

## **CHAPTER 4-21.1**

### **NURSERIES AND NURSERY STOCK**

**4-21.1-01. Definitions.** In this chapter, except when the context or subject matter otherwise requires:

1. "Certificate of inspection" means a document issued or authorized by the commissioner stating that nursery stock is practically free from damaging pests.
2. "Commissioner" means the agriculture commissioner or the commissioner's authorized representative.
3. "Grower" means any person who takes a reproductive part of nursery stock and increases its size and development for at least one full growing season. This includes a person producing nursery stock from tissue culture.
4. "Infested" means actually infested or infected with a pest or so exposed to infestation that it would be reasonable to believe that an infestation exists.
5. "Nonhardy" means plant species, varieties, and cultivars that will not survive climatic conditions in North Dakota.
6. "Nursery" means any place where nursery stock is propagated, grown, or offered for sale.
7. "Nursery stock" means all trees, shrubs, and woody vines and parts thereof which are capable of propagation or growth, except seed. Only those plants that are intended for outdoor planting are considered nursery stock.
8. "Person" means any individual, corporation, limited liability company, company, society, association, government agency, or other entity.
9. "Pest" means any invertebrate animal, pathogen, parasitic plant, or other similar organism which can cause damage to nursery stock.
10. "Place of business" means each separate location from which nursery stock is being offered for sale.
11. "Viable nursery stock" means nursery stock that is capable of living and accomplishing the purpose for which it is grown, whether for foliage, flowers, fruit, or special use.

**4-21.1-02. Administration - Rulemaking authority.** The commissioner has the responsibility for administration of the provisions of this chapter. The commissioner may adopt such rules pursuant to chapter 28-32 as are necessary to carry out the purposes and provisions of this chapter.

**4-21.1-03. Authority for inspection.** The commissioner shall inspect all nursery stock being grown in North Dakota at least once each year and may enter and inspect any nursery or place of business during normal business hours.

**4-21.1-04. Authority for abatement - Removal from sale.** The commissioner may, upon giving notice to the owner or the owner's agent, destroy, treat, or remove from sale, at the owner's expense, any nursery stock offered for sale that is found to be not viable, not accompanied by a certificate of inspection, not labeled correctly, or infested with a pest.

**4-21.1-05. Certification of nursery stock.** A certificate of inspection may be issued annually by the commissioner for nursery stock grown in licensed nurseries within North Dakota

that is found to be practically free from damaging pests. Certificates expire December thirty-first unless canceled at an earlier date. Certification may be withheld when nursery stock is infested with a pest or if weeds or other objects prevent the commissioner from making an adequate inspection of the nursery stock. All nursery stock being offered for sale within North Dakota must be from officially inspected sources. A copy of a certificate of inspection from the state of origin must accompany each commercial lot or shipment of nursery stock that is transported into or offered for sale within North Dakota. All reproductions of the North Dakota certificate of inspection needed for shipping purposes must be approved by the commissioner.

**4-21.1-06. Nursery license - Fee.** No person may sell nursery stock without a license issued by the commissioner. Licenses expire December thirty-first unless revoked at an earlier date. An application for renewal of license with any information requested by the commissioner must be submitted and accompanied by a fee of fifty dollars on or before December thirty-first each year. A separate license is required for each place of business. The fee for each additional license, other than the principal place of business, is ten dollars. No license may be issued to a grower unless the grower has been issued a certificate of inspection.

**4-21.1-07. Dealer's license - Fee.** Repealed by S.L. 1987, ch. 88, § 12.

**4-21.1-08. Agent's license - Fee.** Repealed by S.L. 1987, ch. 88, § 12.

**4-21.1-09. Suspension and revocation of licenses.** Repealed by S.L. 1987, ch. 88, § 12.

**4-21.1-10. Special inspections - Fees.** Repealed by S.L. 1987, ch. 88, § 12.

**4-21.1-11. Labeling and standards for nursery stock.** No person may sell or offer for sale any nursery stock not labeled in accordance with the international code of nomenclature for cultivated plants with the complete correct botanical or approved recognized common name. All nonhardy trees and shrubs, as designated by the commissioner, must be labeled with the statement "nonhardy in North Dakota". All nursery stock offered for sale or distribution must be in a viable condition and must be stored and displayed under conditions that will maintain its viability. Materials used to coat the aerial parts of the plant that change the appearance of the plant surface so as to prevent adequate inspection are prohibited.

**4-21.1-12. Misrepresentation.** It is unlawful for any person to misrepresent the name, age, origin, grade, variety, quality, or hardiness of any nursery stock being offered for sale.

**4-21.1-13. Reciprocal agreements.** The commissioner may enter into reciprocal agreements with officers of other states for the recognition of official licenses and inspection certificates.

**4-21.1-14. Exemptions.** The commissioner may exempt certain nursery stock, nurseries, or persons from all or part of the sections of this chapter. Exemptions from licenses and fees include:

1. Persons growing and propagating nursery stock for research or experimental purposes.
2. Soil conservation districts selling nursery stock for the prevention of soil and wind erosion or other conservation plantings.
3. Persons growing nursery stock for noncommercial purposes or that the commissioner designates as exempt.

**4-21.1-15. Late filing of license applications - Payment of fees.** Repealed by S.L. 1987, ch. 88, § 12.

**4-21.1-16. Penalties - Criminal - Civil - License revocation or nonrenewal.**

1. Any person who violates this chapter, or any rules adopted pursuant to it, is guilty of a class B misdemeanor.
2. Any person who violates any of the provisions of this chapter, or rules adopted pursuant to it, is subject to a civil penalty not to exceed five hundred dollars for each violation. The civil penalty may be adjudicated by the courts or by the commissioner through an administrative hearing pursuant to chapter 28-32.
3. The department may, in accordance with the laws of this state, maintain an appropriate civil action in the name of the state against any person violating this chapter or rules adopted under this chapter.
4. The commissioner may refuse to grant a license to any person found guilty of repeated violations of this chapter or rules adopted under this chapter, or to any person who has failed to pay an adjudicated civil penalty for violation of this chapter within thirty days after a final determination that the civil penalty is owed.

**4-21.1-17. Deposit of funds.** Repealed by S.L. 1987, ch. 88, § 12.