

## CHAPTER 261

[House Bill No. 2832]

## HORTICULTURAL PLANTS AND FACILITIES

AN ACT Relating to horticultural plants and facilities; amending RCW 15.13.250, 15.13.260, 15.13.270, 15.13.310, 15.13.320, 15.13.335, 15.13.350, 15.13.370, 15.13.380, 15.13.410, 15.13.420, 15.13.440, 15.13.470, and 15.13.490; and prescribing penalties.

Be it enacted by the Legislature of the State of Washington:

Sec. 1. Section 1, chapter 33, Laws of 1971 ex. sess. as last amended by section 1, chapter 36, Laws of 1985 and RCW 15.13.250 are each amended to read as follows:

For the purpose of this chapter:

(1) "Department" means the department of agriculture of the state of Washington.

(2) "Director" means the director of the department or ~~((his))~~ the director's duly appointed representative.

(3) "Person" means a natural person, individual, firm, partnership, corporation, company, society and association, and every officer, agent or employee thereof.

(4) "Horticultural plant" includes, but is not limited to, any horticultural, floricultural, and viticultural plant, for planting, propagation or ornamentation growing or otherwise. The term does not apply to cut plant material or to olericultural plants.

(5) "Horticultural facilities" means, but is not limited to, the premises where horticultural plants are grown, stored, handled or delivered for sale or transportation, and all vehicles and equipment, whether aerial or surface, used to transport such horticultural plants.

(6) "Plant pests" means, but is not limited to any living stage of any insects, mites, nematodes, slugs, snails, protozoa, or other invertebrate animals, bacteria, fungi, other parasitic plants, weeds, or reproductive parts thereof, viruses or any organisms similar to or allied with any of the foregoing, or any infectious substance, which can directly or indirectly injure or cause disease or damage in any plant or parts thereof, or any processed, manufactured, or other products of plants.

(7) "Inspection and/or certification" means, but is not limited to, the inspection of any horticultural plants at any time prior to, during, or subsequent to harvest, or sale, by the director, and the issuance by ~~((him))~~ the director of a written certificate stating the grades, classifications, and if such horticultural plants are free of plant pests and in compliance with all the provisions of this chapter and rules adopted hereunder.

(8) "Nursery dealer" means any person who sells, holds for sale, or offers for sale, or plants, grows, receives, or handles horticultural plants, including turf for sale or for planting, including lawns, for another person.

(9) "Sell" means to sell, hold for sale, offer for sale, handle, or to use as an inducement for the sale of another article or product.

(10) "Master license system" means the mechanism established by chapter 19.02 RCW by which master licenses, endorsed for individual state-issued licenses, are issued and renewed utilizing a master application and a master license expiration date common to each renewable license endorsement.

Sec. 2. Section 2, chapter 33, Laws of 1971 ex. sess. as amended by section 2, chapter 36, Laws of 1985 and RCW 15.13.260 are each amended to read as follows:

The director shall enforce the provisions of this chapter and ~~((he))~~ may adopt any rule necessary to carry out its purpose and provisions including but not limited to the following:

(1) The director may adopt rules establishing grades and/or classifications for any horticultural plant and standards for such grades and/or classifications.

(2) The director may adopt rules for the inspection and/or certification of any horticultural plant as to variety, quality, size and freedom from plant pests.

(3) The director shall adopt rules establishing fees for inspection of horticultural plants and methods of collection thereof.

(4) The director shall when adopting rules or regulations under the provisions of this chapter, hold a public hearing and satisfy all the requirements of chapter 34.05 RCW (administrative procedure act) as enacted or hereafter amended, concerning the adoption of rules and regulations.

Sec. 3. Section 3, chapter 33, Laws of 1971 ex. sess. as last amended by section 3, chapter 36, Laws of 1985 and RCW 15.13.270 are each amended to read as follows:

The provisions of this chapter relating to licensing do not apply to: (1) Persons making casual or isolated sales that do not exceed one hundred dollars annually; (2) any garden club, conservation district, or charitable nonprofit association conducting not more than three sales per year for not more than four consecutive days each of horticultural plants as defined in RCW 15.13.250 and which are grown by or donated to its members; (3) educational organizations associated with private or public secondary schools. However, such a club, conservation district, association, or organization shall apply to the director for a permit to conduct such sales. ~~((A two dollar fee shall be assessed))~~ The director shall adopt rules establishing a fee for the permit.

All horticultural plants sold under such a permit issued by the director shall be subject to all the other provisions of this chapter except licensing as set forth herein.

Sec. 4. Section 7, chapter 33, Laws of 1971 ex. sess. as last amended by section 2, chapter 35, Laws of 1987 and RCW 15.13.310 are each amended to read as follows:

(1) There is hereby levied an annual assessment on the gross sale price of the wholesale market value for all fruit trees, fruit tree (~~((seedlings))~~) related ornamental trees, and fruit tree rootstock(~~((, and all other rootstock used for fruit tree propagation))~~) produced in Washington, and sold within the state or shipped from the state of Washington by any licensed nursery dealer during any license period, as set forth in this chapter. Fruit tree related ornamental tree nursery stock shall be limited to the genera, Chaenomeles, Cydonia, Crataegus, Malus, Prunus, Pyrus, and Sorbus. This annual assessment is based on the first sale price of such nursery stock except for rootstocks which are replanted and/or grafted and planted for growing-on in the nursery. The director shall by rule subsequent to a hearing determine the rate of an assessment conforming with the costs necessary to carry out the fruit tree certification and nursery improvement programs specified in RCW 15.13.470.

Such wholesale market price may be determined by the wholesale catalogue price of the seller of such fruit trees, fruit tree (~~((seedlings))~~) related ornamental trees, or fruit tree rootstock or of the shipper moving such fruit trees, fruit tree (~~((seedlings))~~) related ornamentals, or fruit tree rootstock out of the state. If the seller or shipper do not have a catalogue, then such wholesale market price may be based on the actual selling price or an average wholesale market price. The director in determining such average wholesale market price may use catalogues of various businesses licensed under the provisions of this chapter or any other reasonable method.

(2) Such assessment shall be due and payable on the first day of July of each year.

(3) The gross sale period shall be from July 1 to June 30 of the previous license period.

(4) The department may audit the records of licensees during normal business hours to determine that the appropriate assessment has been paid.

Sec. 5. Section 8, chapter 33, Laws of 1971 ex. sess. as amended by section 5, chapter 73, Laws of 1983 1st ex. sess. and RCW 15.13.320 are each amended to read as follows:

An advisory committee is hereby established to advise the director in the administration of the fruit tree and fruit tree related ornamental tree certification and nursery improvement program.

(1) The committee shall consist of five fruit tree (~~((nurserymen))~~) nursery dealers and the director or (~~((his))~~) the director's designated appointee.

(2) The director shall appoint this committee from names submitted by the Washington state nurserymen's association.

(3) The terms of the members of the committee shall be staggered and the members shall serve a term of three years and until their successor has been appointed and qualified.

In the event a committee member resigns, is disqualified, or vacates ~~((his))~~ a position on the committee for any other reason the vacancy shall be filled by the director under the provisions of this section governing appointments.

Sec. 6. Section 6, chapter 73, Laws of 1983 1st ex. sess. and RCW 15.13.335 are each amended to read as follows:

An advisory committee is hereby established to advise the director in the administration of this chapter.

(1) The committee shall consist of not less than four members, representing the interests of licensed nursery dealers and the nursery industry, appointed by the director in consultation with the following ~~((members))~~ persons: The president ~~((, or an appointee designated by the president,))~~ of (a) the Washington state floricultural association, (b) the Washington state bulb association, and (c) the Washington state nursery and landscape association; and the director or ~~((his))~~ the director's designated appointee.

(2) The terms of the members of the committee shall be ~~((the same as the terms of the officers for the association set forth in subsection (1) of this section))~~ staggered and the members shall serve a term of three years and until their successors have been appointed and qualified.

In the event a committee member resigns, is disqualified, or vacates a position on the committee for any other reason, the vacancy shall be filled by the director under the provisions of this section governing appointments.

Sec. 7. Section 11, chapter 33, Laws of 1971 ex. sess. as amended by section 43, chapter 175, Laws of 1989 and RCW 15.13.350 are each amended to read as follows:

The director may, ~~((whenever he determines))~~ after determining that an applicant or licensee has violated any provisions of this chapter, and complying with the notice and hearing requirement and all other provisions of chapter 34.05 RCW concerning adjudicative proceedings, deny, suspend, or revoke any license issued or which may be issued under the provisions of this chapter.

Sec. 8. Section 13, chapter 33, Laws of 1971 ex. sess. and RCW 15.13.370 are each amended to read as follows:

Any person licensed under the provisions of this chapter may request, upon the payment of actual costs to the department as prescribed by the director, the services of a horticultural inspector at such licensee's place of business or point of shipment during the shipping season. Subsequent to inspection such horticultural inspector shall issue to such licensee a certificate of inspection ~~((in triplicate))~~ signed by ~~((him))~~ the inspector covering any horticultural plants which ~~((he))~~ the inspector finds not to be infected with

plant pests and in compliance with the provisions of this chapter and rules adopted hereunder.

Sec. 9. Section 14, chapter 33, Laws of 1971 ex. sess. and RCW 15-13.380 are each amended to read as follows:

The director shall prescribe, in addition to those costs provided for in RCW 15.13.370, any other necessary fees to be charged the owner or ~~((his))~~ the owner's agent for the inspection and certification of any horticultural plant subject to the provisions of this chapter or rules adopted hereunder, and for the inspection and certification when such inspection and certification is performed at the request of any person financially interested in any horticultural plants which are, or are not subject to the provisions of this chapter or rules adopted hereunder, produced in or imported into this state. The inspection fees provided for in this chapter shall become due and payable ~~((by the end of the next business day and if such are not paid within the prescribed time, the director may withdraw inspection or refuse to perform any inspection or certification service for the person in arrears: PROVIDED, That in such instances the director may demand and collect inspection and certification fees prior to inspecting and certifying any horticultural plants for such person))~~ upon billing by the department. A late charge of one and one-half percent per month shall be assessed on the unpaid balance against persons more than thirty days in arrears. In addition to any other penalties, the director may refuse to perform any inspection or certification service for any person in arrears unless the person makes payment in full prior to such inspection or certification service.

Sec. 10. Section 17, chapter 33, Laws of 1971 ex. sess. and RCW 15-13.410 are each amended to read as follows:

Each shipment of horticultural plants transported or shipped into the state and/or offered for retail sale within the state shall be legibly marked or tagged in a conspicuous manner, and shall include the following:

(1) The ~~((kind of horticultural plant(s)))~~ common name; botanical name; and variety or color picture.

(2) When plants, other than floricultural products are on display for retail sale, ~~((one plant per block))~~ each unit of sale shall be tagged as prescribed above. On mixed lots or blocks, each plant shall be tagged as prescribed above.

(3) Any other necessary information prescribed, by rule, by the director. The director may, whenever ~~((he))~~ the director finds that any horticultural plant is not properly marked, order it off sale until it is properly marked, or order that it be returned to the consignor for proper marking.

(4) If the plant is a patented plant or is produced under a grower agreement, that fact shall be noted on the label or tag.

Sec. 11. Section 18, chapter 33, Laws of 1971 ex. sess. and RCW 15-13.420 are each amended to read as follows:

It shall be unlawful for any person:

(1) To falsely represent that ((he)) the person is the agent or representative of any nursery dealer in horticultural plants;

(2) To deceive or defraud another in the sale of horticultural plants by substituting inferior or different grades from those ordered;

(3) To bring into this state any horticultural plants infested with plant pests, or to sell, offer for sale, hold for sale, distribute, ship or deliver any horticultural plants infested with plant pests;

(4) To sell, offer for sale, hold for sale, solicit orders for or distribute horticultural plants by any method which has the capacity and tendency or effect of deceiving any purchaser or prospective purchaser as to the quantity, size, grade, kind, species, age, maturity, condition, vigor, hardiness, number of times transplanted, growth ability, growth characteristics, rate of growth or time required before flowering or fruiting, price, origin or place where grown, or in any other material respect;

(5) To advertise the price of horticultural plants without denoting the size of the plant material;

(6) To make the following representations directly or indirectly, without limiting the effects of this section:

(a) That any horticultural plant has been propagated by grafting or budding methods, when such is not the fact;

(b) That any horticultural plant is healthy and will grow anywhere without the use of fertilizer, or will survive and produce without special care, when such is not a fact;

(c) That any horticultural plant blooms the year around, or will bear an extraordinary number of blooms of unusual size or quality, when such is not a fact;

(d) That any horticultural plant is a new variety, when in fact it is a standard variety to which the person who is selling or holding such horticultural plant for sale has given a new name;

(e) That any horticultural plant cannot be purchased through usual outlets, or that limited stocks are available, when such is not the fact;

(f) That any horticultural plant offered for sale will be delivered in time for the next, or any specified, seasonal planting when the seller is aware of factors which make such delivery improbable;

(g) That the appearance of any horticultural plant is normal or usual when the appearance so represented is in fact abnormal or unusual;

(h) That the root system of any horticultural plant is appreciably larger than that which actually exists, whether accomplished by means of packaging, balling or otherwise;

(i) That bulblets are bulbs;

(j) That any horticultural plant is rare or an unusual item, when such is not the fact;

(7) To sell, offer for sale or hold for sale, or plant for another person any horticultural plants on the basis of grade, unless such horticultural plants have been graded and/or classified and meet the standards prescribed by the director for such grades and/or classifications;

(8) To substitute any other horticultural plant for a horticultural plant covered by an inspection certificate;

(9) To sell, offer for sale, or hold for sale, or plant for another person, any horticultural plant which is dead, in a dying condition, seriously broken, frozen, or damaged, or abnormally potbound;

(10) To sell, offer for sale, or hold for sale, or plant for another person as other than collected horticultural plant any such collected horticultural plant within one year after its collection in its natural habitat unless it is conspicuously marked or labeled as a collected horticultural plant.

No publisher, radio and television broadcast licensee, advertising agency, or agency or medium for the dissemination of an advertisement, except the grower, packer, distributor, or seller of the article to which the advertisement relates, shall be subject to the penalties of RCW 15.13.490 by reason of ~~((his))~~ dissemination of any false advertisement, unless ~~((he))~~ the person has refused on the request of the director to furnish the name and address of the grower, packer, distributor, seller, or advertising agency in the state of Washington, who caused ~~((him to disseminate))~~ dissemination of such false advertisement.

Sec. 12. Section 20, chapter 33, Laws of 1971 ex. sess. and RCW 15.13.440 are each amended to read as follows:

The director shall condemn any or all horticultural plants in a shipment or when any such horticultural plants are held for sale, or offered for sale and they are found to be dead, in a dying condition, seriously broken, diseased, infested with harmful insects, damaged or frozen or abnormally potbound and shall order such horticultural plants to be destroyed or returned at shipper's option. The director's order shall be final fifteen days after the date of issuance, unless within such time the superior court of the county where the condemnation occurred shall issue an order requiring the director to show cause why ~~((his))~~ the order should not be stayed.

Sec. 13. Section 25, chapter 33, Laws of 1971 ex. sess. as last amended by section 3, chapter 35, Laws of 1987 and RCW 15.13.470 are each amended to read as follows:

All moneys collected under this chapter shall be paid to the director, deposited in an account within the agricultural local fund, and used solely for carrying out this chapter and rules adopted under this chapter. No appropriation is required for the disbursement of moneys from the account by the director. Any residual balance of funds remaining in the nursery inspection fund on July 26, 1987, shall be transferred to that account within the agricultural local fund: PROVIDED, That all fees collected for fruit tree, fruit tree ~~((seedling))~~ related ornamental tree, and fruit tree rootstock

assessments as set forth in this chapter shall be deposited in the northwest nursery fund to be used only for the Washington fruit tree and fruit tree related ornamental tree certification and nursery improvement programs as set forth in this chapter and chapter 15.14 RCW. For the purpose of testing and improvement of fruit trees, fruit tree (seedlings) related ornamental trees, fruit tree rootstock, or other plant material used for the propagation of (fruit trees) such stock, the director may, with advice from the advisory committee under RCW 15.13.320, expend up to fifty percent of the money collected from assessments during each fiscal year ending June 30. At no time may such contribution allow the balance of the northwest nursery fund to fall below the combined program cost of the two previous fiscal years. The amount of this minimum balance shall be determined by the director on June 30 of each year.

Sec. 14. Section 27, chapter 33, Laws of 1971 ex. sess. as amended by section 6, chapter 36, Laws of 1985 and RCW 15.13.490 are each amended to read as follows:

~~((1) Any person violating the provisions of this chapter or rules adopted hereunder is guilty of a misdemeanor and guilty of a gross misdemeanor for any subsequent offense, however, any offense committed more than five years after a previous conviction shall be considered a first offense.~~

~~(2) In lieu of any other penalty imposed under this section,)) A person who ((acts as a nursery dealer without the license required by RCW 15.13.280 or the permit required by RCW 15.13.270 is subject to a civil penalty of up to two hundred dollars for each violation. The director may impose the penalty and the penalty shall be subject to appeal in accordance with chapter 34.04 RCW. Penalties collected under this subsection shall be deposited in the state general fund)) fails to comply with this chapter or the rules adopted under it may be subjected to a civil penalty, as determined by the director, in an amount of not more than one thousand dollars for each violation. Each violation shall be a separate and distinct offense. Every person who, through an act of commission or omission, procures, aids, or abets in the violation shall be considered to have violated this section and may be subject to the civil penalty provided in this section.~~

Passed the House March 5, 1990.

Passed the Senate March 2, 1990.

Approved by the Governor March 28, 1990.

Filed in Office of Secretary of State March 28, 1990.

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## CHAPTER 262

[Second Substitute Senate Bill No. 6731]

### ABSENTEE BALLOTS—INCLUSION IN VOTER ABSTRACTS

AN ACT Relating to including absentee ballots in voter abstracts; and amending RCW 29.62.090 and 29.36.070.