

## CHAPTER 18H

### NURSERY LAW

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#### 18H.02 DEFINITIONS.

Subdivision 1. **Scope.** The definitions in this section apply to this chapter.

Subd. 2. **Agent.** "Agent" means a person who, on behalf of another person, receives on consignment, contracts for, or solicits for sale on commission, a plant product from a producer of the product or negotiates the consignment or purchase of a plant product on behalf of another person.

Subd. 3. **Annual.** "Annual" means a plant growing in Minnesota with a life cycle of less than one year.

Subd. 4. **Certificate.** "Certificate" means a document authorized or prepared by a federal or state regulatory official that affirms, declares, or verifies that a plant, product, shipment, or other officially regulated item meets phytosanitary, nursery inspection, pest freedom, plant registration or certification, or other legal requirements.

Subd. 5. **Certification.** "Certification" means a regulatory official's act of affirming, declaring, or verifying compliance with phytosanitary, nursery inspection, pest freedom, plant registration or certification, or other legal requirements.

Subd. 6. **Certified nursery stock.** "Certified nursery stock" means nursery stock which has been officially inspected by the commissioner and found apparently free of quarantine and regulated nonquarantine pests or significant dangerous or potentially damaging plant pests.

Subd. 7. **Commissioner.** "Commissioner" means the commissioner of agriculture or the commissioner's designated employee, representative, or agent.

Subd. 8. **Consignee.** "Consignee" means a person to whom a plant, nursery stock, horticultural product, or plant product is shipped for handling, planting, sale, resale, or any other purpose.

Subd. 9. **Consignor.** "Consignor" means a person who ships or delivers to a consignee a plant, nursery stock, horticultural product, or plant product for handling, planting, sale, resale, or any other purpose.

Subd. 10. **Container-grown.** "Container-grown" means a plant that was produced from a liner or cutting in a container.

Subd. 11. **Department.** "Department" means the Minnesota Department of Agriculture.

Subd. 12. **Distribute.** "Distribute" means offer for sale, sell, barter, ship, deliver for shipment, receive and deliver, offer to deliver, receive on consignment, contract for, solicit for sale on commission, or negotiate the consignment or purchase in this state.

Subd. 12a. **Dormant.** "Dormant" means nursery stock without etiolated growth.

Subd. 12b. **Etiolated growth.** "Etiolated growth" means bleached and unnatural growth resulting from the exclusion of sunlight.

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

Subd. 13. **Infected.** "Infected" means a plant that is:

(1) contaminated with pathogenic microorganisms;

(2) being parasitized;

(3) a host or carrier of an infectious, transmissible, or contagious pest; or

(4) so exposed to a plant listed in clause (1), (2), or (3) that one of those conditions can reasonably be expected to exist and the plant may also pose a risk of contamination to other plants or the environment.

Subd. 14. **Infested.** "Infested" means a plant has been overrun by plant pests, including weeds, or contains or harbors plant pests in a quantity that may threaten other plants.

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

Subd. 16. **Mark.** "Mark" means an official indicator affixed by the commissioner for purposes of identification or separation to, on, around, or near plants or plant material known or suspected to be infected with a plant pest. This includes, but is not limited to, paint, markers, tags, seals, stickers, tape, ribbons, signs, or placards.

Subd. 16a. **Nonhardy.** "Nonhardy" means a plant that cannot be expected to survive or reliably produce flowers and fruit in average minimum winter temperatures at the growing site as determined by the commissioner based upon independent field trials and industry input represented by the United States Department of Agriculture Plant Hardiness Zone designations.

Subd. 17. **Nursery.** "Nursery" means a place where nursery stock is grown, propagated, collected, or distributed, including, but not limited to, private property or property owned, leased, or managed by any agency of the United States, Minnesota or its political subdivisions, or any other state or its political subdivisions where nursery stock is fumigated, treated, packed, or stored.

Subd. 18. **Nursery certificate.** "Nursery certificate" means a document issued by the commissioner recognizing that a person is eligible to sell, offer for sale, or distribute certified nursery stock at a particular location under a specified business name.

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

Subd. 20. **Nursery stock.** "Nursery stock" means a plant intended for planting or propagation, including, but not limited to, trees, shrubs, vines, perennials, biennials, grafts, cuttings, and buds that may be sold for propagation, whether cultivated or wild, and all viable parts of these plants. Nursery stock does not include:

(1) field and forage crops or sod;

(2) seeds;

- (3) vegetable plants, bulbs, or tubers;
- (4) cut flowers, unless stems or other portions are intended for propagation;
- (5) annuals; or
- (6) Christmas trees.

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.

Subd. 24. **Owner.** "Owner" includes, but is not limited to, the person with the legal right of possession, proprietorship of, or responsibility for the property or place where any of the articles regulated in this chapter are found, or the person who is in possession of, proprietorship of, or has responsibility for the regulated articles.

Subd. 24a. **Packaged stock.** "Packaged stock" means bare root nursery stock packed with the roots in moisture-retaining material encased in plastic film or other material designed to hold the moisture-retaining material in place.

Subd. 25. **Person.** "Person" means an individual, firm, corporation, partnership, association, trust, joint stock company, unincorporated organization, the state, a state agency, or a political subdivision.

Subd. 26. **Place of origin.** "Place of origin" means the county and state where nursery stock was most recently certified or grown for at least one full growing season.

Subd. 27. **Plant.** "Plant" means a plant, plant product, plant part, or reproductive or propagative part of a plant, plant product, or plant part, including all growing media, packing material, or containers associated with the plants, plant parts, or plant products.

Subd. 28. **Plant pest.** "Plant pest" means a biotic agent that causes or may cause harm to plants.

Subd. 28a. **Pollinator lethal insecticide.** "Pollinator lethal insecticide" means an insecticide absorbed by a plant that makes the plant lethal to pollinators. Pollinator lethal insecticide includes, but is not limited to, the neonicotinoid class of insecticides that affect the central nervous system of pollinators and may cause pollinator paralysis or death.

Subd. 29. **Public nuisance.** "Public nuisance" means:

(1) a plant, appliance, conveyance, or article that is infested with plant pests that may cause significant damage or harm; or

(2) premises where a plant pest is found.

Subd. 30. **Quarantine.** "Quarantine" means an enforced isolation or restriction of free movement of plants, plant material, animals, animal products, or any article or material in order to treat, control, or eradicate a plant pest.

Subd. 31. **Regulated nonquarantine pest.** "Regulated nonquarantine pest" means a plant pest that has not been quarantined by state or federal agencies and whose presence in plants or articles may pose an unacceptable risk to nursery stock, other plants, the environment, or human activities.

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

Subd. 32a. **Sod.** "Sod" means the upper portion of soil that contains the roots of grasses and the living grass plants.

Subd. 33. **Tree spade.** "Tree spade" means a mechanical device or machinery capable of removing nursery stock, root system, and soil from the planting in one operation.

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.

Subd. 35. **Tropical plant.** "Tropical plant" means a plant that has a United States Department of Agriculture hardiness zone designation of zone 6 or greater, or an annual minimum hardiness temperature of -9 degrees Fahrenheit.

**History:** 2003 c 128 art 5 s 1; 1Sp2005 c 1 art 1 s 41-46; 2009 c 94 art 1 s 69-72; 2012 c 244 art 1 s 11,12; 2014 c 299 s 1; 1Sp2015 c 4 art 2 s 15-17

### 18H.03 POWERS AND DUTIES OF COMMISSIONER.

Subdivision 1. **Employees.** The commissioner may employ entomologists, plant pathologists, and other employees necessary to administer this chapter.

Subd. 2. **Entry and inspection; fees.** (a) The commissioner may enter and inspect a public or private place that might harbor plant pests and may require that the owner destroy or treat plant pests, plants, or other material.

(b) If the owner fails to properly comply with a directive of the commissioner within a given period of time, the commissioner may have any necessary work done at the owner's expense. If the owner does not reimburse the commissioner for the expense within a time specified by the commissioner, the expense is a charge upon the county as provided in subdivision 4.

(c) If a dangerous plant pest infestation or infection threatens plants of an area in the state, the commissioner may take any measures necessary to eliminate or alleviate the danger.

(d) The commissioner may collect fees required by this chapter.

(e) The commissioner may issue and enforce a written or printed "stop-sale" order to the owner or custodian of any nursery stock if fees required by the nursery are not paid. The commissioner may not be

held liable for the deterioration of nursery stock during the period for which it is held pursuant to a stop-sale order.

Subd. 3. **Quarantines.** The commissioner may impose a quarantine to restrict or prohibit the transportation of nursery stock, plants, or other materials capable of carrying plant pests into or through any part of the state.

Subd. 4. **Collection of charges for work done for owner.** If the commissioner incurs an expense in conjunction with carrying out subdivision 2 and is not reimbursed by the owner of the land, the expense is a legal charge against the land. After the expense is incurred, the commissioner shall file verified and itemized statements of the cost of all services rendered with the county auditor of the county in which the land is located. The county auditor shall place a lien in favor of the commissioner against the land involved, certified by the county auditor, and collected according to section 429.101.

Subd. 5. **Delegation authority.** The commissioner may, by written agreements, delegate specific inspection, enforcement, and other regulatory duties of this chapter to officials of other agencies. This delegation may only be made to a state agency, a political subdivision, or a political subdivision's agency that has signed a joint powers agreement with the commissioner as provided in section 471.59.

Subd. 6. **Dissemination of information.** The commissioner may disseminate information among growers relative to treatment of nursery stock in both prevention and elimination of attack by plant pests and diseases.

Subd. 7. **Other duties of service.** The commissioner may carry out other duties or responsibilities that are of service to the industry or that may be necessary for the protection of the industry.

**History:** 2003 c 128 art 5 s 2

#### **18H.04 ADOPTION OF RULES.**

The commissioner may adopt rules to carry out the purposes of this chapter. The rules may include, but are not limited to, rules in regard to labeling and the maintenance of viability and vigor of nursery stock. Rules of the commissioner that are in effect on July 1, 2003, relating to plant protection, nursery inspection, or the Plant Pest Act remain in effect until they are superseded by new rules.

**History:** 2003 c 128 art 5 s 3

#### **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:** 2003 c 128 art 5 s 4; 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 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) the individual conducts sales or distributions of nursery stock on ten or fewer days in a calendar year.
- (b) A municipality may offer certified nursery stock for sale and be exempt from the requirement to obtain a nursery stock certificate if:
- (1) all nursery stock offered for sale or distributed is intended for planting by residents of the municipality on public property or public easements within the municipal boundary;
  - (2) all nursery stock purchased or procured for resale or distribution is grown in Minnesota and has been certified by the commissioner; and
  - (3) the municipality submits to the commissioner before any sale or distribution of nursery stock a list of all suppliers who provide the municipality with nursery stock.
- (c) 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:** 2003 c 128 art 5 s 5; 1Sp2005 c 1 art 1 s 48; 1Sp2015 c 4 art 2 s 18; 2017 c 88 art 2 s 23

#### **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 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 postmarked or electronically date stamped by December 31 of the current year.

(c) A nursery stock grower found operating without a valid nursery stock grower certificate cannot offer for sale or sell nursery stock until: (1) payment is received by the commissioner for (i) the certificate fee due, and (ii) a penalty equal to the certificate fee owed; and (2) a new certificate is issued to the nursery stock grower by the commissioner.

**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 postmarked or electronically date stamped by December 31 of the current year.

(c) A nursery stock dealer found operating without a valid nursery stock dealer certificate cannot offer for sale or sell nursery stock until: (1) payment is received by the commissioner for (i) the certificate fee due, and (ii) a penalty equal to the certificate fee owed; and (2) a new certificate is issued to the nursery stock dealer by the commissioner.

**Subd. 4. Reinspection; additional or optional inspection fees.** If a reinspection is required or an additional inspection is needed or requested a fee must be assessed based on mileage and inspection time as follows:

(1) mileage must be charged at the current United States Internal Revenue Service reimbursement rate; and

(2) inspection time must be charged at a rate sufficient to recover all inspection costs, including the driving time to and from the location in addition to the time spent conducting the inspection.

**History:** 2003 c 128 art 5 s 6; 1Sp2005 c 1 art 1 s 49-51; 2009 c 94 art 1 s 73,74; 1Sp2015 c 4 art 2 s 19; 2017 c 88 art 2 s 24,25



**18H.08 SMALL LOT INSPECTIONS; VIRUS DISEASE-FREE CERTIFICATION; OTHER SERVICES.**

Subdivision 1. **Services and fees.** The commissioner may make small lot inspections or perform other necessary services for which another charge is not specified. For these services the commissioner shall set a fee plus expenses that will recover the cost of performing this service. The commissioner may set an additional acreage fee for inspection of seed production fields for exporters in order to meet domestic and foreign plant quarantine requirements.

Subd. 2. **Virus disease-free certification.** The commissioner may provide special services such as virus disease-free certification and other similar programs. Participation by nursery stock growers is voluntary. Plants offered for sale as certified virus-free must be grown according to certain procedures in a manner defined by the commissioner for the purpose of eliminating viruses and other injurious disease or insect pests. The commissioner shall collect reasonable fees from participating nursery stock growers for services and materials that are necessary to conduct this type of work.

**History:** 2003 c 128 art 5 s 7

**18H.09 NURSERY STOCK CERTIFICATION REQUIREMENTS.**

(a) All nursery stock growing at sites identified by nursery stock dealers or 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:** 2003 c 128 art 5 s 8; 1Sp2005 c 1 art 1 s 52; 2009 c 94 art 1 s 75

#### **18H.10 STORAGE OF NURSERY STOCK.**

(a) All nursery stock must be kept and displayed under conditions of temperature, light, and moisture sufficient to maintain the viability and vigor of the nursery stock.

(b) Packaged dormant nursery stock must be stored under conditions that retard growth, prevent etiolated growth, and protect its viability.

(c) Balled and burlapped nursery stock being held for sale to the public must be kept in a moisture-holding material approved by the commissioner and not toxic to plants. The moisture-holding material must adequately cover and protect the ball of earth and must be kept moist at all times. The commissioner may approve alternative nursery stock management practices to maintain the viability of balled and burlapped stock.

**History:** 2003 c 128 art 5 s 9; 2009 c 94 art 1 s 76; 2012 c 244 art 1 s 13; 2019 c 38 s 7

#### **18H.11 NURSERY STOCK STANDARDS.**

The American Standard for Nursery Stock, ANSI Z60.1, published by the Nursery and Landscape Association, must be used by the commissioner in determining standards and grades of nursery stock when not in conflict with this chapter.

**History:** 2003 c 128 art 5 s 10

#### **18H.12 DAMAGED, DISEASED, INFESTED, OR MISREPRESENTED STOCK.**

(a) No person may knowingly offer to distribute, advertise, or display nursery stock that is infested or infected with quarantine or regulated nonquarantine pests or significant dangerous or potentially damaging plant pests, including noxious weeds or nursery stock that is in a dying condition, desiccated, frozen or damaged by freezing, or materially damaged in any way.

(b) No person may knowingly offer to distribute, advertise, or display nursery stock that may result in the capacity and tendency or effect of deceiving any purchaser or prospective purchaser as to the quantity, size, grade, kind, species name, age, variety, maturity, condition, vigor, hardiness, number of times transplanted, growth ability, growth characteristics, rate of growth, time required before flowering or fruiting, price, origin, place where grown, or any other material respect.

(c) Upon discovery or notification of damaged, diseased, infested, or misrepresented stock, the commissioner may place a stop-sale and distribution order on the material. The order makes it an illegal action to distribute, give away, destroy, alter, or tamper with the plants.

(d) The commissioner may conspicuously mark all plants, materials, and articles known or suspected to be infected or infested with quarantine or regulated nonquarantine pests or significant dangerous or potentially damaging plant pests. The commissioner shall notify the persons, owners, or the tenants in possession of the premises or area in question of the existence of the plant pests.

(e) If the commissioner determines that this chapter has been violated, the commissioner may order that the nuisance, infestation, infection, or plant pest be abated by whatever means necessary, including, but not limited to, destruction, confiscation, treatment, return shipment, or quarantine.

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

**History:** 2003 c 128 art 5 s 11

### 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.

Subd. 2. **Reciprocity.** A person residing outside the state may distribute nursery stock in Minnesota if:

(1) the person is duly certified under the nursery laws of the state where the nursery stock originates and the laws of that state are essentially equivalent to the laws of Minnesota as determined by the commissioner; and

(2) the person complies with this chapter and the rules governing nursery stock distributed in Minnesota.

Subd. 3. **Reciprocal agreements.** The commissioner may cooperate with and enter into reciprocal agreements with other states regarding licensing and movement of nursery stock. Reciprocal agreements with other states do not prevent the commissioner from prohibiting the distribution in Minnesota of any nursery stock that fails to meet minimum criteria for nursery stock of Minnesota certified growers, dealers, or both. An official directory of certified nurseries and related nursery industry businesses from other states is acceptable in lieu of individual nursery certificates.

Subd. 4. **Foreign nursery stock.** A person receiving a shipment of nursery stock from a foreign country that has not been inspected and released by the United States Department of Agriculture at the port of entry must notify the commissioner of the arrival of the shipment, its contents, and the name of the consignor. The person must hold the shipment unopened until inspected or released by the commissioner.

Subd. 5. **Transportation companies.** A person who acts as the representative of a transportation company, private carrier, commercial shipper, common carrier, express parcel carrier, or other transportation entity, and receives, ships, or otherwise distributes a carload, box, container, or any package of plants, plant materials, or nursery stock, that does not have all required certificates attached as required or fails to immediately notify the commissioner is in violation of this chapter.

**History:** 2003 c 128 art 5 s 12; 1Sp2005 c 1 art 1 s 53

### 18H.14 LABELING AND ADVERTISING OF NURSERY STOCK.

(a) Plants, plant materials, or nursery stock must not be labeled or advertised with false or misleading information including, but not limited to, scientific name, variety, place of origin, hardiness zone as defined by the United States Department of Agriculture, and growth habit.

(b) All nonhardy nursery stock as designated by the commissioner must be labeled correctly for hardiness or be labeled "nonhardy" in Minnesota.

(c) A person may not offer for distribution plants, plant materials, or nursery stock, represented by some specific or special form of notation, including, but not limited to, "free from" or "grown free of," unless the plants are produced under a specific program approved by the commissioner to address the specific plant properties addressed in the special notation claim.

(d) Nursery stock collected from the wild state must be inspected and certified prior to sale and at the time of sale must be labeled "Collected from the Wild." The label must remain on each plant or clump of plants while it is offered for sale and during the distribution process. The collected stock may be grown in nursery rows at least two years, after which the plants may be sold without the labeling required by this paragraph.

(e) A person selling at retail or providing to an end user may not label or advertise an annual plant, bedding plant, or other plant, plant material, or nursery stock as beneficial to pollinators if the annual plant, bedding plant, plant material, or nursery stock has:

(1) been treated with a systemic insecticide that:

(i) has a pollinator protection box on the label; or

(ii) has a pollinator, bee, or honey bee precautionary statement in the environmental hazards section of the insecticide product label; and

(2) a concentration in its flowers greater than the no observed adverse effect level of a systemic insecticide.

The commissioner shall enforce this paragraph as provided in chapter 18J.

(f) For the purposes of paragraph (e):

(1) "systemic insecticide" means an insecticide that is both absorbed by the plant and translocated through the plant's vascular system; and

(2) "no observed adverse effect level" means the level established by the United States Environmental Protection Agency for acute oral toxicity for adult honeybees.

**History:** 2003 c 128 art 5 s 13; 2012 c 244 art 1 s 14; 2014 c 299 s 2; 2015 c 44 s 12

### **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:** 2003 c 128 art 5 s 14; 1Sp2005 c 1 art 1 s 54

#### **18H.16 POLITICAL SUBDIVISION ORDINANCES.**

A political subdivision must not enact an ordinance or resolution that conflicts with this chapter.

**History:** 2003 c 128 art 5 s 15

#### **18H.17 NURSERY AND PHYTOSANITARY ACCOUNT.**

A nursery and phytosanitary account is established in the state treasury. The fees and penalties collected under this chapter and interest attributable to money in the account must be deposited in the state treasury and credited to the nursery and phytosanitary account in the agricultural fund. Money in the account, including interest earned, is annually appropriated to the commissioner for the administration and enforcement for

this chapter. The commissioner may spend no more than \$20,000 from the account each fiscal year for purposes of section 18H.14, paragraph (e).

**History:** 2003 c 128 art 5 s 16; 1Sp2015 c 4 art 2 s 20

### **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.

Subd. 2. **Collection without sale.** Wildflower collection from public or private land for the purpose of transplanting the plants to a person's private property and not offering for immediate sale, requires the written permission from the property owner of the land on which the wildflowers are growing.

Subd. 3. **Collection with intent to sell or distribute wildflowers.** (a) The wildflowers listed in this section may be offered for immediate sale only if the plants are to be used for scientific or herbarium purposes.

(b) The wildflowers listed in this section must not be collected and sold commercially unless the plants are:

(1) growing naturally, collected, and cultivated on the collector's property; or

(2) collected through the process described in subdivision 2 and transplanted and cultivated on the collector's property.

(c) The collector must obtain a written permit from the commissioner before the plants may be offered for commercial sale.

**History:** 2003 c 128 art 5 s 17; 1Sp2005 c 1 art 1 s 55