

HOUSE BILL NO. 167  
INTRODUCED BY BRANDEWIE, HARP

IN THE HOUSE

JANUARY 13, 1993	INTRODUCED AND REFERRED TO COMMITTEE ON AGRICULTURE, LIVESTOCK, & IRRIGATION.  FIRST READING.
JANUARY 28, 1993	COMMITTEE RECOMMEND BILL DO PASS AS AMENDED. REPORT ADOPTED.
JANUARY 29, 1993	PRINTING REPORT.
JANUARY 30, 1993	SECOND READING, DO PASS.
FEBRUARY 1, 1993	ENGROSSING REPORT.
FEBRUARY 18, 1993	THIRD READING, PASSED. AYES, 97; NOES, 3.
FEBRUARY 19, 1993	TRANSMITTED TO SENATE.

IN THE SENATE

FEBRUARY 20, 1993	INTRODUCED AND REFERRED TO COMMITTEE ON AGRICULTURE, LIVESTOCK, & IRRIGATION.  FIRST READING.
MARCH 8, 1993	COMMITTEE RECOMMEND BILL BE CONCURRED IN. REPORT ADOPTED.
MARCH 9, 1993	ON MOTION, REREFERRED TO COMMITTEE ON TAXATION.
APRIL 3, 1993	COMMITTEE RECOMMEND BILL BE CONCURRED IN AS AMENDED. REPORT ADOPTED.
APRIL 8, 1993	SECOND READING, CONCURRED IN.
APRIL 12, 1993	THIRD READING, CONCURRED IN. AYES, 37; NOES, 11.  RETURNED TO HOUSE WITH AMENDMENTS.

IN THE HOUSE

APRIL 14, 1993

SECOND READING, AMENDMENTS  
CONCURRED IN.

APRIL 15, 1993

THIRD READING, AMENDMENTS  
CONCURRED IN.

SENT TO ENROLLING.

REPORTED CORRECTLY ENROLLED.

1 House BILL NO. 167  
2 INTRODUCED BY B. L. H. H. H.  
3  
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."  
17  
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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(3) The department shall establish by rule:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

**NEW SECTION. Section 14. Effective date.** [This act] is 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.

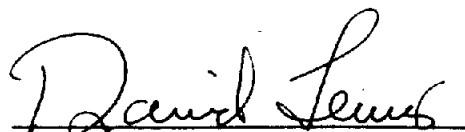
DESCRIPTION OF PROPOSED LEGISLATION:

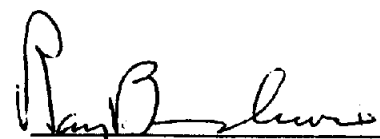
An act generally revising the nursery laws; increasing the nursery license fee; making it unlawful to sell noxious weeds; providing civil penalties; establishing quarantines by department rule; setting nursery stock certification standards by department rule; establishing a special revenue account; amending 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**



(continued)

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

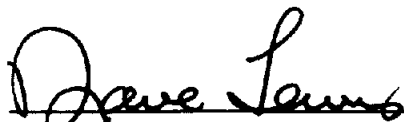
In compliance with a written request, there is hereby submitted a Fiscal Note for HB0167, second reading.


**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.
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 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)

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

 2-16-93  
RAY BRANDEWIE, PRIMARY SPONSOR      DATE

Fiscal Note for HB0167, second reading

HB 167 #2

FISCAL IMPACT:

	FY '94			FY '95		
	<u>Current Law</u>	<u>Proposed Law</u>	<u>Difference</u>	<u>Current Law</u>	<u>Proposed Law</u>	<u>Difference</u>
<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>
	75,744	75,744	-0-	78,936	78,936	-0-
<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	<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	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

## HOUSE BILL NO. 167

INTRODUCED BY BRANDEWIE, HARP

A BILL FOR AN ACT ENTITLED: "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 SECTIONS 80-7-104, 80-7-114, AND 80-7-133, MCA; REPEALING SECTIONS 80-7-101, 80-7-102, 80-7-103, 80-7-111, 80-7-112, 80-7-113, 80-7-115, 80-7-116, 80-7-117, 80-7-118, 80-7-119, 80-7-120, 80-7-131, 80-7-134, 80-7-201, 80-7-202, 80-7-203, 80-7-204, 80-7-205, 80-7-206, 80-7-207, 80-7-208, 80-7-209, 80-7-210, 80-7-301, 80-7-302, 80-7-303, AND 80-7-304, MCA; AND PROVIDING A DELAYED EFFECTIVE DATE."

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

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

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

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

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

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

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

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

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

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

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

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

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

~~(b)~~(c) falsely represent or state that any nursery 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 ~~(c)~~(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 ~~(d)~~(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  
18 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  
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,  
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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 BRANDWIE, HARP

A BILL FOR AN ACT ENTITLED: "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 SECTIONS 80-7-104, 80-7-114, AND 80-7-133, MCA; REPEALING SECTIONS 80-7-101, 80-7-102, 80-7-103, 80-7-111, 80-7-112, 80-7-113, 80-7-115, 80-7-116, 80-7-117, 80-7-118, 80-7-119, 80-7-120, 80-7-131, 80-7-134, 80-7-201, 80-7-202, 80-7-203, 80-7-204, 80-7-205, 80-7-206, 80-7-207, 80-7-208, 80-7-209, 80-7-210, 80-7-301, 80-7-302, 80-7-303, AND 80-7-304, MCA; AND PROVIDING A DELAYED EFFECTIVE DATE."

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

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

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

(2) "Nursery" means the business or location where 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;

(c) pasture grasses;

(d) cut plants not for propagation;

(e) corms, tubers, and bulbs;

(f) fruits or vegetables for human or animal consumption;

(g) cut trees and products for processing; and

(h) plant debris for disposal or processing.

(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.

(5) "Plant inspection certificate" means a document issued by the department or the plant pest regulatory agency of another state that declares that the nursery stock, plants, or plant material grown by the firm named on the 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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(3) The department shall establish by rule:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

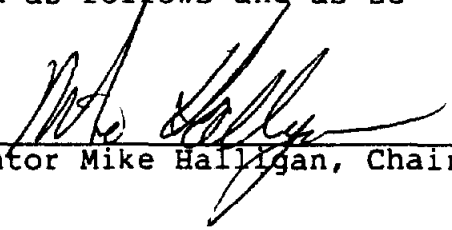
-End-

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

 Amd. Coord.  
Sec. of Senate

Harp  
Senator Carrying Bill

HB 167  
741556SC.Sma

## 1 HOUSE BILL NO. 167

2 INTRODUCED BY BRANDEWIE, HARP

3  
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."

17  
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.

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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  
5 stock;

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12 consumption;

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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

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

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

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

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

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

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

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

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

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

**NEW SECTION. Section 3. Nursery stock inspection --**  
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(3) The department may issue a plant inspection certificate based on the results of a nursery stock or other plant inspection or inspection survey.

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

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

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

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

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

(3) The department shall establish by rule:

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

(b) other matters necessary for the administration of

civil penalties.

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

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

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specified by the department, the department may condemn, remove, or destroy the orchard-or nursery stock or other material or treat it with a proper remedy.

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

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

~~(b)~~(c) falsely represent or state that any nursery

stock offered for sale, sold, or delivered was grown in or came from a certain nursery or locality, when in fact such the nursery stock was grown in or came from another location or nursery;

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

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

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

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

**NEW SECTION. Section 12. Repealer.** Sections 80-7-101,

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

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

-End-