated, packed, stored or otherwise
24 prepared or offered for sale or movement to other localities.

25 "Nursery agent." A person soliciting orders for or selling
26 nursery stock under the partial or full control of a nurseryman,
27 dealer or other nursery agent. The term also applies to any
28 person engaged with a nurseryman, dealer or nursery agent in
29 handling nursery stock on a cooperative basis.

30 "Nurseryman." A person who owns, leases, manages or is in

1 charge of a nursery.

2 "Nursery stock." All trees, shrubs, brambles, woody vines,
3 woody florist stock, herbaceous perennials, vegetable plants,
4 bedding and other annual herbaceous plants, their roots,
5 cuttings, grafts, scions, buds, fruit pits, seeds and their
6 parts for propagation, except bulbs, field crop seeds, vegetable
7 seeds, flower seeds, regardless of where the material may have
8 been grown or is growing.

9 "Person." An individual, corporation, association,
10 partnership or any other entity.

11 "Plant" or "plant product." A plant or portion thereof
12 whether living or dead.

13 "Plant pest." An organism, including other plants, causing
14 or capable of causing injury or damage to plants or plant
15 products.

16 "Plant quarantine." Legal action intended to prevent or
17 delay the establishment of a pest of plants or crops.

18 "Principal." A person who has the controlling authority over
19 a nursery agent.

20 "Secretary." The Secretary of Agriculture of the
21 Commonwealth.

22 "Stop-sale order." A written notice, issued by an inspector
23 to the owner or custodian of a plant or plant product, which
24 prohibits the sale or movement of plants or plant products.

25 "Treatment order." A written document specifying certain
26 measures to be taken to control or eradicate a plant pest,
27 including destruction of appropriate plants or plants products.

28 Section 3. Enforcement.

29 The department is authorized and empowered to enforce all the
30 provisions of this act and shall promulgate, modify and enforce

1 reasonable regulations and orders as may be needed to carry out
2 provisions of this act; to issue licenses, permits and
3 certificates as in the judgment of the secretary may be
4 required; and BY REGULATION to establish and collect fees. <—

5 Section 4. Inspection of land and building.

6 (a) General rule.--The secretary or his agents, in carrying
7 out the provisions of this act, shall have free access, within
8 reasonable hours, to any land, premises, building, vehicle,
9 vessel, car or other place and shall have the power to open,
10 inspect and sample any bundle, package or other container of
11 plants or plant products. It shall be unlawful to deny access to
12 any agent or to hinder, thwart or defeat inspection or other
13 necessary activity by misrepresentation or concealment of facts
14 or conditions.

15 (b) Authority to arrest.--The secretary or his agents, the
16 Pennsylvania State Police or any other officer whose duty it is
17 to preserve the peace of this Commonwealth may arrest without a
18 warrant any person found violating any of the provisions of this
19 act.

20 Section 5. Inspection of nurseries.

21 The department, through its agents, shall, at least once each
22 year, inspect all nurseries and other places in which nursery
23 stock is stored, kept or offered for sale. It shall also have
24 the authority to inspect or reinspect, at any time or place, any
25 nursery stock shipped or moved in or into this Commonwealth. In
26 addition to inspection, the department may collect samples for
27 testing to detect plant pests. A nursery shall furnish the
28 inspector, on request, a list of any or all sources from which
29 nursery stock was obtained. No nursery stock shall be removed,
30 transported, sold or offered for sale which has not been

1 inspected and approved by an agent of the department. Following
2 the inspection, a report of inspection will be issued.

3 Section 6. Certificate of inspection.

4 (a) General rule.--The department shall issue, upon
5 completion of the inspection provided for in section 5, a
6 certificate of inspection setting forth the fact of the
7 inspection and identifying the stock and area actually
8 inspected. The certificate shall be valid, shall not exceed one
9 year, and shall not be transferable or used to cover
10 uninspected, infested or infected nursery stock from any source.

11 (b) Authority of department.--Should the inspection or any
12 tests reveal that a plant pest or pests exceed any established
13 pest tolerance, the department may order any necessary
14 treatment, including destruction. The department may establish
15 procedures to provide for the propagation or production of
16 plants or plant products which are free from or within
17 established pest tolerances.

18 Section 7. False declaration.

19 It shall be unlawful for any person to make a false
20 declaration of acreage, square feet, or any growing area or to
21 cause any concealment of nursery stock from inspection.

22 Section 8. Proceedings on finding pests.

23 (a) General rule.--When any agent shall find plant pests
24 present on any nursery or dealer's premises, he shall notify the
25 owner or person having charge of the premises by issuing a
26 written inspection report and may issue a stop-sale order,
27 listing plant pests found and prescribing treatment or control
28 action to be taken.

29 (b) Stop-sale orders.--Plants under stop-sale order shall
30 remain so until the agent is notified by the owner or person

1 having charge of the premises that the prescribed treatment or
2 action has been taken and a reinspection of the premises
3 indicates the treatment has been effective.

4 (c) Partial infestation or infection.--If the agent finds
5 that part of a nursery is infested or infected with any plant
6 pests and that the remainder of it is not so infested or
7 infected, the department may prescribe in writing such measures
8 or precautions or may stipulate in writing such conditions for
9 the use of the certificate of inspection, as may, in its
10 judgment, be necessary, and it may withhold the certificate of
11 inspection until the conditions have been accepted in writing by
12 the owner of the nursery.

13 (d) Violation.--Using the certificate of inspection without
14 taking appropriate measures or precautions or observing the
15 conditions shall be regarded as a violation of this act.

16 Section 9. Application for inspection.

17 Except as otherwise provided in this act, nurserymen, dealers
18 and nursery agents selling or delivering nursery stock in this
19 Commonwealth shall make application in writing by the date
20 established in regulations and pay a fee established by
21 regulation to the department. The department may establish in
22 regulations, minimum standards for inspecting nursery stock,
23 including, but not limited to, size of the nursery or number of
24 plants being grown or offered for sale. Nurserymen and dealers
25 failing to make application to the department shall be liable
26 for any additional expense of inspection. Fees for the Fruit
27 Tree Improvement Program shall be established by the department
28 through regulations developed in cooperation with a committee of
29 fruit tree nurserymen. Fees for special inspection,
30 phytosanitary export certification and other inspections and

1 testing programs will be established in regulations.

2 Section 10. Dealer's certificate.

3 Every dealer located either within or outside this
4 Commonwealth engaged in or about to engage in selling or
5 soliciting orders for nursery stock within this Commonwealth
6 shall secure a dealer's certificate which will verify that he
7 will buy and sell only stock that has been duly inspected and
8 certified by an official Federal or State inspector.

9 Section 11. Nurseries and dealers outside this Commonwealth.

10 Nurserymen, dealers or other persons residing or doing
11 business outside this Commonwealth who desire to solicit orders
12 for nursery stock in this Commonwealth shall be entitled to
13 solicit orders in this Commonwealth, provided they are certified
14 or licensed and their name appears on the official State
15 Directories of Registered Nurseries and Nursery Dealers issued
16 annually from the state in which their business is conducted.

17 Section 12. Agent's certificate.

18 All nursery agents selling nursery stock or soliciting orders
19 for nursery stock for any nurseryman or dealer located within or
20 outside this Commonwealth shall be required to secure and carry
21 a nursery agent's certificate bearing a copy of the certificate
22 held by the principal. The agent's certificate shall be issued
23 by the department only to persons authorized by their principal
24 or upon request of their principal.

25 Section 13. Records.

26 Every person selling nursery stock in this Commonwealth shall
27 maintain and make available upon request by the department all
28 records pertaining to the distribution or sale of nursery stock
29 covered by this act.

30 Section 14. Revocation of certificate.

1 The department shall have the power to revoke or deny any
2 certificate for sufficient cause, including, but not limited to,
3 a violation of this act or of a rule or regulation promulgated
4 hereunder, or a finding by the department that a certificate of
5 inspection, issued or accepted under the provisions of this act,
6 is being used in connection with plants or plant products which
7 are infested or infected with any plant pest or in connection
8 with plants or other property which have not been inspected and
9 certified.

10 Section 15. Tagging packages.

11 Each person who engages in the selling, delivering or
12 transporting of nursery stock in this Commonwealth is required
13 to attach on the outside of each package, box, bale, truckload
14 or carload lot sold or delivered a tag or poster on which shall
15 appear an exact printed copy of his valid certificate or
16 license. The use of tags or posters bearing an invalid or
17 altered certificate or license or the misuse of any valid
18 certificate or license tag is prohibited.

19 Section 16. Notice of receipt of uncertified stock.

20 When nursery stock is transported into this Commonwealth
21 without a valid certificate of inspection issued by the proper
22 out-of-State authority, the persons receiving the nursery stock
23 must notify the department immediately. The nursery stock must
24 be returned to the consignor or shipper or held for inspection
25 as directed by the department.

26 Section 17. Imported stock requirements; transporting plant
27 pests.

28 (a) Imported stock.--It is unlawful to transport or cause to
29 be transported plants into this Commonwealth from other states,
30 territories or countries unless accompanied by a valid

1 certificate and a statement containing the names and addresses
2 of the consignor and consignee and the nature of the contents.
3 Any person who receives plants from foreign countries without a
4 certification of inspection must notify the department
5 immediately.

6 (b) Transportation of pests.--It is unlawful to transport
7 any plant pest into this Commonwealth for research or any other
8 purpose without first applying to and receiving prior approval
9 from the department.

10 Section 18. Surveys to determine existence of pests.

11 The department may make surveys to determine the existence,
12 distribution and severity of damage caused by plant pests, may
13 collect and transport samples of plants or plant products which
14 are capable of harboring plant pests, may conduct studies
15 relating to the control of plant pests, may make other
16 investigations necessary to protect Pennsylvania agriculture and
17 horticulture from certain plant pests, may prescribe treatment
18 for control of plant pests and may report the results of plant
19 pest investigations.

20 Section 19. Treatment orders.

21 (a) General rule.--If the secretary determines that a
22 serious pest situation exists in any part of this Commonwealth,
23 any necessary eradication or control measures may be taken.
24 Prior to carrying out any treatment procedures, the department
25 shall notify the property owner in writing. Any agent of the
26 department is authorized to enter the premises during reasonable
27 hours to carry out the eradication or control measures.

28 (b) Treatment orders.--If the department finds a pest
29 situation that does not justify the procedures specified in
30 subsection (a), it may issue, in writing to the owner or person

1 in charge, a treatment order. The treatment order shall describe
2 the pest situation that exists and prescribe the required
3 control or eradication measures and the date by which control
4 must be completed. The premises shall be under quarantine until
5 the control or eradication measures as specified have been
6 completed and approved by the department. The department may
7 issue a treatment order if any abandoned crops or noncultivated
8 plants constitute a reservoir for the pest.

9 (c) Noncompliance.--If the owner or person in charge does
10 not comply with the treatment order, the person having received
11 the treatment order shall be in violation of this act. The
12 department may carry out the control measures, and all expenses
13 associated with the treatment shall be paid to the department by
14 the person failing to comply with the treatment order.

15 Section 20. Pests declared public nuisance.

16 When the department determines a plant pest to be dangerous
17 or destructive to the agriculture, horticulture or forests of
18 this Commonwealth, the pest may be declared a public nuisance.
19 It shall be unlawful for any person knowingly to permit any
20 plant pest so declared to exist on his premises or to sell,
21 offer for sale, give away or move any plants, plant products or
22 other material capable of harboring the pest.

23 Section 21. Quarantines.

24 (a) General rule.--The department may establish quarantines
25 as specified in this act or under its regulations to prevent the
26 dissemination of plant pests within this Commonwealth. When a
27 pest or pests that have the potential to cause serious damage to
28 agriculture are found in any geographic area, the area and any
29 adjacent areas as the department deems necessary, shall be
30 quarantined. After a quarantine has been established, the

1 department shall issue such conditions or restrictions as it
2 considers necessary to prevent or reduce the movement of the
3 pest or pests from the quarantine area.

4 (b) Notice.--The department shall give notice of the
5 establishment of a quarantine and any regulations to be issued,
6 either in writing or by publication in at least one newspaper of
7 general circulation in the areas affected. Under the quarantine,
8 the department may prohibit, without inspection, the movement,
9 shipment or transportation of any plant or plant product or
10 other material capable of carrying the plant pest from the area
11 under quarantine.

12 (c) Prevention or delay.--The department may establish a
13 quarantine to prevent or delay the introduction of any plant
14 pest into this Commonwealth from any country, state or
15 territory.

16 (d) Vehicles.--The department may quarantine any vehicle or
17 means of conveyance that is suspected of carrying the
18 quarantined pest. If the pest is detected in or on any vehicle
19 or other means of conveyance, the department may order such
20 treatment as may be necessary to eradicate the pest.

21 (e) Special requirements.--The department may regulate the
22 planting, growing or harvesting of any crop that serves as a
23 host or reservoir for the pest within the quarantined area. The
24 regulations may include prohibiting the establishment of a
25 specific crop, variety or cultivar within a specific geographic
26 area or during a specified time period. If any crop is suspected
27 of harboring the pest, the department may require the treatment
28 or destruction of the crop.

29 Section 22. Violations.

30 It shall be unlawful to violate or fail to comply with any

1 provision of this act or regulations adopted under the
2 provisions of this act.

3 Section 23. Criminal penalties.

4 Any person engaging in unlawful conduct under this act
5 commits a summary offense and, upon conviction, shall be
6 sentenced to pay a fine of not more than \$300 for each offense
7 or to undergo imprisonment for a term of not more than 90 days,
8 or both.

9 Section 24. Civil penalties.

10 In addition to any other remedy available at law or in equity
11 for a violation of a provision of this act, a regulation
12 promulgated under authority of this act or an order issued under
13 this act, the secretary may assess a civil penalty upon the
14 person responsible for the violation. The civil penalty assessed
15 shall not exceed \$20,000 and shall be payable to the
16 Commonwealth and collectible in any manner now or hereafter
17 provided at law for the collection of debt.

18 Section 25. Injunctive relief.

19 In addition to any other remedies provided for in this act,
20 the Attorney General, at the request of the secretary, may
21 initiate, in the Commonwealth Court or the court of common pleas
22 of the county in which the defendant resides or has his place of
23 business, an action in equity for an injunction to restrain
24 violations of this act or the regulations promulgated hereunder
25 or an order issued under this act from which no timely appeal
26 has been taken or which has been sustained on appeal. In any
27 such proceeding, the court shall, upon motion of the
28 Commonwealth, issue a preliminary injunction if it finds that
29 the defendant is engaging in unlawful conduct under this act or
30 is engaging in conduct which is causing immediate or irreparable

1 harm to the public. The Commonwealth shall not be required to
2 furnish bond or other security in connection with the
3 proceedings. In addition to an injunction, the court, in equity
4 proceedings, may levy civil penalties as provided in section 24.
5 Section 26. Cooperation by department.

6 The department is authorized to cooperate, receive grants-in-
7 aid and enter into agreements with any individual, organization
8 or Federal, State or county agency for the purpose of
9 implementing the provisions of this act. The department shall
10 also have the authority to assist in the enforcement of any
11 Federal quarantine established under Federal acts or
12 regulations.

13 Section 27. Disposition of funds.

14 Fees so collected as well as moneys derived from
15 registration, licensing and fines, and civil penalties shall be
16 paid into a special restricted account in the General Fund, to
17 be known as the Plant Pest Management Account for use by the
18 department in administering this act. All moneys placed in the
19 account under the provisions of this section are hereby made
20 available immediately and are hereby specifically appropriated
21 to the department for the purpose of improving and enhancing the
22 administration of the program specified in this act, and not to
23 replace general revenues heretofore appropriated for this
24 purpose.

25 Section 28. Repeal.

26 The act of April 21, 1937 (P.L.318, No.90), known as The
27 Pennsylvania Plant Pest Act of 1937, is repealed.

28 Section 29. Effective date.

29 This act shall take effect in 60 days.