

Second Regular Session
Seventy-first General Assembly
STATE OF COLORADO

INTRODUCED

LLS NO. 18-0814.01 Jennifer Berman x3286

HOUSE BILL 18-1246

HOUSE SPONSORSHIP

Danielson,

SENATE SPONSORSHIP

Coram,

House Committees

Agriculture, Livestock, & Natural Resources

Senate Committees

A BILL FOR AN ACT

101 CONCERNING UPDATES TO THE "COLORADO NURSERY ACT", AND, IN
102 CONNECTION THEREWITH, MODERNIZING THE ACT AND
103 PROTECTING AGRICULTURE FROM PESTS, DISEASES, AND
104 NOXIOUS WEEDS.

Bill Summary

(Note: This summary applies to this bill as introduced and does not reflect any amendments that may be subsequently adopted. If this bill passes third reading in the house of introduction, a bill summary that applies to the reengrossed version of this bill will be available at <http://leg.colorado.gov>.)

The bill updates the "Colorado Nursery Act", last amended in 2009, to protect nursery stock by:

! Updating definitions, including amending the definition of

Shading denotes HOUSE amendment. Double underlining denotes SENATE amendment.
Capital letters or bold & italic numbers indicate new material to be added to existing statute.
Dashes through the words indicate deletions from existing statute.

- "nursery stock" and adding a definition of "noxious weed" (**section 2** of the bill);
- ! Removing an exemption from inspections for nurseries that only sell nursery stock grown in Colorado and not exported outside of Colorado (**section 3**);
 - ! Authorizing the commissioner of agriculture to promulgate rules to add additional information to the nursery stock labeling requirements (**section 4**);
 - ! Prohibiting a person from selling, offering for sale, or distributing noxious weeds or nursery stock that is infested with noxious weeds (**section 5**); and
 - ! Raising the \$100 cap on the nursery stock business registration fee to a \$300 cap (**section 6**).
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1 *Be it enacted by the General Assembly of the State of Colorado:*

2 **SECTION 1.** In Colorado Revised Statutes, **add** 35-26-101.5 as
3 follows:

4 **35-26-101.5. Legislative declaration.** (1) THE GENERAL
5 ASSEMBLY HEREBY FINDS AND DETERMINES THAT NURSERY STOCK CAN
6 HARBOR PLANT PESTS AND DISEASES AND OPERATE AS A DISEASE VECTOR.
7 UNREGULATED PRODUCTION AND SHIPPING OF NURSERY STOCK PRESENTS
8 AN UNACCEPTABLE RISK TO THE STATE'S AGRICULTURAL, FORESTRY, AND
9 HORTICULTURAL INTERESTS AND TO THE STATE'S GENERAL
10 ENVIRONMENTAL QUALITY.

11 (2) THEREFORE, THE GENERAL ASSEMBLY HEREBY DECLARES THAT
12 IT IS NECESSARY TO ENSURE THAT NURSERIES PRODUCE HEALTHY PLANTS
13 AND THAT NURSERY STOCK SHIPPED TO OTHER NURSERIES, BROKERS, OR
14 OUT-OF-STATE CUSTOMERS MEETS THE NATIONAL NURSERY STOCK
15 CLEANLINESS STANDARD.

16 **SECTION 2.** In Colorado Revised Statutes, 35-26-102, **amend**
17 the introductory portion and (14); and **add** (2.5), (9.2), (9.3), (11.5),
18 (11.6), (17.5), and (19.5) as follows:

1 **35-26-102. Definitions.** As used in this ~~article~~ ARTICLE 26, unless
2 the context otherwise requires:

3 (2.5) "BROKER" MEANS:

4 (a) WHEN USED AS A VERB, TO NEGOTIATE THE PURCHASE OR SALE
5 OF ANY PLANT PRODUCT ON BEHALF OF ANOTHER PERSON; OR

6 (b) WHEN USED AS A NOUN, A PERSON WHO NEGOTIATES THE
7 PURCHASE OR SALE OF ANY PLANT PRODUCT ON BEHALF OF ANOTHER
8 PERSON.

9 (9.2) "DISTRIBUTE" MEANS, FOR ANY COMMERCIAL PURPOSE, TO:

10 (a) SELL OR GIVE AWAY, OFFER TO SELL OR GIVE AWAY, DISPLAY
11 FOR SALE OR AS A GIVEAWAY, OR HOLD EITHER FOR SALE OR TO GIVE
12 AWAY; OR

13 (b) SHIP, HOLD FOR SHIPMENT, OR DELIVER OR RELEASE FOR
14 SHIPMENT.

15 (9.3) "EFFECTIVE CONTROL" MEANS, WHEN REFERRING TO ANY
16 PEST THAT IS NOT QUARANTINED PURSUANT TO THE "PEST CONTROL ACT",
17 ARTICLE 4 OF THIS TITLE 35, OR THAT IS NOT QUARANTINED PURSUANT TO
18 ANY COMPARABLE FEDERAL QUARANTINE LAW, ELIMINATING OR
19 REDUCING A PLANT PEST, DISEASE, OR WEED TO THE POINT OF AN
20 ACCEPTABLE ECONOMIC OR ENVIRONMENTAL RISK.

21 (11.5) "NATIONAL NURSERY STOCK CLEANLINESS STANDARD"
22 MEANS A STANDARD FOR NURSERY STOCK THAT REQUIRES THAT:

23 (a) THE NURSERY STOCK IS FREE OF QUARANTINE PESTS AND PESTS
24 OF CONCERN; AND

25 (b) ANY NONQUARANTINE PESTS ARE UNDER EFFECTIVE CONTROL.

26 (11.6) "NOXIOUS WEED" MEANS A SPECIES OF PLANT THAT:

27 (a) IS, OR IS LIABLE TO BE, TROUBLESOME, AGGRESSIVE,

1 INTRUSIVE, DETRIMENTAL, OR DESTRUCTIVE TO AGRICULTURE,
2 SILVICULTURE, OR NATIVE SPECIES;

3 (b) IS DIFFICULT TO CONTROL OR ERADICATE; AND

4 (c) THE COMMISSIONER HAS IDENTIFIED AS A PROHIBITED WEED BY
5 RULE ADOPTED IN ACCORDANCE WITH THE "STATE ADMINISTRATIVE
6 PROCEDURE ACT", ARTICLE 4 OF TITLE 24.

7 (14) "Nursery stock" means: ~~all plants, whether field grown,
8 container grown, or collected native plants; trees, shrubs, vines; turfgrass
9 sod, seedlings, perennials, biennials; and buds, cuttings, grafts, and scions
10 thereof, grown or collected or kept for propagation, sale, or distribution;
11 except that it does not mean dormant bulbs, tubers, roots, corms,
12 rhizomes, pips, field, vegetable, or flower seeds, bedding plants, annual
13 plants, and florists' greenhouse plants, flowers, or cuttings commonly
14 known as greenhouse stock.~~

15 (a) ANY HARDY PLANT OR HERBACEOUS OR WOODY PLANT THAT:

16 (I) SURVIVES COLORADO WINTERS; AND

17 (II) IS GROWN, COLLECTED, OR KEPT FOR PROPAGATION, SALE, OR
18 DISTRIBUTION, INCLUDING THE FOLLOWING:

19 (A) A DECIDUOUS OR EVERGREEN TREE;

20 (B) A SHRUB;

21 (C) A WOODY VINE;

22 (D) TURFGRASS SOD; AND

23 (E) ORNAMENTAL GRASS;

24 (b) ANY NONHARDY PLANT OR PLANT PART TO BE DISTRIBUTED IN
25 ANOTHER STATE THAT REQUIRES PLANT INSPECTION AND CERTIFICATION
26 BEFORE THE PLANT MAY BE TRANSFERRED INTO THE STATE; AND

27 (c) IF THE COMMISSIONER DETERMINES THAT REGULATING THE

1 MOVEMENT OF A PLANT IS NECESSARY TO CONTROL ANY INSECT PEST OR
2 PLANT DISEASE, ANY OTHER PLANT DESIGNATED AS NURSERY STOCK BY
3 THE COMMISSIONER BY RULE.

4 (17.5) "PESTS OF CONCERN" MEANS A NONQUARANTINE PEST THAT
5 IS NOT KNOWN TO OCCUR IN THE STATE OR THAT HAS A LIMITED
6 DISTRIBUTION WITHIN THE STATE BUT THAT HAS THE POTENTIAL TO
7 NEGATIVELY IMPACT NURSERY STOCK HEALTH OR POSE AN UNACCEPTABLE
8 ECONOMIC OR ENVIRONMENTAL RISK WERE IT TO BE INTRODUCED TO OR
9 PROLIFERATE IN THE STATE.

10 (19.5) "SELL" MEANS, FOR ANY COMMERCIAL PURPOSE AND WITH
11 RESPECT TO NURSERY STOCK, TO OFFER, DISPLAY, POSSESS, EXCHANGE,
12 BARTER, BROKER, DISTRIBUTE, OR TRADE.

13 **SECTION 3.** In Colorado Revised Statutes, 35-26-103, **repeal**
14 (1)(b) as follows:

15 **35-26-103. Inspections.** (1) (b) ~~Any nursery that only sells~~
16 ~~nursery stock that is grown within Colorado and does not export such~~
17 ~~stock outside of Colorado is exempt from the inspection requirements~~
18 ~~specified in paragraph (a) of this subsection (1); except that such nursery~~
19 ~~may be inspected upon request if the required inspection fee is paid.~~

20 **SECTION 4.** In Colorado Revised Statutes, 35-26-104, **amend**
21 (1) as follows:

22 **35-26-104. Labeling - rules.** (1) There shall be securely attached
23 to each item of nursery stock when offered for sale or ~~delivered~~
24 DISTRIBUTED, or to each bundle or lot when sold as a single lot of the
25 same kind, grade, size, and variety, a label showing:

26 (a) The correct botanical or accepted common name; ~~and~~

27 (b) The grade or size of ~~such~~ THE nursery stock; AND

1 (c) ANY OTHER INFORMATION ESTABLISHED BY THE
2 COMMISSIONER BY RULE ADOPTED IN ACCORDANCE WITH THE "STATE
3 ADMINISTRATIVE PROCEDURE ACT", ARTICLE 4 OF TITLE 24.

4 **SECTION 5.** In Colorado Revised Statutes, 35-26-105, **amend**
5 (1) as follows:

6 **35-26-105. Prohibited acts - removal from sale - advisory**
7 **alerts.** (1) ~~No~~ A person shall NOT sell, ~~or~~ offer for sale, OR DISTRIBUTE:

8 (a) Nursery stock in a dead or dying condition;

9 (b) Nursery stock infested or infected with insect pests or plant
10 diseases; ~~or~~

11 (c) NOXIOUS WEEDS OR NURSERY STOCK THAT IS INFESTED WITH
12 NOXIOUS WEEDS; OR

13 ~~(e)~~ (d) Nursery stock in violation of any other provision of this
14 ~~article~~ ARTICLE 26 or any rules ~~or regulations~~ promulgated pursuant to
15 this ~~article~~ ARTICLE 26.

16 **SECTION 6.** In Colorado Revised Statutes, 35-26-106, **amend**
17 (1) as follows:

18 **35-26-106. Colorado nursery fund - transfer of moneys to**
19 **plant health, pest control, and environmental protection cash fund -**

20 **fees.** (1) A person shall not engage in the business of selling nursery
21 stock in this state, nor shall ~~he~~ THE PERSON advertise with the intent and
22 purpose of selling nursery stock in this state, without having first obtained
23 a registration issued by the commissioner. ~~Such~~ THE registration ~~shall~~
24 ~~expire~~ EXPIRES on December 31 of each year. Application for registration
25 ~~shall~~ MUST be submitted on a form prescribed by the commissioner. The
26 commissioner shall, by rule, ~~or regulation,~~ establish a registration fee for
27 each place of business. ~~Such~~ THE fee ~~shall~~ MUST not exceed ~~one~~ THREE

1 hundred dollars. Applicants for a registration who were registered at any
2 time during the calendar year immediately preceding the year for which
3 application is made ~~shall~~ MUST apply for a registration by March 1 or pay
4 an amount double the registration fee. ~~No~~ A registration is NOT
5 transferable. All registrants shall inform the commissioner in writing of
6 any change of address prior to ~~any such~~ THE change. ~~of address.~~ All
7 registrants shall meet the requirements of this ~~article~~ ARTICLE 26 and the
8 rules ~~and regulations~~ promulgated pursuant to this ~~article~~ ARTICLE 26.

9 **SECTION 7. Act subject to petition - effective date.** This act
10 takes effect at 12:01 a.m. on the day following the expiration of the
11 ninety-day period after final adjournment of the general assembly (August
12 8, 2018, if adjournment sine die is on May 9, 2018); except that, if a
13 referendum petition is filed pursuant to section 1 (3) of article V of the
14 state constitution against this act or an item, section, or part of this act
15 within such period, then the act, item, section, or part will not take effect
16 unless approved by the people at the general election to be held in
17 November 2018 and, in such case, will take effect on the date of the
18 official declaration of the vote thereon by the governor.