

# Plant Protection Act

Provides for the inspection, regulation, licensing, fees, and penalties regarding the sale of plants and plant parts

New Mexico Territorial Laws

Chapter 76 Agriculture

Chapter 76, Article 5 Insect Pests and Plant Diseases

76-5-11. Short title.

This act may be cited as the "Plant Protection Act."

76-5-12. Definitions.

As used in the Plant Protection Act:

- A. "board" means the board of regents of the New Mexico state university, the board controlling the state department of agriculture.
- B. "plant pests" means any organisms injurious to plants and plant products which in the normal course of events could be transported with the plant including but not limited to the phyla arthropoda, mollusca or nemathelminthes as well as weeds, fungi, bacteria, viruses or parasitic plants which cause pathological or detrimental physiological conditions in plants;
- C. "nursery stock" means any plant grown, propagated or collected for planting, or propagated for landscaping or decorative purposes, but does not include field, vegetable and flower seeds;
- D. "florist stock" means any part of a plant used for decorative purposes, such as cut flowers, evergreens, annuals or perennials;
- E. "nursery" means any ground or premises on or in which nursery stock is propagated, grown or cultivated and from which source nursery stock is offered for distribution or sale;
- F. "dealer" means any person who buys and resells nursery or florist stock or who is engaged in handling nursery or florist stock on a consignment basis, when the stock was not grown on his premises;
- G. "agent" means any person selling or taking orders for nursery or florist stock not sold from any stock on hand for display purposes and is being offered directly to the consumer;
- H. "facilities" means all buildings, greenhouses, vehicles, storage places, cellars,

pits, trenches, bins, containers, packing material, crates and any other facilities and materials used in storing and distributing nursery or florist stock;

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

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

K. "landscaper" means any person who buys and resells, in connection with his design services, plants used in landscaping;

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

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

N. "department" means the state department of agriculture;

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

P. "person" has the extended meaning ascribed to it in Subsection E of Section 12-2-2 NMSA 1978; and

Q. "license year" means a period of twelve months, ending on a date specified by the board.

76-5-13. Authority to inspect.

Inspectors may inspect any nursery or other place or vehicle which might become infested or infected with plant pests or which may contain from time to time plants so infested or infected. They may inspect or reinspect any nursery or florist stock shipped within or into the state.

76-5-14. Inspection before sale.

Every person growing or producing nursery stock for sale in this state shall, before selling, shipping or transporting, or offering for sale, shipment or transportation, any nursery stock so grown or produced, apply for an annual inspection of his nursery and nursery stock. The application for inspection shall be accompanied by the prescribed fee for the payment of such inspections. Persons who grow only vegetable plants for sale may obtain a special certificate for the prescribed fee.

76-5-15. Inspection of nurseries.

The department shall make an annual inspection of all nurseries in the state and all nursery stock grown within the state before the stock is offered for sale. If the

nursery stock is found to be free of plant pests, an inspection certificate shall be issued certifying that the nursery stock has been inspected and is believed to be free from plant pests. The certificate shall be valid for one license year. If, at any subsequent inspection, the nursery is found to be infested with plant pests, the certificate may be canceled until the conditions are corrected.

76-5-16. Dealers' or agents' licenses.

Every dealer or agent selling, importing into the state or storing in this state, nursery or florist stock shall, before October 1 of each year, before engaging in the business of soliciting, landscaping, taking orders, selling, storing or delivering any such stock, apply to the department for a nursery or florist dealer's, landscaper's or agent's license. Dealers or agents distributing such stock directly or on a consignment basis for more than one store or place of business or sales ground, or selling such stock from motor vehicles or other vehicles shall secure a license for each place or each vehicle from which the stock is sold. The application for license shall designate each place of business of the person applying. The application shall be accompanied by the prescribed fee for each place or each vehicle from which the stock is sold. Upon proper application and receipt of the proper fee, the department shall issue the license which shall be valid for one license year. If any licensee is found to have violated any of the provisions of the Plant Protection Act or rules, regulations or orders of the department, the license may be revoked, and, in the discretion of the department, the person may be refused a license in the state. Those dealers who sell only vegetable plants that are sold for food production or dealers selling only cactus plants may obtain a special dealer's license for the prescribed fee. Applicants for the special dealer's license shall state that will handle only vegetable plants or cactus plants and that the plants will be from stock certified by an inspector.

76-5-17, 76-5-18. Repealed.

76-5-19. Labels.

All nursery stock and collected plants sold or trafficked in the state shall be securely and correctly labeled, either as to common or botanical names as recognized by "Standardized Plant Names" prepared by the American joint committee on horticultural nomenclature or the "Manual of Cultivated Plants" by L. H. Bailey.

76-5-20. Viability standards.

Only sound and healthy nursery stock, stored, offered or displayed under conditions which will maintain its vigor, shall be offered for sale or sold. The offering for sale or sale of dead nursery stock or nursery stock so seriously weakened by drying or by excessive heat or cold, or nursery stock which has been mechanically or otherwise treated to the extent of concealing its true condition, or stock which for any cause is in such a condition that it is unable to grow

satisfactorily with reasonable care, is a violation of the Plant Protection Act. Florist stock offered for sale must be such that it will maintain its aesthetic value for a reasonable period of time after sale.

#### 76-5-21. Collected plants.

All persons collecting plants for sale must file with the department an application for a collected plants permit. The board may adopt regulations relative to collected plants.

#### 76-5-22. Certificates of inspection on stock brought into the state.

It is unlawful for any person to bring into or to transport or ship within this state any nursery or florist stock unless there is affixed to each package, in a conspicuous place, an official copy of the certificate of inspection signed by the proper official of the state from which it was brought or shipped.

#### 76-5-23. Transporting within the state.

Every person producing, selling or offering for sale, or shipping or transporting any nursery or florist stock within the state shall have affixed to or printed on each package of stock a certification statement as prescribed by the department. It is unlawful for any transportation company, public carrier, commercial truck or other agency engaged in the business of transportation to ship, transport or accept for shipment any package of nursery or florist stock until the required certification statement is attached thereto.

#### 76-5-24. Forms.

It is duty of the department to prescribe all forms to be used in the administration and enforcement of the Plant Protection Act and to compile and furnish a list of all nurseries which have been certified to sell nursery or florist stock within the state and all the persons who have been certified to sell, ship, store or solicit orders for nursery or florist stock within the state.

#### 76-5-25. Powers of board and department.

The department is directed and empowered to enforce the provisions of the Plant Protection Act. The board shall adopt and promulgate such rules and regulations as may be necessary for its administration and enforcement. The board is empowered to adopt sets of standards and grades for nursery stock and, if it so desires, to adopt those standards and grades recommended by the American Association of Nurserymen, to take any action necessary to ensure that all nursery stock sold in the state meets the standards and grades established, and to stop sales of any substandard stock.

#### 76-5-26. Fees.

A. Fees paid for the licenses, certificates and permits required under the Plant Protection Act shall be set by regulation of the board, but shall not exceed the following amounts:

- (1) annual inspection fee of nursery and nursery stock, seventy-five dollars (\$75.00) plus two dollars (\$2.00) per acre of nursery stock inspected;
- (2) annual special inspection fee for person growing only vegetable plants, twenty-five dollars (\$25.00);
- (3) annual nursery or florist dealer's, landscaper's or agent's license fee, seventy-five dollars (\$75.00);
- (4) annual special dealer's license for persons who handle only vegetable or cactus plants, twenty-five dollars (\$25.00); and
- (5) annual fee for collected plants permit, seventy-five dollars (\$75.00).

B. If the application for renewal of any annual license, permit or certificate provided for in the Plant Protection Act is not filed prior to the expiration of the prior license, permit or certificate, the fee for such license, permit or certificate shall be double the amount specified in this section. However, this double fee shall not apply if the applicant has not engaged in business subsequent to the expiration of his license, permit or certificate, and furnishes an affidavit certifying to that fact.

C. The board may adopt regulations to exempt a person from the payment of fees.

76-5-27. Fees collected.

All fees collected under the provisions of the Plant Protection Act shall be deposited in the treasury of the New Mexico state university and be expended for the purpose of its administration and enforcement.

76-5-28. Penalties.

Any person violating the provisions of the Plant Protection Act or, after a notice to cease and desist, violating any rule, regulation or order promulgated under the Plant Protection Act, upon conviction thereof shall be guilty of a petty misdemeanor. Each day the person remains in violation constitutes a separate offense. The license of any such person may also be revoked.