

take effect immediately.

Passed the Senate April 7, 1971.

Passed the House April 6, 1971.

Approved by the Governor April 14, 1971 with the exception of Section 2 which is vetoed.

Filed in Office of Secretary of State April 16, 1971.

Note: Governor's explanation of partial veto is as follows:

"...This bill permits school buses and fire department vehicles to use studded tires between November 1 and April 1 of each year. Since this law will have no substantive effect until next November, I cannot conceive that an emergency exists and have therefore vetoed the emergency clause."

CHAPTER 33

[Engrossed Senate Bill No. 410]

HORTICULTURAL PLANTS, REGULATION

AN ACT Relating to agriculture; providing for the regulation of horticultural plants; creating new sections; repealing section 1, chapter 221, Laws of 1961, section 16, chapter 240, Laws of 1967 and RCW 15.13.010; repealing section 2, chapter 221, Laws of 1961, section 17, chapter 240, Laws of 1967 and RCW 15.13.020; repealing section 3, chapter 221, Laws of 1961, section 18, chapter 240, Laws of 1967 and RCW 15.13.030; repealing section 4, chapter 221, Laws of 1961 and RCW 15.13.040; repealing section 20, chapter 240, Laws of 1967 and RCW 15.13.045; repealing section 5, chapter 221, Laws of 1961 and RCW 15.13.050; repealing section 6, chapter 221, Laws of 1961 and RCW 15.13.060; repealing section 7, chapter 221, Laws of 1961 and RCW 15.13.070; repealing section 8, chapter 221, Laws of 1961 and RCW 15.13.080; repealing section 9, chapter 221, Laws of 1961 and RCW 15.13.090; repealing section 21, chapter 240, Laws of 1967 and RCW 15.13.095; repealing section 10, chapter 221, Laws of 1961 and RCW 15.13.100; repealing section 11, chapter 221, Laws of 1961 and RCW 15.13.110; repealing section 12, chapter 221, Laws of 1961 and RCW 15.13.120; repealing section 13, chapter 221, Laws of 1961 and RCW 15.13.130; repealing section 14, chapter 221, Laws of 1961 and RCW 15.13.140; repealing section 15, chapter 221, Laws of 1961 and RCW 15.13.150; repealing section 16, chapter 221, Laws of 1961 and RCW 15.13.160; repealing section 17, chapter

221, Laws of 1961 and RCW 15.13.170; repealing section 18, chapter 221, Laws of 1961 and RCW 15.13.180; repealing section 19, chapter 221, Laws of 1961 and RCW 15.13.190; repealing section 20, chapter 221, Laws of 1961, section 19, chapter 240, Laws of 1967 and RCW 15.13.200; repealing section 21, chapter 221, Laws of 1961 and RCW 15.13.210; repealing section 22, chapter 221, Laws of 1961 and RCW 15.13.900; repealing section 23, chapter 221, Laws of 1961 and RCW 15.13.910; prescribing penalties; and declaring an effective date.

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

NEW SECTION. Section 1. For the purpose of this act:

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

(2) "Director" means the director of the department or his 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, viticultural, and olericultural plant, for planting, propagation or ornamentation growing or otherwise, including cut plant material.

(5) "Horticultural facilities" means, but is not limited to, the premises where horticultural plants and/or cut plant material 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 and/or cut plant material.

(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 and/or cut plant material at any time prior to, during, or subsequent to harvest, or sale, by the director, and the issuance by him of a written certificate stating the grades, classifications, and if such horticultural plants and/or cut plant material are free of plant pests and in compliance with all the provisions of this act 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 and/or cut plant material, including turf for sale or for planting, including lawns, for another person including any person who uses horticultural plants of another article or product.

(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.

NEW SECTION. Sec. 2. The director shall enforce the provisions of this act 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/or cut plant material and standards for such grades and/or classifications.

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

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

(4) The director shall when adopting rules or regulations under the provisions of this act, hold a public hearing and satisfy all the requirements of chapter 34.04 RCW (administrative procedure act) as enacted or hereafter amended, concerning the adoption of rules and regulations.

NEW SECTION. Sec. 3. The provisions of this act relating to licensing shall not apply to persons making casual or isolated sales nor to any garden club 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 section 1 of this act and which are grown by or donated to its members: PROVIDED, That such club or association shall apply to the director for a permit to conduct such sale. A two dollar fee shall be assessed for such permit.

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

NEW SECTION. Sec. 4. No person shall act as a nursery dealer without a license for each place of business where horticultural plants are sold. Any person applying for such a license shall file an application with the director on or before July 1st of each year. Such application shall be accompanied by a license fee of twenty-five dollars. Such license shall expire on June 30th following issuance unless it has been revoked or suspended prior thereto by the director for cause. Each such license shall be posted in a conspicuous place

open to the public in the location for which it was issued.

NEW SECTION. Sec. 5. If any application for renewal of nursery dealer license is not filed prior to July 1st in any year, an additional charge of fifty percent shall be assessed and added to the original fee and shall be paid by the applicant before the renewal license shall be issued: PROVIDED, That such additional assessment shall not apply if the applicant furnishes an affidavit certifying that he has not acted as a nursery dealer subsequent to the expiration of his prior license.

NEW SECTION. Sec. 6. Application for a license shall be on a form prescribed by the director and shall include:

(1) The full name of the person applying for such license and if the applicant is an individual, receiver, trustee, firm, partnership, association, or corporation, the full name of each member of the firm or partnership, or the names of the officers of the association or corporation shall be given in the application.

(2) The principal business address of the applicant in the state and elsewhere.

(3) The address for the location or locations for which the licenses are being applied.

(4) The names of the persons authorized to receive and accept service of summons and legal notices of all kinds for the applicant.

(5) Any other necessary information prescribed by the director.

NEW SECTION. Sec. 7. (1) There is hereby levied an annual assessment of one percent on the gross sale price of the wholesale market value for all fruit trees, fruit tree seedlings, and fruit tree rootstock 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 act: PROVIDED, That the director may subsequent to a hearing, on or after this act has been in effect for a period of two years, reduce such assessment to conform with the costs necessary to carry out the fruit tree certification and nursery improvement programs specified in section 10 of this act.

Such wholesale market price may be determined by the wholesale catalogue price of the seller of such fruit trees, fruit tree seedlings, or fruit tree rootstock or of the shipper moving such fruit trees, fruit tree seedlings, 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 act or any other reasonable method.

(2) Such assessment shall be due and payable at the time the

nursery dealer applies for a license or should have applied for a license as required in the provisions of this act.

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

NEW SECTION. Sec. 8. An advisory committee is hereby established to advise the director in the administration of the fruit tree certification and nursery improvement program.

(1) The committee shall consist of three fruit tree nurserymen, one pome fruit producer, and one stone fruit producer, and the director or his designated appointee.

(2) The director shall appoint this committee from the following recommendations: Three names are to be submitted for each position. The Washington state nurserymen's association is to submit names for the fruit tree nurserymen positions. The Washington state horticultural association is to furnish the names for the pome fruit producer and the stone fruit producer.

(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: PROVIDED, That the first appointments to this committee beginning July 30, 1971, shall be for the following terms:

- (a) Position no. 1 -- fruit tree nurseryman, three year term.
- (b) Position no. 3 -- pome fruit producer, three year term.
- (c) Position no. 2 -- fruit tree nurseryman, two year term.
- (d) Position no. 4 -- stone fruit producer, one year term.
- (e) Position no. 5 -- fruit tree nurseryman, one year term.

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

NEW SECTION. Sec. 9. Members of the advisory committee shall be residents of this state, each of whom either individually or as an executive officer of a corporation, firm, or partnership is or has been actually engaged in fruit tree production as a licensed nursery dealer or producing pome or stone fruits within the state of Washington for a period of five years and has during that period derived a substantial portion of his income from either fruit tree production as a licensed nursery dealer or pome fruit production or stone fruit production as is required by the positions noted above.

NEW SECTION. Sec. 10. All fruit tree, fruit tree seedling and fruit tree rootstock assessments shall be paid to the state treasurer to be deposited in the northwest nursery fund account in the general fund for the Washington fruit tree certification and nursery improvement programs. All such assessments shall be used by the director for the purposes set forth in the fruit tree

certification, chapter 15.14 RCW.

(1) There is hereby levied on all delinquent and unpaid assessments a collection charge of twenty percent of the amount due and to be added thereto for each license period such assessment is delinquent.

(2) The director shall not issue a nursery dealer license to any applicant who has failed to pay any assessment due under the provisions of this act.

NEW SECTION. Sec. 11. The director may, whenever he determines that an applicant or licensee has violated any provisions of this act, and complying with the notice and hearing requirement and all other provisions of chapter 34.04 RCW, as enacted or hereafter amended, concerning contested cases, deny, suspend or revoke any license issued or which may be issued under the provisions of this act.

NEW SECTION. Sec. 12. The director may issue subpoenas to compel the attendance of witnesses and/or production of books, documents, and records in any hearing in the county where the person licensed under this act resides affecting the authority or privilege granted by a license issued under the provisions of this act. Witnesses except complaining witnesses, shall be entitled to fees for attendance and travel as provided for in chapter 2.40 RCW, as enacted or hereafter amended.

NEW SECTION. Sec. 13. Any person licensed under the provisions of this act 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 covering any horticultural plants which he finds not to be infected with plant pests and in compliance with the provisions of this act and rules adopted hereunder.

NEW SECTION. Sec. 14. The director shall prescribe, in addition to those costs provided for in section 13 of this act, any other necessary fees to be charged the owner or his agent for the inspection and certification of any horticultural plant subject to the provisions of this act 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 act or rules adopted hereunder, produced in or imported into this state. The inspection fees provided for in this act 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.

NEW SECTION. Sec. 15. It shall be unlawful for any person to sell, ship or transport any horticultural plant in this state unless it is apparently free from plant pests. No person shall sell, ship or transport any horticultural plant in this state unless it meets the requirements of this act or rules adopted hereunder.

NEW SECTION. Sec. 16. (1) It shall be unlawful for any person to ship or deliver any horticultural plant into this state unless such horticultural plant is accompanied by an inspection certificate from the state or country of origin stating that such horticultural plant is apparently free of plant pests and in conformance with not less than the minimal requirements of this act or rules adopted hereunder. The director may require the shipper or receiver to file a copy of the manifest of nursery cargo or shipment of horticultural plants into this state with the director in Olympia, Washington, on or before the date such horticultural plants enter into the state of Washington.

(2) The director may by rule require that any or all such horticultural plants delivered or shipped into this state be inspected for conformance with the requirements of this act and rules adopted hereunder, prior to release by the person delivering or transporting such horticultural plants into this state even though accompanied by acceptable inspection certificates issued by the state or country of origin.

NEW SECTION. Sec. 17. 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).

(2) When plants, other than floricultural products are on display for retail sale, one plant per block 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 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.

NEW SECTION. Sec. 18. It shall be unlawful for any person:

(1) To falsely represent that he 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 section 27 of this act by reason of his dissemination of any false advertisement, unless he 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 such false advertisement.

NEW SECTION. Sec. 19. When the department has cause to believe that any horticultural plants are infested or infected by any plant pest, chemical or other damage, the director may issue a hold order on such horticulture plants. It shall be unlawful to sell, offer for sale, or move such plants until released in writing by the director.

NEW SECTION. Sec. 20. 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, 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 order should not be stayed.

NEW SECTION. Sec. 21. The director may bring an action to enjoin the violation of any provision of this act or any rule adopted

pursuant to this act in the superior court in the county in which such violation occurs, notwithstanding the existence of other remedies at law.

NEW SECTION. Sec. 22. The provisions of this act shall be cumulative and nonexclusive and shall not affect any other remedy.

NEW SECTION. Sec. 23. The enactment of this act shall not have the effect of terminating, or in any way modifying any liability, civil or criminal, which shall already be in existence on July 1, 1971.

NEW SECTION. Sec. 24. The repeal of RCW 15.13.010 through 15.13.210 and RCW 15.13.900 and 15.13.910 by section 30 of this act and the enactment of the remaining sections of this act shall not be deemed to have repealed any rules adopted under the provisions of RCW 15.13.010 through 15.13.210 and RCW 15.13.900 and 15.13.910 and in effect immediately prior to such repeal and not inconsistent with the provisions of this act. For the purpose of this act it shall be deemed that such rules have been adopted under the provisions of this act pursuant to the provisions of chapter 34.04 RCW, concerning the adoption of rules, and any amendment or repeal of such rules after July 1, 1971, shall be subject to the provisions of chapter 34.04 RCW concerning the adoption of rules as enacted or hereafter amended.

NEW SECTION. Sec. 25. All fees except assessment collected under the provisions of this act shall be paid to the state treasurer to be deposited in the nursery inspection account in the state general fund as provided in RCW 43.79.330 to be used only for the enforcement of this act. All moneys collected under the provisions of chapter 15.13 RCW and remaining in such nursery inspection account on July 1, 1971, shall be used for the enforcement of this act. All the moneys in such nursery inspection account shall be subject to the provisions of RCW 43.79.330, provided all fees collected for fruit tree, fruit tree seedling and fruit tree rootstock assessments as set forth in this act shall be deposited in the northwest nursery, fund to be used only for the Washington fruit tree certification and nursery improvement programs as set forth in this act and chapter 15.14 RCW.

NEW SECTION. Sec. 26. The director may cooperate with and enter into agreements with governmental agencies of this state, other states and agencies of the federal government in order to carry out the purpose and provisions of this act.

NEW SECTION. Sec. 27. Any person violating the provisions of this act 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.

NEW SECTION. Sec. 28. If any provision of this act, or its

application to any person or circumstance is held invalid, the remainder of the act, or the application of the provision to other persons or circumstances is not affected.

NEW SECTION. Sec. 29. This act shall take effect on July 1, 1971.

NEW SECTION. Sec. 30. The following acts or parts of acts are each repealed:

(1) Section 1, chapter 221, Laws of 1961, section 16, chapter 240, Laws of 1967 and RCW 15.13.010;

(2) Section 2, chapter 221, Laws of 1961, section 17, chapter 240, Laws of 1967 and RCW 15.13.020;

(3) Section 3, chapter 221, Laws of 1961, section 18, chapter 240, Laws of 1967 and RCW 15.13.030;

(4) Section 4, chapter 221, Laws of 1961 and RCW 15.13.040;

(5) Section 20, chapter 240, Laws of 1967 and RCW 15.13.045;

(6) Section 5, chapter 221, Laws of 1961 and RCW 15.13.050;

(7) Section 6, chapter 221, Laws of 1961 and RCW 15.13.060;

(8) Section 7, chapter 221, Laws of 1961 and RCW 15.13.070;

(9) Section 8, chapter 221, Laws of 1961 and RCW 15.13.080;

(10) Section 9, chapter 221, Laws of 1961 and RCW 15.13.090;

(11) Section 21, chapter 240, Laws of 1967 and RCW 15.13.095;

(12) Section 10, chapter 221, Laws of 1961 and RCW 15.13.100;

(13) Section 11, chapter 221, Laws of 1961 and RCW 15.13.110;

(14) Section 12, chapter 221, Laws of 1961 and RCW 15.13.120;

(15) Section 13, chapter 221, Laws of 1961 and RCW 15.13.130;

(16) Section 14, chapter 221, Laws of 1961 and RCW 15.13.140;

(17) Section 15, chapter 221, Laws of 1961 and RCW 15.13.150;

(18) Section 16, chapter 221, Laws of 1961 and RCW 15.13.160;

(19) Section 17, chapter 221, Laws of 1961 and RCW 15.13.170;

(20) Section 18, chapter 221, Laws of 1961 and RCW 15.13.180;

(21) Section 19, chapter 221, Laws of 1961 and RCW 15.13.190;

(22) Section 20, chapter 221, Laws of 1961, section 19, chapter 240, Laws of 1967 and RCW 15.13.200;

(23) Section 21, chapter 221, Laws of 1961 and RCW 15.13.210;

(24) Section 22, chapter 221, Laws of 1961 and RCW 15.13.900;

and

(25) Section 23, chapter 221, Laws of 1961 and RCW 15.13.910.

Passed the Senate April 7, 1971.

Passed the House April 6, 1971.

Approved by the Governor April 14, 1971 with the exception of an item in Section 1 and an item in Section 10 which is vetoed.

Filed in Office of Secretary of State April 16, 1971.

Note: Governor's explanation of partial veto is as

follows:

"...This bill enacts a comprehensive scheme for the regulation of horticultural plants and the licensing of nursery dealers. A clerical error resulted in the omission of certain words from the definition of "nursery dealer" in subsection 8 of section 1. It was apparently the intent of the draftsman to include within this definition persons who used horticultural plants as an inducement for the sale of another article or product. Because of the omitted language, however, this definition makes no grammatical sense. I have therefore vetoed the phrase from which the intended language was omitted. Because of the inclusion of proper language in the definition of "sell" in subsection 9 of section 1, those persons intended to be covered as nursery dealers in the definition of subsection 8 will be so included and this veto makes no substantive change in the bill as passed by the Legislature.

Section 7, subsection 1, of this bill levies an annual assessment on fruit trees, fruit tree seedlings and fruit tree root stocks sold within this state. The bill as passed by the legislature contains two references to the manner in which the assessments so collected shall be distributed. These funds should be deposited in the Northwest Nursery Fund as provided for in section 25 of the bill. Section 10 of the bill directs that these same funds shall be deposited in a Northwest Nursery Fund account in the General Fund. No such fund exists, and I have therefore vetoed this inapt reference to such a fund. The monies collected from these fruit tree assessments shall therefore be properly distributed in accordance with the provisions of section 25 of the bill."

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