

SUBSTITUTE FOR
HOUSE BILL NO. 4862

A bill to amend 1931 PA 189, entitled
"The insect pest and plant disease act,"
by amending the title and sections 6, 9, and 11 (MCL 286.206,
286.209, and 286.211), the title as amended by 2005 PA 53, section
6 as amended by 1995 PA 137, section 9 as amended by 2004 PA 273,
and section 11 as amended by 1984 PA 88.

THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

1
2
3
4
5
6

TITLE

An act to regulate the sale and distribution of nursery stock,
plants, and plant products; to prevent the introduction into and
the dissemination within this state of insect pests and plant
diseases; to provide for the destruction and control of insect
pests and plant diseases; to provide for the destruction or

1 treatment of certain plants or plant products; to provide for
2 ~~license~~ **THE LICENSURE** and ~~to provide for inspection~~ **OF CERTAIN**
3 **PERSONS AND ACTIVITIES UNDER CERTAIN CIRCUMSTANCES; and imposing TO**
4 **IMPOSE** certain powers and duties on the director of agriculture; **TO**
5 **CREATE CERTAIN RESTRICTED FUNDS FOR CERTAIN DEPARTMENT ACTIVITIES**
6 **AND TO ALLOW ALLOCATION OF THOSE FUNDS THROUGHOUT THE DEPARTMENT;**
7 to provide for the promulgation of rules; to prescribe penalties
8 and civil sanctions; and to provide remedies.

9 Sec. 6. (1) The director shall cause to be inspected at least
10 once each year during the growing season all nurseries in the state
11 to ascertain whether they are infested with insect pests or
12 infected with plant diseases. The director shall cause to be
13 inspected all nursery stock which will be stored or offered for
14 sale or which is stored in cellars, heeling-in grounds, or
15 warehouses to ascertain whether it is infested with insect pests or
16 infected with plant diseases and assess an inspection fee.

17 (2) If upon the inspection of any nursery stock it is
18 determined that the nursery stock or nursery and its premises are
19 apparently free from insect pests and plant diseases, and if the
20 necessary inspection fees have been paid, the director shall give
21 or send to the owner of each nursery or of the nursery stock or to
22 the person in charge of the nursery or nursery stock a certificate
23 executed by the director setting forth the fact of the inspection.
24 If any inspections are requested by any nursery after September 1,
25 the nursery or applicant shall pay, in addition to the inspection
26 fee, the expense of the inspector and mileage at the prevailing
27 rate per mile, as established by the state administrative board, in

1 going to and returning from the inspection, either from Lansing or
2 the location of the nearest inspector.

3 (3) Certificates of inspection are valid from November 1 in 1
4 year to October 31 of the following year. Any nursery owner may
5 request a second inspection be performed, prior to offering for
6 sale or removing or shipping from a nursery or other premises,
7 provided that the nursery owner or applicant pays an inspection fee
8 based upon the actual cost to the department of agriculture of such
9 inspection.

10 (4) A person shall not sell, ~~or~~ offer for sale, or remove or
11 ship from a nursery or other premises any nursery stock until the
12 nursery stock has been officially inspected and a certificate or
13 permit covering it has been granted by the director, except that
14 nursery stock may be shipped to the director without an inspection
15 and certification.

16 (5) The director shall not grant a certificate of inspection
17 to private landowners who are about to sell or remove trees or
18 plants originally supplied from the state, ~~or~~ federal, or state and
19 federal nurseries or by any political subdivision or its agencies.

20 (6) The director shall charge an inspection fee based upon the
21 cost to the department of agriculture of making the inspection.

22 ~~—— (7) The~~ **HOWEVER, THE** director shall adjust the schedule of
23 fees for the costs of making the various inspections of nursery
24 stock, plants, and plant materials as required by this act. The
25 director shall review and adjust its schedule of fees for the
26 inspections at the end of each fiscal year. In any given fiscal
27 year, the director may raise initial inspection fees by no more

1 than 50%. The commission of agriculture shall approve all
 2 adjustments to the initial fees before they are adopted.

3 Sec. 9. (1) A person, firm, partnership, association, or
 4 corporation growing or desiring to sell nursery stock in this state
 5 shall, on or before October 31, 1982 and October 31 of each year,
 6 apply to the director for a license. ~~Until September 30, 2003 or~~
 7 ~~after September 30, 2007, the annual nursery license fee shall be~~
 8 ~~\$50.00, and beginning October 1, 2003 through September 30, 2007,~~
 9 **AFTER SEPTEMBER 30, 2012, THE ANNUAL NURSERY LICENSE FEE SHALL BE**
 10 **\$50.00. UNTIL SEPTEMBER 30, 2012,** the annual nursery license fee
 11 shall be \$100.00. ~~Until September 30, 2003 or after September 30,~~
 12 ~~2007, the annual license fee for plant growers or plant dealers~~
 13 ~~shall be \$20.00, and beginning October 1, 2003 through September~~
 14 ~~30, 2007, AFTER SEPTEMBER 30, 2012, THE ANNUAL LICENSE FEE FOR~~
 15 **PLANT GROWERS OR PLANT DEALERS SHALL BE \$20.00. UNTIL SEPTEMBER 30,**
 16 **2012,** the annual license fee for plant growers or plant dealers
 17 shall be \$100.00. The annual license fee for nursery dealers shall
 18 be \$100.00. ~~For~~ **UNTIL SEPTEMBER 30, 2012, AND FOR** persons growing
 19 less than 1/4 acre of nursery stock or utilizing less than 200
 20 square feet of greenhouse space, ~~and only from October 1, 2003~~
 21 ~~through September 30, 2007, the fee for a license is \$40.00.~~

22 License fees provided for in this act shall become due and payable
 23 at the office of the director on or before October 31 of each year.
 24 The fees imposed in this subsection are subject to subsection ~~(7)~~
 25 **(8)**.

26 **(2) THE AGRICULTURE LICENSING AND INSPECTION FEES FUND IS**
 27 **CREATED WITHIN THE STATE TREASURY. THE STATE TREASURER MAY RECEIVE**

1 LICENSE AND INSPECTION FEES AND ADMINISTRATIVE AND CIVIL FINES
 2 RECEIVED PURSUANT TO THIS ACT AND OTHER ACTS, AS PROVIDED FOR BY
 3 LAW, THAT ARE ADMINISTERED BY THE DEPARTMENT. THE FUND MAY RECEIVE
 4 MONEY OR OTHER ASSETS FROM ANY SOURCE FOR DEPOSIT INTO THE FUND.
 5 THE STATE TREASURER SHALL DIRECT THE INVESTMENT OF THE FUND AND
 6 SHALL CREDIT TO THE FUND INTEREST EARNINGS FROM FUND INVESTMENTS.
 7 MONEY IN THE FUND AT THE CLOSE OF THE FISCAL YEAR SHALL REMAIN IN
 8 THE FUND AND SHALL NOT LAPSE TO THE GENERAL FUND. THE DEPARTMENT
 9 SHALL EXPEND MONEY FROM THE FUND, UPON APPROPRIATION, FOR THE
 10 PURPOSE OF ADMINISTERING AND CARRYING OUT THOSE DUTIES REQUIRED BY
 11 LAW UNDER THIS ACT, AS PROVIDED BY LAW, THAT ARE ADMINISTERED BY
 12 THE DEPARTMENT. THE DEPARTMENT SHALL BE THE ADMINISTRATOR OF THE
 13 FUND FOR AUDITING PURPOSES.

14 (3) ~~(2) Except as otherwise provided in~~ SUBJECT TO subsection
 15 ~~(3)-(4),~~ LICENSE FEES, INSPECTION fees, AND OTHER NONCRIMINAL FEES
 16 collected under SECTIONS 6 AND 9 AND ADMINISTRATIVE FINES IMPOSED
 17 UNDER this act shall be paid into ~~the general fund of the state and~~
 18 ~~shall be used in enforcement of this act.~~ THE AGRICULTURE LICENSING
 19 AND INSPECTION FEES FUND CREATED IN SUBSECTION (2), TO BE USED,
 20 PURSUANT TO APPROPRIATION, BY THE DIRECTOR IN ADMINISTERING AND
 21 CARRYING OUT THOSE DUTIES REQUIRED BY LAW UNDER THIS ACT AND OTHER
 22 ACTS AND TO DEVELOP AND IMPROVE TRAINING AND OUTREACH PROGRAMS FOR
 23 THE PURPOSE OF SAFEGUARDING PLANTS AND PLANT PRODUCTS FROM UNWANTED
 24 PLANT PESTS.

25 (4) ~~(3)~~ Beginning October 1, 2003, the horticulture fund is
 26 created within the state treasury. The state treasurer may receive
 27 money or other assets from any source for deposit into the fund.

1 From October 1, 2003 until September 30, ~~2007~~**2012**, up to
2 \$70,000.00 of the funds generated through licensing ~~shall~~**MAY** be
3 deposited into the horticulture fund each year. The state treasurer
4 shall direct the investments of the horticulture fund. The state
5 treasurer shall credit interest and earnings from fund investments
6 to the fund. Assets in the fund at the close of the fiscal year
7 shall remain in the fund and shall not lapse to the general fund.
8 The director shall administer the fund and shall expend money from
9 the fund, upon appropriation, to provide for research projects, to
10 develop and improve training programs, and to develop outreach
11 materials for the purposes of safeguarding plants and plant
12 products from unwanted plant pests. The director shall administer
13 the fund with advice and consultation from a horticultural advisory
14 committee created in subsection ~~(4)~~**(5)**. After September 30, ~~2007~~
15 **2012**, the fund shall no longer exist and the money in the fund
16 shall revert to the ~~general~~**AGRICULTURE LICENSING AND INSPECTION**
17 **FEES** fund for use as described in subsection (2).

18 (5) ~~(4)~~—There is created a horticulture advisory committee.
19 Members of this committee, to be named by the director, shall
20 include representatives from the horticulture industry.

21 (6) ~~(5)~~—This section does not apply to persons engaged in
22 fruit growing who are not nurserymen but desire to sell or exchange
23 surplus small fruit plants of their own growing, or to farmers or
24 other persons who may sell or give away native shade trees, native
25 shrubs, native vines, native hardy perennials, or native evergreens
26 from their own premises.

27 (7) ~~(6)~~—Beginning the effective date of the amendatory act

1 ~~that added this subsection~~ **JULY 23, 2004**, the director shall issue
2 an initial or renewal license not later than 90 days after the
3 applicant files a completed application. Receipt of the application
4 is considered the date the application is received by any agency or
5 department of the state of Michigan. If the application is
6 considered incomplete by the director, the director shall notify
7 the applicant in writing, or make the information electronically
8 available, within 30 days after receipt of the incomplete
9 application, describing the deficiency and requesting the
10 additional information. The 90-day period is tolled upon
11 notification by the director of a deficiency until the date the
12 requested information is received by the director. The
13 determination of the completeness of an application does not
14 operate as an approval of the application for the license and does
15 not confer eligibility of an applicant determined otherwise
16 ineligible for issuance of a license. The director shall not
17 discriminate against an applicant in the processing of the
18 application based upon the fact that the license fee was refunded
19 or discounted under this subsection.

20 (8) ~~(7)~~—If the director fails to issue or deny a license
21 within the time required by this section, the director shall return
22 the license fee and shall reduce the license fee for the
23 applicant's next renewal application, if any, by 15%. The failure
24 to issue a license within the time required under this section does
25 not allow the department to otherwise delay the processing of the
26 application, and that application, upon completion, shall be placed
27 in sequence with other completed applications received at that same

1 time.

2 (9) ~~(8)~~ Beginning October 1, 2005, the director shall submit a
3 report by December 1 of each year to the standing committees and
4 appropriations subcommittees of the senate and house of
5 representatives concerned with agricultural issues. The director
6 shall include all of the following information in the report
7 concerning the preceding fiscal year:

8 (a) The number of initial and renewal applications the
9 department received and completed within the 90-day time period
10 described in subsection ~~(6)~~ ~~(7)~~.

11 (b) The number of applications denied.

12 (c) The number of applicants not issued a license within the
13 90-day time period and the amount of money returned to licensees
14 and registrants under subsection ~~(7)~~ ~~(8)~~.

15 (10) ~~(9)~~ As used in this section, "completed application"
16 means an application complete on its face and submitted with any
17 applicable licensing and inspection fees as well as any other
18 information, records, approval, security, or similar item required
19 by law or rule from a local unit of government, a federal agency,
20 or a private entity but not from another department or agency of
21 the state of Michigan.

22 Sec. 11. (1) Each nonresident nurseryman, dealer, or grower,
23 who solicits or takes orders for or sells nursery stock in this
24 state through resident or nonresident agents, shall each year
25 obtain a license from the director, for which the fee shall be
26 ~~\$50.00~~ **AS PRESCRIBED IN SECTION 9**. The director may waive the
27 license fee requirement if there is a reciprocal agreement with the

1 appropriate authority of the state in which the applicant's
2 principal place of business is located waiving the requirements for
3 Michigan nurserymen, plant growers, or dealers in that state. The
4 director may enter into reciprocal agreements with responsible
5 officers of other states under which nursery stock owned or handled
6 by nurserymen, plant growers, or dealers of those states may be
7 sold in this state without the payment of the license fee provided
8 for in this section.

9 (2) The director may deny an ~~out-of-state~~ **OUT-OF-STATE**
10 nurseryman or nursery stock dealer the right to ship nursery stock
11 into this state if the **DEPARTMENT DETERMINES THAT THE** nurseryman or
12 nursery stock dealer ~~violates~~ **HAS VIOLATED** this act or a rule
13 promulgated under this act.