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# Agriculture

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# Agriculture

## Agriculture; pest control--shipment of infested plants

Food and Agricultural Code § 6461 (amended and renumbered); § 6461 (new).

AB 1653 (Jones); 1992 STAT. Ch. 29

Under existing law, if there is reasonable cause<sup>1</sup> to believe any shipment<sup>2</sup> of plants<sup>3</sup> or any other things, into this state, may be infested or infected with any pest,<sup>4</sup> it will, in most cases, be destroyed.<sup>5</sup> Chapter 29 makes it unlawful to ship or transport any plant or any other thing into California which is listed, by the Director of Food and Agriculture (Director),<sup>6</sup> as detrimental to agriculture.<sup>7</sup> Chapter 29 provides that, in addition to the civil, criminal, and administrative remedies, the Director may, after

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1. Cf. CAL. FOOD & AGRIC. CODE § 5905 (West 1986) (stating grounds for reasonable belief of infestation of the citrus white fly).

2. See *id.* § 5008 (West 1986) (defining shipment).

3. See *id.* § 5007 (West 1986) (defining plant).

4. See *id.* § 5006 (West 1986) (defining pest).

5. *Id.* § 6461.5 (amended and renumbered by Chapter 29); see *id.* §§ 6462-6465 (West 1986) (providing for warning tags or treatment, rather than destruction of plants, under special circumstances); CAL. HEALTH & SAFETY CODE § 2800.5 (West 1986) (stating that any breeding place of a pest is a public nuisance); see also *Seligman v. Walkley*, 343 N.Y.S.2d 374, 377 (1973) (holding that infested crops were public nuisances which could be destroyed or ordered destroyed by the commissioner, for which the owner is not entitled to compensation); *Skinner v. Coy*, 13 Cal. 2d 407, 418, 90 P.2d 296, 301 (1939) (finding that statutes providing for the summary destruction of vegetation infected with contagious pests, without any preliminary judicial inquiry and without compensating the owner for the resulting loss, are perfectly constitutional so long as they themselves define what constitutes a nuisance, and there is a right to a subsequent judicial review of the action); cf. COLO. REV. STAT. § 35-4-109 (Supp. 1991); HAW. REV. STAT. § 150A-5(5)(A)-(C) (Supp. 1991); S.D. CODIFIED LAWS ANN. § 38-24B-19 (Supp. 1992) (enacting legislation similar to Chapter 29 relating to shipment of infested or infected plant material). See generally CAL. FOOD & AGRIC. CODE §§ 6401-6465 (West 1986 & Supp. 1992) (governing interstate shipments).

6. See CAL. FOOD & AGRIC. CODE § 35 (West 1986) (defining director as the Director of Food and Agriculture).

7. *Id.* § 6461 (enacted by Chapter 29); see *id.* (specifying that the Director can establish or amend the list of pests either by order, after notice and opportunity for written or oral comments, or through the adoption or amendment of quarantine regulations); *id.* § 5301 (West 1986) (giving the Director the authority to establish quarantine regulations as he or she deems necessary); *id.* § 5027 (West 1986) (providing that any violation of this provision is a misdemeanor).

notice<sup>8</sup> and opportunity to respond, impose inspection,<sup>9</sup> treatment,<sup>10</sup> certification,<sup>11</sup> holding,<sup>12</sup> or other requirements.<sup>13</sup> These additional requirements, however, apply only to shippers or transporters that have shipped or transported three or more pest-infested shipments into California within any twelve-month period.<sup>14</sup> Chapter 29 also allows the Director or any County Commissioner<sup>15</sup> to charge the shipper or transporter of any commercial shipment the cost of inspecting and controlling the pest.<sup>16</sup>

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8. *See id.* §§ 5421-5436 (West 1986 & Supp. 1992) (relating generally to notice and expense of abatement).

9. *See id.* § 6403 (West 1986) (giving the officer who makes the inspection the authority to enter any conveyance or place where a plant or thing is located to ascertain whether it is or is liable to be, infested or infected with any pest); *id.* § 5023 (West 1986) (stating that the agricultural commissioner of any county, whenever necessary, may enter and make an inspection of any premises, plant, conveyance, or thing in his jurisdiction).

10. *See id.* § 6464 (West 1986) (authorizing treatment or processing to destroy pests).

11. *See id.* § 5201 (West 1986) (defining certificate).

12. *See id.* § 6401(b) (West 1986) (setting forth provisions for holding plants or articles for inspection).

13. *Id.* § 6461 (enacted by Chapter 29); *see id.* § 5028 (West 1986) (setting forth civil liability and remedies for persons violating quarantine regulations); *cf.* 7 U.S.C. §§ 150dd(a), 164a (1988) (allowing the Secretary of Agriculture of the United States, or a person to whom authority has been delegated, to seize, quarantine, treat, or destroy any product moving into or through the United States in order to prevent the dissemination of plant pests).

14. CAL. FOOD & AGRIC. CODE § 6461 (enacted by Chapter 29).

15. *See id.* § 26 (West 1986) (defining commissioner as any county agricultural commissioner).

16. *Id.* § 6461 (enacted by Chapter 29).