

ARTICLE 14
Prevention and Control of Disease in
Trees and Plants; Insect Pests; Sale
of Fruit-bearing Trees

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S 161. Definitions. As used in this article:

1. The words "nursery stock" shall apply to and include all trees, shrubs, plants and vines and parts thereof.
2. The words "insect pests" mean insects injurious to plant and plant products.
3. The words "plant and plant products" mean trees, shrubs, vines, annuals, biennials, perennials, vegetables, fruit, forage and cereal plants and all other plant cuttings, grafts, scions, buds and all other parts of plants, and fruit, vegetables, roots, bulbs, seeds, wood and lumber.

4. The words "plant diseases" mean fungi, bacteria, nematodes, viruses and plant parasites injurious to plants and plant products, and the pathological condition in plants and plant products caused by fungi, bacteria, nematodes, viruses and plant parasites.

5. The word "nursery" means the grounds and premises, private or public, on or in which nursery stock is propagated, grown or cultivated for the purpose of distribution or selling the same as a business and shall include grounds or premises owned, leased or managed by the state or any agency of the state government, and the owner or operator of such business shall be a "nursery grower"; provided, however, that the term "nursery grower" shall not include persons engaged in the part-time production of plant products not sold in the regular channels of business.

6. The words "nursery dealer" mean any person, firm, partnership, association or corporation not a grower or an original producer of nursery stock in this state which or who buys, or acquires, or receives on consignment nursery stock for the purpose of reselling, transporting, or otherwise disposing of the same.

7. The word "soil" means the commonly accepted medium or other medium in which plants are grown and which is or may be capable of harboring or transmitting insect pests and plant diseases.

8. The words "indoor plants" mean plants which are used for decorative purposes because of their flowering, fruiting or foliar characteristics and which cannot be grown and maintained throughout all seasons in the outdoor environment of this state.

9. The words "noxious weeds" means any living stage (including but not limited to, seeds and reproductive parts) of any parasitic or other plant of a kind, or subdivision of a kind, which is of foreign origin, is new to or not widely prevalent in this state, and can directly or indirectly injure crops, other useful plants, livestock, or poultry or other interests of agriculture, including irrigation.

S 162. Nursery stock; common carriers. No nursery stock shall be received by a common carrier for shipment into or within the state unless accompanied by a copy of an unexpired certificate of inspection issued as provided in the subsequent sections of this article.

S 163. Prevention of introduction of injurious insects, noxious weeds, and plant diseases. 1. The commissioner shall take such action as he may deem necessary to prevent the introduction into this state of injurious insects, noxious weeds, and plant diseases, provided that he shall consult with the commissioner of environmental conservation prior to the commencement of any action to eradicate noxious weeds.

2. All nursery stock shipped into this state shall bear or carry on the container thereof an unexpired certificate, or copy thereof, to the effect that (a) the contents of such container have been inspected by a duly authorized official and that the contents appear to be free from all

injurious insects or plant diseases, or (b) that the nursery stock of the grower of such contents had been examined by a duly authorized official and had been found to be apparently free from all injurious insects or plant diseases. Such certificate shall be the certificate of the chief horticultural inspector, by whatever name known, of the country, province or state in which such shipment originated. There shall be shown in the certificate or by a separate tag attached thereto the name and address of the consignor or shipper, the name and address of the consignee or person to whom the nursery stock is shipped, and the general nature of the contents together with labels upon each variety of nursery stock declaring the name thereof and a statement by the consignor or shipper that such nursery stock is in a live and vigorous condition.

3. Any person within the state receiving nursery stock from without the state not accompanied by the certificate described in subdivision two of this section, shall immediately notify the commissioner of the receipt of such nursery stock and shall not unpack the same unless permitted by the commissioner so to do, and shall not allow such nursery stock to leave his possession until it has been inspected and released by the commissioner.

4. It shall be unlawful for any person to offer for sale or to sell dead nursery stock.

S 163-a. Application. Any nursery grower or nursery dealer, except those nursery dealers selling, transporting, or handling for sale or otherwise disposing of nursery stock, exclusively consisting of indoor plants, at a retail level, desiring to sell, or selling, or handling for sale, or otherwise disposing of nursery stock in this state shall make application in writing to the commissioner upon a form prescribed by the commissioner. The application shall be made on or before the first day of November and every other year thereafter for the registration period beginning in December and shall be accompanied by a fee of one hundred dollars. The commissioner may exempt from the payment of such fees agencies or authorities of the state; county, city, town, or village governments; or other entities providing benefit to the general public, including but not limited to, botanical gardens.

S 163-b. Registration to sell. 1. The commissioner after a nursery has been found to be apparently free from injurious insects and plant diseases shall register each nursery grower desiring to sell, or selling, or handling for sale, or otherwise disposing of nursery stock in this state in accordance with the intent disclosed in the application and shall issue a certificate, upon a form to be prescribed by the commissioner, declaring that such nursery grower is duly registered and authorized to do business in this state. If such nursery grower is maintaining or operating premises in connection with his or her business in more than one place within the state then he or she shall obtain an additional registration for each place of business, provided there shall be no additional fee for such additional registrations.

2. The commissioner shall register each nursery dealer desiring to sell or selling, or handling for sale, or otherwise disposing of nursery stock in this state in accordance with the intent disclosed in his or her application and shall issue a certificate, upon a form prescribed by the commissioner, declaring that such nursery dealer is duly registered and authorized to do business in this state. If such nursery dealer is maintaining or operating premises in connection with his or her business in more than one place within the state, he or she shall obtain a separate registration, upon proper application, for each location.

3. Such certificates shall be conspicuously posted at each place of business, maintained by such nursery grower or nursery dealer.

4. Each person doing a mail order business in nursery stock from an address in this state is required to register as a nursery grower or nursery dealer whether or not the nursery stock sold or offered for sale is within the state.

5. It shall be unlawful to affix a reproduction or facsimile of a nursery dealer's registration on plant materials which have not been inspected by the commissioner.

S 163-c. Revocation of certificates. 1. The commissioner shall at any time have the power to withhold, suspend or revoke any license or certificate for sufficient cause, including the dissemination of false or misleading advertising, or the engaging in fraudulent or deceptive business practices, all of which are hereby declared to be unlawful, or any violation of this chapter or non-conformity with any rules or regulation promulgated thereunder. Before withholding, suspending or revoking any license or certificate, the commissioner shall give written notice to the applicant for or holder of such license or certificate, stating that he contemplates the withholding, suspending or revocation, of same and giving his reasons therefor. Said notice shall appoint a time of hearing before said commissioner and shall be mailed by registered mail or certified mail to the party holding the license or certificate. On the day of hearing, the respondent may present such evidence to the commissioner as he deems fit, and after hearing all the testimony, the commissioner shall decide the question in such manner as to him appears just and proper. The respondent, if he feels aggrieved at the decision of the commissioner, may appeal to the commissioner for a review of said decision within ten days, and in case of his failure to request such review the decision shall become final unless within thirty days after its issuance the respondent shall institute a special proceeding for the review thereof, as provided in article seventy-eight of the civil practice law and rules.

2. The word "fraudulent" as used herein shall include any device, scheme or artifice to defraud and any deception, misrepresentation, concealment, suppression, false premise, false promise or unconscionable contractual provision.

S 164. Control and eradication of injurious insects, noxious weeds, and plant diseases. 1. The commissioner shall take such action as he may deem necessary to control or eradicate any injurious insects, noxious weeds, or plant diseases existing within the state.

2. All trees, shrubs, plants and vines or other material, including soil infected or infested with injurious insects or plant diseases, or which have been exposed to injurious insects or plant diseases, or which are hosts of such insects or plant diseases or other material including soil, and noxious weeds are hereby declared public nuisances and may be destroyed or ordered destroyed by the commissioner.

3. The commissioner may order the owner or person in charge of any infected or infested trees, shrubs, plants and vines or other material including soil or host plants, and noxious weeds or the owner or person in charge of the farm or premises upon which they have been grown or on which they exist or in which they have been stored, or of the vehicles or cars in which they have been conveyed, to take such measures to eradicate or control the said infestation, infection, or noxious weeds as the commissioner may deem necessary or proper. Such orders may be communicated by personal service, service through the mails, or by newspaper publication, as the commissioner deems expedient. Such owner or person in charge shall promptly carry out the order of the commissioner within the period of time designated in the order. If such owner or person in charge shall refuse or neglect to carry out any such order, the commissioner may apply such eradication or control measures at the expense of the owner. Upon the completion of such eradication or control measures the owner shall, upon demand of the commissioner, forthwith pay the cost thereof into the state treasury, and upon his neglect or refusal so to do, the amount thereof shall be recovered in a civil action to be brought and prosecuted by the attorney-general in the name of the people of the state.

S 164-a. Shipment of live pests. No person, shall sell, barter, offer for sale, or move, transport, deliver, ship, or offer for shipment, into or within this state any living insects in any state of their development, or noxious weeds, living fungi, bacteria, nematodes, viruses or other living plant parasitic organisms without first obtaining a permit from the commissioner. Such permit shall be issued only after the commissioner has determined that the insects, noxious weeds or living bacteria, fungi, nematodes, viruses or other plant parasitic organisms in question are not injurious to plants or plant products, if not already present in the state, or have not been found to be seriously injurious to warrant their being refused entrance or movement, if known to be already established within the borders of the state; provided, that the commissioner may at his discretion exempt the sale and transportation of specific insects, noxious weeds, fungi, bacteria, and other plant parasitic organisms from the provisions of this section if such sale and transportation is not considered harmful to the health and welfare of the people of the state, or for scientific purposes under specified safeguards determined by the commissioner.

S 165. Damages for property destroyed. No damages shall be awarded for the destruction of infested or infected trees, shrubs, plants and vines, host plants or other material under the provisions of this article except as follows: any person deeming himself aggrieved may, within six months after the destruction occurs, present to the commissioner a verified claim setting forth the grounds of his grievance and the amount of his damages, which claim shall be determined by the commissioner after giving due consideration to any benefits which have accrued or may accrue to the claimant by reason of such destruction, as an offset to the amount of the claim. The determination of the commissioner may be reviewed in the manner provided by article seventy-eight of the civil practice law and rules.

S 166. Examination and certification of nurseries and nursery stock.

1. The commissioner shall, as often as he or she deems necessary and no less than once every two years, inspect all nurseries or places where nursery stock is grown for sale. If upon examination it is found that such nursery stock is apparently free from injurious insects and plant diseases, the commissioner shall issue to the owner of the nursery stock a certificate to the effect that the stock so examined is apparently free from all injurious insects and plant diseases. Such certificate shall be valid for the period of time designated by the commissioner at the time of issuance, unless sooner revoked by the commissioner for cause. If injurious insects or plant diseases are found therein, the owner or person in charge thereof shall promptly take such measures to eradicate the same as the commissioner shall prescribe, and no certificate of freedom from disease shall be given until the commissioner has satisfied himself or herself, by subsequent inspection, that all such injurious insects or diseases have been eradicated.

2. Owners of nurseries or places where nursery stock is grown for sale who do not hold unexpired and unrevoked certificates of inspection and freedom from disease, as defined in subdivision one of this section, shall not sell or otherwise dispose of such nursery stock.

3. Dealers in nursery stock who buy nursery stock from nursery growers to whom certificates of inspection and freedom from disease have been issued as provided by subdivision one of this section, may be granted by the commissioner certificates of inspection and freedom from injurious insects and plant diseases in respect to the stock so purchased, upon complying with the regulations adopted by the commissioner in relation thereto.

4. All nursery stock consigned for shipment from any point within this state or shipped by common carrier or other means from any point within this state, shall bear or carry on the container thereof a printed copy of the certificate issued as provided in subdivision one of this section. No nursery stock shall be sold or shipped under such a certificate which has not been produced in the nursery in respect to which such certificate was issued, unless and until such

nursery stock shall have been found by the commissioner, by examination or otherwise, to be apparently free from injurious insects and plant diseases.

S 167. Access to premises; quarantines; rules and regulations. 1. The commissioner or his representatives shall have full access to all premises, places, farms, buildings, vehicles, airplanes, vessels and cars for the purpose of enforcing the provisions of this article. The commissioner or his representatives may examine trees, shrubs, plants and vines, soil, or host plants or any other material which are infested or infected or susceptible to infestation or infection by injurious insects or plant diseases, or contaminated by noxious weed. He or they may open any package or other container, the contents of which may have been so infested or infected or contaminated with noxious weed or which have been exposed to such infestation, infection or contamination. It shall be unlawful to hinder or defeat such access or examination by misrepresentation, concealment of facts or conditions, or otherwise.

2. The commissioner is hereby authorized to make, issue, promulgate and enforce such orders, by way of quarantines or otherwise, as he may deem necessary or fitting to carry out the purposes of this article.

3. The commissioner may adopt and promulgate such rules and regulations to supplement and give full effect to the provisions of this article as he may deem necessary including, but not limited to, the designation of any plant as a noxious weed.

4. Non-resident nursery growers or dealers, or other persons, firms, partnerships, associations or corporations desiring to solicit orders for nursery stock in this state shall upon filing a certified copy of their valid state certificate or registration with the commissioner, pay to the commissioner an annual fee of twenty-five dollars.

Notwithstanding such filing and fee requirements, the commissioner may enter into reciprocal agreements with the responsible officers of other states, under which agreements the commissioner may accept such other states' certified directories of persons, firms, associations and corporations registered to sell nursery stock, in lieu of requiring the filing of certified copies of individual registrations by the nursery growers of such states and under which nursery stock owned or handled by nursery growers of such states may be sold or delivered in this state without the payment of a New York non-resident fee, provided like privileges are accorded to New York nursery growers in such other states. Upon satisfying the commissioner of such registration in another state and upon payment of the non-resident fee or the waiver of such fee as provided in this section, such person, firm, partnership, association or corporation shall be authorized to solicit orders for nursery stock in this state.

S 168. Sale of fruit-bearing trees and grapevines; labels; damages.

The vendor shall attach to every bundle of fruit-bearing trees and grapevines sold or shipped within this state a tag or label specifying the name of the variety of trees or vines contained therein. If the bundle shall contain trees or vines of different varieties, such label or tag shall be attached to each tree or vine or group thereof of the same variety. The purchaser of any fruit-bearing tree or grapevine not true to name as specified on such tag or label, shall have a remedy at law in a civil action to recover the damages sustained. Such action may be brought at any time prior to the third bearing year.

S 169. Delegation of powers and immunities in regard to dutch elm disease in municipalities. The powers and immunities prescribed and granted in sections one hundred sixty-four, one hundred sixty-five and one hundred sixty-seven of this article may, within the limits of any municipality, be exercised and enjoyed by the appropriate officers and employees of such municipality with respect and in regard to the dutch elm disease, if with the approval of the commissioner and under the direction of the commissioner or his representative and if the local legislative body of any such municipality by local law or ordinance elects to exercise and enjoy such powers and immunities.

S 169-a. Spraying fruit trees or crops with poison. Any person who sprays with or applies in any way poison or any poisonous substance to fruit trees or any alfalfa and clovers grown as field crops while in blossom, is guilty of a misdemeanor punishable by a fine of not less than ten dollars nor more than fifty dollars for each offense except as hereinafter provided.

The commissioner of agriculture and markets may, after public hearing, permit the use of specific materials for fruit blossom thinning sprays during the current year. The provisions of this section shall not prevent the New York State College of Agriculture and the Agricultural Experiment Station at Geneva from conducting experiments in the application of poisons and spraying mixtures to fruit trees while in blossom.

S 169-b. Fees. Notwithstanding any other provision of law to the contrary, the commissioner is hereby authorized and directed to deposit all money received from fees collected pursuant to this article in designated accounts within the miscellaneous special revenue fund.

S 169-c. Plant industry advisory committee. 1. There is hereby established within the department a plant industry advisory committee which shall consist of no more than fifteen members to be appointed by the commissioner on the basis of their experience and expertise in the plant industry. Members shall be appointed for a term of three years and may serve until their successors are chosen provided, however, that of the members first appointed, five shall serve for a term of one year, five shall serve for a term of two years, and five shall serve for a term of

three years. Members shall serve without salary. A chairperson shall be appointed by the commissioner.

2. The duties and responsibilities of the plant industry advisory committee shall include providing advice, comments and recommendations to the commissioner in regard to state government plans, policies and programs affecting the plant industry and such other matters as the commissioner may request in relation to this article.

3. The advisory committee shall meet at least once annually at times and places set by the commissioner.

4. The commissioner may ask other individuals to attend the committee's meetings or work with it on an occasional or regular basis.

S 169-d. Apiary industry advisory committee. 1. There is hereby established within the department an apiary industry advisory committee which shall consist of no more than fifteen members to be appointed by the commissioner on the basis of their experience and expertise in the apiary industry. Of the members so appointed, at least two members shall represent each of the three sectors of the apiary industry, commercial beekeepers, part-time beekeepers and hobbyist beekeepers; at least one member shall represent the horticulture or vegetable industry and one member shall be an officer or employee of the Cornell cooperative extension service. Members shall be appointed for a term of three years and may serve until their successors are chosen provided, however, that of the members first appointed, five shall serve for a term of one year, five shall serve for a term of two years, and five shall serve for a term of three years. Members shall serve without salary. A chairperson shall be elected by a majority vote of members of the committee.

2. The duties and responsibilities of the apiary industry advisory committee shall include providing advice, comments and recommendations to the commissioner in regard to state government plans, policies and programs affecting the apiary industry and such other matters as the commissioner may request in relation to this article.

3. The advisory committee shall meet at least once annually at times and places set by the commissioner.

4. The commissioner may ask other individuals to attend the committee's meetings or work with it on an occasional or regular basis.