

CHAPTER 847

H.B. No. 1933

AN ACT

relating to boll weevil and pink bollworm control.

*Be it enacted by the Legislature of the State of Texas:*

SECTION 1. Section 74.004, Agriculture Code, is amended by amending Subsections (a), (b), (c), and (f) and by adding Subsection (j) to read as follows:

(a) On petition of the administrative committee of a pest management zone, the department may establish regulated areas, dates, and appropriate methods of destruction of stalks, other parts, and products of host plants for boll weevils, including requirements for destruction of foliage, fruiting structures, and root systems of host plants after *the harvest deadline*.

(b) If on inspection of a field after *the harvest deadline*, the department determines that host plants or any parts or products of host plants have not been destroyed within the time

specified by regulation of the department, the department may declare the field to be a public nuisance.

(c) On the declaration of a field as a public nuisance, the department may take any action necessary to complete destruction of host plants or host plant products or parts to prevent the spread of boll weevils from the infested area and shall:

(1) immediately give written notice to any farm owner and to the operator in charge of the field that the field is in violation of this section, instructing the owner and operator to destroy host plants or host plant products or parts within seven days after the date written notice is received;

(2) publish the notice in a newspaper of general circulation in the county where the land is located or [and] post for a period of three consecutive days a copy of the notice on or in the immediate vicinity of the field in violation, if either the owner or operator of the field cannot be located after a reasonably diligent effort by the department; and

(3) have the host plants or host plant products or parts destroyed, if no response is received by the department from either the owner or operator within four days after the date of posting of the notice at the field or if the department considers a response inadequate.

(f) If neither the farm owner nor operator reimburses the department as provided by Subsection (e) of this section within 30 days after the date of the completion of department action under Subsection (c) of this section, or, if an extension has been granted under Subsection (d) of this section, within 30 days after the date of expiration of the extension, the department may place a lien against the property on which a violation of a department regulation under this section has [the infestation] occurred.

(j) In this section, "harvest deadline" means a deadline set by the department for harvesting a certain crop or, in the absence of a department deadline, the 31st day after the date by which the crop is customarily harvested in the region, as determined by the department.

SECTION 2. Subchapter A, Chapter 74, Agriculture Code, is amended by adding Section 74.0041 to read as follows:

*Sec. 74.0041. REGULATION OF PLANTING DATES. On petition of the administrative committee of a pest management zone, the department may establish uniform planting dates for host plants.*

SECTION 3. Section 74.054, Agriculture Code, is amended to read as follows:

*Sec. 74.054. REGULATION OF PINK BOLLWORM [GROWING]; QUARANTINES.*

(a) ~~The department may adopt rules governing the control of pink bollworm under this subchapter [growing of a host plant in an area in which, under prior law, the governor proclaimed it unlawful to grow the host plant except under rules of the department. In addition to other necessary rules, the rules may include provisions for:~~

~~[(1) planting of seed from noninfested territory;~~

~~[(2) ginning at designated mills; or~~

~~[(3) milling or disinfecting of all seed products marketed within the area].~~

(b) If, under prior law, the governor proclaimed a quarantine against infested territory, no person may import into Texas from the quarantined territory a substance susceptible to pink bollworm infestation.

(c) The department shall maintain a rigid inspection of substances susceptible to pink bollworm contamination that are being carried from quarantined territory into this state.

SECTION 4. Section 74.057, Agriculture Code, is amended to read as follows:

*Sec. 74.057. DESTRUCTION OF HOST PLANTS. (a) If the department considers it necessary to the protection of the cotton industry of this state, the department may:*

*(1) establish regulated areas, dates, and appropriate methods of destruction of host plants and host plant products; and*

(2) require the destruction of or destroy any host plant, host plant product, or field of host plants in which pink bollworm is found or which is probably contaminated by being near an infestation of pink bollworm.

(b) *If on inspection of a field after the harvest deadline the department determines that host plants or any parts or products of host plants have not been destroyed within the time specified by regulation of the department under this section, the department may declare the field to be a public nuisance* [~~Before exercising its power under Subsection (a) of this section, the department shall report the condition to the governor, setting out in detail the area or amount of host plants or host plant products to be destroyed. The governor shall declare the host plants or host plant products to be a public menace~~].

(c) *On the declaration of a field as a public nuisance, the department may take any action necessary to complete destruction of host plants or host plant products or parts to prevent the spread of pink bollworm from the infested area and shall:*

(1) *immediately give written notice to any farm owner and to the operator in charge of the field that the field is in violation of this section, instructing the owner and operator to destroy host plants or host plant products or parts within seven days after the date written notice is received;*

(2) *publish the notice in a newspaper of general circulation in the county where the land is located or post for a period of three consecutive days a copy of the notice on or in the immediate vicinity of the field in violation, if either the owner or operator of the field cannot be located after a reasonably diligent effort by the department; and*

(3) *have the host plants or host plant products or parts destroyed, if no response is received by the department from either the owner or operator within four days after the date of posting of the notice at the field or if the department considers a response inadequate* [~~The department may take any action necessary to complete destruction of host plants or host plant products to prevent the spread of pink bollworm from the infested area~~].

(d) *If adverse weather conditions or other good cause exists, the commissioner may, on written request by a farm owner or operator, grant an extension of the date of implementation of appropriate host plant or host plant product or part destruction.*

(e) *If it becomes necessary for the department to contract with someone to destroy host plants or host plant products or parts, the farm owner or operator shall reimburse the department for 1½ times the actual costs required for destruction.*

(f) *If neither the farm owner nor operator reimburses the department as provided by Subsection (e) of this section within 30 days after the date of the completion of department action under Subsection (c) of this section, or, if an extension has been granted under Subsection (d) of this section, within 30 days after the date of expiration of the extension the department may place a lien against the property on which a violation of a department regulation under this section has occurred.*

(g) *The department may perfect the lien by filing the lien, a sworn statement of the indebtedness, the owner of the property, and a description of the property subject to the lien with the county clerk of the county in which the property is located. The lien arises and attaches to the property when the sworn statement is filed for recordation with the county clerk. The lien is subordinate to the rights of a bona fide purchaser or lienholder for value that acquires an interest in the property before the filing of the sworn statement. The lien must be filed within a 30-day period following the expiration of the 30-day period described in Subsection (f) of this section. Within 180 days after the date of filing the lien, the department may file suit in a court of competent jurisdiction for collection of the account and foreclosure of the lien. Neither the department nor any person to whom the account is assigned may be required to post a cost bond in the suit. The court shall enter judgment for the debt with interest and costs of suit and foreclosing the lien on premises as the court determines necessary for the defraying of expenses, court costs, and the fees owed.*

(h) *All reimbursements and additional costs collected under this section shall be deposited in the state treasury in a special fund to be appropriated to the department to carry out this subchapter.*

*(i) Reimbursement under Subsection (e) of this section does not prevent the department from seeking criminal or civil sanctions under this subchapter.*

*(j) In this section, "harvest deadline" has the meaning assigned by Section 74.004 of this chapter.*

SECTION 5. Section 74.056, Agriculture Code, is repealed.

SECTION 6. The importance of this legislation and the crowded condition of the calendars in both houses create an emergency and an imperative public necessity that the constitutional rule requiring bills to be read on three several days in each house be suspended, and this rule is hereby suspended, and that this Act take effect and be in force from and after its passage, and it is so enacted.

Passed by the House on April 23, 1993, by a non-record vote; the House concurred in Senate amendments on May 22, 1993, by a non-record vote; passed by the Senate, with amendments, on May 19, 1993: Yeas 31, Nays 0.

Approved June 19, 1993.

Effective Aug. 30, 1993, 90 days after date of adjournment.