

EXHIBIT 6
DATE 3/11/09
HB 478

HOUSE BILL NO. 478

INTRODUCED BY W. GRINDE

A BILL FOR AN ACT ENTITLED: "AN ACT DEFINING "SMALL PLANT VENDOR"; EXEMPTING SMALL PLANT VENDORS FROM LICENSURE; REVISING INSPECTION AND INFESTATION PROCEDURES TO INCLUDE SMALL PLANT VENDORS; REVISING UNLAWFUL ACTS AND PENALTIES; AMENDING SECTIONS 80-7-105, 80-7-106, 80-7-108, 80-7-109, 80-7-110, 80-7-122, 80-7-133, AND 80-7-135, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE."

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

Section 1. Section 80-7-105, MCA, is amended to read:

"80-7-105. Definitions. Unless the context requires otherwise, in this chapter, the following definitions apply:

- (1) "Firm" means an individual, company, partnership, association, or corporation.
- (2) "Landscape service" means a firm that buys, sells, or resells nursery stock.
- (3) "Nursery" means the business or location where nursery stock is grown or offered for sale or resale or as part of a landscape service.
- (4) "Nursery stock" means botanically classified plants or parts of plants, including but not limited to tropical potted plants, aquatic plants, cut trees and their products, and turf or sod grass.

The following plants and plant materials may not be considered nursery stock:

- (a) field crop plants and seeds;
 - (b) pasture grasses;
 - (c) cut plants not for propagation;
 - (d) fruits or vegetables for human or animal consumption;
 - (e) cut trees and products that are going to be processed to a point that they no longer represent a pest risk; and
 - (f) plant debris for disposal or processing.
- (5) "Nursery stock certification" means the process by which the nursery stock or other plants have been inspected and found to meet certification standards established by department rule.

(6) "Plant dealer" means a firm that buys plants or plant products from a producer for the purpose of offering the plants or plant products for sale or resale or as part of a landscape service.

(7) "Plant inspection certificate" means a document issued by the department or the plant pest regulatory agency of another state that declares that the nursery stock, plants, or plant material grown by the firm named on the certificate is apparently free of injurious plant pests.

(8) "Plant pest" means an insect, weed, fungus, virus, bacteria, or other organism that can directly or indirectly injure or cause damage in a plant or a product of a plant and that meets the criteria as a pest established by department rule. For purposes of this chapter, noxious weeds, as defined in 7-22-2101(8)(a)(i), or other exotic weeds are defined as plant pests.

(9) "Small plant vendor" means a Montana firm engaged in the business of selling or distributing nursery stock that:

(a) grows the nursery stock offered for sale or distribution; and

(b) has gross annual sales of less than ~~\$3,000~~ \$1,000 in a calendar year."

Section 2. Section 80-7-106, MCA, is amended to read:

"80-7-106. License required -- application and payment of license fee -- exemption. (1)

A firm, nursery, or plant dealer engaging in the business of selling or distributing nursery stock in this state shall obtain a license for each location from the department.

(2) The license must be in the name of the firm, nursery, or plant dealer seeking the license and expires on the anniversary date established by rule by the board of review established in 30-16-302. The applicant shall provide information that the department finds necessary to carry out the provisions and purposes of this chapter and in the form determined by rule by the board of review established in 30-16-302.

(3) The department shall establish license fees by rule. License fees may be no less than ~~\$95~~ \$150 or more than ~~\$125~~ \$175. If the department determines that the revenue from the license fee is inadequate to accomplish the purposes of this chapter, the department may by rule increase the fee within the statutory limit.

(4) A new applicant or a firm, nursery, or plant dealer failing to renew a license on or before the annual anniversary date provided for in subsection (2) shall pay an additional nonrefundable late fee of \$25 for each license.

~~(5) An out-of-state firm that imports nursery stock into Montana for resale by a licensed Montana nursery or plant dealer is not required to obtain a license if the firm is licensed in the state of origin of the nursery stock and if that state extends a similar exemption to Montana firms.~~

~~(6)~~ (5) The fees required by the provisions of this section may be paid by credit card and may be discounted for payment processing charges paid by the department to a third party.

~~(7)~~ (6) A small plant vendor must be licensed but is exempt from the license fee requirements of this section."

Section 3. Section 80-7-108, MCA, is amended to read:

"80-7-108. Nursery stock inspection -- fees. (1) The department may enter the premises of a licensed firm, nursery, or plant dealer or of a small plant vendor during regular business hours for the purpose of inspecting nursery stock or other materials for possible plant pests or for determining licensure compliance. An inspection fee may not be assessed if the department requests the inspection.

(2) A firm, nursery, ~~or plant dealer,~~ or small plant vendor may request the inspection of nursery stock, plants, or other materials by giving the department 5 days' notice prior to the time when the nursery stock, plants, or other materials are ready for inspection. A firm, nursery, ~~or plant dealer,~~ or small plant vendor requesting an inspection shall pay a fee as established by department rule. The fee must cover the actual costs of inspection, surveys, and other services required to issue the plant inspection certificate.

(3) The department may issue a plant inspection certificate based on the results of a nursery stock or other ~~plant inspection or inspection survey.~~"

Section 4. Section 80-7-109, MCA, is amended to read:

"80-7-109. Duty to notify department of infestation. A firm, nursery, ~~or plant dealer,~~ or small plant vendor with nursery stock or other materials that are infected or infested with plant pests shall notify the department. The firm, nursery, ~~or plant dealer,~~ or small plant vendor shall comply with the instructions of the department for the control of the plant pests."

Section 5. Section 80-7-110, MCA, is amended to read:

"80-7-110. Removal of nursery stock -- assessment of costs. (1) If a firm, nursery, or plant dealer, or small plant vendor that owns nursery stock or other materials infected or infested with any injurious plant pest fails to comply with the instructions of the department for the destruction or control of the injurious plant pest or the destruction of the infested or infected nursery stock or other material within the time specified by the department, the department may condemn, remove, or destroy the nursery stock or other material or treat it with a proper remedy at the expense of the owner.

(2) If an owner fails to pay the actual cost of the removal, treatment, or destruction within 30 days after notice has been mailed to the owner at the owner's last-known post-office address and to any purchaser of the property under contract for deed at the purchaser's last-known post-office address, the cost becomes a lien on the land of the owner and must be added by the county treasurer to the taxes upon the property and collected as other taxes."

Section 6. Section 80-7-122, MCA, is amended to read:

"80-7-122. Nursery stock certification. At the request of a licensed firm, nursery, or plant dealer, or of a small plant vendor, the department may inspect nursery stock for the purpose of nursery stock certification. The department shall establish certification standards, inspection procedures, and fees by department rule."

Section 7. Section 80-7-133, MCA, is amended to read:

"80-7-133. Acts made unlawful -- penalty. (1) It is unlawful for a firm, nursery, or plant dealer, or small plant vendor to:

(a) fail to properly identify nursery stock offered for sale. Identification must include but is not limited to the scientific name, common name, and variety, except with regard to mixed annual plantings. Each nursery plant offered for sale as a separate plant must be identified. A single means of identification is allowed on each bundle of bare root seedlings, liners, or hedging grade nursery stock.

(b) falsely represent or misrepresent the name, age, variety, or class of any nursery stock sold or offered for sale;

(c) falsely represent or state that any nursery stock offered for sale, sold, or delivered was grown in a certain location, when in fact the nursery stock was grown in another location;

(d) deceive or defraud any firm in the sale of any nursery stock by substituting inferior or different varieties or ages from those ordered;

(e) bring into this state, offer for sale or distribution within this state, or ship, sell, or deliver upon any sale any nursery stock that is infected or infested with a plant pest dangerous to the horticultural interests of the state or that violates any federal or state quarantine; or

(f) sell or distribute nursery stock, cut decorative plants, or aquatic plants declared to be noxious weeds as defined in 7-22-2101.

(2) In case of misrepresentation, false representation, deceit, fraud, substitution, or sale and distribution of noxious weeds, the firm, nursery, ~~or plant dealer~~, or small plant vendor is subject to punishment as provided in 80-7-135 and is liable to a party damaged or injured to the extent of all damages sustained, which may be recovered in a civil action in any court of competent jurisdiction."

Section 8. Section 80-7-135, MCA, is amended to read:

"80-7-135. Penalty for violation. (1) A firm, ~~nursery, or plant dealer~~, or small plant vendor that violates or aids in the violation of a provision of this part or of the rules, orders, or quarantines of the department adopted under Title 2, chapter 4, and this part commits a civil offense and is subject to a civil penalty of not more than \$1,000 for each violation.

(2) Assessment of a civil penalty may be made in conjunction with another warning, order, or administrative action authorized by this chapter. A civil penalty collected under this section must be deposited in the nursery account established in 80-7-123 for education, training, research, and development for the nursery industry pursuant to rules established by the department.

(3) The department shall establish by rule:

(a) a penalty schedule that establishes the types of penalties and the amounts, not to exceed \$1,000, for initial and subsequent offenses; and

(b) other matters necessary for the administration of civil penalties.

(4) Sections 80-7-105, 80-7-106, 80-7-108, 80-7-109, 80-7-122, 80-7-123, and this section may not be construed as requiring the department or its agents to report violations of this part when the department believes that the public interest will be best served by a suitable notice of warning."

NEW SECTION. **Section 9. Effective date.** [This act] is effective on passage and approval.

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