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Sixty-fifth  
Legislative Assembly  
of North Dakota

FIRST DRAFT:  
Prepared by the Legislative Council staff for the  
Agriculture and Natural Resources Committee

Introduced by

1 A BILL for an Act

2 **BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:**

3 **SECTION 1. AMENDMENT.** Section 4-21.1-01 of the North Dakota Century Code is  
4 amended and reenacted as follows:

5 **~~4-21.1-01~~4.1-22-01. Definitions.**

6 In this chapter, except ~~when the context or subject matter as~~ otherwise requires provided:

- 7 1. "Certificate of inspection" means a document issued or authorized by the  
8 commissioner stating ~~that~~ nursery stock is practically free from damaging pests.
- 9 2. "Commissioner" means the agriculture commissioner or the commissioner's  
10 ~~authorized representative~~ designee.
- 11 3. "Grower" means any person who takes a reproductive part of nursery stock and  
12 increases ~~its~~ the size and development of the stock for at least one full growing  
13 season. ~~This~~ A grower includes a person producing nursery stock from tissue culture.
- 14 4. "Infested" means ~~actually infested or infected with a pest~~ quantity of pests or so  
15 exposed to ~~infestation~~ a quantity of pests that it would be reasonable to believe that an  
16 ~~infestation~~ potential for harm or threat to the health of the host nursery stock exists.

**NOTE:** The definition used only forms of the defined word.

- 17 5. "Nonhardy" means plant species, varieties, and cultivars that will not survive climatic  
18 conditions in North Dakota.
- 19 6. "Nursery" means any place where nursery stock is propagated, grown, or offered for  
20 sale.
- 21 7. "Nursery stock" means all trees, shrubs, ~~and~~ woody vines and their parts thereof  
22 which are capable of propagation or growth, except seed. Only ~~those plants that are~~  
23 intended for outdoor planting are considered nursery stock.

1       8.   ~~"Person" means any individual, corporation, limited liability company, company,~~  
2           ~~society, association, government agency, or other entity.~~

**NOTE:** "Person" is defined in North Dakota Century Code Section 1-01-49(8) for purposes of the entire Century Code to have essentially the same meaning. The definition is not needed here.

3       9.   "Pest" means any invertebrate animal, pathogen, parasitic plant, or other similar  
4           organism which can cause damage to nursery stock.

5    ~~10.9.~~ "Place of business" means each separate location from which nursery stock is being  
6           offered for sale.

7    ~~11.10.~~ "Viable nursery stock" means nursery stock that is capable of living and accomplishing  
8           the purpose for which it is grown, whether for foliage, flowers, fruit, or special use.

9       **SECTION 2. AMENDMENT.** Section 4-21.1-02 of the North Dakota Century Code is  
10      amended and reenacted as follows:

11       ~~4-21.1-024.1-22-02.~~ **Administration - Rulemaking authority.**

12      The commissioner ~~has the responsibility for administration of the provisions of~~ shall  
13      administer this chapter. The commissioner may adopt such rules pursuant to under chapter  
14      ~~28-32 as are necessary to carry out the purposes and provisions of~~ implement this chapter.

15       **SECTION 3. AMENDMENT.** Section 4-21.1-03 of the North Dakota Century Code is  
16      amended and reenacted as follows:

17       ~~4-21.1-034.1-22-03.~~ **Authority for inspection.**

18      The commissioner shall inspect all nursery stock being grown in North Dakota at least once  
19      each year and may enter and inspect any nursery or place of business during normal business  
20      hours.

21       **SECTION 4. AMENDMENT.** Section 4-21.1-04 of the North Dakota Century Code is  
22      amended and reenacted as follows:

23       ~~4-21.1-044.1-22-04.~~ **Authority for abatement - Removal from sale.**

24      The commissioner may, ~~upon~~ After giving notice to the owner or the owner's agent, the  
25      commissioner may destroy, treat, or remove from sale, at the owner's expense, any nursery  
26      stock offered for sale ~~that is found to be not viable, not accompanied by a certificate of~~  
27      inspection, not labeled correctly, or infested with a pest.

28       **SECTION 5. AMENDMENT.** Section 4-21.1-05 of the North Dakota Century Code is  
29      amended and reenacted as follows:

1        **4-21.1-054.1-22-05. Certification of nursery stock.**

2        ~~A~~The commissioner shall issue a certificate of inspection ~~may be issued~~ annually by the  
3        commissioner for nursery stock grown in licensed nurseries within ~~North Dakota that is~~the state  
4        found to be practically free from damaging pests. Certificates expire on December thirty-first  
5        each year unless canceled at an earlier date. Certification may be withheld by the commissioner  
6        when nursery stock is infested with a pest or if weeds or other objects prevent the  
7        commissioner from making an adequate inspection of the nursery stock. All nursery stock being  
8        offered for sale within ~~North Dakota~~the state must be from officially inspected sources. A copy of  
9        a certificate of inspection from the state of origin must accompany each commercial lot or  
10       shipment of nursery stock that is transported into or offered for sale within North Dakota. All  
11       ~~reproductions~~copies of the North Dakota certificate of inspection ~~needed~~required for shipping  
12       purposes must be approved by the commissioner.

13        **SECTION 6. AMENDMENT.** Section 4-21.1-06 of the North Dakota Century Code is  
14        amended and reenacted as follows:

15        **4-21.1-064.1-22-06. Nursery license - Fee.**

16        ~~No~~A person may not sell nursery stock without a license issued by the commissioner.  
17        Licenses expire on December thirty-first each year unless revoked at an earlier date. An  
18        application for renewal of license with any additional information ~~requested~~required by the  
19        commissioner must be submitted and accompanied by a fee of fifty dollars on or before  
20        December thirty-first each year. A separate license is required for each place of business. ~~The~~A  
21        fee of ten dollars must be submitted for each additional license, other than the principal place of  
22        business, ~~is ten dollars~~. ~~No~~A license may not be issued to a grower unless the grower has first  
23        been issued a certificate of inspection.

24        **SECTION 7. AMENDMENT.** Section 4-21.1-11 of the North Dakota Century Code is  
25        amended and reenacted as follows:

26        **4-21.1-114.1-22-07. Labeling and standards for nursery stock.**

27        ~~No~~A person may not sell or offer for sale any nursery stock not labeled in accordance with  
28        the international code of nomenclature for cultivated plants with the complete correct botanical  
29        or approved recognized common name. All nonhardy trees and shrubs, as  
30        ~~designated~~determined by the commissioner, must be labeled ~~with the statement~~ "nonhardy in  
31        North Dakota". All nursery stock offered for sale or distribution must be in a viable condition and

1 must be stored and displayed under conditions that will maintain its viability. Materials used to  
2 coat the aerial parts of the plant ~~that~~which change the appearance of the plant surface so as to  
3 prevent adequate inspection are prohibited.

4 **SECTION 8. AMENDMENT.** Section 4-21.1-12 of the North Dakota Century Code is  
5 amended and reenacted as follows:

6 **~~4-21.1-124.1-22-08.~~ Misrepresentation.**

7 ~~It is unlawful for any person to~~A person may not misrepresent the name, age, origin, grade,  
8 variety, quality, or hardiness of any nursery stock being offered for sale.

9 **SECTION 9. AMENDMENT.** Section 4-21.1-13 of the North Dakota Century Code is  
10 amended and reenacted as follows:

11 **~~4-21.1-134.1-22-09.~~ Reciprocal agreements.**

12 The commissioner may enter into reciprocal agreements with officers of other states for the  
13 recognition of official licenses and inspection certificates.

14 **SECTION 10. AMENDMENT.** Section 4-21.1-14 of the North Dakota Century Code is  
15 amended and reenacted as follows:

16 **~~4-21.1-144.1-22-10.~~ Exemptions.**

17 The commissioner may exempt certain nursery stock, nurseries, or persons from all or part  
18 of the ~~sections~~provisions of this chapter. Exemptions from licenses and fees may include:

- 19 1. Persons growing and propagating nursery stock for research or experimental  
20 purposes;
- 21 2. Soil conservation districts selling nursery stock for the prevention of soil and wind  
22 erosion or other conservation plantings; and
- 23 3. Persons growing nursery stock for noncommercial purposes or that the commissioner  
24 designates as exempt.

25 **SECTION 11. AMENDMENT.** Section 4-21.1-16 of the North Dakota Century Code is  
26 amended and reenacted as follows:

27 **~~4-21.1-164.1-22-11.~~ Penalties - Criminal - Civil - License revocation or nonrenewal.**

- 28 1. ~~Any~~It is a class B misdemeanor for any person who violates to violate this chapter, or  
29 any rules adopted pursuant to it, ~~is guilty of a class B misdemeanor under this chapter.~~
- 30 2. Any person who violates any of the ~~provisions~~provision of this chapter, or ~~rules~~rule  
31 adopted pursuant to it under this chapter, is subject to a civil penalty not to exceed five

- 1            hundred dollars for each violation. The civil penalty may be adjudicated by the courts  
2            or by the commissioner through an administrative hearing ~~pursuant to~~under chapter  
3            28-32.
- 4            3. The department may maintain, in accordance with the laws of this state, ~~maintain~~ an  
5            appropriate civil action in the name of the state against any person violating this  
6            chapter or rules adopted under this chapter.
- 7            4. The commissioner may refuse to grant a license to any person found guilty of  
8            repeated violations of this chapter or rules adopted under this chapter, or to any  
9            person who has failed to pay an adjudicated civil penalty for violation of this chapter  
10           within thirty days after a final determination that the civil penalty is owed.