

SENATE 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:

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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

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

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

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

1 fee, the expense of the inspector and mileage at the prevailing  
2 rate per mile, as established by the state administrative board, in  
3 going to and returning from the inspection, either from Lansing or  
4 the location of the nearest inspector.

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

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

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

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

24 ~~———(7) The~~ **HOWEVER, THE** director shall adjust the schedule of  
25 fees for the costs of making the various inspections of nursery  
26 stock, plants, and plant materials as required by this act. The  
27 director shall review and adjust its schedule of fees for the

1 inspections at the end of each fiscal year. In any given fiscal  
2 year, the director may raise initial inspection fees by no more  
3 than 50%. The commission of agriculture shall approve all  
4 adjustments to the initial fees before they are adopted.

5 Sec. 9. (1) A person, firm, partnership, association, or  
6 corporation growing or desiring to sell nursery stock in this state  
7 shall, on or before October 31, 1982 and October 31 of each year,  
8 apply to the director for a license. ~~Until September 30, 2003 or~~  
9 ~~after September 30, 2007, the annual nursery license fee shall be~~

10 ~~\$50.00, and beginning October 1, 2003 through September 30, 2007,~~

11 **AFTER SEPTEMBER 30, 2012, THE ANNUAL NURSERY LICENSE FEE SHALL BE**

12 **\$50.00. UNTIL SEPTEMBER 30, 2012,** the annual nursery license fee

13 shall be \$100.00. ~~Until September 30, 2003 or after September 30,~~

14 ~~2007, the annual license fee for plant growers or plant dealers~~

15 ~~shall be \$20.00, and beginning October 1, 2003 through September~~

16 ~~30, 2007, AFTER SEPTEMBER 30, 2012, THE ANNUAL LICENSE FEE FOR~~

17 **PLANT GROWERS OR PLANT DEALERS SHALL BE \$20.00. UNTIL SEPTEMBER 30,**

18 **2012,** the annual license fee for plant growers or plant dealers

19 shall be \$100.00. The annual license fee for nursery dealers shall

20 be \$100.00. ~~For~~ **UNTIL SEPTEMBER 30, 2012, AND FOR** persons growing

21 less than 1/4 acre of nursery stock or utilizing less than 200

22 square feet of greenhouse space, ~~and only from October 1, 2003~~

23 ~~through September 30, 2007,~~ the fee for a license is \$40.00.

24 License fees provided for in this act shall become due and payable

25 at the office of the director on or before October 31 of each year.

26 The fees imposed in this subsection are subject to subsection ~~(7)~~

27 **(8).**

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

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

1       (4) ~~(3)~~—Beginning October 1, 2003, the horticulture fund is  
2     created within the state treasury. The state treasurer may receive  
3     money or other assets from any source for deposit into the fund.  
4     From October 1, 2003 until September 30, ~~2007~~—**2012**, up to  
5     \$70,000.00 of the funds generated through licensing ~~shall~~—**MAY** be  
6     deposited into the horticulture fund each year. The state treasurer  
7     shall direct the investments of the horticulture fund. The state  
8     treasurer shall credit interest and earnings from fund investments  
9     to the fund. Assets in the fund at the close of the fiscal year  
10    shall remain in the fund and shall not lapse to the general fund.  
11    The director shall administer the fund and shall expend money from  
12    the fund, upon appropriation, to provide for research projects, to  
13    develop and improve training programs, and to develop outreach  
14    materials for the purposes of safeguarding plants and plant  
15    products from unwanted plant pests. The director shall administer  
16    the fund with advice and consultation from a horticultural advisory  
17    committee created in subsection ~~(4)~~—**(5)**. After September 30, ~~2007~~  
18    **2012**, the fund shall no longer exist and the money in the fund  
19    shall revert to the ~~general~~—**AGRICULTURE LICENSING AND INSPECTION**  
20    **FEES** fund for use as described in subsection (2).

21       (5) ~~(4)~~—There is created a horticulture advisory committee.  
22    Members of this committee, to be named by the director, shall  
23    include representatives from the horticulture industry.

24       (6) ~~(5)~~—This section does not apply to persons engaged in  
25    fruit growing who are not nurserymen but desire to sell or exchange  
26    surplus small fruit plants of their own growing, or to farmers or  
27    other persons who may sell or give away native shade trees, native

1 shrubs, native vines, native hardy perennials, or native evergreens  
2 from their own premises.

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

23       (8) ~~(7)~~ If the director fails to issue or deny a license  
24 within the time required by this section, the director shall return  
25 the license fee and shall reduce the license fee for the  
26 applicant's next renewal application, if any, by 15%. The failure  
27 to issue a license within the time required under this section does

1 not allow the department **OF AGRICULTURE** to otherwise delay the  
 2 processing of the application, and that application, upon  
 3 completion, shall be placed in sequence with other completed  
 4 applications received at that same time.

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

11 (a) The number of initial and renewal applications the  
 12 department received and completed within the 90-day time period  
 13 described in subsection ~~(6)~~—(7).

14 (b) The number of applications denied.

15 (c) The number of applicants not issued a license within the  
 16 90-day time period and the amount of money returned to licensees  
 17 and registrants under subsection ~~(7)~~—(8).

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

25 Sec. 11. (1) Each nonresident nurseryman, dealer, or grower,  
 26 who solicits or takes orders for or sells nursery stock in this  
 27 state through resident or nonresident agents, shall each year

1 obtain a license from the director, for which the fee shall be  
2 ~~\$50.00~~ **AS PRESCRIBED IN SECTION 9**. The director may waive the  
3 license fee requirement if there is a reciprocal agreement with the  
4 appropriate authority of the state in which the applicant's  
5 principal place of business is located waiving the requirements for  
6 Michigan nurserymen, plant growers, or dealers in that state. The  
7 director may enter into reciprocal agreements with responsible  
8 officers of other states under which nursery stock owned or handled  
9 by nurserymen, plant growers, or dealers of those states may be  
10 sold in this state without the payment of the license fee provided  
11 for in this section.

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