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SENATE BILL 6122

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State of Washington

55th Legislature

1998 Regular Session

By Senators Morton and Rasmussen; by request of Department of Agriculture

Read first time 01/12/98. Referred to Committee on Agriculture & Environment.

1 AN ACT Relating to the inspection and certification of  
2 horticultural products; amending RCW 15.17.010, 15.17.020, 15.17.030,  
3 15.17.050, 15.17.060, 15.17.080, 15.17.090, 15.17.130, 15.17.140,  
4 15.17.150, 15.17.170, 15.17.190, 15.17.200, 15.17.210, 15.17.230,  
5 15.17.240, 15.17.260, 15.17.290, 15.04.100, and 42.17.31909; adding new  
6 sections to chapter 15.17 RCW; adding a new chapter to Title 15 RCW;  
7 creating a new section; recodifying RCW 15.04.100 and 15.17.130;  
8 repealing RCW 15.17.040, 15.17.070, 15.17.100, 15.17.110, 15.17.115,  
9 15.17.120, 15.17.160, 15.17.180, 15.17.220, 15.17.250, 15.17.280,  
10 15.17.910, 15.17.920, 15.17.930, 15.17.950, 15.04.020, 15.04.030,  
11 15.04.040, 15.04.060, 15.04.070, and 15.04.080; and prescribing  
12 penalties.

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

14 **Sec. 1.** RCW 15.17.010 and 1963 c 122 s 1 are each amended to read  
15 as follows:

16 The purpose of this chapter is to provide for the fair and orderly  
17 marketing of fruits and vegetables in the state of Washington by  
18 establishing uniform grades and standards (~~for horticultural plants~~  
19 ~~and products~~) and (~~to provide~~) by providing for the inspection of

1 (~~((such horticultural plants or))~~) these products (~~((in the state of~~  
2 ~~Washington))~~). This chapter is (~~((important and))~~) vital to (~~((the~~  
3 ~~maintenance of a high level of public health and welfare of the~~  
4 ~~citizens of this state by))~~) protecting the national and international  
5 reputation of (~~((horticultural plants and))~~) fruit and vegetable products  
6 grown and shipped from this state and protecting (~~((the citizens of this~~  
7 ~~state))~~) consumers from the (~~((importation and))~~) sale of (~~((ungraded,~~  
8 ~~immature, and))~~) inferior (~~((horticultural plants and products so as to~~  
9 ~~prevent a condition conducive to substitution, confusion, deception,~~  
10 ~~and fraud, a condition which if permitted to exist would tend to~~  
11 ~~interfere with the orderly and fair marketing of horticultural plants~~  
12 ~~and products essential to the well being of the citizens of this state.~~  
13 ~~It is hereby declared that))~~) and misrepresented fruits and vegetables.  
14 This chapter is enacted in the exercise of the police power of this  
15 state for the purpose of protecting the immediate and future health,  
16 safety, and general welfare of the citizens of this state.

17 **Sec. 2.** RCW 15.17.020 and 1996 c 188 s 1 are each amended to read  
18 as follows:

19 For the purpose of this chapter:

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

22 (2) ~~"Director" means the director of the department or his duly~~  
23 ~~authorized representative.~~

24 (3) ~~"Person" means a natural person, individual, or firm,~~  
25 ~~partnership, corporation, company, society, and association, and every~~  
26 ~~officer, agent, or employee thereof. This term shall import either the~~  
27 ~~singular or plural, as the case may be.~~

28 (4) ~~"Horticultural plant or product" includes, but is not limited~~  
29 ~~to, any horticultural, floricultural, viticultural, and olericultural~~  
30 ~~plant, growing or otherwise, and their products whether grown above or~~  
31 ~~below the ground's surface.~~

32 (5) ~~"Horticultural facilities" means, but is not limited to, the~~  
33 ~~premises where horticultural plants and products are grown, stored,~~  
34 ~~handled, or delivered for sale or transportation, records required by~~  
35 ~~rule under this chapter, and all vehicles and equipment, whether aerial~~  
36 ~~or surface, used to transport such horticultural plants or products.~~

37 (6) ~~"Deceptive pack" means the pack of any container which has in~~  
38 ~~the outer layer or any exposed surface, horticultural plants or~~

1 products which are in quality, size, condition, or any other respect so  
2 superior to those in the interior of the container in the unexposed  
3 portion as to materially misrepresent the contents.— Such pack is  
4 deceptive when the outer or exposed surface is composed of  
5 horticultural plants or products whose size is not an accurate  
6 representation of the variation of the size of such horticultural  
7 plants or products in the entire container, even though such  
8 horticultural plants or products in the container are virtually uniform  
9 in size or comply with the specific horticultural plant or product for  
10 which the director in prescribing standards for grading and classifying  
11 has prescribed size variations or if such size variations are  
12 prescribed by law.

13 (7) "Deceptive arrangement or display" of any horticultural plants  
14 or products, means any bulk lot or load, arrangement or display of such  
15 horticultural plants or products which has in the exposed surface,  
16 horticultural plants or products which are so superior in quality,  
17 size, condition, or any other respect to those which are concealed, or  
18 the unexposed portion, as to materially misrepresent any part of such  
19 bulk lot or load, arrangement, or display.

20 (8) "Mislabel" means the placing or presence of any false or  
21 misleading statement, design, or device upon any container, or upon the  
22 label or lining of any such container, or upon the wrapper of any  
23 horticultural plants or products, or upon any such horticultural plants  
24 or products, or any placard used in connection therewith and having  
25 reference to such horticultural plants or products.— A statement,  
26 design, or device is false or misleading when the horticultural plant  
27 or product or container to which it refers does not conform to such  
28 statement.

29 (9) "Container" means any container, subcontainer used within a  
30 container, or any type of a container used to prepackage any  
31 horticultural plants or products: PROVIDED, That this does not include  
32 containers used by a retailer to package such horticultural plants or  
33 products sold from a bulk display to a consumer.

34 (10) "Agent" means broker, commission merchant, auctioneer,  
35 solicitor, seller, or consignor, and any other person acting upon the  
36 actual or implied authority of another.

37 (11) "Inspection and certification" means, but is not limited to,  
38 the inspection of any horticultural plant or product at any time prior  
39 to, during, or subsequent to harvest, by the director, and the issuance

1 by him of a written permit to move or sell or a written certificate  
2 stating the grade, classification, and if such horticultural plants or  
3 products are free of plant pests and/or other defects.

4 (12) "Plant pests" means, but is not limited to, any living stage  
5 of any insects, mites, nematodes, slugs, snails, protozoa, or other  
6 invertebrate animals, bacteria, fungi, other parasitic plants or  
7 reproductive parts thereof, viruses, or any organisms similar to or  
8 allied with any of the foregoing, or any infectious substance, which  
9 can directly or indirectly injure or cause disease or damage in any  
10 plant or parts thereof, or any processed, manufactured, or other  
11 products of plants.) "Agent" means broker, commission merchant,  
12 solicitor, seller, or consignor, and any other person acting upon the  
13 actual or implied authority of another.

14 (2) "Certification" means, but is not limited to, the issuance by  
15 the director of an inspection certificate or other official document  
16 stating the grade, classification, and/or condition of any fruits or  
17 vegetables, and/or if the fruits or vegetables are free of plant pests  
18 and/or other defects.

19 (3) "Combination grade" means two or more grades packed together as  
20 one, except cull grades, with a minimum percent of the product of the  
21 higher grade, as established by rule.

22 (4) "Compliance agreement" means an agreement entered into between  
23 the department and a shipper or packer, that authorizes the shipper or  
24 packer to issue certificates of compliance for fruits and vegetables.

25 (5) "Container" means any container or subcontainer used to  
26 prepackage any fruits or vegetables. This does not include a container  
27 used by a retailer to package fruits or vegetables sold from a bulk  
28 display to a consumer.

29 (6) "Deceptive arrangement or display" means any bulk lot or load,  
30 arrangement, or display of fruits or vegetables which has in the  
31 exposed surface, fruits or vegetables which are so superior in quality,  
32 size, condition, or any other respect to those which are concealed, or  
33 the unexposed portion, as to materially misrepresent any part of the  
34 bulk lot or load, arrangement, or display.

35 (7) "Deceptive pack" means the pack of any container which has in  
36 the outer layer or any exposed surface fruits or vegetables which are  
37 in quality, size, condition, or any other respect so superior to those  
38 in the interior of the container in the unexposed portion as to  
39 materially misrepresent the contents. Such pack is deceptive when the

1 outer or exposed surface is composed of fruits or vegetables whose size  
2 is not an accurate representation of the variation of the size of the  
3 fruits or vegetables in the entire container, even though the fruits or  
4 vegetables in the container are virtually uniform in size or comply  
5 with the specific standards adopted under this chapter.

6 (8) "Department" means the department of agriculture of the state  
7 of Washington.

8 (9) "Director" means the director of the department or his or her  
9 duly authorized representative.

10 (10) "District manager" means a person representing the director in  
11 charge of overall operation of a fruit and vegetable inspection  
12 district established under RCW 15.17.230.

13 (11) "Facility" means, but is not limited to, the premises where  
14 fruits and vegetables are grown, stored, handled, or delivered for sale  
15 or transportation, and all vehicles and equipment, whether aerial or  
16 surface, used to transport fruits and vegetables.

17 (12) "Fruits and vegetables" means any unprocessed fruits or  
18 vegetables.

19 (13) "Handler" means any person engaged in the business of  
20 handling, selling, processing, storing, shipping, or distributing  
21 fruits or vegetables that he or she has purchased or acquired from a  
22 producer.

23 (14) "Inspection" means, but is not limited to, the inspection by  
24 the director of any fruits or vegetables at any time prior to, during,  
25 or subsequent to harvest.

26 (15) "Mislabel" means the placing or presence of any false or  
27 misleading statement, design, or device upon any wrapper, container,  
28 container label or lining, or any placard used in connection with and  
29 having reference to fruits or vegetables.

30 (16) "Person" means any individual, firm, partnership, corporation,  
31 company, society, or association, and every officer, agent, or employee  
32 thereof.

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

1       (18) "Sell" means to sell, offer for sale, hold for sale, or ship  
2 or transport in bulk or in containers.

3       (19) "Standards" means grades, classifications, and other  
4 inspection criteria for fruits and vegetables.

5       **Sec. 3.** RCW 15.17.030 and 1963 c 122 s 3 are each amended to read  
6 as follows:

7       (1) The director shall enforce and carry out the provisions of this  
8 chapter and may adopt the necessary rules to carry out its purpose.  
9 ~~((The adoption of rules shall be subject to the provisions of chapter~~  
10 ~~34.05 RCW, concerning the adoption of rules, as enacted or hereafter~~  
11 ~~amended.))~~

12       (2) The director shall, whenever he or she considers the adoption  
13 of rules or amendments to existing rules, consult with growers,  
14 associations of growers or other industry associations, or other  
15 persons affected by such rules or amendments.

16 ~~((3) The director may, on his own motion or shall, on the written~~  
17 ~~application of twenty-five or more interested persons, call a hearing~~  
18 ~~for the purpose of considering changes to any rules prescribed under~~  
19 ~~the provisions of this chapter.))~~

20       **Sec. 4.** RCW 15.17.050 and 1963 c 122 s 5 are each amended to read  
21 as follows:

22       (1) The director shall adopt rules providing standards for apples,  
23 apricots, Italian prunes, peaches, sweet cherries, pears, potatoes, and  
24 asparagus and may adopt rules providing standards for any other fruit  
25 or vegetable. When establishing these standards, the director shall  
26 consider the factors of maturity, soundness, color, shape, size, and  
27 freedom from mechanical and plant pest injury and other factors  
28 important to marketing.

29       (2) The director shall adopt rules providing for mandatory  
30 inspection of apples, apricots, Italian prunes, peaches, sweet  
31 cherries, pears, and asparagus and may adopt rules providing for  
32 mandatory inspection of any other fruit or vegetable.

33       (3) The director may ~~((, unless otherwise provided for by the laws~~  
34 ~~of this state, or in this chapter, establish))~~ adopt rules:

35 ~~((1) Providing standards and sizes for grades and/or~~  
36 ~~classifications especially provided for in this chapter for any~~  
37 ~~horticultural plant or product;~~

1       ~~(2) Providing grades and/or classifications for any horticultural~~  
2 ~~plant or product not especially provided for in this chapter. In~~  
3 ~~establishing such standards for grades and/or classifications, the~~  
4 ~~director shall take into account the factors of maturity, soundness,~~  
5 ~~color, shape, size, and freedom from mechanical and plant pest injury.~~  
6 ~~When adopting grades and/or classifications for any horticultural plant~~  
7 ~~or product not especially provided for in this chapter the director may~~  
8 ~~consider and adopt grades and/or classifications established by the~~  
9 ~~secretary of agriculture of the United States in effect on July 1,~~  
10 ~~1963, and any subsequent amendment to such grades and/or~~  
11 ~~classifications prescribed by the said secretary;~~

12       ~~(3)) (a) Fixing the sizes and dimensions of containers to be used~~  
13 ~~for the packing or handling of any ((horticultural plant or product;~~

14       ~~(4) Concerning the inspection of any horticultural plant or product~~  
15 ~~subject to the provisions of this chapter or in cooperation with the~~  
16 ~~United States government or any other state;~~

17       ~~(5) Necessary to carry out the purpose and provisions of this~~  
18 ~~chapter)) fruits or vegetables; and~~

19       ~~(b) Establishing combination grades for fruits and vegetables. The~~  
20 ~~standards for combination grades shall, by percentage quantities,~~  
21 ~~include two or more of the grades provided for under this chapter.~~

22       **Sec. 5.** RCW 15.17.060 and 1963 c 122 s 6 are each amended to read  
23 as follows:

24       The director may adopt any United States ~~((grade and/or~~  
25 ~~classification)) or other state's standard for any ~~((horticultural~~  
26 ~~plant or product especially provided for in this chapter if such United~~  
27 ~~States grade and/or classification)) fruits and vegetables, if that~~  
28 ~~standard is determined by the director to be substantially equivalent~~  
29 ~~to or better than the ~~((minimum grade and/or classification especially~~~~  
30 ~~provided for such horticultural plant or product in)) standard adopted~~  
31 ~~under this chapter.~~~~

32       **Sec. 6.** RCW 15.17.080 and 1963 c 122 s 8 are each amended to read  
33 as follows:

34       It ~~((shall be))~~ is unlawful for any person to sell ~~((fresh fruits))~~  
35 ~~for fresh consumption~~ any fresh fruits classified as culls under the  
36 provisions of this chapter or rules adopted hereunder unless such fruit  
37 is packed in one-half bushel or one bushel wooden baskets ring faced,

1 with the fruit in the ring face representative of the size and quality  
2 of the fruit in such baskets. (~~(Such)~~) The baskets shall be lidded and  
3 the words "cull" including the kind of fruit and variety must appear on  
4 the top and side of each basket and on any label (~~(thereon)~~) in clear  
5 and legible letters at least two and one-half inches high. Every bill  
6 of lading, invoice, memorandum, and document referring to (~~(said)~~) the  
7 fruit shall designate them as culls.

8 **Sec. 7.** RCW 15.17.090 and 1963 c 122 s 9 are each amended to read  
9 as follows:

10 The director may approve and register a private grade or brand for  
11 any (~~(horticultural plant or product: PROVIDED, That such)~~) fruit or  
12 vegetable. The private grade or brand shall not be lower than the  
13 second grade and/or classification established under the provisions of  
14 this chapter or rules adopted (~~(hereunder)~~) under this chapter for  
15 (~~(such horticultural plant or product)~~) the fruit or vegetable.

16 **Sec. 8.** RCW 15.17.130 and 1963 c 122 s 13 are each amended to read  
17 as follows:

18 (~~(The provisions of)~~) (1) This chapter (~~(shall)~~) does not apply:  
19 (~~(1)~~) (a) To the movement in bulk of any (~~(horticultural plant or~~  
20 ~~product)~~) fruits or vegetables from the premises where they are grown  
21 or produced to a packing shed, warehouse, or processing plant (~~(within~~  
22 ~~the area of production prior to inspection and/or grading where such~~  
23 ~~inspection and/or grading is to be performed at such packing shed,~~  
24 ~~warehouse, or processing plant; nor~~

25 ~~(2)~~) for the purpose of storing, grading, packing, labeling, or  
26 processing prior to entering commercial channels for wholesale or  
27 retail sale;

28 (b) To any processed, canned, frozen, or dehydrated (~~(horticultural~~  
29 ~~plants or products; nor~~

30 ~~(3) Shall this chapter prevent the manufacture of)~~ fruits or  
31 vegetables;

32 (c) To any infected (~~(horticultural plant or product)~~) or infested  
33 fruits or vegetables to be manufactured into byproducts or (~~(its~~  
34 ~~shipment)~~) to be shipped to a byproducts plant; or

35 (d) To the sale of up to five hundred pounds per day of any fruit  
36 or vegetable by any producer or handler directly to an individual  
37 ultimate consumer unless otherwise established by rule for an



1 individual commodity. These fruits and vegetables shall meet the  
2 requirements of RCW 15.17.210(1)(b).

3 (2) The inspection requirements of this chapter do not apply to the  
4 sale or transportation within a zone of production, as defined by rule,  
5 of any fruit or vegetable named in RCW 15.17.050(1) or any combination  
6 of those fruits and vegetables to a fruit or produce stand or farmers  
7 market in a quantity specified by the director by rule.

8 **Sec. 9.** RCW 15.17.140 and 1963 c 122 s 14 are each amended to read  
9 as follows:

10 (1) Any person financially interested in any ((horticultural plants  
11 or products)) fruits or vegetables in this state may ((apply to the  
12 director for)) request inspection and/or certification ((as to whether  
13 such horticultural plants or products meet the requirements provided  
14 for by the laws of this state, the provisions of this chapter or rules  
15 adopted hereunder, or the standards for grading and classifying such  
16 horticultural plants or products established by the secretary of the  
17 United States department of agriculture, or by any other state, or by  
18 contractual agreement between buyers and sellers of such horticultural  
19 plants or products)) services provided for those fruits or vegetables  
20 under this chapter.

21 (2) To facilitate the movement or sale of fruits and vegetables or  
22 other agricultural commodities, the director may provide, if requested  
23 by growers or other interested persons, special inspections or  
24 certifications not otherwise authorized under this chapter and shall  
25 prescribe a fee for that service.

26 (3) Persons requesting services shall be responsible for payment of  
27 fees for those services prescribed by the director under RCW 15.17.150.

28 **Sec. 10.** RCW 15.17.150 and 1963 c 122 s 15 are each amended to  
29 read as follows:

30 The director shall ((prescribe)) adopt rules establishing the  
31 necessary fees to ((be charged, (1) to the owner or his agent for the  
32 inspection and certification of any horticultural plants or products  
33 subject to the provisions of this chapter or rules adopted hereunder,  
34 (2) for inspection and certification when such inspection and  
35 certification is performed at the request of any person financially  
36 interested in any horticultural plants or products which are, or are  
37 not, subject to the provisions of this chapter or rules adopted

1 ~~hereunder, produced in, or imported into, this state))~~ recover the  
2 costs of providing inspection and/or certification or other requested  
3 services.

4 ~~(1) The fees ((provided for in this section shall become))~~ are due  
5 and payable ((by the end of the next business day and if such fees are  
6 not paid within the prescribed time the director may withdraw  
7 inspection or refuse to perform any inspection or certification  
8 services for the person in arrears: PROVIDED, That the director in  
9 such instances may demand and collect inspection and certification fees  
10 prior to inspecting and certifying any horticultural plants or products  
11 for such person)) upon billing.

12 ~~(2) A late fee of one and one-half percent per month on the unpaid~~  
13 balance shall be assessed against persons more than thirty days in  
14 arrears.

15 ~~(3) In addition to other penalties, the director may refuse to~~  
16 perform any inspection or certification service provided under this  
17 chapter for any person in arrears unless the person makes payment in  
18 full prior to such inspection or certification service.

19 ~~(4) The director may refuse to perform inspection or certification~~  
20 service for any person who has failed to pay assessments required by  
21 law to any agricultural commodity commission.

22 **Sec. 11.** RCW 15.17.170 and 1963 c 122 s 17 are each amended to  
23 read as follows:

24 Every inspection certificate or other official document issued by  
25 the director under the provisions of this chapter shall be received in  
26 all the courts of the state as prima facie evidence of the statements  
27 therein.

28 **Sec. 12.** RCW 15.17.190 and 1963 c 122 s 19 are each amended to  
29 read as follows:

30 The director may enter during business hours and inspect any  
31 ~~((horticultural))~~ facility where any ~~((horticultural plants or products~~  
32 are produced)) fruits or vegetables are processed, stored, packed,  
33 delivered for shipment, loaded, shipped, being transported, or sold,  
34 and may inspect all ((such horticultural plants or products)) fruits or  
35 vegetables and the containers ~~((thereof))~~ and the equipment in ~~((any~~  
36 ~~such horticultural))~~ that facility. The director may take for  
37 inspection ~~((such))~~ representative samples of ~~((such horticultural~~

1 ~~plants or products~~) fruits or vegetables and ~~((such))~~ containers as  
2 may be necessary to determine whether or not ~~((provisions of))~~ this  
3 chapter or rules adopted ~~((hereunder))~~ under this chapter have been  
4 violated~~(, and may subject such samples of horticultural plants or~~  
5 ~~products to any method of inspection or testing. Should)).~~ If the  
6 director ~~((be))~~ is denied access to any ~~((horticultural facilities~~  
7 ~~where such access was sought for the purpose set forth in this section,~~  
8 ~~he))~~ facility, the director may apply to a court of competent  
9 jurisdiction for a search warrant authorizing access to ~~((such~~  
10 ~~horticultural facilities for said purpose))~~ the facility. The court  
11 may upon such application issue ~~((the))~~ a search warrant for the  
12 purpose requested.

13 **Sec. 13.** RCW 15.17.200 and 1987 c 202 s 172 are each amended to  
14 read as follows:

15 ~~((The director may affix to any such lot or part thereof of~~  
16 ~~horticultural plants or products a tag or notice of warning that such~~  
17 ~~lot of horticultural plants or products is held and stating the reasons~~  
18 ~~therefor. It shall be unlawful for any person other than the director~~  
19 ~~to detach, alter, deface, or destroy any such tag or notice affixed to~~  
20 ~~any such lot, or part thereof, of horticultural plants or products, or~~  
21 ~~to remove or dispose of such lot, or part thereof, in any manner or~~  
22 ~~under conditions other than as prescribed in such tag or notice, except~~  
23 ~~on the written permission of the director or the court.~~

24 ~~The director shall forthwith cause a notice of noncompliance to be~~  
25 ~~served upon the person in possession of such lot of horticultural~~  
26 ~~plants or products. The notice of noncompliance shall include a~~  
27 ~~description of the lot, the place where, and the reason for which, it~~  
28 ~~is held, and it shall give notice that such lot of horticultural plants~~  
29 ~~or products is a public nuisance and subject to disposal as provided in~~  
30 ~~this section unless, within a minimum of seventy two hours or such~~  
31 ~~greater time as prescribed in the notice by the director, it is~~  
32 ~~reconditioned or the deficiency is otherwise corrected so as to bring~~  
33 ~~it into compliance.~~

34 ~~If the person so served is not the sole owner of such lot of~~  
35 ~~horticultural plants or products, or does not have the authority as an~~  
36 ~~agent for the owner to bring it into compliance, it shall be the duty~~  
37 ~~of such person to notify the director forthwith in writing giving the~~  
38 ~~names and addresses of the owner or owners and all other persons known~~

1 to him or her to claim an interest in such lot of horticultural plants  
2 or products. Any person so served shall be liable for any loss  
3 sustained by such owner or other person whose name and address he or  
4 she has knowingly concealed from the director.

5 If such lot of horticultural plants or products has not been  
6 reconditioned or the deficiency corrected so as to bring it into  
7 compliance within the time specified in the notice, the director shall  
8 forthwith cause a copy of such notice to be served upon all persons  
9 designated in writing by the person in possession of such lot of  
10 horticultural plants or products to be the owner or to claim an  
11 interest therein. Any notice required by this section may be served  
12 personally or by mail addressed to the person to be served at last  
13 known address.

14 The director with the written consent of all such persons so  
15 served, is hereby authorized to destroy such lot of horticultural  
16 plants or products or otherwise abate the nuisance. If any such person  
17 fails or refuses to give such consent, then the director shall proceed  
18 in the manner provided for such purposes in this section.

19 If such lot of horticultural plants or products is perishable or  
20 subject to rapid deterioration the director may, through the prosecutor  
21 in the county where such horticultural plants or products are held,  
22 file a verified petition in the superior court of the said county to  
23 destroy such lot of horticultural plants or products or otherwise abate  
24 the nuisance. The petition shall state the condition of such lot of  
25 horticultural plants or products, that such lot of horticultural plants  
26 or products is held, and that notice of noncompliance has been served  
27 as provided in this chapter. The court may then order that such lot of  
28 horticultural plants or products be forthwith destroyed or the nuisance  
29 otherwise abated as set forth in said order.

30 If such lot of horticultural plants or products is not perishable  
31 or subject to rapid deterioration, the director may, through the  
32 prosecutor in the county in which it is located, file a petition within  
33 five days of the serving of the notice of noncompliance upon the owners  
34 or person in possession of such lot of horticultural plants or products  
35 in the superior court or district court of the said county for an order  
36 to show cause, returnable in five days, why such lot of horticultural  
37 plants or products should not be abated. The owner or person in  
38 possession, on his or her own motion within five days from the  
39 expiration of the time specified in the notice of noncompliance, may

1 file a petition in such court for an order to show cause, returnable in  
2 five days, why such lot of horticultural plants or products should not  
3 be released to the petitioner and any warning tags previously affixed  
4 removed therefrom.

5 The court may enter a judgment ordering that such lot of  
6 horticultural plants or products be condemned and destroyed in the  
7 manner directed by the court or relabeled, or denatured, or otherwise  
8 processed, or sold, or released upon such conditions as the court in  
9 its discretion may impose to insure that the nuisance will be abated.  
10 In the event of sale by the owner or the court, the costs of storage,  
11 handling, reconditioning, and disposal shall be deducted from the  
12 proceeds of the sale and the balance, if any, paid into the court for  
13 the owner))

14 (1) For the purposes of this section, "lot" means any lot or any  
15 part of a lot.

16 (2) When the director determines that any lot of fruits or  
17 vegetables fails to comply with the requirements of this chapter, the  
18 director may issue a hold order prohibiting the sale or movement of  
19 that lot except under conditions that may be prescribed.

20 (3)(a) Written notice of the hold order must be provided to the  
21 person in possession of the lot of fruits or vegetables and a tag may  
22 be affixed to the lot or its containers. It is unlawful for any person  
23 except the director to alter, deface, or remove the tag or notice or to  
24 move or allow the lot of fruits or vegetables to be moved except under  
25 the conditions prescribed on the tag or notice.

26 (b) The notice shall include:

27 (i) A description of the lot that is in noncompliance;

28 (ii) The location of the lot;

29 (iii) The reason that the hold order is placed on the lot;

30 (iv) Any reconditioning, other corrective measures, or diversion to  
31 processing that may be required to release the lot for sale;

32 (v) Time frames to affect the reconditioning or other corrective  
33 measures; and

34 (vi) A reference to the violation of this chapter that provides the  
35 basis for the hold order.

36 (c) Any corrective measures required by the notice pursuant to  
37 (b)(iv) of this subsection and the costs associated therewith are the  
38 sole responsibility of the person holding the fruits or vegetables for  
39 sale.

1       (4) Upon issuance of a hold order by the director under this  
2 section, the seller or holder of the fruits or vegetables may request  
3 a hearing. The request for hearing must be in writing and filed with  
4 the director. Any hearing shall be held in conformance with RCW  
5 34.05.422 and 34.05.479.

6       **Sec. 14.** RCW 15.17.210 and 1994 c 67 s 2 are each amended to read  
7 as follows:

8       It is unlawful:

9       ~~(1) To sell((, offer for sale, hold for sale, ship, or transport))~~  
10 any ~~((horticultural plants or products))~~ fruits or vegetables:

11       ~~((1) Subject to the requirements of RCW 15.17.040 unless they meet~~  
12 ~~the requirements;~~

13       ~~(2)) (a) As meeting ((either)) the ((grades or classifications, or~~  
14 ~~both, and)) standards ((and sizes for the grades or classifications as~~  
15 ~~adopted or amended by the director under RCW 15.17.050 unless they meet~~  
16 ~~the standards and sizes for either grades or classifications, or both;~~

17       ~~(3) As meeting the standards and sizes for private grades or brands~~  
18 ~~as approved by the director under RCW 15.17.090 unless they meet the~~  
19 ~~standards and sizes))~~ for any fruit or vegetable as prescribed by the  
20 director unless they in fact do so;

21       ~~((4)) (b) For which no standards have been established under this~~  
22 ~~chapter unless ninety percent or more by weight or count, as determined~~  
23 ~~by the director, are free from plant pest injury that has penetrated or~~  
24 ~~damaged the edible portions and from worms, mold, slime, or decay;~~

25       (c) In containers other than the size and dimensions prescribed by  
26 the director((, when he or she has prescribed)) by rule ((the size and  
27 dimensions for containers in which any horticultural plants or products  
28 will be placed or packed. However, this subsection shall not apply  
29 when any such horticultural plants or products are being shipped or  
30 transported to a packing plant, processing plant, or cold storage  
31 facility for preparation for market));

32       ~~((5)) (d) Unless the containers in which the ((horticultural~~  
33 ~~plants or products))~~ fruits or vegetables are placed or packed are  
34 marked ~~((as prescribed by the director, with either the proper United~~  
35 ~~States or Washington grade or classification, or both, or private~~  
36 ~~grades or brands of the horticultural plants or products;~~

37       ~~(6) Unless the containers in which the horticultural plants or~~  
38 ~~products are placed or packed are marked as prescribed by the director,~~

1 ~~which may include the following))~~ with the proper grade and additional  
2 information as may be prescribed by rule. The additional information  
3 may include:

4 ~~((a))~~ (i) The name and address of the grower, or packer, or  
5 distributor;

6 ~~((b))~~ (ii) The varieties of the ~~((horticultural plants or~~  
7 products)) fruits or vegetables;

8 ~~((c))~~ (iii) The size, weight, and either volume or count, or  
9 both, of the ~~((horticultural plants or products))~~ fruits or vegetables;

10 ~~((7))~~ (e) Which are in containers marked or advertised for sale  
11 or sold as being either graded or classified, or both, according to the  
12 standards ~~((and sizes))~~ prescribed by the director ~~((or by law))~~ by  
13 rule unless the ~~((horticultural plants or products))~~ fruits or  
14 vegetables conform with ~~((either grades or classifications, or both,~~  
15 and their standards and sizes)) the standards;

16 ~~((8))~~ (f) Which are deceptively packed;

17 ~~((9))~~ (g) Which are deceptively arranged or displayed;

18 ~~((10))~~ (h) Which are mislabeled; or

19 ~~((11) Which are in containers marked with a Washington state grade~~  
20 ~~designation for apples, unless the containers of apples were packed in~~  
21 ~~the state of Washington;~~

22 ~~(12))~~ (i) Which do not conform to ~~((the provisions of))~~ this  
23 chapter or rules adopted ~~((hereunder))~~ under this chapter;

24 (2) For any person to ship or transport or any carrier to accept  
25 any lot of fruits or vegetables without an inspection certificate,  
26 permit, or certificate of compliance when the director has prescribed  
27 by rule that such products be accompanied by an inspection certificate,  
28 permit, or certificate of compliance. The inspection certificate,  
29 permit, or certificate of compliance shall be on a form prescribed by  
30 the director and may include methods of denoting that all assessments  
31 provided for by law have been paid before the fruits or vegetables may  
32 lawfully be delivered or accepted for shipment;

33 (3) For any person to refuse to submit any container, load, or  
34 display of fruits or vegetables for inspection by the director, or  
35 refuse to stop any vehicle or equipment containing such products for  
36 the purpose of inspection by the director; or

37 (4) For any person to move any fruits or vegetables or their  
38 containers to which any tag has been affixed, except as provided in RCW  
39 15.17.200.

1       **Sec. 15.** RCW 15.17.230 and 1986 c 203 s 2 are each amended to read  
2 as follows:

3       For the purpose of this chapter the state shall be divided into not  
4 less than three ~~((horticulture))~~ fruit and vegetable inspection  
5 districts to which the director may assign ~~((one or more inspectors at-~~  
6 ~~large))~~ a district manager who ~~((as a representative of the director))~~  
7 shall supervise and administer regulatory and inspection affairs of the  
8 districts~~((: PROVIDED, That for purposes of efficiency and economy the~~  
9 ~~director may by rule promulgated in accordance with the Administrative~~  
10 ~~Procedure Act establish or adjust district boundaries or abolish any~~  
11 ~~district: PROVIDED, HOWEVER, That there shall be at least three~~  
12 ~~districts in existence at all times))~~. The director, by rule, shall  
13 establish the boundaries of the districts and may adjust the boundaries  
14 for purposes of efficiency and economy.

15       **Sec. 16.** RCW 15.17.240 and 1975 c 40 s 3 are each amended to read  
16 as follows:

17       (1) ~~The ((inspectors at large in charge of such inspections))~~  
18 district managers shall collect the fees ~~((therefor))~~ provided for  
19 under this chapter and deposit them in the ~~((horticultural))~~ fruit and  
20 vegetable district fund in any bank in the district approved for the  
21 deposit of state funds. ~~((The inspectors at large shall expend fees~~  
22 ~~deposited in the horticultural district fund to assist in defraying the~~  
23 ~~expenses of inspections and they))~~ The fees shall be used to carry out  
24 the provisions of this chapter and no appropriation is required for  
25 disbursement from the fund. District managers shall ((make)) approve  
26 payments from the ((horticultural)) fruit and vegetable inspection  
27 district funds to the ((horticultural)) fruit and vegetable inspection  
28 trust ((fund in Olympia as authorized by the director)) account in  
29 accordance with RCW 15.04.100 (as recodified by this act).  
30 ~~((Inspectors at large shall furnish bonds to the state in amounts set~~  
31 ~~by the director of the department of general administration, pursuant~~  
32 ~~to RCW 43.19.540, with sureties approved by the director of~~  
33 ~~agriculture, conditioned upon the faithful handling of said funds for~~  
34 ~~the purposes specified; and shall, on or before the tenth day of each~~  
35 ~~month, render))~~ On a monthly basis, each district manager shall provide  
36 to the director ((of agriculture)) a detailed account of the receipts  
37 and disbursements for the preceding month.



1       (2) Assessments and other fees approved by the director or  
2 authorized by law and collected by the district managers shall be  
3 deposited in the fruit and vegetable inspection district funds and  
4 distributed to the appropriate fund or agency.

5       **Sec. 17.** RCW 15.17.260 and 1963 c 122 s 26 are each amended to  
6 read as follows:

7       The director may bring an action to enjoin the violation of any  
8 provision of this chapter or rule adopted pursuant to this chapter in  
9 the superior court of Thurston county or of any county in which such  
10 violation occurs, notwithstanding the existence of other remedies at  
11 law.

12       **Sec. 18.** RCW 15.17.290 and 1963 c 122 s 30 are each amended to  
13 read as follows:

14       Any person ~~((violating the provisions of))~~ who violates this  
15 chapter or rules adopted ~~((hereunder is guilty of a misdemeanor))~~ under  
16 this chapter may be subject to:

17       (1) Suspension of any compliance agreement under this chapter to  
18 which the person is a party for a period not to exceed twelve  
19 consecutive months; and/or

20       (2) A civil penalty in an amount of not more than one thousand  
21 dollars for each violation.

22       **Sec. 19.** RCW 15.04.100 and 1987 c 393 s 2 are each amended to read  
23 as follows:

24       The director shall establish a ~~((horticulture))~~ fruit and vegetable  
25 inspection trust ((fund)) account to be derived from ~~((horticulture))~~  
26 fruit and vegetable inspection district funds. The director shall  
27 adjust district payments so that the balance in the trust ~~((fund))~~  
28 account shall not exceed three hundred thousand dollars. The director  
29 is authorized to make payments from the trust ~~((fund))~~ account to:

30       (1) Pay fees and expenses provided in the inspection agreement  
31 between the ~~((state))~~ department ~~((of agriculture))~~ and the  
32 agricultural marketing service of the United States department of  
33 agriculture;

34       (2) Assist ~~((horticulture))~~ fruit and vegetable inspection  
35 districts in temporary financial distress as a result of less than  
36 normal production of ((horticultural commodities: PROVIDED, That))

1 fruits and vegetables. Districts receiving such assistance shall  
2 ((make repayment to)) repay the trust ((fund)) account as district  
3 funds ((shall)) permit. Temporary financial distress and terms of the  
4 trust account repayment shall be determined by the director;

5 (3) Pay necessary administrative ((expenses)) expenditures for the  
6 commodity inspection division attributable to the supervision of the  
7 ((horticulture)) fruit and vegetable inspection services.

8 NEW SECTION. Sec. 20. A new section is added to chapter 15.17 RCW  
9 to be codified between RCW 15.17.140 and 15.17.150 to read as follows:

10 Any shipper or packer of apples, apricots, cherries, pears,  
11 peaches, Italian prunes, potatoes, or asparagus may petition the  
12 director for authority to issue certificates of compliance for each  
13 season. The director may issue certificate of compliance agreements,  
14 granting this authority, on terms and conditions defined by rule.  
15 Certificates of compliance shall only be issued for fruits or  
16 vegetables that are in full compliance with this chapter and the rules  
17 adopted under this chapter.

18 NEW SECTION. Sec. 21. The definitions in this section apply  
19 throughout this chapter unless the context clearly requires otherwise.

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

22 (2) "Director" means the director of the department or his or her  
23 duly authorized representative.

24 (3) "Facility" means, but is not limited to, the premises where  
25 ginseng is grown, stored, dried, handled, or delivered for sale or  
26 transportation, or where records required by rule under this chapter  
27 are stored or kept, and all vehicles and equipment, whether aerial or  
28 surface, used to transport ginseng.

29 (4) "Grower" means a person who grows cultivated, wild simulated,  
30 and/or woodsgrown American ginseng and sells it to a dealer.

31 (5) "Person" means any individual, firm, partnership, corporation,  
32 company, society, or association, and every officer, agent, or employee  
33 thereof.

34 NEW SECTION. Sec. 22. The director shall enforce and carry out  
35 the provisions of this chapter and may adopt the necessary rules to  
36 carry out its purpose.

1        NEW SECTION.    **Sec. 23.**    In addition to the powers conferred on the  
2 director under this chapter, the director has the power to adopt rules:

3        (1) Establishing certification requirements for American ginseng  
4 (Panax quinquefolius L.).

5        Certification factors include:

6        (a) Place of origin;

7        (b) Whether the ginseng is wild or cultivated;

8        (c) Weight; and

9        (d) Date of harvest;

10       and may include whether the ginseng meets requirements for freedom from  
11 infestation by plant pests as required by the importing country;

12       (2) Requiring the registration of ginseng growers and of dealers  
13 who purchase and/or sell American ginseng for the purpose of foreign  
14 export; and

15       (3) Requiring that records be maintained by ginseng growers and by  
16 dealers who purchase or sell American ginseng for the purpose of  
17 foreign export.

18       The director may adopt any other rules necessary to comply with the  
19 requirements of the convention on international trade in endangered  
20 species of wild fauna and flora (27 U.S.T. 108); the endangered species  
21 act of 1973, as amended (16 U.S.C. Sec. 1531 et seq.); and 50 C.F.R.  
22 Part 23 (1995), as they existed on June 6, 1996, or a subsequent date  
23 as may be provided by rule, consistent with the purposes of this  
24 section.

25       NEW SECTION.    **Sec. 24.**    (1) The director shall adopt rules  
26 establishing fees to recover the costs of providing ginseng  
27 certification activities authorized under this chapter. All moneys  
28 collected under this chapter shall be paid to the director, deposited  
29 in an account within the agricultural local fund, and used solely for  
30 carrying out the purposes of this chapter and rules adopted under this  
31 chapter.

32       (2) In addition to other penalties, the director may refuse to  
33 perform any inspection or certification service authorized under this  
34 chapter for any person in arrears unless the person makes payment in  
35 full prior to performing the service.

36       NEW SECTION.    **Sec. 25.**    The director may enter at reasonable times  
37 as determined by the director and inspect any facility and any records

1 required under this chapter. The director may take for inspection  
2 those representative samples of ginseng necessary to determine whether  
3 or not this chapter or rules adopted under this chapter have been  
4 violated. If the director is denied access to any facility or records,  
5 the director may apply to a court of competent jurisdiction for a  
6 search warrant authorizing access to the facility or records. The  
7 court may upon such application issue a search warrant for the purpose  
8 requested.

9 NEW SECTION. **Sec. 26.** The director may bring an action to enjoin  
10 any violation of this chapter or rule adopted under this chapter in the  
11 superior court of Thurston county or of any county in which a violation  
12 occurs, notwithstanding the existence of other remedies at law.

13 NEW SECTION. **Sec. 27.** The director may cooperate with and enter  
14 into agreements with governmental agencies of this state, other states,  
15 and agencies of the federal government in order to carry out the  
16 purpose and provisions of this chapter.

17 NEW SECTION. **Sec. 28.** The department shall not disclose  
18 information obtained under this chapter regarding the purchases, sales,  
19 or production of an individual American ginseng grower or dealer,  
20 except for providing reports to the United States fish and wildlife  
21 service. This information is exempt from public disclosure required by  
22 chapter 42.17 RCW.

23 NEW SECTION. **Sec. 29.** It is unlawful for a person to sell, offer  
24 for sale, hold for sale, or ship or transport American ginseng for  
25 foreign export in violation of this chapter or rules adopted under this  
26 chapter.

27 NEW SECTION. **Sec. 30.** Any person who violates the provisions of  
28 this chapter or rules adopted under this chapter may be subject to:

29 (1) A civil penalty in an amount of not more than one thousand  
30 dollars for each violation; and/or

31 (2) Denial, revocation, or suspension of any registration or  
32 application for registration issued under this chapter. Upon notice by  
33 the director to deny, revoke, or suspend a registration or application

1 for registration, a person may request a hearing under chapter 34.05  
2 RCW.

3 NEW SECTION. **Sec. 31.** The provisions of this chapter are  
4 cumulative and nonexclusive and do not affect any other remedy.

5 NEW SECTION. **Sec. 32.** If any provision of this act or its  
6 application to any person or circumstance is held invalid, the  
7 remainder of the act or the application of the provision to other  
8 persons or circumstances is not affected.

9 **Sec. 33.** RCW 42.17.31909 and 1996 c 188 s 6 are each amended to  
10 read as follows:

11 Except under (~~section 3 of this act~~) section 28 of this act,  
12 information obtained regarding the purchases, sales, or production of  
13 an individual American ginseng grower or dealer is exempt from  
14 disclosure under this chapter.

15 NEW SECTION. **Sec. 34.** The repeal of RCW 15.17.115 and the  
16 enactment of chapter 15.-- RCW (sections 21 through 32 of this act)  
17 does not repeal any rules adopted under the provisions of chapter 15.17  
18 RCW not in conflict with the provisions of chapter 15.-- RCW (sections  
19 21 through 32 of this act) and in effect immediately prior to the  
20 repeal of any section under section 36 of this act. For the purpose of  
21 chapter 15.-- RCW (sections 21 through 32 of this act) it shall be  
22 deemed that such rules have been adopted under the provisions of  
23 chapter 15.-- RCW (sections 21 through 32 of this act) pursuant to the  
24 provisions of chapter 34.05 RCW.

25 NEW SECTION. **Sec. 35.** Sections 21 through 32 of this act  
26 constitute a new chapter in Title 15 RCW.

27 NEW SECTION. **Sec. 36.** The following acts or parts of acts are  
28 each repealed:

- 29 (1) RCW 15.17.040 and 1963 c 122 s 4;  
30 (2) RCW 15.17.070 and 1963 c 122 s 7;  
31 (3) RCW 15.17.100 and 1994 c 67 s 1, 1990 c 19 s 1, & 1963 c 122 s  
32 10;  
33 (4) RCW 15.17.110 and 1963 c 122 s 11;

- 1 (5) RCW 15.17.115 and 1996 c 188 s 2;  
2 (6) RCW 15.17.120 and 1963 c 122 s 12;  
3 (7) RCW 15.17.160 and 1963 c 122 s 16;  
4 (8) RCW 15.17.180 and 1963 c 122 s 18;  
5 (9) RCW 15.17.220 and 1963 c 122 s 22;  
6 (10) RCW 15.17.250 and 1977 ex.s. c 26 s 1, 1969 ex.s. c 76 s 3, &  
7 1963 c 122 s 25;  
8 (11) RCW 15.17.280 and 1963 c 122 s 32;  
9 (12) RCW 15.17.910 and 1963 c 122 s 28;  
10 (13) RCW 15.17.920 and 1963 c 122 s 29;  
11 (14) RCW 15.17.930 and 1963 c 122 s 34;  
12 (15) RCW 15.17.950 and 1963 c 122 s 35;  
13 (16) RCW 15.04.020 and 1981 c 296 s 1, 1977 c 75 s 7, & 1961 c 11  
14 s 15.04.020;  
15 (17) RCW 15.04.030 and 1981 c 296 s 2 & 1961 c 11 s 15.04.030;  
16 (18) RCW 15.04.040 and 1987 c 393 s 1, 1975-'76 2nd ex.s. c 34 s  
17 11, & 1961 c 11 s 15.04.040;  
18 (19) RCW 15.04.060 and 1961 c 11 s 15.04.060;  
19 (20) RCW 15.04.070 and 1981 c 296 s 3 & 1961 c 11 s 15.04.070; and  
20 (21) RCW 15.04.080 and 1961 c 11 s 15.04.080.

21 NEW SECTION. **Sec. 37.** (1) RCW 15.04.100 is recodified as a new  
22 section in chapter 15.17 RCW to be codified between RCW 15.17.240 and  
23 15.17.260.

24 (2) RCW 15.17.130 is recodified as a new section in chapter 15.17  
25 RCW to be codified between RCW 15.17.210 and 15.17.230.

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