(2) the actor is alleged to have violated Section 36.05, Penal Code, by committing an act of family violence against a witness or prospective witness.

(b) In the prosecution of an offense described by Subsection (a), subject to the Texas Rules of Evidence or other applicable law, each party may offer testimony or other evidence of all relevant facts and circumstances that would assist the trier of fact in determining whether the actor's conduct coerced the witness or prospective witness, including the nature of the relationship between the actor and the witness or prospective witness.

Art. 38.49. FORFEITURE BY WRONGDOING. (a) A party to a criminal case who wrongfully procures the unavailability of a witness or prospective witness:

(1) may not benefit from the wrongdoing by depriving the trier of fact of relevant evidence and testimony; and

(2) forfeits the party's right to object to the admissibility of evidence or statements based on the unavailability of the witness as provided by this article through forfeiture by wrongdoing.

(b) Evidence and statements related to a party that has engaged or acquiesced in wrongdoing that was intended to, and did, procure the unavailability of a witness or prospective witness are admissible and may be used by the offering party to make a showing of forfeiture by wrongdoing under this article, subject to Subsection (c).

(c) In determining the admissibility of the evidence or statements described by Subsection (b), the court shall determine, out of the presence of the jury, whether forfeiture by wrongdoing occurred by a preponderance of the evidence. If practicable, the court shall make the determination under this subsection before trial using the procedures under Article 28.01 of this code and Rule 104, Texas Rules of Evidence.

(d) The party offering the evidence or statements described by Subsection (b) is not required to show that:

(1) the actor's sole intent was to wrongfully cause the witness's or prospective witness's unavailability;

(2) the actions of the actor constituted a criminal offense; or

(3) any statements offered are reliable.

(e) A conviction for an offense under Section 36.05 or 36.06, Penal Code, creates a presumption of forfeiture by wrongdoing under this article.

(f) Rule 403, Texas Rules of Evidence, applies to this article. This article does not permit the presentation of character evidence that would otherwise be inadmissible under the Texas Rules of Evidence or other applicable law.

SECTION 4. The change in law made by this Act applies only to an offense committed on or after the effective date of this Act. An offense committed before the effective date of this Act is governed by the law in effect on the date the offense was committed, and the former law is continued in effect for that purpose. For purposes of this section, an offense was committed before the effective date of this Act if any element of the offense occurred before that date.

SECTION 5. This Act takes effect September 1, 2013.

Passed the Senate on April 30, 2013: Yeas 31, Nays 0; passed the House on May 8, 2013: Yeas 148, Nays 0, one present not voting.

Approved May 24, 2013.

Effective September 1, 2013.

CHAPTER 166

S.B. No. 1427

AN ACT

relating to the administration of the citrus budwood certification program and the creation of the citrus
nursery stock certification program; providing civil, criminal, and administrative penalties and authorizing fees.

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

SECTION 1. The heading to Chapter 19, Agriculture Code, is amended to read as follows:

CHAPTER 19. CITRUS BUDWOOD AND CITRUS NURSERY STOCK CERTIFICATION PROGRAMS

SECTION 2. Section 19.001, Agriculture Code, is amended to read as follows:
Sec. 19.001. PURPOSE. The purpose of this chapter is to:
(1) establish a certified citrus budwood program to produce citrus trees that are horticulturally sound, are free from virus and other recognizable bud-transmissible diseases, and are of an assured type of citrus variety;
(2) establish a certified citrus nursery program for citrus nursery stock sold in the citrus zone as part of an effort to produce citrus trees that are free from pathogens, including citrus greening disease, which is spread by the Asian citrus psyllid;
(3) provide standards for foundation groves, certified citrus nurseries, and certified citrus nursery trees; and
(4) provide for an advisory council to make recommendations on the implementation of the programs.

SECTION 3. Section 19.002, Agriculture Code, is amended by adding Subdivisions (1-a), (2-a), (2-b), and (5-a) and amending Subdivisions (4) and (5) to read as follows:
(1-a) "Asian citrus psyllid" has the meaning assigned by Section 80.003.
(2-a) "Certified citrus nursery" means a nursery that meets standards required by the department for production of citrus nursery stock free from pests of citrus.
(2-b) "Certified citrus nursery stock" means citrus nursery stock propagated from cuttings or by budding, grafting, or air-layering and grown from certified citrus budwood that meets standards required by the department for assurance of type of citrus variety and for freedom from dangerous pathogens.
(4) "Citrus grower" means a citrus producer growing and producing citrus nursery stock for commercial or retail marketing purposes.
(5) "Citrus nursery" means a producer of citrus trees propagated through the budding or grafting of citrus trees using certified citrus budwood.
(5-a) "Citrus nursery stock" means citrus plants to be used in a commercial or noncommercial setting.

SECTION 4. Section 19.003, Agriculture Code, is amended to read as follows:
Sec. 19.003. SCOPE. Except as otherwise provided by this chapter, this chapter applies to all citrus nurseries and citrus growers.

SECTION 5. Chapter 19, Agriculture Code, is amended by adding Sections 19.0031 and 19.0041 to read as follows:
Sec. 19.0031. CITRUS ZONE. The following counties are designated as the citrus zone of this state for the purpose of this chapter: Brooks, Cameron, Hidalgo, Jim Hogg, Kenedy, Starr, Willacy, and Zapata.
Sec. 19.0041. CITRUS NURSERY STOCK CERTIFICATION PROGRAM. (a) The citrus nursery stock certification program is established. The department administers the program.
(b) The department shall accomplish the purposes of the program through the certification of nurseries growing or selling citrus nursery stock in the citrus zone.
(c) All citrus nursery stock grown in or sold in the citrus zone must be grown in a certified citrus nursery.
(d) The department, in consultation with the advisory council, shall set standards for certified citrus nurseries and citrus nursery stock certification, and shall inspect citrus
nurseries and the records of citrus nurseries to ensure that citrus nurseries comply with the provisions of the citrus nursery stock certification program.

(e) The department shall provide for an annual renewal of a certificate for a certified citrus nursery, including the imposition of applicable fees. The department shall renew the certificate if the nursery maintains the standards set by the department under Subsection (d).

SECTION 6. Section 19.006, Agriculture Code, is amended to read as follows:

Sec. 19.006. RULES. The department, with the advice of the advisory council, shall adopt standards and rules:

(1) necessary to administer the citrus budwood certification program and the citrus nursery certification program; [and]

(2) to regulate the sale of citrus budwood and citrus nursery trees as supplies of certified citrus budwood and certified citrus nursery trees become available; and

(3) requiring citrus nursery stock sold in the citrus zone to be propagated:
   (A) using certified citrus budwood; and
   (B) in an enclosed structure that:
      (i) is built to specifications as determined by department rule; and
      (ii) has a top and sides that are built to exclude insects that may transmit citrus pathogens.

SECTION 7. Sections 19.007, 19.008, 19.009, 19.010, and 19.011, Agriculture Code, are amended to read as follows:

Sec. 19.007. CERTIFICATION STANDARDS. (a) The department shall establish:

(1) the certification standards for genetic purity for varieties of citrus budwood by type;

(2) procedures that must be followed to prevent the introduction of dangerous citrus pathogens into budwood stock from and in foundation groves;

(3) procedures for certification of citrus budwood grown in foundation groves; and

(4) procedures for certification of citrus nurseries and citrus nursery stock.

(b) The department shall establish standards and procedures for:

(1) inspecting and testing for diseases, using current technologies in disease diagnosis, and for desirable horticultural characteristics of citrus budwood grown in designated foundation groves;

(2) certifying citrus budwood and citrus nurseries meeting requirements established under this chapter;

(3) maintaining a source of citrus budwood of superior tested varieties for distribution to the citrus industry;

(4) verifying propagation of citrus varieties and special rootstocks for growers on request, including an inspection of the citrus nursery's books and records; [and]

(5) maintaining appropriate records required for participation in the citrus budwood certification and citrus nursery stock certification programs;

(6) inspecting citrus nurseries to ensure that the structures in which citrus nursery stock is propagated meet standards set by the department, including standards for:
   (A) size;
   (B) construction;
   (C) insect resistance;
   (D) citrus nursery sanitation;
   (E) movement of the citrus nursery stock from one structure to another at the nursery;
   (F) proximity to nearby citrus groves; and
   (G) other standards for the operation of a certified nursery as may be required by the department; and
(7) requiring each citrus nursery to submit source tree bud cutting reports to the department not later than the 30th day after citrus trees are budded [program].

Sec. 19.008. APPLYING FOR FOUNDATION GROVE DESIGNATION, [AND] BUDWOOD CERTIFICATION, AND CITRUS NURSERY CERTIFICATION. (a) A person who desires to operate a foundation grove and produce certified citrus budwood for sale to the citrus industry must [shall] apply for foundation grove designation and citrus budwood certification in accordance with rules adopted by the department.

(b) A person who desires to operate a citrus nursery to propagate citrus nursery stock for sale in the citrus zone must apply for citrus nursery certification in accordance with rules adopted by the department.

Sec. 19.009. REVOCATION. The department shall establish rules regarding the revocation of foundation grove designation, [and] citrus budwood certification, and citrus nursery certification.

Sec. 19.010. PROGRAM COST; FEES; ACCOUNT. (a) The department shall set and collect fees from persons applying for foundation grove designation, [and] citrus budwood certification, or citrus nursery certification. The department shall set the fees in an amount that recovers the department's costs in administering and enforcing the citrus budwood certification program and the citrus nursery certification program. The department may also accept funds from the citrus industry or other interested persons to cover the costs of administering the programs [program].

(b) All fees and funds collected or contributed under this section shall be deposited to the credit of an account in the general revenue fund. Money in the account may be appropriated only to the department for the purpose of administering and enforcing this chapter.

Sec. 19.011. STOP-SALE ORDER. (a) If a person offers citrus budwood or a citrus nursery tree for sale falsely claiming that it is certified, [and] that it comes from a designated foundation grove, or that it comes from a certified citrus nursery, or offers citrus budwood, [or] a citrus nursery tree, or citrus nursery stock for sale in violation of rules adopted under this chapter, the department may issue a written order to stop the sale of that citrus budwood, [or] citrus nursery tree, or citrus nursery stock. A person may not sell citrus budwood, [or] a citrus nursery tree, or citrus nursery stock that is subject to a stop-sale order under this section until:

(1) the sale is permitted by a court under Subsection (b); or

(2) the department determines that the sale of the citrus budwood, [or] citrus nursery tree, or citrus nursery stock is in compliance with this chapter and rules adopted under this chapter.

(a-1) The department may issue a written order to stop the sale of citrus nursery stock from a citrus nursery or to stop the operation of all or part of a citrus nursery if a person propagates citrus nursery stock in a citrus nursery for sale in the citrus zone and:

(1) the person falsely claims that the citrus nursery is certified; or

(2) if the citrus nursery is certified, the person fails to comply with the rules adopted under this chapter.

(a-2) A person may not sell citrus nursery stock out of a citrus nursery, or operate a citrus nursery or a part of a citrus nursery, that is subject to a stop-sale order under this section until:

(1) the sale is permitted by a court under Subsection (b); or

(2) the department determines that the citrus nursery is in compliance with this chapter and rules adopted under this chapter.

(b) The person named in the order may bring suit in a court in the county where the citrus budwood, [or] citrus nursery tree, or citrus nursery subject to the stop-sale order is located. After a hearing, the court may, as applicable, permit the citrus budwood or citrus nursery tree to be sold, or permit the citrus nursery to continue operations, if the court finds, as applicable, the citrus budwood or citrus nursery tree is not being offered for sale or that the citrus nursery is not operating in violation of this chapter.
(c) This section does not limit the department's right to act under another section of this chapter.

(d) The department shall inspect each citrus nursery in the citrus zone not less than once every two months in order to enforce this section.

SECTION 8. Subsection (a), Section 19.012, Agriculture Code, is amended to read as follows:

(a) A person commits an offense if the person:

(1) sells or offers to sell citrus budwood, a citrus nursery tree, or citrus nursery stock falsely claiming that it is certified or that it comes from a designated foundation grove or a certified citrus nursery;

(2) uses, for commercial purposes, citrus budwood that is required by department rule to be certified and is not certified or does not come from a designated foundation grove;

(3) sells or offers to sell in the citrus zone citrus nursery stock that has not been propagated in a certified citrus nursery;

(4) operates, in the citrus zone for the propagation of citrus nursery stock, a citrus nursery that is not a certified citrus nursery or that is not in compliance with this chapter or a rule adopted under this chapter;

(5) operates, outside of the citrus zone for the propagation of citrus nursery stock for sale in the citrus zone, a citrus nursery that is not a certified citrus nursery or that is not in compliance with this chapter or a rule adopted under this chapter;

(6) fails to comply with an order of the department issued under this chapter.

SECTION 9. Subsections (a) and (c), Section 19.013, Agriculture Code, are amended to read as follows:

(a) A person who violates this chapter, a rule adopted under this chapter, or an order adopted under this chapter is liable to the state for a civil penalty not to exceed $500 for each violation. Each day a violation continues is a separate violation for purposes of civil penalty assessment.

(c) A civil penalty collected under this section in a suit filed by the attorney general shall be deposited to the credit of an account in the general revenue fund. A civil penalty collected under this section in a suit filed by a county or district attorney shall be divided between the state and the county in which the county or district attorney brought suit, with 50 percent of the amount collected paid to the state for deposit to the credit of an account in the general revenue fund and 50 percent of the amount collected paid to the county. Funds credited to the account in the general revenue fund may be appropriated only to the department for purposes of administering and enforcing this chapter and rules adopted under this chapter.

SECTION 10. Section 19.014, Agriculture Code, is amended to read as follows:

Sec. 19.014. ADMINISTRATIVE PENALTIES. The department may assess an administrative penalty under Chapter 12 for a violation of this chapter if the department finds that a person:

(1) sells or offers to sell citrus budwood, a citrus nursery tree, or citrus nursery stock falsely claiming that it is certified or that it comes from a designated foundation grove or a certified citrus nursery under this chapter;

(2) uses citrus budwood in violation of rules adopted under this chapter;

(3) uses, for commercial purposes, citrus budwood that is required by department rule to be certified and is not certified or does not come from a designated foundation grove;

(4) sells or offers to sell citrus nursery stock in the citrus zone falsely claiming that the citrus nursery stock was propagated in a certified citrus nursery;

(5) operates, in the citrus zone for the propagation of citrus nursery stock, a citrus nursery that is not a certified citrus nursery or that is not in compliance with this chapter or a rule adopted under this chapter;

(6) operates, outside of the citrus zone for the propagation of citrus nursery stock for sale in the citrus zone, a citrus nursery that is not a certified citrus nursery or that is not in compliance with this chapter or a rule adopted under this chapter; or
(7) fails to comply with an order of the department issued under this chapter.

SECTION 11. Not later than October 1, 2013, the Department of Agriculture shall adopt rules to administer Chapter 19, Agriculture Code, as amended by this Act.

SECTION 12. The changes in law made by this Act apply only to an offense committed on or after the effective date of this Act. An offense committed before the effective date of this Act is covered by the law in effect when the offense was committed, and the former law is continued in effect for that purpose. For purposes of this section, an offense was committed before the effective date of this Act if any element of the offense was committed before that date.

SECTION 13. The changes in law made by this Act apply only to a violation committed on or after the effective date of this Act. A violation committed before the effective date of this Act is covered by the law in effect when the violation was committed, and the former law is continued in effect for that purpose.

SECTION 14. This Act takes effect September 1, 2013.

Passed the Senate on May 1, 2013: Yeas 30, Nays 1; passed the House on May 8, 2013: Yeas 142, Nays 5, two present not voting.

Approved May 24, 2013.

Effective September 1, 2013.

CHAPTER 167
S.B. No. 1538
AN ACT
relating to evaluating the performance, including computing dropout and completion rates, of public schools designated as dropout recovery schools.

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

SECTION 1. Subchapter C, Chapter 39, Education Code, is amended by adding Section 39.0545 to read as follows:

Sec. 39.0545. EVALUATING DROPOUT RECOVERY SCHOOLS. (a) For purposes of evaluating performance under Section 39.053(c), the commissioner shall designate as a dropout recovery school a school district or an open-enrollment charter school or a campus of a district or of an open-enrollment charter school:

(1) that serves students in grades 9 through 12 and has an enrollment of which at least 50 percent of the students are 17 years of age or older as of September 1 of the school year as reported for the fall semester Public Education Information Management System (PEIMS) submission; and

(2) that meets the eligibility requirements for and is registered under alternative education accountability procedures adopted by the commissioner.

(b) Notwithstanding Section 39.053(c)(2), the commissioner shall use the alternative completion rate under this subsection to determine the student achievement indicator under Section 39.053(c)(2) for a dropout recovery school. The alternative completion rate shall be the ratio of the total number of students who graduate, continue attending school into the next academic year, or receive a high school equivalency certificate to the total number of students in the longitudinal cohort of students.

(c) Notwithstanding Section 39.053(c)(2), in determining the performance rating under Section 39.051 of a dropout recovery school, the commissioner shall include any student described by Section 39.053(g–1) who graduates or receives a high school equivalency certificate.

(d) For a dropout recovery school, only the best result from the primary administration and any retake of an assessment instrument administered to a student in the school year