

CHAPTER 18H

NURSERY LAW

18H.02	Definitions.	18H.09	Nursery stock certification requirements.
18H.05	Nursery certificate requirements.	18H.13	Shipment of nursery stock into Minnesota.
18H.06	Exempt nursery sales.	18H.15	Violations.
18H.07	Fee schedule.	18H.18	Conservation of certain wildflowers.

18H.02 DEFINITIONS.

[For text of subds 1 to 12, see M.S.2004]

Subd. 12a. **Individual.** "Individual" means a human being.

[For text of subds 13 and 14, see M.S.2004]

Subd. 15. [Repealed, 1Sp2005 c.1 art 1 s 98]

[For text of subds 16 to 18, see M.S.2004]

Subd. 19. [Repealed, 1Sp2005 c.1 art 1 s 98]

[For text of subd 20, see M.S.2004]

Subd. 21. **Nursery stock broker.** "Nursery stock broker" means a nursery stock dealer engaged in the business of selling or reselling certified nursery stock as a business transaction without taking ownership or handling the nursery stock.

Subd. 22. **Nursery stock dealer.** "Nursery stock dealer" means a person involved in the acquisition and further distribution of certified nursery stock; the utilization of certified nursery stock for landscaping or purchase of certified nursery stock for other persons; or the distribution of certified nursery stock with a mechanical digger, commonly known as a tree spade, or by any other means. A person who purchases more than half of the certified nursery stock offered for sale at a sales location during the current certificate year is considered a nursery stock dealer rather than a nursery stock grower for the purposes of determining a proper fee schedule. Nursery stock brokers, landscapers, and tree spade operators are considered nursery stock dealers for purposes of determining proper certification.

Subd. 23. **Nursery stock grower.** "Nursery stock grower" includes, but is not limited to, a person who raises, grows, or propagates nursery stock, outdoors or indoors. A person who grows more than half of the certified nursery stock offered for sale at a sales location during the current certificate year is considered a nursery stock grower for the purpose of determining a proper fee schedule.

[For text of subds 24 to 31, see M.S.2004]

Subd. 32. **Sales location.** "Sales location" means a fixed location from which certified nursery stock is displayed or distributed.

[For text of subd 33, see M.S.2004]

Subd. 34. **Tree spade operator.** "Tree spade operator" means a person who uses a tree spade to dig, sell, offer for sale, distribute, or transport certified nursery stock.

History: 1Sp2005 c.1 art 1 s 41-46

18H.05 NURSERY CERTIFICATE REQUIREMENTS.

(a) No person may offer for sale or distribute certified nursery stock as a nursery stock grower or dealer without first obtaining the appropriate nursery stock certificate from the commissioner. The commissioner may not issue a certificate to a person who does not sell certified nursery stock. Certificates are issued solely for these purposes and may not be used for other purposes.

(b) A certificate issued by the commissioner expires on December 31 of the year it is issued.

(c) A person required to be certified by this section must apply for a certificate or for renewal on a form furnished by the commissioner which must contain:

(1) the name and address of the applicant, the number of locations to be operated by the applicant and their addresses, and the assumed business name of the applicant;

(2) if other than an individual, a statement whether a person is a partnership, corporation, or other organization;

(3) the type of business to be operated and, if the applicant is an agent, the principals the applicant represents; and

(4) source or sources of purchased nursery stock.

(d) No person may:

(1) falsely claim to be a certified dealer, grower, broker, or agent;

(2) make willful false statements when applying for a certificate; or

(3) sell or distribute certified nursery stock to an uncertified nursery stock dealer who is required to be certified or nursery stock grower.

(e) Each application for a certificate must be accompanied by the appropriate certificate fee under section 18H.07.

(f) Certificates issued by the commissioner must be prominently displayed to the public in the place of business where certified nursery stock is sold or distributed.

(g) The commissioner may refuse to issue a certificate for cause.

(h) Each grower or dealer is entitled to one sales location under the certificate of the grower or dealer. Each additional sales location maintained by the person requires the payment of the full certificate fee for each additional sales outlet.

(i) A grower who is also a dealer is certified only as a grower for that specific site.

(j) A certificate is personal to the applicant and may not be transferred. A new certificate is necessary if the business entity is changed or if the membership of a partnership is changed, whether or not the business name is changed.

(k) The certificate issued to a dealer or grower applies to the particular premises named in the certificate. However, if prior approval is obtained from the commissioner, the place of business may be moved to the other premises or location without an additional certificate fee.

(l) A collector of nursery stock from the wild is required to obtain a dealer's certificate from the commissioner and is subject to all the requirements that apply to the inspection of nursery stock. All collected nursery stock must be labeled as "collected from the wild."

History: *1Sp2005 c 1 art 1 s 47*

18H.06 EXEMPT NURSERY SALES.

Subdivision 1. **Not-for-profit sales.** An organization or individual may offer for sale certified nursery stock and be exempt from the requirement to obtain a nursery stock dealer certificate if sales are conducted by a nonprofit charitable, educational, or religious organization that:

(1) conducts sales or distributions of certified nursery stock on ten or fewer days in a calendar year; and

(2) uses the proceeds from its certified nursery stock sales or distribution for charitable, educational, or religious purposes.

Subd. 2. **Occasional sales.** (a) An individual may offer nursery stock for sale and be exempt from the requirement to obtain a nursery stock dealer certificate if:

(1) the gross sales of all nursery stock in a calendar year do not exceed \$2,000;

(2) all nursery stock sold or distributed by the individual is intended for planting in Minnesota;

(3) all nursery stock purchased or procured for resale or distribution was grown in Minnesota and has been certified by the commissioner; and

(4) conducts sales or distributions of nursery stock on ten or fewer days in a calendar year.

(b) The commissioner may prescribe the conditions of the exempt nursery sales under this subdivision and may conduct routine inspections of the nursery stock offered for sale.

History: *1Sp2005 c 1 art 1 s 48*

18H.07 FEE SCHEDULE.

Subdivision 1. Establishment of fees. The commissioner shall establish fees sufficient to allow for the administration and enforcement of this chapter and rules adopted under this chapter, including the portion of general support costs and statewide indirect costs of the agency attributable to that function, with a reserve sufficient for up to six months. The commissioner shall review the fee schedule annually in consultation with the Minnesota Nursery and Landscape Advisory Committee. For the certificate year beginning January 1, 2006, the fees are as described in this section.

Subd. 2. Nursery stock grower certificate. (a) A nursery stock grower must pay an annual fee based on the area of all acreage on which nursery stock is grown for certification as follows:

- (1) less than one-half acre, \$150;
- (2) from one-half acre to two acres, \$200;
- (3) over two acres up to five acres, \$300;
- (4) over five acres up to ten acres, \$350;
- (5) over ten acres up to 20 acres, \$500;
- (6) over 20 acres up to 40 acres, \$650;
- (7) over 40 acres up to 50 acres, \$800;
- (8) over 50 acres up to 200 acres, \$1,100;
- (9) over 200 acres up to 500 acres, \$1,500; and
- (10) over 500 acres, \$1,500 plus \$2 for each additional acre.

(b) In addition to the fees in paragraph (a), a penalty of ten percent of the fee due must be charged for each month, or portion thereof, that the fee is delinquent up to a maximum of 30 percent for any application for renewal not received by January 1 of the year following expiration of a certificate.

Subd. 3. Nursery stock dealer certificate. (a) A nursery stock dealer must pay an annual fee based on the dealer's gross sales of certified nursery stock per location during the most recent certificate year. A certificate applicant operating for the first time must pay the minimum fee. The fees per sales location are:

- (1) gross sales up to \$5,000, \$150;
- (2) gross sales over \$5,000 up to \$20,000, \$175;
- (3) gross sales over \$20,000 up to \$50,000, \$300;
- (4) gross sales over \$50,000 up to \$75,000, \$425;
- (5) gross sales over \$75,000 up to \$100,000, \$550;
- (6) gross sales over \$100,000 up to \$200,000, \$675; and
- (7) gross sales over \$200,000, \$800.

(b) In addition to the fees in paragraph (a), a penalty of ten percent of the fee due must be charged for each month, or portion thereof, that the fee is delinquent up to a maximum of 30 percent for any application for renewal not received by January 1 of the year following expiration of a certificate.

[For text of subd 4, see M.S.2004]

History: *1Sp2005 c 1 art 1 s 49-51*

18H.09 NURSERY STOCK CERTIFICATION REQUIREMENTS.

(a) All nursery stock growing at sites identified by nursery stock growers and submitted for inspection must be inspected by the commissioner within the previous 12 months prior to sale and found apparently free from quarantine and regulated nonquarantine pests as well as significantly dangerous or potentially damaging plant pests. The commissioner may waive a site inspection under the following conditions:

- (1) the nursery stock is not going to be sold within 12 months;
- (2) the nursery stock will not be moved out of Minnesota; and
- (3) the nursery site or stock is not subject to certification requirements associated with a state or federally regulated or quarantined plant pest.

All nursery stock originating from out of state and offered for sale in Minnesota must have been inspected by the appropriate state or federal agency during the previous 12 months and found free from quarantine and regulated nonquarantine pests as well as significantly dangerous or potentially damaging plant pests. A nursery stock certificate is valid from January 1 to December 31.

(b) Nursery stock must be accessible to the commissioner for inspection during regular business hours. Weeds or other growth that hinder a proper inspection are grounds to suspend or withhold a certificate or require a reinspection.

(c) Inspection reports issued to growers must contain a list of the plant pests found at the time of inspection. Withdrawal-from-distribution orders are considered part of the inspection reports. A withdrawal-from-distribution order must contain a list of plants withdrawn from distribution and the location of the plants.

(d) The commissioner may post signs to delineate sections withdrawn from distribution. These signs must remain in place until the commissioner removes them or grants written permission to the grower to remove the signs.

(e) Inspection reports issued to dealers must outline the violations involved and corrective actions to be taken including withdrawal-from-distribution orders which would specify nursery stock that could not be distributed from a certain area.

(f) Optional inspections of plants may be conducted by the commissioner upon request by any persons desiring an inspection. A fee as provided in section 18H.07 must be charged for such an inspection.

History: 1Sp2005 c 1 art 1 s 52

18H.13 SHIPMENT OF NURSERY STOCK INTO MINNESOTA.

Subdivision 1. **Identification of origin.** Proof of valid nursery certification and origin of all nursery stock must accompany the shipment. It is the shared responsibility of both the consignee and consignor to examine all shipments for the presence of current and applicable nursery stock certifications for all plant material from all sources of stock in each shipment.

[For text of subs 2 to 5, see M.S.2004]

History: 1Sp2005 c 1 art 1 s 53

18H.15 VIOLATIONS.

(a) A person who offers to distribute nursery stock that is uncertified, uninspected, or falsely labeled or advertised possesses an illegal regulated commodity that is considered infested or infected with harmful plant pests and subject to regulatory action and control. If the commissioner determines that the provisions of this section have been violated, the commissioner may order the destruction of all of the plants unless the person:

(1) provides proper phytosanitary preclearance, phytosanitary certification, or nursery stock certification;

(2) agrees to have the plants, plant materials, or nursery stock returned to the consignor; and

(3) provides proper documentation, certification, or compliance to support advertising claims.

(b) The plant owner is liable for all costs associated with a withdrawal-from-distribution order or the quarantine, treatment, or destruction of plants. The commissioner is not liable for actual or incidental costs incurred by a person due to the commissioner's actions. The commissioner must be reimbursed by the owner of the plants for the actual expenses incurred in carrying out a withdrawal-from-distribution order or the quarantine, treatment, or destruction of any plants.

(c) It is unlawful for a person to:

- (1) misrepresent, falsify, or knowingly distribute, sell, advertise, or display damaged, mislabeled, misrepresented, infested, or infected nursery stock;
- (2) fail to obtain a nursery certificate as required by the commissioner;
- (3) fail to renew a nursery certificate, but continue business operations;
- (4) fail to display a nursery certificate;
- (5) misrepresent or falsify a nursery certificate;
- (6) refuse to submit to a nursery inspection;
- (7) fail to provide the cooperation necessary to conduct a successful nursery inspection;
- (8) offer for sale uncertified plants, plant materials, or nursery stock;
- (9) possess an illegal regulated commodity;
- (10) violate or disobey a commissioner's order;
- (11) violate a quarantine issued by the commissioner;
- (12) fail to obtain phytosanitary certification for plant material or nursery stock brought into Minnesota;
- (13) deface, mutilate, or destroy a nursery stock certificate, phytosanitary certificate, or phytosanitary preclearance certificate, or other commissioner mark, permit, or certificate;
- (14) fail to notify the commissioner of an uncertified shipment of plants, plant materials, or nursery stock;
- (15) transport uncertified plants, plant materials, or nursery stock in Minnesota; or
- (16) sell nursery stock to an uncertified nursery stock dealer who is required to be certified.

History: *1Sp2005 c 1 art 1 s 54*

18H.18 CONSERVATION OF CERTAIN WILDFLOWERS.

Subdivision 1. **Restrictions on collecting.** No person shall distribute any species of orchids (*Orchidaceae*), any gentian (*Gentiana*), arbutus (*Epigaea repens*), lilies (*Lilium* species), coneflowers (*Echinacea* species), bloodroot (*Sanguinaria canadensis*), mayapple (*Podophyllum peltatum*), any species of trillium (*Trillium* species), or lotus (*Nelumbo lutea*), which have been collected in any manner from any public or private property without the written permission of the property owner and written authorization from the commissioner.

[For text of subs 2 and 3, see M.S.2004]

History: *1Sp2005 c 1 art 1 s 55*