

**WORKING DRAFT**

SENATE FILE NO. \_\_\_\_\_

Nursery stock.

Sponsored by: Joint Agriculture, Public Lands and Water  
Resources Interim Committee

A BILL

for

1 AN ACT relating to nursery stock; providing for cease and  
2 desist orders relating to nursery stock violations;  
3 providing procedures; modifying definitions; adding  
4 definitions; eliminating transportation of nursery stock  
5 from licensing requirements; providing for exemptions;  
6 requiring inspections; limiting nursery stock sales;  
7 increasing penalties; repealing certain nonresident  
8 requirements; and providing for an effective date.

9

10 *Be It Enacted by the Legislature of the State of Wyoming:*

11

12 **Section 1.** W.S. 11-9-108 is created to read:

13

1           **11-9-108. Cease and desist orders; quarantine;**  
2   **confiscation; destruction or removal of nursery stock;**  
3   **hearing; final orders; enforcement.**

4  
5           (a) The department is authorized to issue cease and  
6   desist orders to any nursery stock dealer, quarantine any  
7   place of nursery stock business or order confiscation,  
8   destruction or removal from the state, of any nursery stock  
9   the department determines poses a serious risk of  
10   introducing injurious insects, plant diseases, other pests  
11   or noxious weeds into the state.

12  
13           (b) All notices and orders required to be served by  
14   the department under this article shall be served by  
15   certified mail, return receipt requested, to the last known  
16   address of the nursery stock dealer or may be served as  
17   provided by the Wyoming rules of civil procedure. The  
18   notice of an order issued by the department under this  
19   article shall include:

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21           (i) A statement of the grounds for issuing the  
22   order, including a citation of the statute or rule  
23   involved;

1           (ii) A statement of the supporting facts;

2

3           (iii) A statement informing the nursery stock  
4 dealer subject to the order of the right to a hearing on  
5 the order before the director, right of appeal of any  
6 subsequent order in accordance with the Wyoming  
7 Administrative Procedure Act and that failure to timely  
8 request a hearing shall result in the order becoming final;  
9 and

10

11           (iv) A copy of the order.

12

13           (c) A request for a hearing on a proposed order  
14 issued by the department under this article shall be in  
15 writing and shall be submitted to the director no later  
16 than seven (7) days after receipt of the notice from the  
17 department. The director shall hold the hearing not later  
18 than fifteen (15) days after receipt of the request for  
19 hearing, unless the nursery stock dealer subject to the  
20 proposed order requests an extension of time for good cause  
21 shown.

22

23           (d) A hearing on a proposed order issued under this  
24 article shall be a contested case hearing conducted in

1 accordance with the Wyoming Administrative Procedure Act.  
2 After the hearing, the director shall issue findings of fact  
3 and conclusions of law and a final decision either  
4 confirming or dismissing the proposed order. The director  
5 shall confirm a proposed order only if the director finds  
6 by a preponderance of the evidence that grounds exist under  
7 this article for issuing the proposed order. Otherwise,  
8 the director shall dismiss the proposed order. If the  
9 director confirms a proposed order it shall become a final  
10 order.

11  
12 (e) The department shall serve a final order upon the  
13 nursery stock dealer who is the subject of the order. The  
14 final order shall take effect upon service and shall remain  
15 in effect until the department or a court of competent  
16 jurisdiction terminates the final order. The nursery stock  
17 dealer who is the subject of the final order may appeal the  
18 issuance of the final order in accordance with Wyoming  
19 Administrative Procedure Act.

20  
21 (f) On or after the effective date of a final order  
22 under this article, the attorney general, upon request from  
23 the department, may apply to the district court of the  
24 county in which the nursery is located or the county where

1 the violations of this article occurred, for enforcement of  
2 the final order.

3

4 **Section 2.** W.S. 11-9-101(a), 11-9-102(a), (b), (c)  
5 and (e) and by creating a new subsection (f), 11-9-103,  
6 11-9-104(b) and by creating new subsections (c) and (d),  
7 11-9-105, 11-9-107 and by amending and renumbering 11-9-108  
8 as 11-9-109 are amended to read:

9

10 **11-9-101. Definitions.**

11

12 (a) As used in W.S. 11-9-101 through  
13 ~~11-9-108~~11-9-109:

14

15 (i) "Nursery" means any ground, place or  
16 establishment where nursery stock is grown, offered for  
17 sale, sold, ~~or~~ distributed or is offered as part of a  
18 landscape service;

19

20 (ii) "Nursery stock" means:

21

22 (B) All ~~berry~~ plants, rooted cuttings and  
23 plants with roots attached grown from bulbs, corms, tubers,  
24 rhizomes or other vegetative parts, whether produced

1 out-of-doors or under glass and whether grown in open  
2 ground or in benches, boxes, pots or other containers; ~~and~~

3

4 (C) All bulbs, corms, pips, rhizomes,  
5 tubers, roots, cuttings, scions, grafts or other vegetative  
6 parts of plants; and -

7

8 (D) All ground cover, including sod, plugs  
9 and vegetative mulches and compost.

10

11 (iii) "Nursery stock" shall not include noxious,  
12 regulated or designated weeds;

13

14 ~~(iii)~~ (iv) "Nursery stock dealers" means any  
15 person who obtains nursery stock to be offered for sale or  
16 distribution;

17

18 ~~(iv)~~ (v) "Nursery stock salesman" means any  
19 person selling, distributing or soliciting orders for  
20 delivery of nursery stock directly to the ultimate consumer  
21 from a supply on hand at a location other than a nursery  
22 stock dealer's place of business;

23

1           ~~(v)~~(vi) "Injurious insect" means any animal of  
2 the phylum Arthropoda, Arachnida or Mollusca known to be  
3 injurious to agricultural, horticultural or ornamental  
4 plants;

5  
6           (vii) "Other pest" means nematode, parasitic  
7 plant, plant parasite or other vector;

8  
9           ~~(vi)~~(viii) "Plant disease" means any fungi,  
10 bacteria, ~~nematode, or~~ virus ~~or plant parasite~~ injurious to  
11 plants and plant products~~;~~

12  
13           (ix) "Plant inspection or health certificate"  
14 means a legal document issued by the department or the  
15 plant regulatory agency of another state declaring that the  
16 nursery stock being sold or distributed is apparently free  
17 of injurious insects, plant diseases, other pests and  
18 noxious weeds;

19  
20           (x) "Vector" means an insect or other organism  
21 that transmits a pathogenic fungus, virus, bacterium or  
22 other infection.

1           **11-9-102. License requirements and fees for dealers**  
2 **and salesmen; disposition of fees.**

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4           (a) No person shall engage in the business of  
5 selling, offering for sale, or distributing ~~or transporting~~  
6 nursery stock within Wyoming without first obtaining a  
7 license from the state department of agriculture. The fee  
8 for a license shall be the fee authorized by W.S. 11-1-104.

9  
10          (b) Upon application for a resident nursery stock  
11 dealer license and payment of the required fee, the  
12 director, or an authorized inspector shall inspect the  
13 premises and stock of the applicant and shall issue the  
14 license if the inspection shows the premises and stock to  
15 be apparently free from injurious insects, plant diseases, or  
16 other pests or ~~primary~~ noxious or designated weeds.

17  
18          (c) No person shall act as a nursery stock salesman  
19 without first securing a license from the state department  
20 of agriculture. The fee for a license shall be ~~granted if~~  
21 ~~the applicant shows evidence of knowledge of the nursery~~  
22 ~~stock industry and pays~~ the fee authorized by W.S.  
23 11-1-104.



1 (e) Licenses granted to nursery stock dealers or  
2 salesmen ~~within or outside of Wyoming~~ expire on March 31  
3 ~~next following date of issue~~ of each year. All license fees  
4 collected shall be deposited in the general fund.

5  
6 (f) Any person may petition the department for  
7 exemption from the licensing requirement. The petition for  
8 exemption shall be applied for annually.

9  
10 **11-9-103. Right of entry of authorized persons for**  
11 **inspection.**

12  
13 The director, or his authorized agents, during reasonable  
14 business hours, may enter upon or into any premises, lands,  
15 establishments or places in this state where they suspect  
16 that injurious insects, plant diseases or noxious or  
17 designated weeds occur for the purpose of inspecting,  
18 controlling or exterminating insects or diseases or  
19 otherwise carrying out the provisions of W.S. 11-9-101  
20 through ~~11-9-108~~ 11-9-109.

21  
22 **11-9-104. Shipping inspection certificate; health**  
23 **certificate; public carriers not to accept stock without**  
24 **affidavit.**

1

2 (b) Public carriers shall not accept for shipment  
3 nursery stock that does not bear a proper affidavit showing  
4 apparent freedom from injurious insect, ~~pests~~, plant  
5 diseases, other pests and noxious, regulated or designated  
6 weeds.

7

8 (c) Any person shipping, selling or distributing  
9 nursery stock from out of state shall furnish with each  
10 shipment of nursery stock a plant inspection or health  
11 certificate stating that the nursery stock to be sold,  
12 offered for sale or distributed into Wyoming has been  
13 inspected and issued a plant inspection or health  
14 certificate by the state of origin.

15

16 (d) Resident nursery stock dealers shall request an  
17 inspection of any nursery stock to be shipped out of  
18 Wyoming. An annual inspection shall be sufficient for the  
19 purposes of this subsection. The department shall issue a  
20 plant inspection or health certificate after inspection by  
21 the department of the premises and nursery stock.

22

23 **11-9-105. Nursery stock for sale; condition**  
24 **generally.**

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2       (a) All nursery stock sold or offered for sale shall  
3 be in a sound, healthy condition and shall be stored and  
4 displayed under conditions which will maintain its vigor.  
5 Nursery stock which is dead or so seriously weakened that  
6 it will not grow with normal vigor when given reasonable  
7 care shall not be sold or offered for sale.

8

9       (b) Any nursery stock containing any injurious  
10 insects, plant diseases, other pests or noxious, regulated  
11 or designated weeds shall not be sold.

12

13       **11-9-107. Rules and regulations by director of**  
14 **agriculture; objections.**

15

16 The director may issue and enforce rules, regulations and  
17 definitions to implement the provisions of W.S. 11-9-101  
18 through ~~11-9-108~~11-9-109, subject to the Wyoming  
19 Administrative Procedure Act. ~~Licensed nursery stock~~  
20 ~~dealers or salesmen shall be given an opportunity to file~~  
21 ~~verified objections, if any, before final adoption of the~~  
22 ~~rules.~~

23

1           **Section 3.** W.S. 11-9-108 by amending and renumbering  
2 11-9-108 as 11-9-109 is amended to read:

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4           ~~11-9-108~~11-9-109. **Penalty for violation of**  
5 **provisions.**

6

7 Any person who violates any provision of W.S. 11-9-101  
8 through ~~11-9-108~~11-9-109 or any rule or regulation issued  
9 pursuant thereto is guilty of a misdemeanor and shall be  
10 fined not ~~less~~more than ~~twenty-five dollars (\$25.00) or~~  
11 ~~more than one hundred dollars (\$100.00)~~one thousand  
12 dollars (\$1,000.00) for each offense, and may have any  
13 license issued to them under such statutes suspended or  
14 revoked. Each day shall constitute a separate violation.  
15 Any person found guilty of violating any provision of W.S.  
16 11-9-101 through 11-9-109, shall reimburse the state for  
17 the cost of any treatments, control actions, quarantine,  
18 confiscation, destruction or removal of any nursery stock  
19 from the state resulting from the violation.

20

21           **Section 4.** W.S. 11-9-102(d) is repealed.

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23           **Section 5.** This act is effective July 1, 2007.

24

1

(END)