

1 _____ BILL NO. _____

2 INTRODUCED BY _____
3 (Primary Sponsor)

4 A BILL FOR AN ACT ENTITLED: "AN ACT REVISING NURSERY LAWS; SETTING A LICENSE RENEWAL
5 DATE; CREATING FEES BASED ON CLASSIFICATIONS; ELIMINATING REQUESTS FOR INSPECTIONS;
6 AMENDING SECTIONS 30-16-301, 50-50-207, 80-7-105, 80-7-106, 80-7-108, AND 80-7-135, MCA; AND
7 PROVIDING AN IMMEDIATE EFFECTIVE DATE."

8
9 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

10
11 **Section 1.** Section 30-16-301, MCA, is amended to read:

12 **"30-16-301. Business registration and licensing plan -- administration.** (1) The provisions of
13 16-11-120, 16-11-122, 30-12-203, 30-16-104, 50-50-201, 50-50-203, 50-50-205, 50-50-207, 50-50-214,
14 50-57-201 through 50-57-206, 50-57-208, ~~80-7-106~~, 81-9-201, 81-20-201, and 82-15-105 constitute a means of
15 implementing a preliminary plan for streamlined registration and licensing procedures. Sections 16-11-120,
16 16-11-122, 30-12-203, 30-16-104, 50-50-201, 50-50-203, 50-50-205, 50-50-207, 50-50-214, 50-57-201 through
17 50-57-206, 50-57-208, ~~80-7-106~~, 81-9-201, 81-20-201, and 82-15-105 provide that certain licenses selected by
18 the board of review must allow for:

- 19 (a) an anniversary date for license renewal that is set by the board of review;
- 20 (b) an electronic means of verifying the information required in the license application; and
- 21 (c) payment of fees required for licensure by credit card, debit card, or other commercially acceptable
22 means as provided in 15-1-231.

23 (2) The department shall designate an employee in charge of administering the plan whose duties
24 include those of executive secretary of the board of review."
25

26 **Section 2.** Section 50-50-207, MCA, is amended to read:

27 **"50-50-207. Expiration date of license.** (1) Except as provided in subsection (2), licenses expire on
28 December 31 following the date of issue unless canceled for cause.

29 (2) License renewals provided for in 16-11-122, 30-12-203(5)(a), 50-50-201, ~~80-7-106~~, and 82-15-105
30 expire on the anniversary date established by rule by the board of review established in 30-16-302."



- 1
- 2 **Section 3.** Section 80-7-105, MCA, is amended to read:
- 3 **"80-7-105. Definitions.** Unless the context requires otherwise, in this chapter, the following definitions
- 4 apply:
- 5 (1) "Firm" means an individual, company, partnership, association, or corporation.
- 6 (2) "Landscape service" means a firm that buys, sells, or resells nursery stock.
- 7 (3) "Nursery" means the business or location where nursery stock is grown or offered for sale or resale
- 8 or as part of a landscape service.
- 9 (4) "Nursery stock" means botanically classified plants or parts of plants, including but not limited to
- 10 tropical potted plants, aquatic plants, ~~cut trees and their products~~, and turf or sod grass. The following plants and
- 11 plant materials may not be considered nursery stock:
- 12 (a) ~~field crop~~ plants and seeds that are agricultural commodities as defined in 80-4-402;
- 13 (b) pasture grasses;
- 14 (c) cut plants not for propagation;
- 15 (d) fruits or vegetables for human or animal consumption;
- 16 (e) cut trees and products that are going to be processed to a point that they no longer represent a pest
- 17 risk; and
- 18 (f) plant debris for disposal or processing.
- 19 (5) "Nursery stock certification" means the process by which the nursery stock or other plants have been
- 20 inspected and found to meet certification standards established by department rule.
- 21 (6) "Plant dealer" means a firm that buys plants or plant products from a producer for the purpose of
- 22 offering the plants or plant products for sale or resale or as part of a landscape service.
- 23 (7) "Plant inspection certificate" means a document issued by the department or the plant pest regulatory
- 24 agency of another state that declares that the nursery stock, plants, or plant material grown by the firm named
- 25 on the certificate is apparently free of injurious plant pests.
- 26 (8) "Plant pest" means an insect, weed, fungus, virus, bacteria, or other organism that can directly or
- 27 indirectly injure or cause damage in a plant or a product of a plant and that meets the criteria as a pest
- 28 established by department rule. For purposes of this chapter, noxious weeds, as defined in 7-22-2101(8)(a)(i),
- 29 or other exotic weeds are defined as plant pests.
- 30 (9) "Small plant vendor" means a Montana firm that is engaged in the business of selling or distributing

1 nursery stock, including coniferous Christmas decorations, and that:

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

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

4

5 **Section 4.** Section 80-7-106, MCA, is amended to read:

6 **"80-7-106. License required -- application and payment of license fee -- exemption.** (1) (a) Except
7 as provided in subsection (1)(b), a firm, nursery, plant dealer, or small plant vendor engaging in the business of
8 selling or distributing nursery stock in this state shall obtain a license from the department. ~~If the firm, nursery,~~
9 ~~plant dealer, or small plant vendor is required to be licensed and sells or distributes nursery stock, the firm,~~
10 ~~nursery, plant dealer, or small plant vendor shall obtain a license for each taxpayer identification number the firm,~~
11 ~~nursery, plant dealer, or small plant vendor uses when selling or distributing nursery stock.~~

12 (b) (i) ~~A firm, nursery, or plant dealer, or small plant vendor~~ is not required to obtain a license in Montana
13 if the firm, nursery, or plant dealer, ~~or small plant vendor~~:

14 ~~— (i) is licensed as a nursery in another state and the state in which the firm, nursery, or plant dealer, or~~
15 ~~small plant vendor is licensed grants nonresident licenses to residents of this state on the same basis; or,~~

16 (ii) A firm, nursery, plant dealer, or small plant vendor is not required to obtain a license in Montana if the
17 firm, nursery, plant dealer, or small plant vendor operates only in Montana and has less than \$1,000 in gross
18 annual sales of nursery stock.

19 (2) (a) The license must be in the name of the firm, nursery, plant dealer, or small plant vendor seeking
20 the license and expires on the anniversary date established by rule by the board of review established in
21 30-16-302 September 30 of each year. The applicant shall provide information that the department finds
22 necessary to carry out the provisions and purposes of this chapter and in the form determined by rule by the
23 board of review established in 30-16-302.

24 (b) Licenses will be prorated during the transition from the most recent anniversary date prior to [the
25 effective date of this act] established by rule by the board of review established in 30-16-302 to the September
26 30 renewal date and prorated for those that initially license at some time other than September 30 and have less
27 than 11 months before renewal.

28 (3) (a) ~~A firm, nursery, plant dealer, or small plant vendor that earns at least \$1,000 but less than \$5,000~~
29 ~~in gross annual sales of nursery stock shall pay a license fee of \$25~~ Landscapers and landscape contractors
30 selling or distributing nursery stock shall pay a license fee of \$110.

1 (b) ~~A firm, nursery, plant dealer, or small plant vendor that earns \$5,000 or more in gross annual sales~~
 2 ~~of nursery stock shall pay a license fee of \$100~~ Individuals, nonprofit organizations, and those selling or
 3 distributing nursery stock only at farmer's markets with:

4 (i) less than \$5,000 in gross annual sales shall pay a license fee of \$35 and may operate at more than
 5 one location;

6 (ii) \$5,000 or more in gross annual sales shall pay a license fee of \$110 and may operate at more than
 7 one location.

8 (c) A firm, nursery, or plant dealer selling or distributing nursery stock with gross annual sales of:

9 (i) less than \$5,000 shall pay a license fee of \$125 for each sale or distribution location;

10 (ii) between \$5,001 and \$50,000 shall pay a license fee of \$275 for each sale or distribution location;

11 (iii) between \$50,001 and \$100,000 shall pay a license fee of \$375 for each sale or distribution location;

12 (iv) \$100,001 or more shall pay a license fee of \$475 for each sale or distribution location.

13 (4) Individuals, firms, nurseries, and plant dealers that fall within more than one licensing category shall
 14 obtain a license in the category with the higher license fee.

15 (5) Montana individuals, firms, nurseries, plant dealers, or small plant vendors are eligible for a 10%
 16 nursery license fee discount when they submit proof of current certification at the time of initial licensing or license
 17 renewal for one of the following:

18 (a) Montana nursery and landscape certified plant professional;

19 (b) Montana state university master gardener program;

20 (c) Montana state university urban integrated pest management program; or

21 (d) international society of arborists.

22 ~~(4)(6)~~ The department may seek verification from the department of revenue as to whether a firm,
 23 nursery, plant dealer, or small plant vendor has met the income thresholds established in this section.

24 ~~(5)(7)~~ A new applicant or a firm, nursery, plant dealer, or small plant vendor failing to renew a license
 25 on or before the annual anniversary date provided for in subsection (2) shall pay an additional nonrefundable late
 26 fee of \$25 for each license.

27 ~~(6)(8)~~ The fees required by this section may be paid by credit card and may be discounted for payment
 28 processing charges paid by the department to a third party."

29

30 **Section 5.** Section 80-7-108, MCA, is amended to read:

1 **"80-7-108. Nursery stock inspection -- fees.** (1) The department:

2 (a) may enter the premises of a licensed firm, nursery, plant dealer, or small plant vendor during regular
3 business hours for the purpose of inspecting nursery stock or other materials for possible plant pests or for
4 determining licensure compliance; and

5 (b) shall, pursuant to rules promulgated by the department, determine the schedule, the need for
6 inspections based on complaints received and the department's assessment of risk to the state from potential
7 plant pests, and the expected amount of time for the inspections.

8 ~~(2) A firm, nursery, plant dealer, or small plant vendor may request the inspection of nursery stock,
9 plants, or other materials by giving the department 5 days' notice prior to the time when the nursery stock, plants,
10 or other materials are ready for inspection. The firm, nursery, plant dealer, or small plant vendor shall pay a fee
11 to the department for an inspection conducted pursuant to this section. The fee must cover the actual costs of
12 inspection, surveys, and other services performed by the department and may not be less than \$42 per hour or
13 more than \$50 per hour as established by department rule.~~

14 ~~(3)~~(2) The department may issue a plant inspection certificate based on the results of a nursery stock
15 or other plant inspection or inspection survey."
16

17 **Section 6.** Section 80-7-135, MCA, is amended to read:

18 **"80-7-135. Penalty for violation.** (1) A firm, nursery, plant dealer, or small plant vendor that violates or
19 aids in the violation of a provision of this part or of the rules, orders, or quarantines of the department adopted
20 under Title 2, chapter 4, and this part commits a civil offense and is subject to a civil penalty of not more than
21 \$1,000 for each violation.

22 (2) Assessment of a civil penalty may be made in conjunction with another warning, order, or
23 administrative action authorized by this chapter. A civil penalty collected under this section must be deposited
24 in the nursery account established in 80-7-123 for:

25 (a) response activities by the department; or

26 (b) education, training, research, and development for the nursery industry pursuant to rules established
27 by the department.

28 (3) The department shall establish by rule:

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

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

2 (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
3 construed as requiring the department or its agents to report violations of this part when the department believes
4 that the public interest will be best served by a suitable notice of warning."

5
6 **NEW SECTION. Section 7. Severability.** If a part of [this act] is invalid, all valid parts that are severable
7 from the invalid part remain in effect. If a part of [this act] is invalid in one or more of its applications, the part
8 remains in effect in all valid applications that are severable from the invalid applications.

9
10 **NEW SECTION. Section 8. Saving clause.** [This act] does not affect rights and duties that matured,
11 penalties that were incurred, or proceedings that were begun before [the effective date of this act].

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

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