

APRIL 14, 1993

SECOND READING, AMENDMENTS
CONCURRED IN.

APRIL 15, 1993

THIRD READING, AMENDMENTS
CONCURRED IN.

SENT TO ENROLLING.

REPORTED CORRECTLY ENROLLED.

House BILL NO. 167

1 INTRODUCED BY James Harp

2
3 A BILL FOR AN ACT ENTITLED: "AN ACT GENERALLY REVISING THE
4 NURSERY LAWS; INCREASING THE NURSERY LICENSE FEE; MAKING IT
5 UNLAWFUL TO SELL NOXIOUS WEEDS; PROVIDING CIVIL PENALTIES;
6 ESTABLISHING QUARANTINES BY DEPARTMENT RULE; SETTING NURSERY
7 STOCK CERTIFICATION STANDARDS BY DEPARTMENT RULE;
8 ESTABLISHING A SPECIAL REVENUE ACCOUNT; AMENDING SECTIONS
9 80-7-104, 80-7-114, AND 80-7-133, MCA; REPEALING SECTIONS
10 80-7-101, 80-7-102, 80-7-103, 80-7-111, 80-7-112, 80-7-113,
11 80-7-115, 80-7-116, 80-7-117, 80-7-118, 80-7-119, 80-7-120,
12 80-7-131, 80-7-134, 80-7-201, 80-7-202, 80-7-203, 80-7-204,
13 80-7-205, 80-7-206, 80-7-207, 80-7-208, 80-7-209, 80-7-210,
14 80-7-301, 80-7-302, 80-7-303, AND 80-7-304, MCA; AND
15 PROVIDING A DELAYED EFFECTIVE DATE."

16
17 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

18 NEW SECTION. **Section 1. Definitions.** Unless the
19 context requires otherwise, in this chapter, the following
20 definitions apply:

21 (1) "Firm" means an individual, company, partnership,
22 association, or corporation.

23 (2) "Nursery" means the business or location where
24 nursery stock is grown or offered for sale, resale, or as

1 part of a landscape service.

2 (3) "Nursery stock" means botanically classified plants
3 or parts of plants. The following plants and plant materials
4 when free of plant pests may not be considered nursery
5 stock:

6 (a) aquatic plants used for aquarium purposes;
7 (b) field crop plants and seeds;
8 (c) pasture grasses;
9 (d) cut plants not for propagation;
10 (e) corms, tubers, and bulbs;
11 (f) fruits or vegetables for human or animal
12 consumption;
13 (g) cut trees and products for processing; and
14 (h) plant debris for disposal or processing.

15 (4) "Nursery stock certification" means the process
16 whereby the nursery stock or other plants have been
17 inspected and found to meet certification standards
18 established by department rule.

19 (5) "Plant inspection certificate" means a document
20 issued by the department or the plant pest regulatory agency
21 of another state that declares that the nursery stock,
22 plants, or plant material grown by the firm named on the
23 certificate is apparently free of injurious plant pests.

24 (6) "Plant pest" means an insect, fungus, virus,
25 bacteria, or other organism that can directly or indirectly

1 injure or cause damage in a plant or a product of a plant
 2 and that meets the criteria as a pest established by
 3 department rule. For purposes of this chapter, noxious
 4 weeds, as defined in 7-22-2101(7)(a)(i), or other exotic
 5 weeds are defined as plant pests.

6 **NEW SECTION. Section 2. License required --**
 7 application and payment of license fee. (1) A firm engaging
 8 in the business of selling or distributing nursery stock in
 9 this state shall obtain a license for each nursery from the
 10 department.

11 (2) The license must be in the name of the firm seeking
 12 the license and expires on December 31 following the date of
 13 issue. The applicant shall provide information the
 14 department finds necessary to carry out the provisions and
 15 purposes of this chapter.

16 (3) The license fee is \$95 per nursery.

17 (4) A nursery that earns less than \$1,000 in gross
 18 annual sales of nursery stock and that submits a notarized
 19 affidavit to that effect to the department is exempt from
 20 licensing.

21 (5) A new applicant or a firm failing to renew a
 22 license by January 1 of each year shall pay an additional
 23 nonrefundable application fee of \$25 for each license.

24 (6) An out-of-state firm that imports nursery stock
 25 into Montana for resale by a licensed Montana nursery is not

1 required to obtain a license if the firm is licensed in the
 2 state of origin of the nursery stock and if that state
 3 extends a similar exemption to Montana firms.

4 (7) If the department determines that the revenue from
 5 the license fee is inadequate to accomplish the purposes of
 6 this chapter, the department may by rule increase the fee.

7 **NEW SECTION. Section 3. Nursery stock inspection --**
 8 fees. (1) The department may enter a firm or nursery
 9 premises during regular business hours for the purpose of
 10 inspecting nursery stock or other materials for possible
 11 plant pests or for determining licensure compliance. An
 12 inspection fee may not be assessed if the department
 13 requests the inspection.

14 (2) A firm or nursery may request the inspection of
 15 nursery stock, plants, or other materials by giving the
 16 department 5 days' notice prior to the time when the nursery
 17 stock, plants, or other materials are ready for inspection.
 18 A firm or nursery requesting an inspection shall pay a fee
 19 as established by department rule. The fee must cover the
 20 actual costs of inspection, surveys, and other services
 21 required to issue the plant inspection certificate.

22 (3) The department may issue a plant inspection
 23 certificate based on the results of a nursery stock or other
 24 plant inspection or inspection survey.

25 **NEW SECTION. Section 4. Duty to notify department of**

1 infestation. A firm or nursery with nursery stock or other
 2 materials that are infested with plant pests, as defined in
 3 [section 1], shall notify the department. The firm or
 4 nursery shall comply with the instructions of the department
 5 for the control of the plant pests.

6 NEW SECTION. **Section 5. Penalty for violation.** (1) A
 7 firm or nursery that purposely, knowingly, or negligently
 8 violates or aids in the violation of a provision of this
 9 chapter or of the rules, orders, or quarantines of the
 10 department adopted under Title 2, chapter 4, and this
 11 chapter commits both a civil and criminal offense and is
 12 subject to the following penalties:

13 (a) a civil penalty of not more than \$1,000 for each
 14 violation; or

15 (b) upon conviction, a fine of not less than \$300 or
 16 more than \$1,000.

17 (2) Assessment of a civil penalty may be made in
 18 conjunction with another warning, order, or administrative
 19 action authorized by this chapter.

20 (3) The department shall establish by rule:

21 (a) a penalty schedule that establishes the types of
 22 penalties and the amounts, not to exceed \$1,000, for initial
 23 and subsequent offenses; and

24 (b) other matters necessary for the administration of
 25 civil penalties.

1 (4) [Sections 1 through 8] may not be construed as
 2 requiring the department or its agents to report violations
 3 of this chapter when the department believes that the public
 4 interest will be best served by a suitable notice of
 5 warning.

6 NEW SECTION. **Section 6. Quarantines.** The department
 7 may by rule adopt interstate and intrastate quarantines to
 8 prevent the spread of plant pests or the movement of plants
 9 that are carriers of or susceptible to specified pests and
 10 diseases.

11 NEW SECTION. **Section 7. Nursery stock certification.**
 12 At the request of a firm or nursery, the department may
 13 inspect nursery stock for the purpose of nursery stock
 14 certification. The department shall establish certification
 15 standards, inspection procedures, and fees by department
 16 rule.

17 NEW SECTION. **Section 8. Nursery account -- investment**
 18 **of funds.** (1) There is an account in the state special
 19 revenue fund. All inspection and license fee revenue
 20 authorized under [sections 1 through 8] must be deposited in
 21 this account.

22 (2) Revenue received under [sections 1 through 8] not
 23 immediately required for the purpose of [sections 1 through
 24 8] must be invested in accordance with the unified
 25 investment program established in Title 17, chapter 6, part

1 2. Income from the investments must be deposited in the
2 account.

3 **Section 9.** Section 80-7-104, MCA, is amended to read:

4 "80-7-104. Grounds for refusal or revocation of
5 license. The department, in accordance with Title 2, chapter
6 4, may refuse to issue a license or it may revoke a license
7 under this part when:

8 (1) the person firm has been adjudged bankrupt,
9 insolvent, or guilty of fraud or deceit by a court of
10 competent jurisdiction; or

11 (2) a verified complaint is made to the department that
12 a licensee has failed to comply with this part ~~or--the~~ the
13 horticulture-laws."

14 **Section 10.** Section 80-7-114, MCA, is amended to read:

15 "80-7-114. Removal of infected trees nursery stock --
16 assessment of costs. (1) If a person firm owning any-orchard
17 or nursery stock or other materials infected or infested
18 with any injurious insect plant pest or-disease-and-which
19 becomes-a-menace-to-the-agricultural-or-fruit-industry-or--a
20 menace--to--ornamental-trees,-shrubs,-plants,-or-vines fails
21 to comply with the instructions of the department for the
22 destruction or control of the injurious insect plant pest or
23 disease or the destruction of the infested or infected
24 orchard-or nursery stock or other material within the time
25 specified by the department, the department may condemn,

1 remove, or destroy the orchard-or nursery stock or other
2 material or treat it with a proper remedy.

3 (2) If an owner fails to pay the actual cost of the
4 removal, treatment, or destruction within 30 days after
5 notice has been mailed to the owner at his the owner's
6 last-known post-office address and to any purchaser of the
7 property under contract for deed at his the purchaser's
8 last-known post-office address, the cost shall--become
9 becomes a lien on the land of the owner and shall must be
10 added by the county treasurer to the taxes upon the property
11 and collected as other taxes."

12 **Section 11.** Section 80-7-133, MCA, is amended to read:

13 "80-7-133. Acts made unlawful -- penalty. (1) It is
14 unlawful for any-person a firm to:

15 (a) fail to properly identify nursery stock offered for
16 sale at retail. Identification must include but is not
17 limited to the common name and variety. Each nursery plant
18 offered for sale as a separate plant must be identified. A
19 single means of identification is allowed on each bundle of
20 bare root seedlings, liners, or hedging grade nursery stock.

21 (b) falsely represent or misrepresent the name, age,
22 variety, or class of any nursery stock sold or offered for
23 sale;

24 (c) falsely represent or state that any nursery
25 stock offered for sale, sold, or delivered was grown in or

1 came from a certain nursery or locality, when in fact such
 2 the nursery stock was grown in or came from another location
 3 or nursery;

4 (d) deceive or defraud any person firm in the sale
 5 of any nursery stock by substituting inferior or different
 6 varieties or ages from those ordered; or

7 (e) willfully or intentionally bring into this
 8 state, offer for sale or distribution within this state or
 9 ship, sell, or deliver upon any sale any nursery stock that
 10 is infected or infested with any-disease-or-insect a plant
 11 pest dangerous to the horticultural interests of the state;
 12 or

13 (f) sell or distribute plants or nursery stock declared
 14 noxious weeds under 7-22-2101(7)(a)(i).

15 (2) In case of such misrepresentation, false
 16 representation, deceit, fraud, or substitution, or sale and
distribution of noxious weeds, such--person the firm is
 17 subject to punishment as provided by 80-7-134 in [section 5]
 18 and is liable to the--person--firm--or--corporation a party
 19 damaged or injured thereby, to the extent of all damages
 20 sustained, to be recovered in a civil action in any court of
 21 competent jurisdiction."

23 NEW SECTION. Section 12. Repealer. Sections 80-7-101,
 24 80-7-102, 80-7-103, 80-7-111, 80-7-112, 80-7-113, 80-7-115,
 25 80-7-116, 80-7-117, 80-7-118, 80-7-119, 80-7-120, 80-7-131,

1 80-7-134, 80-7-201, 80-7-202, 80-7-203, 80-7-204, 80-7-205,
 2 80-7-206, 80-7-207, 80-7-208, 80-7-209, 80-7-210, 80-7-301,
 3 80-7-302, 80-7-303, and 80-7-304, MCA, are repealed.

4 NEW SECTION. Section 13. Codification instruction.
 5 [Sections 1 through 8] are intended to be codified as an
 6 integral part of Title 80, chapter 7, and the provisions of
 7 Title 80, chapter 7, apply to [sections 1 through 8].

8 NEW SECTION. Section 14. Effective date. [This act] is
 9 effective January 1, 1994.

-End-

STATE OF MONTANA - FISCAL NOTE

Form BD-15

In compliance with a written request, there is hereby submitted a Fiscal Note for HB0167, as introduced.

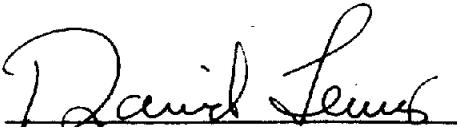
DESCRIPTION OF PROPOSED LEGISLATION:

An act generally revising the nursery laws; increasing the nursery license fee; making it unlawful to sell noxious weeds; providing civil penalties; establishing quarantines by department rule; setting nursery stock certification standards by department rule; establishing a special revenue account; amending and repealing existing statutes and providing a delayed effective date.

ASSUMPTIONS:

1. The Department of Agriculture nursery program will become self supporting in FY95.
2. Nursery license and inspection fee revenue estimates are based on FY92 actuals.
3. Nursery licenses are renewed January 1 each year.
4. Inspection fees are collected monthly with change from general fund to state special fund not fully implemented until FY95.
5. Program funding will be converted from general fund to a state special revenue account effective January 1, 1994. The general fund will support the program from July 1, 1993 to January 1, 1994.
6. Approximately 13% of total program general fund expenditures occur in the nursery program (based on historical employee time and expense data). FY94 and FY95 expenditures are based on executive budget data which includes an indirect charge for services provided by department. Indirect costs are calculated using 18.28% of personnel services in FY94 and 18.31% in FY95.
7. One nursery license of \$95 each will replace the three tiered license system.
8. Fund balance is used to operate program until license fees are received by January 1st each year.
9. Excess revenues must be invested in the state unified investment program. Interest earnings are projected at 4% beginning July 1, 1994 to be deposited in the state special nursery account.

(continued)

 1-19-93

DAVID LEWIS, BUDGET DIRECTOR DATE
Office of Budget and Program Planning

 1-19-93

RAY BRANDEWIE, PRIMARY SPONSOR DATE

Fiscal Note for HB0167, as introduced

HB 167

FISCAL IMPACT:Department of Agriculture:

	FY '94			FY '95		
	Current Law	Proposed Law	Difference	Current Law	Proposed Law	Difference
<u>Expenditures:</u>						
Personal Services	\$ 57,713	\$ 57,713	-0-	\$ 57,871	\$ 57,871	\$ -0-
Operating Expenses	12,318	12,318	-0-	10,468	10,468	-0-
Indirect Costs	<u>5,713</u>	<u>5,713</u>	<u>\$ -0-</u>	<u>10,597</u>	<u>10,597</u>	<u>-0-</u>
	\$ 75,844	\$ 75,744	\$ -0-	\$ 78,936	\$ 78,936	\$ -0-
<u>Funding:</u>						
General Fund	\$ 75,844	\$ 35,116	(\$40,728)	\$ 78,936	\$ -0-	(\$78,936)
State Special Fund	-0-	40,728	40,728	-0-	78,936	\$ 78,936
<u>Revenues:</u>						
Inspection Fees	\$ 17,811	\$ 17,811	\$ -0-	\$ 17,811	\$ 19,000	\$ 1,189
Nursery License Fees	22,830	59,850	37,020	22,830	59,850	37,020
Interest Earnings	<u>-0-</u>	<u>-0-</u>	<u>-0-</u>	<u>-0-</u>	<u>\$ 1,500</u>	<u>\$ 1,500</u>
	\$ 40,641	\$ 77,661	\$ 37,020	\$ 40,641	\$ 80,350	\$ 39,709
<u>Disposition of Revenues:</u>						
General Fund	\$ 40,641	\$ 6,000	(\$34,641)	\$ 40,641	\$ -0-	(\$40,641)
State Special Fund	-0-	71,661	71,661	-0-	80,350	\$ 80,350
<u>Net Impact:</u>						
General Fund (01)	\$ 35,203	(\$ 29,116)	(\$ 6,087)	\$ 38,295	-0-	(\$ 38,295)
State Special Fund (02)	-0-	\$ 30,933	\$ 30,933	-0-	\$ 1,414	\$ 1,414

HB 167

STATE OF MONTANA - FISCAL NOTE

Form BD-15

In compliance with a written request, there is hereby submitted a Fiscal Note for HB0167, second reading.

DESCRIPTION OF PROPOSED LEGISLATION: An act generally revising the nursery laws; increasing the nursery license fee; making it unlawful to sell noxious weeds; providing civil penalties; establishing quarantines by department rule; setting nursery stock certification standards by department rule; establishing a special revenue account; amending and repealing existing statutes and providing a delayed effective date.

ASSUMPTIONS:

1. The Department of Agriculture nursery program will become self supporting in FY95.
2. Nursery license and inspection fee revenue estimates are based on FY92 actuals.
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4. Inspection fees are collected monthly with change from general fund to state special fund not fully implemented until FY95.
5. Program funding will be converted from general fund to a state special revenue account effective January 1, 1994. The general fund will support the program from July 1, 1993 to January 1, 1994.
6. Approximately 13% of total program general fund expenditures occur in the nursery program (based on historical employee time and expense data). FY94 and FY95 expenditures are based on executive budget data which includes an indirect charge for services provided by Department of Agriculture. Indirect costs are calculated using 18.28% of personnel services in FY94 and 18.31% in FY95.
7. One nursery license of \$95 each will replace the three tiered license system.
8. Fund balance is used to operate program until license fees are received by January 1st each year.
9. Excess revenues must be invested in the state unified investment program. Interest earnings are projected at 4% beginning July 1, 1994 to be deposited in the state special nursery account.
10. No significant revenues from the assessment of civil or criminal penalties are projected, but the amount is not subject to reasonable estimate. This assumption #10 is the only change from the fiscal note on the introduced bill.

(continued on next page)

Dave Lewis 2-15-93
DAVID LEWIS, BUDGET DIRECTOR DATE
Office of Budget and Program Planning

Ray Brandewie 2-16-93
RAY BRANDEWIE, PRIMARY SPONSOR DATE

Fiscal Note for HB0167, second reading

HB 167 #2

FISCAL IMPACT:

	FY '94			FY '95		
	Current Law	Proposed Law	Difference	Current Law	Proposed Law	Difference
<u>Expenditures:</u>						
Personal Services	57,713	57,713	-0-	57,871	57,871	-0-
Operating Expenses	12,318	12,318	-0-	10,468	10,468	-0-
Indirect Costs	5,713	5,713	-0-	10,597	10,597	-0-
	<u>75,744</u>	<u>75,744</u>	<u>-0-</u>	<u>78,936</u>	<u>78,936</u>	<u>-0-</u>
<u>Funding:</u>						
General Fund	75,744	35,016	(40,728)	78,936	-0-	(78,936)
State Special Fund	-0-	40,728	40,728	-0-	78,936	78,936
<u>Revenues:</u>						
Inspection Fees	17,811	17,811	-0-	17,811	19,000	1,189
Nursery License Fees	22,830	59,850	37,020	22,830	59,850	37,020
Interest Earnings	-0-	-0-	-0-	-0-	1,500	1,500
	<u>40,641</u>	<u>77,661</u>	<u>37,020</u>	<u>40,641</u>	<u>80,350</u>	<u>39,709</u>
<u>Disposition of Revenues:</u>						
General Fund	40,641	6,000	(34,641)	40,641	-0-	(40,641)
State Special Fund	-0-	71,661	71,661	-0-	80,350	80,350
<u>Net Impact:</u>						
General Fund	35,203	(29,116)	(6,087)	38,295	-0-	(38,295)
State Special	-0-	30,933	30,933	-0-	1,414	1,414

HB 167 - #2

APPROVED BY COMMITTEE
ON AGRICULTURE LIVESTOCK
AND IRRIGATION

18 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

19 **NEW SECTION.** **Section 1. Definitions.** Unless the
20 context requires otherwise, in this chapter, the following
21 definitions apply:

22 (1) "Firm" means an individual, company, partnership,
23 association, or corporation.

24 (2) "Nursery" means the business or location where
25 nursery stock is grown or offered for sale, resale, or as

part of a landscape service.

(3) "Nursery stock" means botanically classified plants or parts of plants. The following plants and plant materials when free of plant pests may not be considered nursery stock:

- (a) aquatic plants used for aquarium purposes;
- (b) field crop plants and seeds;
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- (e) corms, tubers, and bulbs;
- (f) fruits or vegetables for human or animal consumption;
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(4) "Nursery stock certification" means the process whereby the nursery stock or other plants have been inspected and found to meet certification standards established by department rule.

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1 injure or cause damage in a plant or a product of a plant
2 and that meets the criteria as a pest established by
3 department rule. For purposes of this chapter, noxious
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8 in the business of selling or distributing nursery stock in
9 this state shall obtain a license for each nursery from the
10 department.

11 (2) The license must be in the name of the firm seeking
12 the license and expires on December 31 following the date of
13 issue. The applicant shall provide information the
14 department finds necessary to carry out the provisions and
15 purposes of this chapter.

16 (3) The license fee is \$95 per nursery.

17 (4) A nursery that earns less than \$1,000 in gross
18 annual sales of nursery stock and that submits a notarized
19 affidavit to that effect to the department is exempt from
20 licensing.

21 (5) A new applicant or a firm failing to renew a
22 license by January 1 of each year shall pay an additional
23 nonrefundable application fee of \$25 for each license.

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25 into Montana for resale by a licensed Montana nursery is not

1 required to obtain a license if the firm is licensed in the
2 state of origin of the nursery stock and if that state
3 extends a similar exemption to Montana firms.

4 (7) If the department determines that the revenue from
5 the license fee is inadequate to accomplish the purposes of
6 this chapter, the department may by rule increase the fee.

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15 ~~tbj--upon-conviction, a fine of not less than \$300--or~~
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 20 menace--to--ornamental-trees,-shrubs,-plants,-or-vines fails
 21 to comply with the instructions of the department for the
 22 destruction or control of the injurious insect plant pest or
 23 disease or the destruction of the infested or infected
 24 orchard-or nursery stock or other material within the time
 25 specified by the department, the department may condemn,

1 remove, or destroy the orchard-or nursery stock or other
 2 material or treat it with a proper remedy.

3 (2) If an owner fails to pay the actual cost of the
 4 removal, treatment, or destruction within 30 days after
 5 notice has been mailed to the owner at his the owner's
 6 last-known post-office address and to any purchaser of the
 7 property under contract for deed at his the purchaser's
 8 last-known post-office address, the cost shall---become
 9 becomes a lien on the land of the owner and shall must be
 10 added by the county treasurer to the taxes upon the property
 11 and collected as other taxes."

12 **Section 11.** Section 80-7-133, MCA, is amended to read:

13 "80-7-133. Acts made unlawful -- penalty. (1) It is
 14 unlawful for any-person a firm to:

15 (a) fail to properly identify nursery stock offered for
 16 sale at retail. Identification must include but is not
 17 limited to the common name and variety. Each nursery plant
 18 offered for sale as a separate plant must be identified. A
 19 single means of identification is allowed on each bundle of
 20 bare root seedlings, liners, or hedging grade nursery stock.

21 (b) falsely represent or misrepresent the name, age,
 22 variety, or class of any nursery stock sold or offered for
 23 sale;

24 (c) falsely represent or state that any nursery
 25 stock offered for sale, sold, or delivered was grown in or

1 came from a certain nursery or locality, when in fact such
 2 the nursery stock was grown in or came from another location
 3 or nursery;

4 ~~to(d)~~ deceive or defraud any person firm in the sale
 5 of any nursery stock by substituting inferior or different
 6 varieties or ages from those ordered; or

7 ~~to(e)~~ willfully or intentionally bring into this
 8 state, offer for sale or distribution within this state or
 9 ship, sell, or deliver upon any sale any nursery stock that
 10 is infected or infested with any-disease-or-insect a plant
 11 pest dangerous to the horticultural interests of the state;
 12 or

13 (f) sell or distribute plants-or nursery stock OR CUT
 14 DECORATIVE OR AQUARIUM PLANTS declared noxious weeds under
 15 7-22-2101(7)(a)(i).

16 (2) In case of such misrepresentation, false
 17 representation, deceit, fraud, or substitution, or sale and
distribution of noxious weeds, such--person the firm is
 19 subject to punishment as provided by-80-7-134 in [section 5]
 20 and is liable to the-person,-firm,-or-corporation a party
 21 damaged or injured thereby, to the extent of all damages
 22 sustained, to be recovered in a civil action in any court of
 23 competent jurisdiction."

24 NEW SECTION. Section 12. Repealer. Sections 80-7-101,
 25 80-7-102, 80-7-103, 80-7-111, 80-7-112, 80-7-113, 80-7-115,

1 80-7-116, 80-7-117, 80-7-118, 80-7-119, 80-7-120, 80-7-131,
 2 80-7-134, 80-7-201, 80-7-202, 80-7-203, 80-7-204, 80-7-205,
 3 80-7-206, 80-7-207, 80-7-208, 80-7-209, 80-7-210, 80-7-301,
 4 80-7-302, 80-7-303, and 80-7-304, MCA, are repealed.

5 NEW SECTION. Section 13. Codification instruction.
 6 [Sections 1 through 8] are intended to be codified as an
 7 integral part of Title 80, chapter 7, and the provisions of
 8 Title 80, chapter 7, apply to [sections 1 through 8].

9 NEW SECTION. Section 14. Effective date. [This act] is
 10 effective January 1, 1994.

-End-

HOUSE BILL NO. 167

INTRODUCED BY BRANDEWIE, HARP

4 A BILL FOR AN ACT ENTITLED: "AN ACT GENERALLY REVISING THE
5 NURSERY LAWS; INCREASING THE NURSERY LICENSE FEE; MAKING IT
6 UNLAWFUL TO SELL NOXIOUS WEEDS; PROVIDING CIVIL PENALTIES;
7 ESTABLISHING QUARANTINES BY DEPARTMENT RULE; SETTING NURSERY
8 STOCK CERTIFICATION STANDARDS BY DEPARTMENT RULE;
9 ESTABLISHING A SPECIAL REVENUE ACCOUNT; AMENDING SECTIONS
10 80-7-104, 80-7-114, AND 80-7-133, MCA; REPEALING SECTIONS
11 80-7-101, 80-7-102, 80-7-103, 80-7-111, 80-7-112, 80-7-113,
12 80-7-115, 80-7-116, 80-7-117, 80-7-118, 80-7-119, 80-7-120,
13 80-7-131, 80-7-134, 80-7-201, 80-7-202, 80-7-203, 80-7-204,
14 80-7-205, 80-7-206, 80-7-207, 80-7-208, 80-7-209, 80-7-210,
15 80-7-301, 80-7-302, 80-7-303, AND 80-7-304, MCA; AND
16 PROVIDING A DELAYED EFFECTIVE DATE."

18 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

19 NEW SECTION. **Section 1. Definitions.** Unless the
20 context requires otherwise, in this chapter, the following
21 definitions apply:

22 (1) "Firm" means an individual, company, partnership,
23 association, or corporation.

24 (2) "Nursery" means the business or location where
25 nursery stock is grown or offered for sale, resale, or as

1 part of a landscape service.

2 (3) "Nursery stock" means botanically classified plants
3 or parts of plants. The following plants and plant materials
4 when-free-of-plant--pests may not be considered nursery
5 stock:

6 (a) aquatic plants used for aquarium purposes;
7 (b) field crop plants and seeds;
8 (c) pasture grasses;
9 (d) cut plants not for propagation;
10 (e) corms, tubers, and bulbs;
11 (f) fruits or vegetables for human or animal
12 consumption;
13 (g) cut trees and products for processing; and
14 (h) plant debris for disposal or processing.

15 (4) "Nursery stock certification" means the process
16 whereby the nursery stock or other plants have been
17 inspected and found to meet certification standards
18 established by department rule.

19 (5) "Plant inspection certificate" means a document
20 issued by the department or the plant pest regulatory agency
21 of another state that declares that the nursery stock,
22 plants, or plant material grown by the firm named on the
23 certificate is apparently free of injurious plant pests.

24 (6) "Plant pest" means an insect, fungus, virus,
25 bacteria, or other organism that can directly or indirectly

1 injure or cause damage in a plant or a product of a plant
 2 and that meets the criteria as a pest established by
 3 department rule. For purposes of this chapter, noxious
 4 weeds, as defined in 7-22-2101(7)(a)(i), or other exotic
 5 weeds are defined as plant pests.

6 NEW SECTION. **Section 2. License required --**
 7 application and payment of license fee. (1) A firm engaging
 8 in the business of selling or distributing nursery stock in
 9 this state shall obtain a license for each nursery from the
 10 department.

11 (2) The license must be in the name of the firm seeking
 12 the license and expires on December 31 following the date of
 13 issue. The applicant shall provide information the
 14 department finds necessary to carry out the provisions and
 15 purposes of this chapter.

16 (3) The license fee is \$95 per nursery.

17 (4) A nursery that earns less than \$1,000 in gross
 18 annual sales of nursery stock and that submits a notarized
 19 affidavit to that effect to the department is exempt from
 20 licensing.

21 (5) A new applicant or a firm failing to renew a
 22 license by January 1 of each year shall pay an additional
 23 nonrefundable application fee of \$25 for each license.

24 (6) An out-of-state firm that imports nursery stock
 25 into Montana for resale by a licensed Montana nursery is not

1 required to obtain a license if the firm is licensed in the
 2 state of origin of the nursery stock and if that state
 3 extends a similar exemption to Montana firms.

4 (7) If the department determines that the revenue from
 5 the license fee is inadequate to accomplish the purposes of
 6 this chapter, the department may by rule increase the fee.

7 NEW SECTION. **Section 3. Nursery stock inspection --**
 8 fees. (1) The department may enter a firm or nursery
 9 premises during regular business hours for the purpose of
 10 inspecting nursery stock or other materials for possible
 11 plant pests or for determining licensure compliance. An
 12 inspection fee may not be assessed if the department
 13 requests the inspection.

14 (2) A firm or nursery may request the inspection of
 15 nursery stock, plants, or other materials by giving the
 16 department 5 days' notice prior to the time when the nursery
 17 stock, plants, or other materials are ready for inspection.
 18 A firm or nursery requesting an inspection shall pay a fee
 19 as established by department rule. The fee must cover the
 20 actual costs of inspection, surveys, and other services
 21 required to issue the plant inspection certificate.

22 (3) The department may issue a plant inspection
 23 certificate based on the results of a nursery stock or other
 24 plant inspection or inspection survey.

25 NEW SECTION. **Section 4. Duty to notify department of**

1 infestation. A firm or nursery with nursery stock or other
 2 materials that are infested with plant pests, as defined in
 3 [section 1], shall notify the department. The firm or
 4 nursery shall comply with the instructions of the department
 5 for the control of the plant pests.

6 NEW SECTION. **Section 5. Penalty for violation.** (1) A
 7 firm or nursery that purposely, knowingly, or negligently
 8 violates or aids in the violation of a provision of this
 9 chapter or of the rules, orders, or quarantines of the
 10 department adopted under Title 2, chapter 4, and this
 11 chapter commits both a civil and--criminal offense and is
 12 subject to the--following--penalties:

13 (a) a civil penalty of not more than \$1,000 for each
 14 violation; or

15 (b)--upon--conviction, a fine of not less--than--\$300--or
 16 more--than--\$1,000.

17 (2) Assessment of a civil penalty may be made in
 18 conjunction with another warning, order, or administrative
 19 action authorized by this chapter.

20 (3) The department shall establish by rule:

21 (a) a penalty schedule that establishes the types of
 22 penalties and the amounts, not to exceed \$1,000, for initial
 23 and subsequent offenses; and

24 (b) other matters necessary for the administration of
 25 civil penalties.

1 (4) [Sections 1 through 8] may not be construed as
 2 requiring the department or its agents to report violations
 3 of this chapter when the department believes that the public
 4 interest will be best served by a suitable notice of
 5 warning.

6 NEW SECTION. **Section 6. Quarantines.** The department
 7 may by rule adopt interstate and intrastate quarantines to
 8 prevent the spread of plant pests or the movement of plants
 9 that are carriers of or susceptible to specified pests and
 10 diseases.

11 NEW SECTION. **Section 7. Nursery stock certification.**
 12 At the request of a firm or nursery, the department may
 13 inspect nursery stock for the purpose of nursery stock
 14 certification. The department shall establish certification
 15 standards, inspection procedures, and fees by department
 16 rule.

17 NEW SECTION. **Section 8. Nursery account -- investment**
 18 of funds. (1) There is an account in the state special
 19 revenue fund. All inspection and license fee revenue
 20 authorized under [sections 1 through 8] must be deposited in
 21 this account.

22 (2) Revenue received under [sections 1 through 8] not
 23 immediately required for the purpose of [sections 1 through
 24 8] must be invested in accordance with the unified
 25 investment program established in Title 17, chapter 6, part

1 2. Income from the investments must be deposited in the
2 account.

3 **Section 9.** Section 80-7-104, MCA, is amended to read:

4 "80-7-104. Grounds for refusal or revocation of
5 license. The department, in accordance with Title 2, chapter
6 4, may refuse to issue a license or it may revoke a license
7 under this part when:

8 (1) the person firm has been adjudged bankrupt,
9 insolvent, or guilty of fraud or deceit by a court of
10 competent jurisdiction; or

11 (2) a verified complaint is made to the department that
12 a licensee has failed to comply with this part or--the
13 horticulture-laws."

14 **Section 10.** Section 80-7-114, MCA, is amended to read:

15 "80-7-114. Removal of infected trees nursery stock --
16 assessment of costs. (1) If a person firm owning any-orchard
17 or nursery stock or other materials infected or infested
18 with any injurious insect plant pest or-disease-and-which
19 becomes-a-menace-to-the-agricultural-or-fruit-industry-or--a
20 menace--to--ornamental-trees,-shrubs,-plants,-or-vines fails
21 to comply with the instructions of the department for the
22 destruction or control of the injurious insect plant pest or
23 disease or the destruction of the infested or infected
24 orchard-or nursery stock or other material within the time
25 specified by the department, the department may condemn,

1 remove, or destroy the orchard-or nursery stock or other
2 material or treat it with a proper remedy.

3 (2) If an owner fails to pay the actual cost of the
4 removal, treatment, or destruction within 30 days after
5 notice has been mailed to the owner at his the owner's
6 last-known post-office address and to any purchaser of the
7 property under contract for deed at his the purchaser's
8 last-known post-office address, the cost shall--become
9 becomes a lien on the land of the owner and shall must be
10 added by the county treasurer to the taxes upon the property
11 and collected as other taxes."

12 **Section 11.** Section 80-7-133, MCA, is amended to read:

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16 sale at retail. Identification must include but is not
17 limited to the common name and variety. Each nursery plant
18 offered for sale as a separate plant must be identified. A
19 single means of identification is allowed on each bundle of
20 bare root seedlings, liners, or hedging grade nursery stock.

21 (b) falsely represent or misrepresent the name, age,
22 variety, or class of any nursery stock sold or offered for
23 sale;

24 (c) falsely represent or state that any nursery
25 stock offered for sale, sold, or delivered was grown in or

1 came from a certain nursery or locality, when in fact such
 2 the nursery stock was grown in or came from another location
 3 or nursery;

4 to(d) deceive or defraud any person firm in the sale
 5 of any nursery stock by substituting inferior or different
 6 varieties or ages from those ordered; or

7 to(e) willfully or intentionally bring into this state,
 8 offer for sale or distribution within this state or
 9 ship, sell, or deliver upon any sale any nursery stock that
 10 is infected or infested with any-disease-or-insect a plant
 11 pest dangerous to the horticultural interests of the state;

12 or

13 (f) sell or distribute plants-or nursery stock OR CUT
 14 DECORATIVE OR AQUARIUM PLANTS declared noxious weeds under
 15 7-22-2101(7)(a)(i).

16 (2) In case of such misrepresentation, false
 17 representation, deceit, fraud, or substitution, or sale and
distribution of noxious weeds, such--person the firm is
 19 subject to punishment as provided by-80-7-134 in [section 5]
 20 and is liable to the-persony-firm-or-corporation a party
 21 damaged or injured thereby, to the extent of all damages
 22 sustained, to be recovered in a civil action in any court of
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 25 80-7-102, 80-7-103, 80-7-111, 80-7-112, 80-7-113, 80-7-115,

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 6 [Sections 1 through 8] are intended to be codified as an
 7 integral part of Title 80, chapter 7, and the provisions of
 8 Title 80, chapter 7, apply to [sections 1 through 8].

9 NEW SECTION. Section 14. Effective date. [This act] is
 10 effective January 1, 1994.

-End-

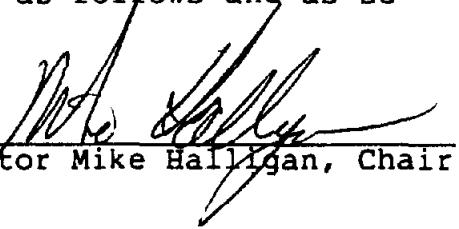
SENATE STANDING COMMITTEE REPORT

Page 1 of 1
April 2, 1993

MR. PRESIDENT:

We, your committee on Taxation having had under consideration House Bill No. 167 (third reading copy -- blue), respectfully report that House Bill No. 167 be amended as follows and as so amended be concurred in.

Signed:


Senator Mike Halligan, Chair

That such amendments read:

1. Page 5, line 19.

Following: ".."

Insert: "A civil penalty collected under this section must be deposited in the general fund."

-END-

SENATE

M Amd. Coord.
TH Sec. of Senate

Harp
Senator Carrying Bill

HB 167
741556SC.Sma

1 **HOUSE BILL NO. 167**

INTRODUCED BY BRANDEWIE, HARP

4 A BILL FOR AN ACT ENTITLED: "AN ACT GENERALLY REVISING THE
5 NURSERY LAWS; INCREASING THE NURSERY LICENSE FEE; MAKING IT
6 UNLAWFUL TO SELL NOXIOUS WEEDS; PROVIDING CIVIL PENALTIES;
7 ESTABLISHING QUARANTINES BY DEPARTMENT RULE; SETTING NURSERY
8 STOCK CERTIFICATION STANDARDS BY DEPARTMENT RULE;
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10 80-7-104, 80-7-114, AND 80-7-133, MCA; REPEALING SECTIONS
11 80-7-101, 80-7-102, 80-7-103, 80-7-111, 80-7-112, 80-7-113,
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20 context requires otherwise, in this chapter, the following
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23 association, or corporation.

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25 nursery stock is grown or offered for sale, resale, or as

1 part of a landscape service.

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3 or parts of plants. The following plants and plant materials
4 when-free-of-plant--pests may not be considered nursery
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- (f) fruits or vegetables for human or animal consumption;
- (g) cut trees and products for processing; and
- (h) plant debris for disposal or processing.

15 (4) "Nursery stock certification" means the process
16 whereby the nursery stock or other plants have been
17 inspected and found to meet certification standards
18 established by department rule.

19 (5) "Plant inspection certificate" means a document
20 issued by the department or the plant pest regulatory agency
21 of another state that declares that the nursery stock,
22 plants, or plant material grown by the firm named on the
23 certificate is apparently free of injurious plant pests.

(6) "Plant pest" means an insect, fungus, virus, bacteria, or other organism that can directly or indirectly



1 injure or cause damage in a plant or a product of a plant
 2 and that meets the criteria as a pest established by
 3 department rule. For purposes of this chapter, noxious
 4 weeds, as defined in 7-22-2101(7)(a)(i), or other exotic
 5 weeds are defined as plant pests.

6 NEW SECTION. **Section 2.** License required --
 7 application and payment of license fee. (1) A firm engaging
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 9 this state shall obtain a license for each nursery from the
 10 department.

11 (2) The license must be in the name of the firm seeking
 12 the license and expires on December 31 following the date of
 13 issue. The applicant shall provide information the
 14 department finds necessary to carry out the provisions and
 15 purposes of this chapter.

16 (3) The license fee is \$95 per nursery.

17 (4) A nursery that earns less than \$1,000 in gross
 18 annual sales of nursery stock and that submits a notarized
 19 affidavit to that effect to the department is exempt from
 20 licensing.

21 (5) A new applicant or a firm failing to renew a
 22 license by January 1 of each year shall pay an additional
 23 nonrefundable application fee of \$25 for each license.

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 25 into Montana for resale by a licensed Montana nursery is not

1 required to obtain a license if the firm is licensed in the
 2 state of origin of the nursery stock and if that state
 3 extends a similar exemption to Montana firms.

4 (7) If the department determines that the revenue from
 5 the license fee is inadequate to accomplish the purposes of
 6 this chapter, the department may by rule increase the fee.

7 NEW SECTION. **Section 3.** Nursery stock inspection --
 8 fees. (1) The department may enter a firm or nursery
 9 premises during regular business hours for the purpose of
 10 inspecting nursery stock or other materials for possible
 11 plant pests or for determining licensure compliance. An
 12 inspection fee may not be assessed if the department
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14 (2) A firm or nursery may request the inspection of
 15 nursery stock, plants, or other materials by giving the
 16 department 5 days' notice prior to the time when the nursery
 17 stock, plants, or other materials are ready for inspection.
 18 A firm or nursery requesting an inspection shall pay a fee
 19 as established by department rule. The fee must cover the
 20 actual costs of inspection, surveys, and other services
 21 required to issue the plant inspection certificate.

22 (3) The department may issue a plant inspection
 23 certificate based on the results of a nursery stock or other
 24 plant inspection or inspection survey.

25 NEW SECTION. **Section 4.** Duty to notify department of

1 infestation. A firm or nursery with nursery stock or other
 2 materials that are infested with plant pests, as defined in
 3 [section 1], shall notify the department. The firm or
 4 nursery shall comply with the instructions of the department
 5 for the control of the plant pests.

6 NEW SECTION. **Section 5.** Penalty for violation. (1) A
 7 firm or nursery that purposely, knowingly, or negligently
 8 violates or aids in the violation of a provision of this
 9 chapter or of the rules, orders, or quarantines of the
 10 department adopted under Title 2, chapter 4, and this
 11 chapter commits both a civil and--criminal offense and is
 12 subject to the following penalties:

13 (a) a civil penalty of not more than \$1,000 for each
 14 violation; or

15 (b)--upon conviction, a fine of not less than--\$300--or
 16 more than--\$1,000.

17 (2) Assessment of a civil penalty may be made in
 18 conjunction with another warning, order, or administrative
 19 action authorized by this chapter. A CIVIL PENALTY COLLECTED
 20 UNDER THIS SECTION MUST BE DEPOSITED IN THE GENERAL FUND.

21 (3) The department shall establish by rule:

22 (a) a penalty schedule that establishes the types of
 23 penalties and the amounts, not to exceed \$1,000, for initial
 24 and subsequent offenses; and

25 (b) other matters necessary for the administration of

1 civil penalties.

2 (4) [Sections 1 through 8] may not be construed as
 3 requiring the department or its agents to report violations
 4 of this chapter when the department believes that the public
 5 interest will be best served by a suitable notice of
 6 warning.

7 NEW SECTION. **Section 6.** Quarantines. The department
 8 may by rule adopt interstate and intrastate quarantines to
 9 prevent the spread of plant pests or the movement of plants
 10 that are carriers of or susceptible to specified pests and
 11 diseases.

12 NEW SECTION. **Section 7.** Nursery stock certification.
 13 At the request of a firm or nursery, the department may
 14 inspect nursery stock for the purpose of nursery stock
 15 certification. The department shall establish certification
 16 standards, inspection procedures, and fees by department
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 19 of funds. (1) There is an account in the state special
 20 revenue fund. All inspection and license fee revenue
 21 authorized under [sections 1 through 8] must be deposited in
 22 this account.

23 (2) Revenue received under [sections 1 through 8] not
 24 immediately required for the purpose of [sections 1 through
 25 8] must be invested in accordance with the unified

1 investment program established in Title 17, chapter 6, part
 2. Income from the investments must be deposited in the
 3 account.

4 **Section 9.** Section 80-7-104, MCA, is amended to read:

5 "80-7-104. Grounds for refusal or revocation of
 6 license. The department, in accordance with Title 2, chapter
 7 4, may refuse to issue a license or it may revoke a license
 8 under this part when:

9 (1) the person firm has been adjudged bankrupt,
 10 insolvent, or guilty of fraud or deceit by a court of
 11 competent jurisdiction; or

12 (2) a verified complaint is made to the department that
 13 a licensee has failed to comply with this part ~~or--the~~ the
 14 horticulture laws."

15 **Section 10.** Section 80-7-114, MCA, is amended to read:

16 "80-7-114. Removal of infected trees nursery stock --
 17 assessment of costs. (1) If a person firm owning any ~~orchard~~
 18 or nursery stock or other materials infected or infested
 19 with any injurious insect plant pest or disease and which
 20 becomes ~~a menace to the agricultural or fruit industry or a~~
 21 ~~menace to ornamental trees, shrubs, plants, or vines~~ fails
 22 to comply with the instructions of the department for the
 23 destruction or control of the injurious insect plant pest or
 24 disease or the destruction of the infested or infected
 25 orchard or nursery stock or other material within the time

1 specified by the department, the department may condemn,
 2 remove, or destroy the ~~orchard or~~ nursery stock or other
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4 (2) If an owner fails to pay the actual cost of the
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 8 property under contract for deed at ~~his~~ the purchaser's
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 20 single means of identification is allowed on each bundle of
 21 bare root seedlings, liners, or hedging grade nursery stock.

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 23 variety, or class of any nursery stock sold or offered for
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 2 came from a certain nursery or locality, when in fact such
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5 to(d) deceive or defraud any person firm in the sale
 6 of any nursery stock by substituting inferior or different
 7 varieties or ages from those ordered; or

8 to(e) willfully or intentionally bring into this state, offer for sale or distribution within this state or
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 11 pest dangerous to the horticultural interests of the state;
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24 NEW SECTION. Section 12. Repealer. Sections 80-7-101,

1 80-7-102, 80-7-103, 80-7-111, 80-7-112, 80-7-113, 80-7-115,
 2 80-7-116, 80-7-117, 80-7-118, 80-7-119, 80-7-120, 80-7-131,
 3 80-7-134, 80-7-201, 80-7-202, 80-7-203, 80-7-204, 80-7-205,
 4 80-7-206, 80-7-207, 80-7-208, 80-7-209, 80-7-210, 80-7-301,
 5 80-7-302, 80-7-303, and 80-7-304, MCA, are repealed.

6 NEW SECTION. Section 13. Codification instruction.
 7 [Sections 1 through 8] are intended to be codified as an
 8 integral part of Title 80, chapter 7, and the provisions of
 9 Title 80, chapter 7, apply to [sections 1 through 8].

10 NEW SECTION. Section 14. Effective date. [This act] is
 11 effective January 1, 1994.

-End-