

**STATE OF MICHIGAN
96TH LEGISLATURE
REGULAR SESSION OF 2012**

**Introduced by Senators Caswell, Jones, Booher, Green, Emmons, Kahn, Marleau, Hansen, Nofs, Colbeck
and Jansen**

ENROLLED SENATE BILL No. 946

AN ACT to amend 1931 PA 189, entitled "An act to regulate the sale and distribution of nursery stock, plants, and plant products; to prevent the introduction into and the dissemination within this state of insect pests and plant diseases; to provide for the destruction and control of insect pests and plant diseases; to provide for the destruction or treatment of certain plants or plant products; to provide for the licensure and inspection of certain persons and activities under certain circumstances; to impose certain powers and duties on the director of agriculture; to create certain restricted funds for certain department activities and to allow allocation of those funds throughout the department; to provide for the promulgation of rules; to prescribe penalties and civil sanctions; and to provide remedies," by amending sections 2, 4, 6, 9, 17, and 22 (MCL 286.202, 286.204, 286.206, 286.209, 286.217, and 286.222), sections 6 and 9 as amended by 2007 PA 84.

The People of the State of Michigan enact:

Sec. 2. As used in this act:

(a) "Agent" means a person that solicits, takes orders, or sells nursery stock in this state for a grower or dealer of nursery stock, but not on the premises or place of business of the grower or dealer of nursery stock.

(b) "Department" means the department of agriculture and rural development.

(c) "Director" means the director of the department or an employee of the department authorized by the director.

(d) "Insect pests" means insects or other invertebrates injurious to plants or plant products.

(e) "Nursery" means any grounds or premises on or in which nursery stock is propagated, grown, or cultivated for the purpose of distributing or selling nursery stock as a business.

(f) "Nursery dealer" means a person that is not a grower or an original producer of nursery stock in this state, that buys nursery stock for the purpose of reselling or reshipping independently of the control of any nursery grower or nursery dealer, or that is engaged with a nursery grower or nursery dealer in handling nursery stock on a consignment basis.

(g) "Nursery grower" or "nurseryman" means a person owning, leasing, managing, or in charge of a nursery.

(h) "Nursery stock" means all domesticated or wild botanically classified hardy perennial or biennial trees, shrubs, vines, and other plants; cuttings, grafts, scions, buds, bulbs, rhizomes, or roots of any of these; and fruit pits. Nursery stock includes plants and plant parts for, or capable of, propagation, excepting field, vegetable, and flower seeds, corms, and tubers.

(i) "Person" means an individual, partnership, corporation, association, governmental entity, or other legal entity.

(j) "Places" means vessels, cars and other vehicles, buildings, docks, nurseries, orchards, and other premises where plants or plant products are grown, kept, or handled.

(k) "Plant diseases" means fungi, bacteria, nematodes, and viruses, injurious to plants or plant products, and the pathological condition in plants or plant products caused by fungi, bacteria, nematodes, and viruses.

(l) "Plant grower" or "plant dealer" means a person growing or offering for sale herbaceous perennials, or biennial nursery stock, small-fruited plants, or asparagus or rhubarb roots.

(m) "Plants or plant products" means trees, shrubs, vines, fruit, forage and cereal plants, and all other plants, cuttings, grafts, scions, buds, and all other parts of plants; including fruit, vegetables, roots, bulbs, pips, seeds, wood, lumber, and all other plant products.

(n) "Property" means real estate, personal property, and any thing or substance connected with real estate or personal property whether or not it has value.

Sec. 4. A person desiring to sell or give away nursery stock in this state shall apply in writing before April 1 of each year to the director for the inspection of the nursery stock growing in this state. A person that fails to apply for the inspection of nursery stock as required under this section is liable for the additional expense of the department for the inspection of the nursery stock. The application shall be submitted under the true name of the person. If an assumed name is used, the proprietor's name and address shall also appear on the application and in all advertising or printed matter used or distributed.

Sec. 6. (1) The director shall cause to be inspected not less than every other year each nursery located in this state, and each nursery dealer located in this state that receives nursery stock from other states or countries, including any nursery stock found at that nursery or nursery dealer that will be sold, offered for sale, or removed or shipped from the nursery to ascertain whether they are infested with insect pests or infected with plant diseases. Inspections of nurseries that distribute nursery stock interstate shall be conducted annually, provided those nurseries are in compliance with this act. If the director conducts an inspection under this subsection, the director shall assess an inspection fee as provided for in this section.

(2) If upon the inspection of any nursery stock the department determines that the nursery stock or nursery and its premises are apparently free from insect pests and plant diseases, and if the necessary inspection fees have been paid, the director shall give or send to the owner of the nursery or of the nursery stock or to the person in charge of the nursery or nursery stock a certificate executed by the director setting forth the fact of the inspection.

(3) Certificates of inspection are valid from November 1 in 1 year to October 31 of the following year. A nursery owner or nursery dealer may request a second inspection be performed, prior to offering for sale or removing or shipping of nursery stock from a nursery or other premises. The department shall perform the inspection if the nursery owner, nursery dealer, or applicant pays an inspection fee based upon the actual cost to the department in conducting the inspection.

(4) A person shall not sell, offer for sale, or remove or ship from a nursery or other premises any nursery stock until the nursery stock has been officially inspected and a certificate or permit covering it has been granted by the director, except that nursery stock may be shipped to the director without an inspection and certification.

(5) The director shall not grant a certificate of inspection to persons that intend to sell or remove nursery stock originally supplied from the state, federal, or state and federal nurseries or by any political subdivision or its agencies.

(6) The director shall charge an inspection fee based upon the cost to the department of making the inspection. However, the director shall adjust the schedule of fees for the costs of making the various inspections of nursery stock, plants, and plant materials as required by this act. The director shall review and adjust its schedule of fees for the inspections at the end of each fiscal year. In any given fiscal year, the director may raise inspection fees by not more than an amount determined by the state treasurer to reflect the cumulative annual percentage change in the Detroit-Ann Arbor-Flint consumer price index over the 1-year period. An adjustment under this subsection shall not exceed 5% even if the amount determined by the state treasurer to reflect the cumulative annual percentage change over the 1-year period is more than 5%. If the cumulative annual percentage change over the 1-year period is less than zero, a cumulative annual percentage change of zero shall be used for the adjustment. The adjustment shall be rounded to the nearest dollar to set each year's fee under this subsection, but the absolute value shall be carried over and used to calculate the next annual adjustment. The commission of agriculture and rural development shall approve all adjustments to the fees before they are adopted.

Sec. 9. (1) A person growing or desiring to sell nursery stock in this state shall, on or before October 31 of each year, apply to the director for a license. A person that is a nursery dealer that only purchases nursery stock grown in this state by a nursery grower in this state that holds a valid nursery license and certificate of inspection is not required to apply for a license, but instead shall, on or before October 31 of each year, register with the director as a nursery dealer. The fee to register as a nursery dealer is \$35.00. The annual nursery license fee is \$100.00. The annual license fee for plant growers or plant dealers is \$100.00. The annual license fee for nursery dealers is \$100.00. For persons growing less than 1/4 acre of nursery stock or utilizing less than 200 square feet of greenhouse space, the fee for a license is \$40.00. License fees provided for in this act are due and payable at the office of the director on or before October 31 of each year. The fees imposed in this subsection are subject to subsection (8).

(2) The agriculture licensing and inspection fees fund is created within the state treasury. The state treasurer may receive license and inspection fees and administrative and civil fines received pursuant to this act and other acts, as provided for by law, that are administered by the department for deposit into the agriculture licensing and inspection fees fund. The state treasurer may also receive money or other assets from any other source for deposit into the agriculture licensing and inspection fees fund. The state treasurer shall direct the investment of the agriculture licensing and inspection fees fund and shall credit to the agriculture licensing and inspection fees fund interest earnings from fund investments. Money in the agriculture licensing and inspection fees fund at the close of the fiscal year shall remain in the fund and shall not lapse to the general fund. The department shall expend money from the agriculture licensing and inspection fees fund, upon appropriation, for the purpose of administering and carrying out those duties required by law under this act and other acts, as provided by law, that are administered by the department. The department shall be the administrator of the agriculture licensing and inspection fees fund for auditing purposes.

(3) Subject to subsection (4), license fees, inspection fees, and other noncriminal fees collected under this section and section 6 and administrative fines imposed under this act shall be deposited into the agriculture licensing and inspection fees fund, to be used, upon appropriation, by the director in administering and carrying out those duties required by law under this act and to develop and improve training and outreach programs for the purpose of safeguarding plants or plant products from unwanted plant pests.

(4) The horticulture fund is created within the state treasury. The state treasurer may receive money or other assets from any source for deposit into the horticulture fund. Up to \$70,000.00 of the funds generated through licensing may be deposited into the horticulture fund each year. The state treasurer shall direct the investments of the horticulture fund. The state treasurer shall credit interest and earnings from horticulture fund investments to the horticulture fund. Assets in the horticulture fund at the close of the fiscal year shall remain in the horticulture fund and shall not lapse to the general fund. The director shall administer the horticulture fund and shall expend money from the horticulture fund, upon appropriation, to provide for research projects, to develop and improve training programs, and to develop outreach materials for the purposes of safeguarding plants or plant products from unwanted plant pests. The director shall administer the horticulture fund with advice and consultation from the horticultural advisory committee created in subsection (5).

(5) There is created a horticulture advisory committee. Members of this committee, to be named by the director, shall include representatives from the horticulture industry.

(6) This section does not apply to persons engaged in fruit growing that are not nursery growers but desire to sell or exchange surplus small fruit plants of their own growing, or to farmers or other persons that may sell or give away wild shade trees, wild shrubs, wild vines, wild hardy perennials, or wild evergreens from their own premises.

(7) The director shall issue an initial or renewal license under this section not later than 90 days after a completed application for the license is received by the department. If the application is considered incomplete by the director, the director shall notify the applicant in writing, or make the information electronically available, within 30 days after receipt of the incomplete application, describing the deficiency and requesting the additional information. The 90-day period is tolled upon notification by the director of a deficiency until the date the requested information is received by the director. The determination of the completeness of an application does not operate as an approval of the application for the license and does not confer eligibility of an applicant determined otherwise ineligible for issuance of a license. The director shall not discriminate against an applicant in the processing of the application based upon the fact that the license fee was refunded or discounted under subsection (8).

(8) If the director fails to issue or deny a license within the time required by this section, the director shall return the license fee and shall reduce the license fee for the applicant's next renewal application, if any, by 15%. The failure to issue a license within the time required under this section does not allow the department to otherwise delay the processing of the application, and that application, upon completion, shall be placed in sequence with other completed applications received at that same time.

(9) The director shall submit a report by December 1 of each year to the standing committees and appropriations subcommittees of the senate and house of representatives concerned with agricultural issues. The director shall include all of the following information in the report concerning the preceding fiscal year:

(a) The number of initial and renewal applications the department received and completed within the 90-day time period described in subsection (7).

(b) The number of applications denied.

(c) The number of applicants not issued a license within the 90-day time period and the amount of money returned to licensees and registrants under subsection (8).

(10) As used in this section, "completed application" means an application complete on its face and submitted with any applicable licensing and inspection fees as well as any other information, records, approval, security, or similar item required by law or rule from a local unit of government, a federal agency, or a private entity but not from another department or agency of this state.

Sec. 17. (1) A person shall not sell within this state any nursery stock unless the nursery stock has been inspected and a certificate issued by the director stating that the nursery stock has been inspected and found apparently free from insect pests and plant diseases. However, a nursery grower or plant grower holding a valid certificate covering nursery stock grown by him or her may ship under the certificate nursery stock grown for him or her elsewhere or purchased by him or her from other states or countries, if all of the nursery stock is received under a certificate acceptable to the director that states that it has been inspected where grown and found to be apparently free from insect pests and diseases. The director may also inspect or reinspect at any time or place any nursery stock shipped within this state or shipped into this state as provided in this section. Except as provided in this subsection, a person shall not ship into or transport within this state any nursery stock unless it has first been inspected by the director. In the case of plants moving from a nursery or other premises, a tag bearing a valid certificate issued to the nursery grower or person owning or in charge of other premises from where the plants have been moved shall be in plain sight and attached to some of the plants on the vehicle used to transport the plants. All wild trees, herbaceous perennials, and shrubs taken up from a person's woodlots, forests, or other premises other than a nursery, when being shipped into or transported on the highways of this state, shall have attached to each plant a special tag furnished at cost by the director, which tag shall not be removed from the plant or plants after they are replanted, and shall have plainly printed on the tag the fact that this plant is of wild stock and is not nursery grown and this information shall be clearly and legibly stated in all advertising media offering the plant for sale. Carrying uninspected nursery stock in vehicles is prohibited, and the director may post signs on the highways warning tourists and other carriers against the transportation of wild trees, herbaceous perennials, and shrubs and he or she may cooperate with the department of natural resources and seek the cooperation of the Michigan state police or local law enforcing officials in the enforcement of this act.

(2) A person receiving or selling nursery stock on a wholesale basis shall maintain shipping documents including certificates of inspection of the nursery stock for a period of 36 months after the date of receipt or sale, whichever is later. A person that receives nursery stock on a retail basis is not subject to this subsection.

Sec. 22. A person that wishes to ship plants or plant products into another state or country may request that the director inspect the plants or plant products for insect pests or diseases or other factors likely to prevent the acceptance of the plants or plant products in that state or country. The request shall include an agreement to pay in full the expenses of the inspection. Upon receipt of a request and agreement under this section, or as soon thereafter as may be conveniently practicable, the director shall comply with the request and, upon the receipt of the expenses of the inspection, shall issue to the applicant a certificate to the facts disclosed.

This act is ordered to take immediate effect.

Carol Morey Viventi

Secretary of the Senate

Jay E. Randall

Clerk of the House of Representatives

Approved

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Governor