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AN ACT

RELATING TO AGRICULTURE; AMENDING AND REPEALING SECTIONS OF
THE PLANT PROTECTION ACT.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF NEW MEXICO:

SECTION 1. Section 76-5-11 NMSA 1978 (being Laws 1959,
Chapter 195, Section 1) is amended to read:

"76-5-11. SHORT TITLE.--Sections 76-5-11 through
76-5-28 NMSA 1978 may be cited as the "Plant Protection
Act"."

SECTION 2. Section 76-5-12 NMSA 1978 (being Laws 1959,
Chapter 195, Section 2, as amended) is amended to read:

"76-5-12. DEFINITIONS.--As used in the Plant Protection
Act:

A. "board" means the board of regents of New
Mexico state university, the board controlling the New Mexico
department of agriculture;

B. "plant pests" or "pests" means any organisms
injurious to plants and plant products that in the normal
course of events could be transported with the plant,
including but not limited to the phyla arthropoda, mollusca
or nematoda as well as weeds, fungi, bacteria, viruses or
parasitic plants that cause pathological or detrimental
physiological conditions in plants;

C. "nursery stock" means any plant grown,

1 propagated or collected for planting or propagated for
2 landscaping or decorative purposes but does not include
3 field, vegetable and flower seeds;

4 D. "florist stock" means any parts of a plant used
5 for decorative purposes, such as cut flowers, evergreens,
6 annuals or perennials;

7 E. "nursery" means any ground or premises on or in
8 which nursery stock is propagated, grown or cultivated and
9 from which source nursery stock is offered for distribution
10 or sale;

11 F. "dealer" means any person who buys and resells
12 nursery or florist stock, or who is engaged in handling
13 nursery or florist stock on a consignment basis, when the
14 stock was not grown on the person's premises;

15 G. "agent" means any person selling or taking
16 orders for nursery or florist stock not sold from any stock
17 on hand for display purposes and is being offered directly to
18 the consumer;

19 H. "facilities" means all buildings, greenhouses,
20 vehicles, storage places, cellars, pits, trenches, bins,
21 containers, packing material, crates and any other facilities
22 and materials used in storing and distributing nursery or
23 florist stock;

24 I. "collected plants" means those plants dug or
25 gathered from any location in which plants are found growing

1 wild;

2 J. "inspector" means any qualified person employed
3 by the department to carry out the provisions of the Plant
4 Protection Act;

5 K. "landscaper" means any person who buys and
6 resells, in connection with the person's design services,
7 plants used in landscaping;

8 L. "plant" means any part of any living thing not
9 classified as an animal, which under the proper conditions
10 can either continue to or resume growing;

11 M. "stock" means nursery or florist stock or both;

12 N. "department" means the New Mexico department of
13 agriculture;

14 O. "package" means any bundle, parcel, box,
15 carton, crate or container used in shipping or displaying
16 nursery or florist stock; and

17 P. "license year" means a period of twelve months
18 ending on a date specified by the board."

19 SECTION 3. Section 76-5-13 NMSA 1978 (being Laws 1959,
20 Chapter 195, Section 3, as amended) is amended to read:

21 "76-5-13. AUTHORITY TO INSPECT.--The department may
22 inspect any nursery or other place or vehicle that might
23 become infested or infected with plant pests or that may
24 contain from time to time plants so infested or infected.

25 The department may inspect or reinspect any nursery or

1 florist stock within the state and inspect associated
2 documentation. Nursery or florist stock or other plant
3 material not found to meet viability standards as provided in
4 Section 76-5-20 NMSA 1978 may be destroyed or removed from
5 sale or managed in a manner deemed necessary by the
6 department until the conditions are corrected."

7 SECTION 4. Section 76-5-15 NMSA 1978 (being Laws 1959,
8 Chapter 195, Section 6, as amended) is amended to read:

9 "76-5-15. INSPECTION OF NURSERIES.--The department is
10 authorized to inspect all nurseries in the state and all
11 nursery stock grown within the state. If the nursery stock
12 is found to be free of plant pests, an inspection certificate
13 shall be issued certifying that the nursery stock has been
14 inspected and is believed to be free from plant pests. The
15 certificate shall be valid for one license year. If, at any
16 subsequent inspection, the nursery is found to be infested
17 with plant pests, the certificate may be canceled until the
18 conditions are corrected."

19 SECTION 5. Section 76-5-16 NMSA 1978 (being Laws 1959,
20 Chapter 195, Section 7, as amended) is amended to read:

21 "76-5-16. DEALERS' OR AGENTS' LICENSES.--Every in-state
22 dealer or agent selling, importing into the state or storing
23 in this state nursery or florist stock shall, before October
24 1 of each year and before engaging in the business of
25 soliciting, landscaping, taking orders, selling, storing or

1 delivering any such stock, apply to the department for a
2 nursery or florist dealer's, landscaper's or agent's license.
3 Dealers or agents distributing stock directly or on a
4 consignment basis for more than one store or place of
5 business or sales ground or selling stock from motor vehicles
6 or other vehicles shall secure a license for each place or
7 each vehicle from which the stock is sold. The application
8 for license shall designate each place of business of the
9 person applying. The application shall be accompanied by the
10 prescribed fee for each place or each vehicle from which the
11 stock is sold. Upon proper application and receipt of the
12 proper fee, the department shall issue the license, which
13 shall be valid for one license year. If any licensee is
14 found to have violated any of the provisions of the Plant
15 Protection Act or rules, regulations or orders of the
16 department, the license may be revoked and, in the discretion
17 of the department, the person may be refused a license in the
18 state. Those dealers who sell only vegetable plants that are
19 sold for food production or dealers selling only cactus
20 plants may obtain a special dealer's license for the
21 prescribed fee. Applicants for the special dealer's license
22 shall state that they will handle only vegetable plants or
23 cactus plants and that the plants will be from stock
24 certified by an inspector."

25 SECTION 6. Section 76-5-19 NMSA 1978 (being Laws 1959,

1 Chapter 195, Section 10, as amended) is amended to read:

2 "76-5-19. LABELS.--All nursery stock and collected
3 plants sold or trafficked in the state shall be securely and
4 correctly labeled either as to common or botanical names
5 based on a current and recognized industry reference."

6 SECTION 7. Section 76-5-20 NMSA 1978 (being Laws 1973,
7 Chapter 97, Section 9) is amended to read:

8 "76-5-20. VIABILITY STANDARDS.--Only pest-free, sound
9 and healthy nursery stock stored, offered or displayed under
10 conditions that will maintain its vigor shall be offered for
11 sale or sold. The offering for sale or sale of dead nursery
12 stock or nursery stock so seriously weakened by drying or by
13 excessive heat or cold or nursery stock that has been
14 mechanically or otherwise treated to the extent of concealing
15 its true condition or stock that for any cause is in such a
16 condition that it is unable to grow satisfactorily with
17 reasonable care or stock that may potentially be infested
18 with a plant pest, is a violation of the Plant Protection
19 Act. Florist stock offered for sale must be such that it is
20 pest-free and will maintain its aesthetic value for a
21 reasonable period of time after sale."

22 SECTION 8. Section 76-5-23 NMSA 1978 (being Laws 1959,
23 Chapter 195, Section 13, as amended) is amended to read:

24 "76-5-23. TRANSPORTING WITHIN THE STATE.-- The
25 department may require a person producing, selling or

1 offering for sale or shipping or transporting any nursery or
2 florist stock within the state to affix or have printed on
3 each package of stock a certification statement as prescribed
4 by the department. When a certification statement is
5 required, it is unlawful for any transportation company,
6 public carrier, commercial truck or other agency engaged in
7 the business of transportation to ship, transport or accept
8 for shipment any package of nursery or florist stock until
9 the required certification statement is attached to the
10 package."

11 SECTION 9. Section 76-5-25 NMSA 1978 (being Laws 1959,
12 Chapter 195, Section 15, as amended) is amended to read:

13 "76-5-25. POWERS OF BOARD AND DEPARTMENT.--The
14 department shall enforce the provisions of the Plant
15 Protection Act. The board shall adopt and promulgate such
16 rules as may be necessary for its administration and
17 enforcement. The board may adopt sets of standards and
18 grades for nursery stock and, if it so desires, adopt those
19 standards and grades recommended by an industry-recognized
20 reference, to take any action necessary to ensure that all
21 nursery stock sold in the state meets the standards and
22 grades established and to stop sales of any substandard
23 stock."

24 SECTION 10. REPEAL.--Section 76-5-22 NMSA 1978
25 (being Laws 1959, Chapter 195, Section 12, as amended) is

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