

SENATE FILE NO. SF0064

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

14 **11-9-108. Cease and desist orders; quarantine;**
15 **confiscation; destruction or removal of nursery stock;**
16 **hearing; final orders; enforcement.**

1

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

9

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

17

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

21

22 (ii) A statement of the supporting facts;

23

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

8
9 (iv) A copy of the order.

10
11 (c) A request for a hearing on a proposed order
12 issued by the department under this article shall be in
13 writing and shall be submitted to the director no later
14 than seven (7) days after receipt of the notice from the
15 department. The director shall hold the hearing not later
16 than fifteen (15) days after receipt of the request for
17 hearing, unless the nursery stock dealer subject to the
18 proposed order requests an extension of time for good cause
19 shown.

20
21 (d) A hearing on a proposed order issued under this
22 article shall be a contested case hearing conducted in
23 accordance with the Wyoming Administrative Procedure Act.
24 After the hearing, the director shall issue findings of

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

9
10 (e) The department shall serve a final order upon the
11 nursery stock dealer who is the subject of the order. The
12 final order shall take effect upon service and shall remain
13 in effect until the department or a court of competent
14 jurisdiction terminates the final order. The nursery stock
15 dealer who is the subject of the final order may appeal the
16 issuance of the final order in accordance with Wyoming
17 Administrative Procedure Act.

18
19 (f) On or after the effective date of a final order
20 under this article, the attorney general, upon request from
21 the department, may apply to the district court of the
22 county in which the nursery is located or the county where
23 the violations of this article occurred, for enforcement of
24 the final order.

1

2 **Section 2.** W.S. 11-9-101(a)(intro), (i), (ii)(B),
3 (C), by creating a new subparagraph (D), by creating a new
4 paragraph (iii), by renumbering (iii) and (iv) as (iv) and
5 (v), by amending and renumbering (v) as (vi), by creating a
6 new paragraph (vii), by amending and renumbering (vi) as
7 (viii) and by creating new paragraphs (ix) and (x),
8 11-9-102(a), (b), (c) and (e) and by creating a new
9 subsection (f), 11-9-103, 11-9-104(b) and by creating new
10 subsections (c) and (d), 11-9-105 and 11-9-107 are amended
11 to read:

12

13 **11-9-101. Definitions.**

14

15 (a) As used in W.S. 11-9-101 through ~~11-9-108~~
16 11-9-109:

17

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

22

23 (ii) "Nursery stock" means:

24

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

6
7 (C) All bulbs, corms, pips, rhizomes,
8 tubers, roots, cuttings, scions, grafts or other vegetative
9 parts of plants; ~~i-~~ and

10

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

13

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

16

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

20

21 ~~(iv)~~ (v) "Nursery stock salesman" means any
22 person selling, distributing or soliciting orders for
23 delivery of nursery stock directly to the ultimate consumer

1 from a supply on hand at a location other than a nursery
2 stock dealer's place of business;

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

8
9 (vii) "Other pest" means nematode, parasitic
10 plant, plant parasite or other vector;

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

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

1 (x) "Vector" means an insect or other organism
2 that transmits a pathogenic fungus, virus, bacterium or
3 other infection.

4
5 **11-9-102. License requirements and fees for dealers**
6 **and salesmen; disposition of fees.**

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

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

21
22 (c) No person shall act as a nursery stock salesman
23 without first securing a license from the state department
24 of agriculture. The fee for a license shall be ~~granted if~~

1 ~~the applicant shows evidence of knowledge of the nursery~~
2 ~~stock industry and pays~~ the fee authorized by W.S.
3 11-1-104.

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

9
10 (f) An exemption from licensing requirements may be
11 granted upon petition to the department. The department
12 shall consider any petition and shall grant the petition
13 within thirty (30) days of receiving the petition if the
14 petitioner shows the exemption will only apply to
15 operations of a charitable or educational institution or if
16 the gross annual nursery stock sales are less than one
17 hundred dollars (\$100.00).

18
19 **11-9-103. Right of entry of authorized persons for**
20 **inspection.**

21
22 The director, or his authorized agents, during reasonable
23 business hours, may enter upon or into any premises, lands,
24 establishments or places in this state where they suspect

1 that injurious insects, plant diseases or noxious or
2 designated weeds occur for the purpose of inspecting,
3 controlling or exterminating insects or diseases or
4 otherwise carrying out the provisions of W.S. 11-9-101
5 through ~~11-9-108~~ 11-9-109.

6
7 **11-9-104. Shipping inspection certificate; health**
8 **certificate; public carriers not to accept stock without**
9 **affidavit.**

10
11 (b) Public carriers shall not accept for shipment
12 nursery stock that does not bear a proper affidavit showing
13 apparent freedom from injurious insect, ~~pests,~~ plant
14 diseases, other pests and noxious, regulated or designated
15 weeds.

16
17 (c) Any person shipping, selling or distributing
18 nursery stock from out of state shall furnish with each
19 shipment of nursery stock a plant inspection or health
20 certificate stating that the nursery stock to be sold,
21 offered for sale or distributed into Wyoming has been
22 inspected and issued a plant inspection or health
23 certificate by the state of origin.

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

7
8 **11-9-105. Nursery stock for sale; condition**
9 **generally.**

10
11 (a) All nursery stock sold or offered for sale shall
12 be in a sound, healthy condition and shall be stored and
13 displayed under conditions which will maintain its vigor.
14 Nursery stock which is dead or so seriously weakened that
15 it will not grow with normal vigor when given reasonable
16 care shall not be sold or offered for sale.

17
18 (b) Any nursery stock containing any injurious
19 insects, plant diseases, other pests or noxious, regulated
20 or designated weeds shall not be sold, offered for sale or
21 distributed.

22
23 **11-9-107. Rules and regulations by director of**
24 **agriculture; objections.**

1

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

9

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

12

13 ~~11-9-108~~ 11-9-109. **Penalty for violation of**
14 **provisions.**

15

16 (a) Any person who violates any provision of W.S.
17 11-9-101 through ~~11-9-108~~ 11-9-109 or any rule or
18 regulation issued pursuant thereto is guilty of a
19 misdemeanor and shall be fined not ~~less~~ more than
20 ~~twenty five dollars (\$25.00) or more than one hundred~~
21 ~~dollars (\$100.00)~~ seven hundred fifty dollars (\$750.00) for
22 each offense, and may have any license issued to them under
23 such statutes suspended or revoked. Each day shall
24 constitute a separate violation.

1

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

10

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

12

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

14

15 (END)