

SENATE BILL NO. 55

INTRODUCED BY D. SALOMON

BY REQUEST OF THE DEPARTMENT OF AGRICULTURE

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5 A BILL FOR AN ACT ENTITLED: "AN ACT REVISING LAWS RELATED TO LICENSING, FEES, INSPECTIONS,
6 AND PENALTIES FOR PLANT NURSERIES; REVISING DEFINITIONS; PROVIDING FOR NURSERY LICENSE
7 FEES BASED ON GROSS ANNUAL SALES; ~~ELIMINATING NURSERY STOCK INSPECTION FEES;~~
8 EXPANDING RULEMAKING AUTHORITY; AMENDING SECTIONS 80-7-105, 80-7-106, 80-7-108, 80-7-109,
9 80-7-110, 80-7-123, 80-7-133, AND 80-7-135, MCA; REPEALING SECTION 80-7-122, MCA; AND PROVIDING
10 AN IMMEDIATE EFFECTIVE DATE."

11
12 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

13
14 **Section 1.** Section 80-7-105, MCA, is amended to read:

15 **"80-7-105. Definitions.** Unless the context requires otherwise, in this chapter, the following definitions
16 apply:

17 (1) "Firm" means an individual, company, partnership, association, or corporation.

18 (2) "Landscape service" means a firm that buys, sells, or resells nursery stock.

19 (3) "Nursery" means the business or location where nursery stock is grown ~~or offered for sale or resale~~
20 ~~or as part of a landscape service, offered for sale, or distributed.~~

21 (4) "Nursery stock" means botanically classified plants or parts of plants, including but not limited to
22 tropical potted plants, aquatic plants, ~~cut trees and their products~~, and turf or sod grass. ~~The following plants~~
23 Certain plants and plant materials intended for human or animal consumption and not intended for planting may
24 not be considered nursery stock, including the following:

25 (a) ~~field crop plants and seeds~~ commodity plants and their seeds;

26 (b) pasture grasses;

27 (c) cut plants not for propagation;

28 (d) fruits or vegetables for human or animal consumption;

29 (e) cut trees and products that are going to be processed to a point that they no longer represent a pest
30 risk; and

1 (f) plant debris for disposal or processing.

2 (5) "~~Nursery stock certification~~" means the process by which the nursery stock or other plants have been
3 inspected and found to meet certification standards established by department rule.

4 (6)(5) "Plant dealer" means a firm that buys plants or plant products from a producer for the purpose of
5 offering the plants or plant products for sale or resale or as part of a landscape service.

6 (7)(6) "Plant inspection certificate" means a document issued by the department or the plant pest
7 regulatory agency of another state that declares that the nursery stock, plants, or plant material grown by the firm
8 named on the certificate is apparently free of injurious plant pests.

9 (8)(7) "Plant pest" means an insect, weed, fungus, virus, bacteria, or other organism that can directly
10 or indirectly injure or cause damage in a plant or a product of a plant and that meets the criteria as a pest
11 established by department rule. For purposes of this chapter, noxious weeds, as defined in 7-22-2101(8)(a)(i),
12 or other exotic weeds are defined as plant pests.

13 (9) "~~Small plant vendor~~" means a Montana firm that is engaged in the business of selling or distributing
14 nursery stock, including coniferous Christmas decorations, and that:

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

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

17

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

19 **"80-7-106. License required -- application and payment of license fee -- exemption.** (1) (a) Except
20 as provided in subsection (1)(b), a firm, nursery, plant dealer, or ~~small plant vendor~~ landscape service engaging
21 in the business of selling or distributing nursery stock in this state shall obtain a license from the department FOR
22 EACH LOCATION. ~~If the firm, nursery, plant dealer, or small plant vendor is required to be licensed and sells or~~
23 ~~distributes nursery stock, the firm, nursery, plant dealer, or small plant vendor shall obtain a license for each~~
24 ~~taxpayer identification number the firm, nursery, plant dealer, or small plant vendor uses when selling or~~
25 ~~distributing nursery stock.~~

26 (b) A firm, nursery, plant dealer, or ~~small plant vendor~~ landscape service is not required to obtain a
27 license in Montana if the firm, nursery, plant dealer, or ~~small plant vendor~~ landscape service:

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

1 ~~——— (ii) operates only in Montana and has less than \$1,000 in gross annual sales of nursery stock.~~

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

7 ~~(3) (a) A firm, nursery, plant dealer, or small plant vendor that earns at least \$1,000 but less than \$5,000~~
 8 ~~in gross annual sales of nursery stock shall pay a license fee of \$25.~~

9 ~~——— (b) A firm, nursery, plant dealer, or small plant vendor that earns \$5,000 or more in gross annual sales~~
 10 ~~of nursery stock shall pay a license fee of \$100.~~

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

13 (3) (a) The license fees FOR EACH LOCATION for a firm, nursery, or plant dealer are as follows:

<u>Gross annual sales of nursery stock:</u>	<u>Fee range:</u>
not more than \$1,000 <u>\$5,000</u>	\$10 to \$15 <u>\$25 TO \$35</u>
\$1,001 to \$5,000 <u>\$5,001 TO \$75,000</u>	\$50 to \$75 <u>\$135 TO \$185</u>
\$5,001 to \$25,000 <u>\$75,001 TO \$150,000</u>	\$125 to \$175 <u>\$200 TO \$250</u>
\$25,001 to \$50,000 <u>\$150,001 TO \$250,000</u>	\$200 to \$250 <u>\$300 TO \$350</u>
\$50,001 to \$100,000	\$300 to \$350
more than \$100,000 <u>\$250,000</u>	\$400 to \$480 <u>\$400 TO \$450</u>

21 ~~(b) A landscape service shall pay a license fee of not less than \$100~~ \$150 or more than \$150 ~~\$200~~. A
 22 landscape service that sells nursery stock shall pay a license fee for either a landscape service or a nursery,
 23 whichever is greater.

24 (c) A SOD FARMER SHALL PAY A LICENSEE FEE OF NOT LESS THAN \$220 OR MORE THAN \$270.

25 ~~(e)(d)~~ The department may adjust by rule a license fee within the fee range described in this subsection
 26 (3) to maintain funding for this part. When calculating a license fee, the department shall adjust gross sales down
 27 to the nearest dollar.

28 ~~(5)(4)~~ A new applicant or a firm, nursery, plant dealer, or ~~small plant vendor~~ landscape service failing
 29 to renew a license FOR ANY LOCATION on or before the annual anniversary date provided for in subsection (2) shall

1 pay an additional nonrefundable late fee of \$25 for ~~each~~ THE license FOR THE LOCATION.

2 ~~(6)(5)~~ The fees required by this section may be paid by credit card ~~and may be discounted for payment~~
3 ~~processing charges paid by the department to a third party."~~

4

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

6 **"80-7-108. Nursery stock inspection -- fees inspections.** ~~(1)~~ The department:

7 ~~(a)(1)~~ may enter the premises of a licensed firm, nursery, plant dealer, or ~~small plant vendor~~ landscape
8 service during regular business hours for the purpose of inspecting nursery stock or other materials for possible
9 plant pests or for determining licensure compliance; and

10 ~~(b)(2)~~ shall, pursuant to rules promulgated by the department, determine the schedule, the need for
11 inspections based on complaints received and the department's assessment of risk to the state from potential
12 plant pests, and the expected amount of time for the inspections.

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

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

21 (3) (A) A FIRM, NURSERY, OR PLANT DEALER MAY REQUEST THE INSPECTION OF NURSERY STOCK, PLANTS, OR
22 OTHER MATERIALS BY GIVING THE DEPARTMENT 5 DAYS' NOTICE PRIOR TO THE TIME WHEN THE NURSERY STOCK, PLANTS,
23 OR OTHER MATERIALS ARE READY FOR INSPECTION. THE DEPARTMENT MAY COLLECT AN INSPECTION FEE COMMENSURATE
24 WITH COSTS AS APPROVED BY THE DEPARTMENT BY RULE.

25 (B) THE DEPARTMENT MAY NOT CHARGE AN INSPECTION FEE IF OTHER FEES IMPOSED PURSUANT TO THIS PART
26 ARE ABLE TO COVER THE COSTS OF INSPECTIONS."

27

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

29 **"80-7-109. Duty to notify department of infestation.** A firm, nursery, plant dealer, or ~~small plant vendor~~
30 landscape service with nursery stock or other materials that are infected or infested with plant pests shall notify

1 the department. The firm, nursery, plant dealer, or ~~small plant vendor~~ landscape service shall comply with the
 2 instructions of the department for the control of the plant pests."

3

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

5 **"80-7-110. Removal of nursery stock -- assessment of costs.** (1) If a firm, nursery, plant dealer, or
 6 ~~small plant vendor~~ landscape service that owns nursery stock or other materials infected or infested with any
 7 injurious plant pest fails to comply with the instructions of the department for the destruction or control of the
 8 injurious plant pest or the destruction of the infested or infected nursery stock or other material within the time
 9 specified by the department, the department may condemn, remove, or destroy the nursery stock or other
 10 material or treat it with a proper remedy at the expense of the owner.

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

16

17 **Section 6.** Section 80-7-123, MCA, is amended to read:

18 **"80-7-123. Nursery account -- investment of funds.** (1) There is an account in the state special
 19 revenue fund. All ~~inspection and license~~ fee revenue and reimbursements for costs authorized under 80-7-106,
 20 ~~80-7-108~~, 80-7-110, ~~80-7-122~~, 80-7-135, and this section must be deposited in this account. Revenue in the
 21 account must be used for the purposes and provisions of this part.

22 (2) Revenue received under 80-7-106, ~~80-7-108~~, 80-7-110, ~~80-7-122~~, 80-7-135, and this section not
 23 immediately required for the ~~purpose~~ purposes of 80-7-106, ~~80-7-108~~, 80-7-110, ~~80-7-122~~, 80-7-135, and this
 24 section must be invested in accordance with the unified investment program established in Title 17, chapter 6,
 25 part 2. Income from the investments must be deposited in the account."

26

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

28 **"80-7-133. Acts made unlawful -- penalty.** (1) It is unlawful for a firm, nursery, plant dealer, or ~~small~~
 29 ~~plant vendor~~ landscape service to:

30 (a) fail to properly identify nursery stock offered for sale. Identification must include but is not limited to

1 the scientific name, common name, and variety, except with regard to mixed annual plantings. Each nursery plant
 2 offered for sale as a separate plant must be identified. A single means of identification is allowed on each bundle
 3 of bare root seedlings, liners, or hedging grade nursery stock.

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

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

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

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

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

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

19

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

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

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

29 (3) The department shall establish by rule:

30 (a) a penalty schedule that establishes the types of penalties and the amounts, not to exceed \$1,000,

1 for initial and subsequent offenses; and

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

3 (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
4 construed as requiring the department or its agents to report violations of this part when the department believes
5 that the public interest will be best served by a suitable notice of warning."
6

7 NEW SECTION. **Section 9. Repealer.** The following section of the Montana Code Annotated is
8 repealed:

9 80-7-122. Nursery stock certification.
10

11 NEW SECTION. **Section 10. Saving clause.** [This act] does not affect rights and duties that matured,
12 penalties that were incurred, or proceedings that were begun before [the effective date of this act].
13

14 NEW SECTION. **Section 11. Severability.** If a part of [this act] is invalid, all valid parts that are
15 severable from the invalid part remain in effect. If a part of [this act] is invalid in one or more of its applications,
16 the part remains in effect in all valid applications that are severable from the invalid applications.
17

18 NEW SECTION. **Section 12. Effective date.** [This act] is effective on passage and approval.
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