

Act No. 84  
Public Acts of 2007  
Approved by the Governor  
September 30, 2007  
Filed with the Secretary of State  
September 30, 2007  
EFFECTIVE DATE: September 30, 2007

**STATE OF MICHIGAN  
94TH LEGISLATURE  
REGULAR SESSION OF 2007**

Introduced by Rep. Condino

# **ENROLLED HOUSE BILL No. 4862**

AN ACT to amend 1931 PA 189, entitled "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 treatment of certain plants or plant products; to provide for license and to provide for inspection; and imposing certain powers and duties on the director of agriculture; to provide for the promulgation of rules; to prescribe penalties and civil sanctions; and to provide remedies," 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:*

## **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 treatment of certain plants or plant products; to provide for the licensure and inspection of certain persons and activities under certain circumstances; to impose certain powers and duties on the director of agriculture; to create certain restricted funds for certain department activities and to allow allocation of those funds throughout the department; to provide for the promulgation of rules; to prescribe penalties and civil sanctions; and to provide remedies.

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

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

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

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

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

(6) The director shall charge an inspection fee based upon the cost to the department of agriculture of making the inspection. However, the director shall adjust the schedule of fees for the costs of making the various inspections of nursery stock, plants, and plant materials as required by this act. The director shall review and adjust its schedule of fees for the inspections at the end of each fiscal year. In any given fiscal year, the director may raise initial inspection fees by no more than 50%. The commission of agriculture shall approve all adjustments to the initial fees before they are adopted.

Sec. 9. (1) A person, firm, partnership, association, or corporation growing or desiring to sell nursery stock in this state shall, on or before October 31, 1982 and October 31 of each year, apply to the director for a license. After September 30, 2012, the annual nursery license fee shall be \$50.00. Until September 30, 2012, the annual nursery license fee shall be \$100.00. After September 30, 2012, the annual license fee for plant growers or plant dealers shall be \$20.00. Until September 30, 2012, the annual license fee for plant growers or plant dealers shall be \$100.00. The annual license fee for nursery dealers shall be \$100.00. Until September 30, 2012, and for persons growing less than 1/4 acre of nursery stock or utilizing less than 200 square feet of greenhouse space, the fee for a license is \$40.00. License fees provided for in this act shall become due and payable at the office of the director on or before October 31 of each year. The fees imposed in this subsection are subject to subsection (8).

(2) The agriculture licensing and inspection fees fund is created within the state treasury. The state treasurer may receive license and inspection fees and administrative and civil fines received pursuant to this act and other acts, as provided for by law, that are administered by the department of agriculture. The fund may receive money or other assets from any source for deposit into the fund. The state treasurer shall direct the investment of the fund and shall credit to the fund interest earnings from fund investments. Money in the fund at the close of the fiscal year shall remain in the fund and shall not lapse to the general fund. The department of agriculture shall expend money from the fund, upon appropriation, for the purpose of administering and carrying out those duties required by law under this act and other acts, as provided by law, that are administered by the department. The department of agriculture shall be the administrator of the fund for auditing purposes.

(3) Subject to subsection (4), license fees, inspection fees, and other noncriminal fees collected under sections 6 and 9 and administrative fines imposed under this act shall be paid into the agriculture licensing and inspection fees fund created in subsection (2), to be used, pursuant to appropriation, by the director in administering and carrying out those duties required by law under this act and to develop and improve training and outreach programs for the purpose of safeguarding plants and plant products from unwanted plant pests.

(4) Beginning October 1, 2003, the horticulture fund is created within the state treasury. The state treasurer may receive money or other assets from any source for deposit into the fund. From October 1, 2003 until September 30, 2012, up to \$70,000.00 of the funds generated through licensing may be deposited into the horticulture fund each year. The state treasurer shall direct the investments of the horticulture fund. The state treasurer shall credit interest and earnings from fund investments to the fund. Assets in the fund at the close of the fiscal year shall remain in the fund and shall not lapse to the general fund. The director shall administer the fund and shall expend money from the fund, upon appropriation, to provide for research projects, to develop and improve training programs, and to develop outreach materials for the purposes of safeguarding plants and plant products from unwanted plant pests. The director shall administer the fund with advice and consultation from a horticultural advisory committee created in subsection (5). After September 30, 2012, the fund shall no longer exist and the money in the fund shall revert to the agriculture licensing and inspection fees fund for use as described in subsection (2).

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

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

(7) Beginning July 23, 2004, the director shall issue an initial or renewal license not later than 90 days after the applicant files a completed application. Receipt of the application is considered the date the application is received by any agency or department of the state of Michigan. If the application is considered incomplete by the director, the

director shall notify the applicant in writing, or make the information electronically available, within 30 days after receipt of the incomplete application, describing the deficiency and requesting the additional information. The 90-day period is tolled upon notification by the director of a deficiency until the date the requested information is received by the director. The determination of the completeness of an application does not operate as an approval of the application for the license and does not confer eligibility of an applicant determined otherwise ineligible for issuance of a license. The director shall not discriminate against an applicant in the processing of the application based upon the fact that the license fee was refunded or discounted under this subsection.

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

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

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

(b) The number of applications denied.

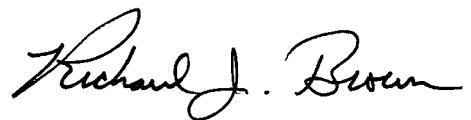
(c) The number of applicants not issued a license within the 90-day time period and the amount of money returned to licensees and registrants under subsection (8).

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

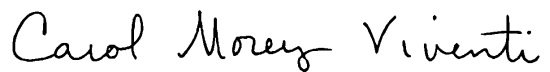
Sec. 11. (1) Each nonresident nurseryman, dealer, or grower, who solicits or takes orders for or sells nursery stock in this state through resident or nonresident agents, shall each year obtain a license from the director, for which the fee shall be as prescribed in section 9. The director may waive the license fee requirement if there is a reciprocal agreement with the appropriate authority of the state in which the applicant's principal place of business is located waiving the requirements for Michigan nurserymen, plant growers, or dealers in that state. The director may enter into reciprocal agreements with responsible officers of other states under which nursery stock owned or handled by nurserymen, plant growers, or dealers of those states may be sold in this state without the payment of the license fee provided for in this section.

(2) The director may deny an out-of-state nurseryman or nursery stock dealer the right to ship nursery stock into this state if the department of agriculture determines that the nurseryman or nursery stock dealer has violated this act or a rule promulgated under this act.

This act is ordered to take immediate effect.



Clerk of the House of Representatives



Secretary of the Senate

Approved \_\_\_\_\_

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Governor