

## THE GENERAL ASSEMBLY OF PENNSYLVANIA

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# HOUSE BILL

## No. 1781

Session of  
1991

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

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AS REPORTED FROM COMMITTEE ON AGRICULTURE AND RURAL AFFAIRS,  
HOUSE OF REPRESENTATIVES, AS AMENDED, NOVEMBER 13, 1991

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

22 Section 1. Short title.

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

25 Section 2. Definitions.

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

29 "Agent," "inspector" or "deputy." A representative of the  
30 Department of Agriculture duly appointed by the Secretary of

1 Agriculture to carry out the provisions of this act.

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

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

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

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

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

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

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

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

29 "Nurseryman." A person who owns, leases, manages or is in  
30 charge of a nursery.

1 "Nursery stock." All trees, shrubs, brambles, woody vines,  
2 woody florist stock ~~and herbaceous perennials~~, HERBACEOUS <—  
3 PERENNIALS, VEGETABLE PLANTS, BEDDING AND OTHER ANNUAL  
4 HERBACEOUS PLANTS, their roots, cuttings, grafts, scions, buds,  
5 fruit pits, seeds and their parts for propagation, except bulbs,  
6 field crop seeds, vegetable seeds, ~~vegetable plants, flower~~ <—  
7 ~~seeds, bedding and other annual herbaceous plants and their~~  
8 ~~parts~~, FLOWER SEEDS, regardless of where the material may have <—  
9 been grown or is growing.

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

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

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

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

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

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

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

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

29 Section 3. Enforcement.

30 The department is authorized and empowered to enforce all the

1 provisions of this act and shall promulgate, modify and enforce  
2 reasonable regulations and orders as may be needed to carry out  
3 provisions of this act; to issue licenses, permits and  
4 certificates as in the judgment of the secretary may be  
5 required; and to establish and collect fees.

6 Section 4. Inspection of land and building.

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

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

21 Section 5. Inspection of nurseries.

22 The department, through its agents, shall, at least once each  
23 year, inspect all nurseries and other places in which nursery  
24 stock is stored, kept or offered for sale. It shall also have  
25 the authority to inspect or reinspect, at any time or place, any  
26 nursery stock shipped or moved in or into this Commonwealth. In  
27 addition to inspection, the department may collect samples for  
28 testing to detect plant pests. A nursery shall furnish the  
29 inspector, on request, a list of any or all sources from which  
30 nursery stock was obtained. No nursery stock shall be removed,

1 transported, sold or offered for sale which has not been  
2 inspected and approved by an agent of the department. Following  
3 the inspection, a report of inspection will be issued.

4 Section 6. Certificate of inspection.

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

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

19 Section 7. False declaration.

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

23 Section 8. Proceedings on finding pests.

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

30 (b) Stop-sale orders.--Plants under stop-sale order shall

1 remain so until the agent is notified by the owner or person  
2 having charge of the premises that the prescribed treatment or  
3 action has been taken and a reinspection of the premises  
4 indicates the treatment has been effective.

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

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

17 Section 9. Application for inspection.

18 Except as otherwise provided in this act, nurserymen, dealers  
19 and nursery agents selling or delivering nursery stock in this  
20 Commonwealth shall make application in writing by the date  
21 established in regulations and pay a fee established by  
22 regulation to the department. THE DEPARTMENT MAY ESTABLISH IN  
23 REGULATIONS, MINIMUM STANDARDS FOR INSPECTING NURSERY STOCK,  
24 INCLUDING, BUT NOT LIMITED TO, SIZE OF THE NURSERY OR NUMBER OF  
25 PLANTS BEING GROWN OR OFFERED FOR SALE. Nurserymen and dealers  
26 failing to make application to the department shall be liable  
27 for any additional expense of inspection. Fees for the Fruit  
28 Tree Improvement Program shall be established by the department  
29 through regulations developed in cooperation with a committee of  
30 fruit tree nurserymen. Fees for special inspection,

1 phytosanitary export certification and other inspections and  
2 testing programs will be established in regulations.

3 Section 10. Dealer's certificate.

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

10 Section 11. Nurseries and dealers outside this Commonwealth.

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

18 Section 12. Agent's certificate.

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

26 Section 13. Records.

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



1 Section 14. Revocation of certificate.

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

11 Section 15. Tagging packages.

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

20 Section 16. Notice of receipt of uncertified stock.

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

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

29 (a) Imported stock.--It is unlawful to transport or cause to  
30 be transported plants into this Commonwealth from other states,

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

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

11 Section 18. Surveys to determine existence of pests.

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

21 Section 19. Treatment orders.

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

29 (b) Treatment orders.--If the department finds a pest  
30 situation that does not justify the procedures specified in

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

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

16 Section 20. Pests declared public nuisance.

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

24 Section 21. Quarantines.

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

1 quarantined. After a quarantine has been established, the  
2 department shall issue such conditions or restrictions as it  
3 considers necessary to prevent or reduce the movement of the  
4 pest or pests from the quarantine area.

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

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

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

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

30 Section 22. Violations.

1 It shall be unlawful to violate or fail to comply with any  
2 provision of this act or regulations adopted under the  
3 provisions of this act.

4 Section 23. Criminal penalties.

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

10 Section 24. Civil penalties.

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

19 Section 25. Injunctive relief.

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

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

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

14 Section 27. Disposition of funds.

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

26 Section 28. Repeal.

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

29 Section 29. Effective date.

30 This act shall take effect in 60 days.