

HOUSE BILL No. 4348

February 20, 1991, Introduced by Rep. Hickner and referred to the Committee on Agriculture, Forestry and Minerals.

A bill to amend the title and sections 2 and 9 of Act No. 189 of the Public Acts of 1931, entitled as amended "The insect pest and plant disease act," section 9 as amended by Act No. 157 of the Public Acts of 1982, being sections 286.202 and 286.209 of the Michigan Compiled Laws; and to add section 9a.

THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

1 Section 1. The title and sections 2 and 9 of Act No. 189 of
2 the Public Acts of 1931, section 9 as amended by Act No. 157 of
3 the Public Acts of 1982, being sections 286.202 and 286.209 of
4 the Michigan Compiled Laws, are amended and section 9a is added
5 to read as follows:

TITLE

1
2 An act to regulate the sale and distribution of nursery
3 stock, plants, and plant products; to prevent the introduction
4 into and the dissemination within this state of insect pests and
5 plant diseases; to provide for the destruction and control of
6 insect pests and plant diseases; to provide for the destruction
7 of certain plants by owners of certain fruit trees; to provide
8 for ~~license and to provide for~~ THE LICENSING AND inspection ~~→~~
9 ~~and imposing~~ OF SELLERS OF NURSERY STOCK, PLANTS, AND PLANT
10 PRODUCTS; TO CREATE THE MICHIGAN ORNAMENTAL PLANT COUNCIL; TO
11 IMPOSE certain powers and duties on the director of THE DEPART-
12 MENT OF agriculture AND ON THE MICHIGAN ORNAMENTAL PLANT COUNCIL;
13 to provide for the promulgation of rules; and to prescribe
14 penalties.

15 Sec. 2. As used in this act:

16 (a) "Insect pests" means insects or other invertebrates
17 injurious to plants and plant products.

18 (b) "Plant diseases" means fungi, bacteria, nematodes, and
19 viruses, injurious to plants and plant products, and the patho-
20 logical condition in plants and plant products caused by fungi,
21 bacteria, nematodes, and viruses.

22 (c) "Plants" and "plant products" means trees, shrubs,
23 vines, fruit, forage and cereal plants and all other plants, cut-
24 tings, grafts, scions, buds, and all other parts of plants; and
25 fruit, vegetables, roots, bulbs, seeds, wood, lumber, and all
26 other plant products.

1 (d) "Nursery stock" ~~means~~ AND "ORNAMENTAL PLANT" MEAN all
2 botanically classified hardy perennial or biennial trees, shrubs,
3 vines, and plants, either domesticated or wild, cuttings, grafts,
4 scions, buds, bulbs, rhizomes, or roots thereof; ~~—~~ fruit pits;
5 ~~also~~ AND other such plants and plant parts for, or capable of,
6 propagation, excepting field, vegetable and flower seeds, corms
7 and tubers.

8 (e) "Nursery" means any grounds or premises on or in which
9 nursery stock is propagated, grown or cultivated for the purpose
10 of distributing or selling same as a business.

11 (f) "Nurseryman" means any ~~person, firm~~ INDIVIDUAL, part-
12 nership, association, or corporation owning, leasing, managing,
13 or in charge of a nursery.

14 (g) "Plant grower" or "plant dealer" means any ~~person,~~
15 ~~firm~~ INDIVIDUAL, partnership, association, or corporation grow-
16 ing or offering for sale herbaceous perennials, or biennial nurs-
17 ery stock, small fruit plants, or asparagus or rhubarb roots.

18 (h) "Nursery dealer" means any ~~person, firm~~ INDIVIDUAL,
19 partnership, association, or corporation not a grower or an orig-
20 inal producer of nursery stock in this state, who buys nursery
21 stock for the purpose of reselling or reshipping independently of
22 the control of any nurseryman, nursery dealer or who is engaged
23 with a nurseryman or dealer in handling nursery stock on a con-
24 signment basis.

25 (i) "Agent" means any ~~person~~ INDIVIDUAL who solicits,
26 takes orders, or sells nursery stock in this state for a

1 nurseryman, dealer, or grower of nursery stock, but not on the
2 premises or place of business.

3 (j) "Places" means vessels, cars and other vehicles, build-
4 ings, docks, nurseries, orchards and other premises where plants
5 and plant products are grown, kept, or handled.

6 (k) "Property" means real estate, personal property, and any
7 thing or substance connected therewith, with or without value.

8 (l) "Commissioner of agriculture" or "director" means the
9 director of the department of agriculture.

10 (M) "COUNCIL" MEANS THE MICHIGAN ORNAMENTAL PLANT COUNCIL
11 CREATED IN SECTION 9A.

12 Sec. 9. (1) ~~A person, firm~~ AN INDIVIDUAL, partnership,
13 association, or corporation growing or desiring to sell nursery
14 stock in this state shall, on or before October 31, 1982, and
15 October 31 of each year thereafter, apply to the director for a
16 license. ~~The annual nursery license fee shall be \$50.00. The~~
17 ~~annual license fee for plant growers or plant dealers shall be~~
18 ~~\$20.00. The annual license fee for nursery dealers shall be~~
19 ~~\$50.00.~~ License fees provided for in ~~this act~~ SUBSECTION (2)
20 shall become due and payable at the office of the director on or
21 before October 31 of each year. ~~Fees collected under this act~~
22 ~~shall be paid into the general fund of the state and shall be~~
23 ~~used in enforcement of this act.~~ TWENTY DOLLARS OF EACH FEE PAID
24 FOR A PLANT GROWER OR PLANT DEALER LICENSEE AND \$50.00 OF EACH
25 FEE PAID FOR A NURSERY OR NURSERY DEALER LICENSEE SHALL BE DEPOS-
26 ITED INTO THE GENERAL FUND OF THE STATE. THE BALANCE OF THE FEES
27 COLLECTED PURSUANT TO THIS ACT SHALL BE DEPOSITED INTO THE

1 GENERAL FUND OF THE STATE AND SHALL BE EXPENDED SOLELY FOR
 2 NECESSARY EXPENSES INCURRED WITH RESPECT TO THE COUNCIL.

3 (2) BEGINNING OCTOBER 31, 1991, THE FOLLOWING LICENSE FEES
 4 SHALL ACCOMPANY A LICENSE APPLICATION:

5 (A) PLANT GROWER..... \$20.00.

6 (B) PLANT DEALER..... \$20.00.

7 (C) NURSERYMAN WHOSE GROSS ANNUAL SALES OF NURSERY STOCK ARE
 8 LESS THAN \$7,500.00..... \$75.00.

9 (D) NURSERYMAN WHOSE GROSS ANNUAL SALES OF NURSERY STOCK
 10 EQUAL OR EXCEED \$7,500.00..... \$200.00.

11 (E) NURSERY DEALER WHOSE GROSS ANNUAL SALES OF NURSERY STOCK
 12 ARE LESS THAN \$7,500.00..... \$75.00.

13 (F) NURSERY DEALER WHOSE GROSS ANNUAL SALES OF NURSERY STOCK
 14 EQUAL OR EXCEED \$7,500.00.....\$200.00.

15 (3) This section shall not apply to ~~persons~~ INDIVIDUALS
 16 engaged in fruit growing who are not nurserymen but desire to
 17 sell or exchange surplus small fruit plants of their own growing,
 18 or to farmers or other ~~persons~~ INDIVIDUALS who may sell or give
 19 away native shade trees, native shrubs, native vines, native
 20 hardy perennials, or native evergreens from their own premises.

21 SEC. 9A. (1) THE MICHIGAN ORNAMENTAL PLANT COUNCIL IS CRE-
 22 ATED IN THE DEPARTMENT OF AGRICULTURE. THE COUNCIL SHALL CONSIST
 23 OF THE FOLLOWING:

24 (A) TWO GROWERS OF NURSERY STOCK.

25 (B) TWO LANDSCAPE CONTRACTORS.

26 (C) TWO RETAILERS OF NURSERY STOCK.

1 (D) ONE OWNER OR OPERATOR OF ANY BUSINESS OR ENTERPRISE
2 SUBJECT TO THIS ACT.

3 (E) THE DIRECTOR OF THE DEPARTMENT OF AGRICULTURE OR HIS OR
4 HER DESIGNEE AS AN EX OFFICIO NONVOTING MEMBER.

5 (2) THE MEMBERS OF THE COUNCIL DESCRIBED IN SUBSECTION
6 (1)(A) TO (D) SHALL BE APPOINTED BY THE GOVERNOR FROM LISTS SUB-
7 MITTED TO THE GOVERNOR BY THE MICHIGAN ASSOCIATION OF
8 NURSERYMEN. THE LISTS SHALL CONSIST OF NOT LESS THAN TWICE THE
9 NUMBER OF MEMBERS TO BE APPOINTED UNDER SUBSECTION (1). THE MEM-
10 BERS SHALL BE APPOINTED FOR 2-YEAR TERMS, AND SHALL NOT SERVE
11 MORE THAN 2 CONSECUTIVE TERMS. OF THOSE MEMBERS FIRST APPOINTED,
12 2 SHALL BE APPOINTED FOR A 1-YEAR TERM AND THE REMAINING 5 SHALL
13 BE APPOINTED FOR 2-YEAR TERMS.

14 (3) THE COUNCIL MAY EMPLOY PERSONNEL AND INCUR SUCH EXPENSES
15 AS ARE NECESSARY TO CARRY OUT THE PURPOSES OF THE COUNCIL UNDER
16 THIS ACT. ALL SUCH EXPENSES SHALL BE PAID FROM FEES CREDITED TO
17 THE COUNCIL UNDER SECTION 9(1). A MEMBER OF THE COUNCIL OR ANY
18 EMPLOYEE OR AGENT OF THE COUNCIL SHALL NOT BE PERSONALLY LIABLE
19 FOR THE CONTRACTS OF THE COUNCIL.

20 (4) A MEMBER OF THE COUNCIL SHALL RECEIVE \$50.00 PER DAY FOR
21 EACH DAY SPENT IN ACTUAL ATTENDANCE AT MEETINGS OF THE COUNCIL
22 AND SHALL RECEIVE REIMBURSEMENT FOR ACTUAL TRAVELING EXPENSES
23 WHILE ON COUNCIL BUSINESS IN ACCORDANCE WITH STANDARD TRAVEL REG-
24 ULATIONS SET FORTH BY THE DEPARTMENT OF MANAGEMENT AND BUDGET.

25 (5) THE COUNCIL SHALL DO ALL OF THE FOLLOWING:

26 (A) ANNUALLY, WITHIN 60 DAYS AFTER THE BEGINNING OF EACH
27 FISCAL YEAR, MEET AND ORGANIZE, SELECT A CHAIRPERSON AND OTHER

1 OFFICERS AS MAY BE NECESSARY, AND ADOPT PROCEDURES FOR THE
2 CONDUCT OF ITS BUSINESS.

3 (B) AT THE BEGINNING OF EACH FISCAL YEAR, PREPARE A BUDGET
4 OF THE ANTICIPATED RECEIPTS AND EXPENSES FOR THE UPCOMING FISCAL
5 YEAR.

6 (C) FURNISH TO THE DIRECTOR ANY AVAILABLE INFORMATION HE OR
7 SHE MAY REQUIRE.

8 (D) PROVIDE FOR RESEARCH ON ORNAMENTAL PLANTS, INCLUDING,
9 BUT NOT LIMITED TO, METHODS OF PLANTING, GROWING, CONTROLLING
10 INSECTS AND DISEASES, MARKETING, PROCESSING, DISTRIBUTION, ADVER-
11 TISING, SALES PRODUCTION, AND PRODUCT DEVELOPMENT.

12 (E) PROVIDE THE NURSERY AND LANDSCAPE INDUSTRY WITH INFORMA-
13 TION RELATIVE TO PROPER METHODS OF HANDLING AND SELLING ORNAMEN-
14 TAL PLANTS.

15 (F) PROVIDE FOR MARKET SURVEYS AND ANALYSES FOR PURPOSES OF
16 EXPANDING EXISTING MARKETS AND CREATING NEW AND LARGER MARKETS
17 FOR ORNAMENTAL PLANTS.

18 (G) PROVIDE FOR THE PROMOTION OF THE SALE OF MICHIGAN ORNA-
19 MENTAL PLANTS FOR THE PURPOSE OF MAINTAINING OR EXPANDING PRESENT
20 MARKETS AND CREATING NEW AND LARGER DOMESTIC AND FOREIGN
21 MARKETS.

22 (H) COLLECT AND ASSEMBLE INFORMATION AND DATA NECESSARY TO
23 THE PROPER ADMINISTRATION OF THE PROGRAM OF THE COUNCIL.

24 (I) MAINTAIN ACCURATE ADMINISTRATIVE AND ACCOUNTING RECORDS
25 AND PROTECT COUNCIL FUNDS THROUGH THE UTILIZATION OF FIDELITY
26 BONDS FOR EMPLOYEES, AGENTS, REPRESENTATIVES, AND CONTRACTS, IF
27 NECESSARY.

1 (J) MAINTAIN ACCURATE MINUTES, BOOKS, AND RECORDS OF THE
2 COUNCIL WHICH SHALL BE SUBJECT TO EXAMINATION AT ANY TIME BY THE
3 DIRECTOR OR HIS OR HER AUTHORIZED AGENT. MINUTES OF EACH MEETING
4 SHALL BE REPORTED PROMPTLY TO THE DIRECTOR AND AT THE END OF EACH
5 MARKETING SEASON A STATISTICAL AND HISTORICAL ANNUAL REPORT OF
6 THE OPERATION SHALL BE FURNISHED TO THE DIRECTOR.

7 (K) CAUSE THE BOOKS OF THE COUNCIL TO BE AUDITED BY THE
8 AUDITOR GENERAL OR BY A CERTIFIED PUBLIC ACCOUNTANT APPOINTED BY
9 THE AUDITOR GENERAL AT LEAST ONCE EACH FISCAL YEAR AND AT ANY
10 OTHER TIME AS THE COUNCIL MAY CONSIDER NECESSARY OR AS THE DIREC-
11 TOR MAY REQUIRE. THE REPORT OF THE AUDIT SHALL SHOW THE RECEIPTS
12 AND EXPENDITURES OF FUNDS COLLECTED. WITHIN 30 DAYS AFTER THE
13 COMPLETION OF THE AUDIT, THE AUDITOR GENERAL OR CERTIFIED PUBLIC
14 ACCOUNTANT SHALL DISPERSE COPIES TO THE COUNCIL MEMBERS AND THE
15 DIRECTOR. A COPY OF THE ACTIVITY AND FINANCIAL REPORT SHALL BE
16 PUBLISHED ANNUALLY AND MADE AVAILABLE TO THE PUBLIC.

17 (6) THE COUNCIL MAY PROMULGATE RULES PURSUANT TO THE ADMIN-
18 ISTRATIVE PROCEDURES ACT OF 1969, ACT NO. 306 OF THE PUBLIC ACTS
19 OF 1969, BEING SECTIONS 24.201 TO 24.328 OF THE MICHIGAN COMPILED
20 LAWS, FOR THE PURPOSES OF IMPLEMENTING AND ENFORCING THIS
21 SECTION. HOWEVER, A RULE SHALL NOT BE PROMULGATED THAT CONFLICTS
22 WITH A RULE PROMULGATED BY THE DEPARTMENT OF AGRICULTURE UNDER
23 THIS ACT.

24 Section 2. This amendatory act shall take effect
25 October 31, 1991.