

CHAPTER 105

AGRICULTURE

HOUSE BILL 18-1246

BY REPRESENTATIVE(S) Danielson, Arndt, Esgar, Exum, Gray, Hamner, Hansen, Herod, Melton, Michaelson Jenet, Pettersen, Roberts, Salazar, Valdez, Young, Duran;
also SENATOR(S) Coram, Aguilar, Court, Crowder, Donovan, Fields, Kerr, Merrifield, Priola, Scott, Todd, Williams A.

AN ACT

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

Be it enacted by the General Assembly of the State of Colorado:

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

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

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

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

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

(2.5) "BROKER" MEANS:

Capital letters or bold & italic numbers indicate new material added to existing statutes; dashes through words indicate deletions from existing statutes and such material not part of act.

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

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

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

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

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

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

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

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

(b) ANY NONQUARANTINE PESTS ARE UNDER EFFECTIVE CONTROL.

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

(a) IS, OR IS LIABLE TO BE, TROUBLESOME, AGGRESSIVE, INTRUSIVE, DETRIMENTAL, OR DESTRUCTIVE TO AGRICULTURE, SILVICULTURE, OR NATIVE SPECIES;

(b) IS DIFFICULT TO CONTROL OR ERADICATE; AND

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

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

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

(I) SURVIVES COLORADO WINTERS; AND

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

- (A) A DECIDUOUS OR EVERGREEN TREE;
- (B) A SHRUB;
- (C) A WOODY VINE;
- (D) TURFGRASS SOD; AND
- (E) ORNAMENTAL GRASS;

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

(c) IF THE COMMISSIONER DETERMINES THAT REGULATING THE MOVEMENT OF A PLANT IS NECESSARY TO CONTROL ANY INSECT PEST OR PLANT DISEASE, ANY OTHER PLANT DESIGNATED AS NURSERY STOCK BY THE COMMISSIONER BY RULE.

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

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

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

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

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

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

- (a) The correct botanical or accepted common name; ~~and~~
- (b) The grade or size of ~~such~~ THE nursery stock; AND
- (c) ANY OTHER INFORMATION ESTABLISHED BY THE COMMISSIONER BY RULE

ADOPTED IN ACCORDANCE WITH THE "STATE ADMINISTRATIVE PROCEDURE ACT",
ARTICLE 4 OF TITLE 24.

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

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

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

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

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

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

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

35-26-106. Colorado nursery fund - transfer of moneys to plant health, pest control, and environmental protection cash fund - fees. (1) A person shall not engage in the business of selling nursery stock in this state, nor shall ~~he~~ THE PERSON advertise with the intent and purpose of selling nursery stock in this state, without having first obtained a registration issued by the commissioner. ~~Such~~ THE registration ~~shall expire~~ EXPIRES on December 31 of each year. Application for registration ~~shall~~ MUST be submitted on a form prescribed by the commissioner. The commissioner shall, by rule, ~~or regulation~~, establish a registration fee for each place of business. ~~Such~~ THE fee ~~shall~~ MUST not exceed ~~one~~ THREE hundred dollars. Applicants for a registration who were registered at any time during the calendar year immediately preceding the year for which application is made ~~shall~~ MUST apply for a registration by March 1 or pay an amount double the registration fee. ~~No~~ A registration is NOT transferable. All registrants shall inform the commissioner in writing of any change of address prior to ~~any such~~ THE change. ~~of address~~. All registrants shall meet the requirements of this ~~article~~ ARTICLE 26 and the rules ~~and regulations~~ promulgated pursuant to this ~~article~~ ARTICLE 26.

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

Approved: April 9, 2018