

ENROLLED ACT NO. 43, SENATE

FIFTY-NINTH LEGISLATURE OF THE STATE OF WYOMING
2007 GENERAL SESSION

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

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

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

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

(a) The department is authorized to issue cease and desist orders to any nursery stock dealer, quarantine any place of nursery stock business or order confiscation, destruction or removal from the state, of any nursery stock the department determines poses a serious risk of introducing or spreading injurious insects, plant diseases, other pests or prohibited, restricted, regulated or designated noxious weeds within the state.

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

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

(ii) A statement of the supporting facts;

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

(iv) A copy of the order.

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

(d) A hearing on a proposed order issued under this article shall be a contested case hearing conducted in accordance with the Wyoming Administrative Procedure Act. After the hearing, the director shall issue findings of fact and conclusions of law and a final decision either confirming or dismissing the proposed order. The director shall confirm a proposed order only if the director finds by a preponderance of the evidence that grounds exist under this article for issuing the proposed order. Otherwise, the director shall dismiss the proposed order. If the

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director confirms a proposed order it shall become a final order.

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

(f) On or after the effective date of a final order under this article, the attorney general, upon request from the department, may apply to the district court of the county in which the nursery is located or the county where the violations of this article occurred, for enforcement of the final order.

Section 2. W.S. 11-9-101(a)(intro), (i), (ii)(B), (C), by creating a new subparagraph (D), by creating a new paragraph (iii), by renumbering (iii) and (iv) as (iv) and (v), by amending and renumbering (v) as (vi), by creating a new paragraph (vii), by amending and renumbering (vi) as (viii) and by creating new paragraphs (ix) through (xii), 11-9-102, 11-9-103, 11-9-104(b) and by creating new subsections (c) and (d), 11-9-105 and 11-9-107 are amended to read:

11-9-101. Definitions.

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

(i) "Nursery" means any ground, place or establishment where nursery stock is grown, offered for

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sale, sold, ~~or~~ distributed or is offered as part of a landscape service;

(ii) "Nursery stock" means:

(B) All ~~berry~~ plants, rooted cuttings and plants with roots attached grown from bulbs, corms, tubers, rhizomes or other vegetative parts, whether produced out-of-doors or under glass and whether grown in open ground or in benches, boxes, pots or other containers; ~~and~~

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

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

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

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

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

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

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(vii) "Other pest" means any animal of the phyla Mollusca or Nematoda or parasitic plant, plant parasite or other vector known to be injurious to agricultural or horticultural plants;

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

(ix) "Plant inspection or health certificate" means a legal document issued by the department or the plant regulatory agency of another state declaring that the nursery stock being sold or distributed is apparently free of injurious insects, plant diseases, other pests and prohibited, restricted, regulated or designated noxious weeds;

(x) "Vector" means an insect, plant or other organism that transmits an insect, fungus, virus, bacterium or other infection;

(xi) "Designated noxious weed" means as defined in W.S. 11-5-102(a)(xi);

(xii) "Substantially free" means any injurious insect, other pest or plant disease is not locatable in groups or not affecting more than one percent (1%) of the nursery stock.

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

(a) No person shall engage in the business of selling, offering for sale, or distributing ~~or transporting~~ nursery stock within Wyoming without first obtaining a

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license from the state department of agriculture. The fee for a license shall be the fee authorized by W.S. 11-1-104.

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

(c) If the inspection reveals the premises or stock not to be substantially free or apparently free of injurious insects, plant diseases, other pests or prohibited, restricted, regulated or designated noxious weeds, the nursery stock shall be removed or quarantined from sale and a written plan of action to remedy the condition by treatment, control actions or destruction shall be presented to the inspector within one (1) working day. The nursery shall be inspected again within a time agreed upon by the director, or his authorized agent, and the dealer and noted in writing on the plan, but no later than fifteen (15) days after the previous inspection. Upon subsequent inspection the nursery stock shall be substantially free or apparently free from the injurious insects, plant diseases and other pests and free from prohibited, restricted, regulated or designated noxious weeds in order to be released for sale. Failure to comply with this subsection shall subject the dealer to the penalties provided in W.S. 11-9-108 or 11-9-109.

~~(e)~~(d) No person shall act as a nursery stock salesman without first securing a license from the state department of agriculture. The fee for a license shall be

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~~granted if the applicant shows evidence of knowledge of the nursery stock industry and pays~~ the fee authorized by W.S. 11-1-104.

~~(d)~~(e) No nonresident shall sell, take orders to sell, offer for sale or distribute nursery stock which has been grown outside this state without first securing a license from the department of agriculture. The license fee for each establishment shipping nursery stock into Wyoming shall be the fee authorized by W.S. 11-1-104. No license shall be granted to a nonresident unless the applicant agrees to furnish with each shipment of nursery stock an affidavit stating that the nursery stock to be sold, offered for sale or transported into Wyoming has been inspected by the proper state, district or county officials of the state of origin and found free from injurious insects, plant diseases and prohibited, restricted, regulated or designated noxious ~~or designated~~ weeds.

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

(g) Charitable and educational institutions shall be exempt from licensing requirements imposed by this section.

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

The director, or his authorized agents, during reasonable business hours, may enter upon or into any premises, lands, establishments or places in this state where they suspect that injurious insects, other pests, plant diseases or prohibited, restricted, regulated or designated noxious ~~or designated~~ weeds occur for the purpose of inspecting,

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controlling or exterminating insects or diseases or otherwise carrying out the provisions of W.S. 11-9-101 through ~~11-9-108~~ 11-9-109.

11-9-104. Shipping inspection certificate; health certificate; public carriers not to accept stock without affidavit.

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

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

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

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

(a) All nursery stock sold or offered for sale shall be in a sound, healthy condition and shall be stored and displayed under conditions which will maintain its vigor. Nursery stock which is dead or so seriously weakened that

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it will not grow with normal vigor when given reasonable care shall not be sold or offered for sale.

(b) Any nursery stock shall be substantially free or apparently free of any injurious insects, plant diseases, other pests or prohibited, restricted, regulated or designated weeds and shall not be sold, offered for sale or distributed.

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

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

Section 3. W.S. 11-9-108 as 11-9-109 is amended and renumbered to read:

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

(a) Any person who violates any provision of W.S. 11-9-101 through ~~11-9-108~~ 11-9-109 or any rule or regulation issued pursuant thereto is guilty of a misdemeanor and shall be fined not ~~less~~ more than ~~twenty five dollars (\$25.00) or more than one hundred dollars (\$100.00)~~ seven hundred fifty dollars (\$750.00) for each offense, and may have any license issued to them under such statutes suspended or revoked. Each day shall constitute a separate violation.

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(b) Any person found guilty of violating any provision of W.S. 11-9-101 through 11-9-109, shall reimburse the state for the cost of any treatments, control actions, quarantine, confiscation, destruction or removal of any nursery stock from the state resulting from the violation. Amounts collected under this subsection shall be paid to the department of agriculture technical services division account.

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

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

(END)

Speaker of the House

President of the Senate

Governor

TIME APPROVED: _____

DATE APPROVED: _____

I hereby certify that this act originated in the Senate.

Chief Clerk