



# Model Plant Pest Law

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## Introduction and Summary

The purpose of this document is to provide State Plant Regulatory Officials with a working tool that may be utilized in the development of a new Plant Pest Law or to provide recommendations for updating an existing law. Based on a comparative review, the basic components are consistent with similar state laws. This document outlines those components considered to be essential to the development of a comprehensive Plant Pest Law and is consistent with many similar state statutory authorities. Each State Plant Regulatory Official, in cooperation with program and legal staff, will need to evaluate to determine if additional sections or components might be needed in order to address specific issues in their individual state programs.

Individual states may vary in the adoption and administration of their plant pest and nursery regulatory programs. Broadly, states adopt either separate plant pest and nursery laws or utilize the plant pest law as the enabling authority for the development of pursuant nursery regulations. This document relates specifically to the development of the plant pest law. The National Plant Board has also provided model text for the nursery law.

## **Suggested Structure for a Model Plant Pest Law**<sup>i</sup>

- .01 Title**  
The purpose of this section is to outline and provide the official citation for the statutory authority.
- .02 Background and Purpose**  
The purpose of this section is to provide a brief overview of the background and need for the statutory authority.
- .03 Definitions**  
The purpose of this section is to provide those core definitions, as determined by the individual state, critical to the interpretation of the authority.
- .04 Prohibitions**  
The purpose of this section is to outline unlawful acts associated with this authority.
- .05 Authorization to Promulgate Regulations and Establish Fee Structures**  
The purpose of this section is to provide authorization, as required for the governing body, to adopt regulations needed to fully implement the statutory authority.
- .06 Declaration, Control and Eradication of Plant Pests**  
The purpose of this section is to provide authorization for the governing body to take those measures necessary to eradicate, control, or manage plant pests.
- .07 Establishment and Implementation of Quarantines**  
The purpose of this section is to provide authorization for the governing body to establish, in the absence of any federal quarantine, those quarantines prohibiting or restricting the intra- and/or interstate movement of plants, plant products or other articles capable of moving plant pests.
- .08 Establishment of Regulated Non-quarantine Pests and Federal Recognition of State-Managed Phytosanitary Programs**  
The purpose of this section is to provide the foundation for the promulgation of regulations for non-quarantine plant pests with a specified economically unacceptable impact and when measures to control the level of infestation achieve the required level of control. This section will further provide for the incorporation of the Federally Recognized State-Managed Phytosanitary Program at the state and regional levels.
- .09 Authorization to Conduct Inspections**  
The purpose of this section is to provide the necessary authority for the Secretary, Commissioner or delegates to carry out such actions as provided for in statutory authority, including entry on the premises for the purpose of inspections needed to determine the presence or absence of plant pests.

- .10 Cooperation with Other Entities**  
The purpose of this section is to provide authorization for the agency to enter into cooperative agreements with other public or private groups or individuals for the purpose of carrying out the statutory authority.
- .11 Violations**  
The purpose of this section is to provide detail criminal and civil actions that may be taken in the event of a violation.
- .12 Appeal Procedures**  
The purpose of this section is to detail those appeal procedures that may be utilized by those that fail to comply with the provisions of the statutory authority.
- .13 Compensation for Loss or Destruction**  
The purpose of this section is to outline that no authorization is granted for the Department to approve payment for damages to any owner for any loss or destruction of infested or infected plants, plant products or other regulated articles, nor is there to be any reimbursement made for expenses incurred incidental to the application of prescribed preventative or remedial measures except as provided for by the state legislative assembly.
- .14 Severability**  
The purpose of this section is to confirm that should any section, sentence, clause, phrase, or other portion of this statutory authority be determined as unconstitutional, the validity of the remaining portions would not be affected.

## **Suggested General Text for a Plant Pest Law**

### **.01 Title**

This title may be cited as the “Plant Pest Law.”

### **.02 Background and Purpose**

The detection, prevention, suppression, control or eradication of plant pests is necessary for the protection of the agriculture, environment, and economy of this state. While the unregulated movement of plant pests and other articles capable of harboring plant pests presents an unacceptable risk of introducing or spreading plant pests, it is also the responsibility of the [Secretary or Commissioner] to facilitate intra and interstate commerce for any affected agricultural products and other commodities posing such a risk. Therefore, it is necessary to abate, suppress, eradicate and prevent, by such means as shall be prescribed and provided by law or by rule, order, or regulation of the Department, all contagious, infectious and plant pests destructive to the state’s agricultural, forestry or horticultural interests or to the State’s general environmental quality.

### **.03 Definitions**

(1) Article – refers to any material or tangible object that could harbor plant pests.

(2) Certificate – an authorized document prepared by the Secretary or Commissioner or his/her authorized representative that affirms, declares, or verifies the plants, plant products, or other regulated article meet those quarantine guidelines outlined and are free to move without restriction.

(3) Commissioner – the Commissioner of Agriculture or his/her designee.

(4) Department – the respective Department of Agriculture and includes, but is not limited to its officers, inspectors, employees, agents, or representatives.

(5) Emergency – an emergency is any situation in which the department has declared a public nuisance or when in the opinion of the department a plant pest, communicable or infectious disease, noxious weed or arthropod endangers or threatens the horticultural or agricultural interests of the state.

(6) Eradication – the elimination of a plant pest based on absence determined by negative verification survey for the target pest.

(7) Federally Recognized State-Managed Phytosanitary Program – a program designed to recognize state official control programs to eradicate or contain a plant pest that is not regulated by the lead federal agency and affords equivalent protection at ports of entry for the same pest when the states to which it is destined are under official control.

(8) Nursery Stock – any plant for planting, propagation, or ornamentation, including, but not limited to: All plants, trees, shrubs, vines, perennials, grafts,

cuttings, and buds that may be sold for propagation, whether cultivated or wild, and all viable parts of these plants.

(9) Official Control – official actions taken by plant pest regulatory agencies to eradicate or suppress plant pests with the goal of eliminating isolated plant pest infestations.

(10) Permit – an authorized document prepared by the Secretary or Commissioner or his/her authorized representative allowing the movement of noncertified regulated articles to a specified destination for specialized handling, utilization, processing or for treatment.

(11) Plant – any plant (including any plant part) for or capable of propagation, including a tree, tissue culture, plantlet culture, pollen, shrub, vine, cutting, graft, scion, bud, bulb, a root or seed.

(12) Plant Pest – any living stage of a protozoan, a nonhuman animal, a parasitic plant, a bacterium, a fungus, a virus or viroid, an infectious agent or other pathogen, or any article similar to or allied with any of these articles that can directly or indirectly injure, cause damage to or cause disease in any plant or plant product.

(13) Plant Product – any flower, fruit, vegetable, root, bulb, seed or other plant part that is not included in the definition of plant or any manufactured or processed plant or plant part.

(14) Public Nuisance – means a plant, plant product, conveyance, premises, or article that harbors, is infested or infected with, is liable to spread, or is exposed to a plant pest, communicable or infectious disease, noxious weed or arthropod that may cause damage or harm to, or whose eradication, treatment, or control may benefit persons, industries, or communities within the state, regardless whether it may damage or harm the public generally.

(15) Regulated Article – any article of any character, carrying or capable of carrying a plant pest for which quarantine has been established.

(16) Regulated Non-quarantine Pest – a non-quarantine pest whose presence in plants for planting affects the intended use of those plants with an economically unacceptable impact and which is therefore regulated within the United States or the State by an authorized plant protection organization.

(17) Secretary – the Secretary of the State’s Department of Agriculture or his or her designee.

(18) Quarantine – prohibitions or restrictions imposed by the Department as a means for mitigating pest risk.

(19) Suppression – measures that are undertaken to reduce the plant pest population and limit the spread.

(20) Systems Approach – The application of different pest risk management measures, at least two of which act independently but with cumulative effect, to apply the appropriate level of phytosanitary protection.

**.04 Prohibitions**

(1) It is unlawful, under the provisions outlined in this Act, for any person to:

(a) Knowingly maintain upon any premises, any plant pest or plant product infected or infested with a plant pest, except under provision outlined by the Department.

(b) Knowingly or willfully violate a quarantine imposed by the Department.

(c) Sell, offer for sale, ship, move, convey, transport, or deliver any plant pest without the issuance of a certificate or permit confirming the proposed shipment or use will not create a hazard to the agricultural, horticultural, forest, or environmental quality of the state.

(d) Knowingly forge, counterfeit, or without authority of the Department use, alter, deface, or destroy any certificate, permit or other document provided for in this Act.

(e) Refuse to comply with the provisions of this Act or any rule promulgated hereunder.

(f) Interfere with the Department in the enforcement of the provisions of this Act.

(g) Fail to pay any penalties assessed under this Act.

**.05 Authorization to Promulgate Regulations and Establish Fee Structures**

(1) The Department is authorized to adopt such reasonable regulations as necessary to implement and carry out the purposes of this law related to the prevention, introduction, suppression, and eradication of plant pests, including, but not limited to the intra- and interstate movement of plant pests. The Department may adopt those regulations for plant pests that may not be economically eradicated or suppressed in order to prevent their spread within the state.

*[Note: This section may be omitted should the agency have or develop a separate Plant Pest Law and Nursery Law].* The Department is authorized, in order to control plant pests, to adopt regulations governing the inspection, certification and intra and interstate movement of nursery stock. Regulations may provide for the incorporation of a voluntary systems approach as needed to enhance the state's nursery certification and quarantine programs.

The Department is further authorized to prescribe and collect a schedule of fees associated with plant pest inspection and certification processing activities.

**.06 Declaration, Control, and Eradication of Plant Pests**

(1) Any premises, plants, plant products or other articles which are found to be infected or infested with any plant pest may be held and declared a public nuisance. The owner of such articles, upon written notification by the Department, shall take such measures as may be prescribed to control or eradicate such plant pests. Should the owner fail to comply with such a notice, within a reasonable period, the Department, through its duly authorized agents, shall proceed to take such measures as necessary to control or eradicate such plant pests. The Department may compute the actual costs of such labor and materials utilized in controlling or eradicating such plant pests and the owner of the premises shall pay to the Department such assessed costs. No damage shall be awarded to the owner of such premises for entering and destroying or otherwise treating when such activities are conducted by order of the Department.

**.07 Establishment and Implementation of Quarantines**

(1) The Department, upon the detection of a plant pest and in the absence of any federal quarantine, may promulgate and enforce a quarantine restricting or prohibiting the intra and/or interstate movement of plants, plant products, or other articles capable of moving such plant pests. Quarantine actions may include, but are not limited to stop sale and hold orders, emergency regulations, state quarantines, parallel state interior and exterior quarantines, uniform state quarantines, and assistance with the enforcement of federal quarantines. Such quarantines may include the entire state, portions of the state or a list of infested premises.

The shipment, introduction or release into or within the state of any plant pest, plants, plant products or other articles which may directly or indirectly affect the state is restricted or prohibited. The Department may establish regulations necessary for the movement of regulated articles for regulated articles originating from a state or federally quarantined area or for regulated articles originating in non-regulated areas, including provisions for the development of certificates or permits.

The Department may revise an established quarantine when additional supportive information is provided and changes are necessary to mitigate pest risk. The Department may repeal such quarantines when the purposes for which it was established have been met.

**.08 Establishment of Regulated Non-quarantine Pests and Federal Recognition of State-managed Phytosanitary Programs**

(1) The Department may promulgate quarantines for non-regulated plant pests when such quarantines apply to individual plant pests having an economically unacceptable impact and for which measures to control achieve an acceptable level of control.

The Department may work cooperatively with the Secretary of Agriculture or

designee with the implementation of a Federally Recognized State-Managed Phytosanitary program when such a program would economically or environmentally assist with mitigating the spread of a regulated non-quarantine pest.

**.09 Authorization to Conduct Inspections**

(1) The Department or the Department's authorized agent shall enforce any adopted regulations and shall have the authority to designate such individuals to assist in carrying out the duties provided by this Act. The Department or any duly authorized agent of the Department shall have the authority to enter upon and inspect any premises for the purpose of inspecting, examining or determining the general pest condition of any agricultural, horticultural, forestry and environmental setting. The Department or any duly authorized agent of the Department shall have the authority to place, monitor and retrieve traps and samples for identification or verification. The Department shall have the authority to inspect any vehicle or means of transportation during normal business hours throughout the year to determine the presence or absence of plant pests. An agent of the Department or any law enforcement officer shall have the authority to stop or cause to be stopped on any highway or other public place, any vehicle or other means of transportation being utilized or if the Department has reasonable grounds to believe it is being utilized, to transport or move any plant, plant product or other regulated article in violation of the provisions of this Law.

**.10 Cooperation with Other Entities**

(1) The Department is authorized to enter into cooperative agreements with any entity of the United States for the purpose of working cooperatively to develop and implement plans to prevent, suppress, control or eradicate plant pests.

The Department may independently or cooperatively implement necessary control or eradication measures on behalf of another entity if a plant pest occurs and the entity is not able to implement the necessary controls.*[Note: This section may also incorporate the concept of tax assessments or other mechanisms for payment, dependent on the individual state.]*

**.11 Violations**

(1) Any person who willfully or knowingly violates any provision of this Act or any rule promulgated under this Act shall be guilty of a Class 1 (or other specified level) misdemeanor.

The Department may assess a civil penalty of not more than (*e.g.*, five thousand dollars (\$5,000)) against any person who violates a provision of this Act or any rule promulgated there under. In determining the amount of the penalty, the Department shall consider the degree and extent of harm caused by the violation.

**.12 Appeal Procedures**

(1) The failure to comply with the provisions of this statutory authority may result in the assessment of a civil penalty. An individual, who feels aggrieved by the

Department as a result of such an assessment, may take appeal, within (e.g.) 30 days to [insert appropriate authority]. After a hearing, the court shall make such decree as just and proper. A written notice of appeal, together with the grounds, shall be served upon the Secretary or Commissioner of the Department.

**.13 Compensation for Loss or Destruction**

(1) No authorization is granted for the Department to approve payment for damages to any owner for any loss or destruction of infested or infected plants, plant products, or other regulated articles, nor is there to be any reimbursement made for expenses incurred incidental to the application of prescribed preventative or remedial measures except as provided for the state legislature.

**.14 Severability**

(1) If any provision of this title or application of any provision of this title to any person or circumstances is held invalid, the remainder of this title and the application of the provision to other persons and circumstances shall not be affected by the invalidity.

**Specific State Examples**

- A. Rules of the Tennessee Department of Agriculture, Division of Regulatory Services, Chapter 0080-6-26, Rules and Regulations Governing Quarantine of Sudden Oak Death (*Phytophthora ramorum*)  
(<http://www.tn.gov/sos/rules/0080/0080-06/0080-06-26.pdf> )
- B. Rules of the Tennessee Department of Agriculture, Division of Plant Industries, Chapter 0080-06-24, Plant Pest Regulations  
(<http://state.tn.us/sos/rules/0080/0080-06/0080-06-24.20090413.pdf> )
- C. Rules of the Florida Department of Agriculture and Consumer Services, Division of Plant Industry, Chapter 5B-3 Plant Quarantine and Certification Entry Requirements  
(<https://www.flrules.org/gateway/ChapterHome.asp?Chapter=5B-3>)
- D. Virginia Administrative Code  
Chapter 316, Rules and Regulations for Enforcement of the Virginia Pest Law –Beach Vitex Quarantine  
(<http://www.vdacs.virginia.gov/plant&pest/pdf/beachvitex.pdf> )
- E. Virginia Department of Agriculture and Consumer Services  
2 VAC5-315, Virginia Imported Fire Ant Quarantine for Enforcement of the Virginia Pest Law  
(<http://www.vdacs.virginia.gov/plant&pest/pdf/importedfirean.pdf> )
- F. Emergency Rules  
Title 2 – Department of Agriculture, Division 70 – Plant Industries  
Chapter 11 – Missouri Plant Law Quarantines  
(<http://www.sos.mo.gov/adrules/csr/current/2csr/2c70-11.pdf> )

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*<sup>i</sup>This document is designed to be a tool for you to use as you review your state plant pest law. We have attempted to do some of the work for you. For purposes of consistency, 'State Department of Agriculture' and 'Secretary of Agriculture' are used throughout the document. You will need to change these terms to conform to the proper agency and title names used in your state. In addition, many states combine their plant pest and nursery laws into one. You may wish to make other changes; this is just a guide. Good luck!*