

1 SENATE BILL 184

2 **51ST LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 2013**

3 INTRODUCED BY

4 Joseph Cervantes

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9  
10 AN ACT

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

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

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

17 "76-5-11. SHORT TITLE.--~~[This act]~~ Sections 76-5-11  
18 through 76-5-28 NMSA 1978 may be cited as the "Plant Protection  
19 Act"."

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

22 "76-5-12. DEFINITIONS.--As used in the Plant Protection  
23 Act:

24 A. "board" means the board of regents of [~~the~~] New  
25 Mexico state university, the board controlling the [~~state~~] New

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1 Mexico department of agriculture;

2 B. "plant pests" or "pests" means any organisms  
3 injurious to plants and plant products [~~which~~] that in the  
4 normal course of events could be transported with the plant,  
5 including but not limited to the phyla arthropoda, mollusca or  
6 [~~nemathelminthes~~] nematoda as well as weeds, fungi, bacteria,  
7 viruses or parasitic plants [~~which~~] that cause pathological or  
8 detrimental physiological conditions in plants;

9 C. "nursery stock" means any plant grown,  
10 propagated or collected for planting or propagated for  
11 landscaping or decorative purposes but does not include field,  
12 vegetable and flower seeds;

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

16 E. "nursery" means any ground or premises on or in  
17 which nursery stock is propagated, grown or cultivated and from  
18 which source nursery stock is offered for distribution or sale;

19 F. "dealer" means any person who buys and resells  
20 nursery or florist stock, or who is engaged in handling nursery  
21 or florist stock on a consignment basis, when the stock was not  
22 grown on [~~his~~] the person's premises;

23 G. "agent" means any person selling or taking  
24 orders for nursery or florist stock not sold from any stock on  
25 hand for display purposes and is being offered directly to the

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1 consumer;

2 H. "facilities" means all buildings, greenhouses,  
3 vehicles, storage places, cellars, pits, trenches, bins,  
4 containers, packing material, crates and any other facilities  
5 and materials used in storing and distributing nursery or  
6 florist stock;

7 I. "collected plants" means those plants dug or  
8 gathered from any location in which plants are found growing  
9 wild;

10 J. "inspector" means any qualified person employed  
11 by the department to carry out the provisions of the Plant  
12 Protection Act;

13 K. "landscaper" means any person who buys and  
14 resells, in connection with ~~[his]~~ the person's design services,  
15 plants used in landscaping;

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

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

20 N. "department" means the ~~[state]~~ New Mexico  
21 department of agriculture;

22 O. "package" means any bundle, parcel, box, carton,  
23 crate or container used in shipping or displaying nursery or  
24 florist stock; and

25 ~~[P. "person" has the extended meaning ascribed to~~

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1 ~~it in Subsection E of Section 12-2-2 NMSA 1978; and~~

2 Q.] P. "license year" means a period of twelve  
3 months ending on a date specified by the board."

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

6 "76-5-13. AUTHORITY TO INSPECT.--~~[Inspectors]~~ The  
7 department may inspect any nursery or other place or vehicle  
8 ~~[which]~~ that might become infested or infected with plant pests  
9 or ~~[which]~~ that may contain from time to time plants so  
10 infested or infected. ~~[They]~~ The department may inspect or  
11 reinspect any nursery or florist stock ~~[shipped]~~ within ~~[or~~  
12 ~~into]~~ the state and inspect associated documentation. Nursery  
13 or florist stock or other plant material not found to meet  
14 viability standards as provided in Section 76-5-20 NMSA 1978  
15 may be destroyed or removed from sale or managed in a manner  
16 deemed necessary by the department until the conditions are  
17 corrected."

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

20 "76-5-15. INSPECTION OF NURSERIES.--The department ~~[shall~~  
21 ~~make an annual inspection of]~~ is authorized to inspect all  
22 nurseries in the state and all nursery stock grown within the  
23 state ~~[before the stock is offered for sale]~~. If the nursery  
24 stock is found to be free of plant pests, an inspection  
25 certificate shall be issued certifying that the nursery stock

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1 has been inspected and is believed to be free from plant pests.  
2 The certificate shall be valid for one license year. If, at  
3 any subsequent inspection, the nursery is found to be infested  
4 with plant pests, the certificate may be canceled until the  
5 conditions are corrected."

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

8 "76-5-16. DEALERS' OR AGENTS' LICENSES.--Every in-state  
9 dealer or agent selling, importing into the state or storing in  
10 this state nursery or florist stock shall, before October 1 of  
11 each year and before engaging in the business of soliciting,  
12 landscaping, taking orders, selling, storing or delivering any  
13 such stock, apply to the department for a nursery or florist  
14 dealer's, landscaper's or agent's license. Dealers or agents  
15 distributing [~~such~~] stock directly or on a consignment basis  
16 for more than one store or place of business or sales ground or  
17 selling [~~such~~] stock from motor vehicles or other vehicles  
18 shall secure a license for each place or each vehicle from  
19 which the stock is sold. The application for license shall  
20 designate each place of business of the person applying. The  
21 application shall be accompanied by the prescribed fee for each  
22 place or each vehicle from which the stock is sold. Upon  
23 proper application and receipt of the proper fee, the  
24 department shall issue the license, which shall be valid for  
25 one license year. If any licensee is found to have violated

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1 any of the provisions of the Plant Protection Act or rules,  
2 regulations or orders of the department, the license may be  
3 revoked and, in the discretion of the department, the person  
4 may be refused a license in the state. Those dealers who sell  
5 only vegetable plants that are sold for food production or  
6 dealers selling only cactus plants may obtain a special  
7 dealer's license for the prescribed fee. Applicants for the  
8 special dealer's license shall state that they will handle only  
9 vegetable plants or cactus plants and that the plants will be  
10 from stock certified by an inspector."

11 SECTION 6. Section 76-5-19 NMSA 1978 (being Laws 1959,  
12 Chapter 195, Section 10, as amended) is amended to read:

13 "76-5-19. LABELS.--All nursery stock and collected plants  
14 sold or trafficked in the state shall be securely and correctly  
15 labeled either as to common or botanical names [~~as recognized~~  
16 ~~by "Standardized Plant Names" prepared by the American joint~~  
17 ~~committee on horticultural nomenclature or the "Manual of~~  
18 ~~Cultivated Plants" by L. H. Bailey]~~ based on a current and  
19 recognized industry reference."

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

22 "76-5-20. VIABILITY STANDARDS.--Only pest-free, sound and  
23 healthy nursery stock stored, offered or displayed under  
24 conditions [~~which~~] that will maintain its vigor shall be  
25 offered for sale or sold. The offering for sale or sale of

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1 dead nursery stock or nursery stock so seriously weakened by  
2 drying or by excessive heat or cold or nursery stock [~~which~~]  
3 that has been mechanically or otherwise treated to the extent  
4 of concealing its true condition or stock [~~which~~] that for any  
5 cause is in such a condition that it is unable to grow  
6 satisfactorily with reasonable care or stock that may  
7 potentially be infested with a plant pest, is a violation of  
8 the Plant Protection Act. Florist stock offered for sale must  
9 be such that it is pest-free and will maintain its aesthetic  
10 value for a reasonable period of time after sale."

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

13 "76-5-23. TRANSPORTING WITHIN THE STATE.--~~[Every]~~ The  
14 department may require a person producing, selling or offering  
15 for sale or shipping or transporting any nursery or florist  
16 stock within the state [~~shall have affixed~~] to affix or have  
17 printed on each package of stock a certification statement as  
18 prescribed by the department. When a certification statement  
19 is required, it is unlawful for any transportation company,  
20 public carrier, commercial truck or other agency engaged in the  
21 business of transportation to ship, transport or accept for  
22 shipment any package of nursery or florist stock until the  
23 required certification statement is attached [~~thereto~~] to the  
24 package."

25 SECTION 9. Section 76-5-25 NMSA 1978 (being Laws 1959,

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1 Chapter 195, Section 15, as amended) is amended to read:  
2 "76-5-25. POWERS OF BOARD AND DEPARTMENT.--The department  
3 [~~is directed and empowered to~~] shall enforce the provisions of  
4 the Plant Protection Act. The board shall adopt and promulgate  
5 such rules [~~and regulations~~] as may be necessary for its  
6 administration and enforcement. The board [~~is empowered to~~]  
7 may adopt sets of standards and grades for nursery stock and,  
8 if it so desires, [~~to~~] adopt those standards and grades  
9 recommended by [~~the American association of nurserymen~~] an  
10 industry-recognized reference, to take any action necessary to  
11 ensure that all nursery stock sold in the state meets the  
12 standards and grades established and to stop sales of any  
13 substandard stock."

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