

Stricken language would be deleted from and underlined language would be added to present law.

State of Arkansas
92nd General Assembly
Regular Session, 2019

A Bill

SENATE BILL 166

By: Senator J. Cooper

For An Act To Be Entitled

AN ACT TO REPEAL THE ARKANSAS NURSERY FRAUD ACT OF 1919; TO ELIMINATE THE LICENSE REQUIREMENT OF PERSONS OPERATING OR WORKING IN A NURSERY; AND FOR OTHER PURPOSES.

Subtitle

TO REPEAL THE ARKANSAS NURSERY FRAUD ACT OF 1919; AND TO ELIMINATE THE LICENSE REQUIREMENT OF PERSONS OPERATING OR WORKING IN A NURSERY.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF ARKANSAS:

SECTION 1. DO NOT CODIFY. Legislative findings and intent.

(a) The General Assembly finds that:

(1) Arkansas is taking a leading role in the nationwide pursuit of reforms to the system of occupational licensing;

(2) Arkansas became one (1) of eleven (11) states chosen to participate in the Occupational Licensing Policy Learning Consortium, an initiative funded by a grant from the United States Department of Labor and supported in partnership with the National Conference of State Legislatures, the Council of State Governments, and the National Governors Association;

(3) Governor Asa Hutchinson appointed seventeen (17) individuals to the Red Tape Reduction Working Group to review and address occupational licensing regulations that create unnecessary barriers to labor market entry;

(4) The Red Tape Reduction Working Group issued a final report to the Governor in the fall of 2018 with five (5) recommendations for



substantive legislative reform, which are to:

(A) Establish an expedited procedure for occupational licensing entities to collectively submit administrative rules that are responsive to new legislation;

(B) Extend Acts 2017, No. 781, to allow repeal of subsections of rules;

(C) Establish provisions to allow certain agencies to consider occupational relevance with regard to criminal background issues;

(D) Authorize occupational licensing entities to identify types of individuals or entities that may be issued temporary or provisional licenses; and

(E) Establish a systematic process for review of:

(i) New occupational licensure and occupational licensing entities; and

(ii) Existing occupational licensure and occupational licensing entities;

(5) Several occupational licenses are needlessly regulated and could be deregulated or de-licensed without causing detrimental harm to the citizens of the State of Arkansas and the economy of the this state;

(6) Research has found that occupational licensing reduces access to jobs, inhibits geographic mobility, and raises the costs of services;

(b) It is the intent of the General Assembly to deregulate or de-license nursery workers.

SECTION 2. Arkansas Code Title 2, Chapter 21, is repealed.

~~2-21-101. Title.~~

~~This chapter shall be known as the "Arkansas Nursery Fraud Act of 1919".~~

~~2-21-102. Definitions.~~

~~As used in this chapter, unless the context otherwise requires:~~

~~(1) "Agent" means any person not selling nursery stock under the partial or full control of a nurseryman or of a dealer or other agent. This term shall also apply to any person engaged with a nurseryman, dealer, or agent in handling nursery stock on a cooperative basis;~~

~~(2) "Dealer" means any person, not a grower of nursery stock, who buys nursery stock for the purpose of reselling and reshipping independently of any control of a nursery;~~

~~(3) "Nursery" means any grounds or premises on or in which nursery stock is propagated and grown for sale, or any grounds or premises on or in which nursery stock is being fumigated, treated, packed, or stored;~~

~~(4) "Nurseryman" means the person who owns, leases, manages, or is in charge of a nursery;~~

~~(5) "Nursery stock" means all field grown florist stock, trees, shrubs, vines, cuttings, grafts, scions, buds, fruitpits, and other seeds of fruit and ornamental trees and shrubs and other plants and plant products for propagation, except field, vegetable, and flower seeds; and~~

~~(6) "Person" means corporations, companies, societies, associations, partnerships, or any individual or combination of individuals. When construing or enforcing the provisions of this chapter, omission or failure of any officer, agent, servant, or other individual acting for or employed by any person, as defined within the scope of his or her employment or office, shall, in every case, be also deemed to be the act, omission, or failure of that person as well as that of the individual himself or herself.~~

~~2-21-103. Unlawful acts.~~

~~(a) Without first having qualified, obtained, and having in force a valid license from the State Plant Board to do so, it shall be unlawful for any person, firm, or corporation to:~~

~~(1) Engage in, conduct, or carry on the business of selling or dealing in any nursery stock or of importing into this state for sale or distribution any nursery stock;~~

~~(2) Act as agent, salesman, or solicitor for any nurseryman or dealer in nursery stock; or~~

~~(3) Solicit orders for the purchase of nursery stock.~~

~~(b) It is unlawful for any person to falsely represent that he or she is the agent, salesman, solicitor, or representative of any nurseryman or dealer in nursery stock.~~

~~2-21-104. Penalty.~~

~~Any person who shall violate any provisions or requirements of this~~

~~chapter or of the rules made under authority of this chapter shall be guilty of a misdemeanor and, upon conviction, shall be punished by a fine of not less than fifteen dollars (\$15.00) nor more than five hundred dollars (\$500).~~

~~2-21-105. Prosecutions.~~

~~Prosecutions under this chapter shall be commenced by the prosecuting attorney upon evidence furnished by the Director of the State Plant Board.~~

~~2-21-106. Rules.~~

~~The State Plant Board is authorized to make such reasonable rules as it may deem necessary for the enforcement of the provisions of this chapter and to prevent violations.~~

~~2-21-107. Issuance of licenses.~~

~~(a) All licenses shall be in the name of the person, firm, or corporation licensed and shall show the:~~

~~(1) Purposes for which issued; and~~

~~(2) Name and location of the nursery or place of business of the nurseryman or dealer licensed or represented by the agent, salesman, or solicitor licensed.~~

~~(b) No license shall be issued to any agent, salesman, or solicitor unless the nurseryman or dealer represented shall be licensed.~~

~~2-21-108. License fees.~~

~~(a) No license shall be issued until the applicant shall have qualified and paid the required fee.~~

~~(b)(1) The annual license fee shall be ten dollars (\$10.00) for either a nurseryman or dealer in nursery stock and ten dollars (\$10.00) for each agent, salesman, or solicitor.~~

~~(2) Fees for nursery inspections under the Arkansas Plant Act of 1917, § 2-16-201 et seq., shall also cover the license fees for nurserymen required under this chapter but shall not be construed to cover the license fees for dealers, agents, salesmen, or solicitors.~~

~~2-21-109. Expiration of licenses.~~

~~(a) Licenses shall be issued on an annual basis.~~

~~(b) The date of expiration of the licenses shall be set by the State Plant Board in its rules and regulations made under this chapter.~~

~~2-21-110. Denial of license.~~

~~(a) The State Plant Board shall have authority to deny or refuse renewal of a license to any person when it is revealed by investigation or experience that the person does not have a record of financial or moral responsibility.~~

~~(b) Any person so denied a license may appeal to the circuit court.~~

~~2-21-111. Invalidation of license.~~

~~(a) Any license issued in accordance with this chapter may be invalidated by the State Plant Board or its authorized representative, after a hearing, for the following reasons:~~

~~(1) Substitution by the licensee of varieties or kinds of nursery stock other than those ordered, except by the consent of the purchaser;~~

~~(2) Misrepresentations such as making false statements or promises for the purpose of making a sale;~~

~~(3) Repeated sales of poor quality, unthrifty, diseased, or insect-infested nursery stock;~~

~~(4) Failure to fulfill commitments covered by contracts or neglecting to make adjustments or replacements on nursery stock as by prior agreement; or~~

~~(5) Violation of any provisions of this chapter or the rules made under authority of it, or of the provisions of the Arkansas Plant Act of 1917, § 2-16-201 et seq., or of the rules made under authority of the Arkansas Plant Act of 1917, § 2-16-201 et seq.~~

~~(b) The licensee may appeal the board's decision within thirty (30) days to the circuit court.~~

~~2-21-112. Certification of experts.~~

~~Any person contracting to render expert advice or services regarding horticultural practices as part of the value received in the sale of nursery stock shall be required to:~~

~~(1) Furnish satisfactory evidence to the Director of the State~~

~~Plant Board that he or she is qualified to give expert advice or perform the service; and~~

~~(2)(A) Obtain a certificate to that effect, under signature of the director.~~

~~(B) A fee of one dollar (\$1.00) shall be required for this certificate.~~

~~2-21-113. Disposition of moneys.~~

~~All moneys collected by the State Plant Board under this chapter shall be deposited and used in the same manner as moneys collected under § 2-16-210.~~