
HOUSE BILL 2376

State of Washington

56th Legislature

2000 Regular Session

By Representatives G. Chandler, Clements, Grant, Linville and Mastin;
by request of Department of Agriculture

Read first time 01/12/2000. Referred to Committee on Agriculture &
Ecology.

1 AN ACT Relating to horticultural plants and facilities; amending
2 RCW 15.13.250, 15.13.260, 15.13.265, 15.13.270, 15.13.280, 15.13.285,
3 15.13.290, 15.13.300, 15.13.310, 15.13.320, 15.13.335, 15.13.340,
4 15.13.360, 15.13.370, 15.13.380, 15.13.390, 15.13.400, 15.13.410,
5 15.13.420, 15.13.425, 15.13.430, 15.13.440, 15.13.445, 15.13.450,
6 15.13.455, 15.13.470, 15.13.480, and 15.13.490; adding new sections to
7 chapter 15.13 RCW; adding new sections to chapter 15.09 RCW;
8 decodifying RCW 15.13.460, 15.13.930, and 15.13.950; repealing RCW
9 15.09.130 and 15.13.350; and prescribing penalties.

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

11 **Sec. 1.** RCW 15.13.250 and 1993 c 120 s 1 are each amended to read
12 as follows:

13 For the purpose of this chapter:

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

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

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

4 (4) "Horticultural plant" includes, but is not limited to, any
5 horticultural, floricultural, (~~and~~) or viticultural plant, or turf,
6 for planting, propagation or ornamentation growing or otherwise. The
7 term does not apply to potato, garlic, or onion planting stock or to
8 cut plant material, except (~~cuttings, budsticks, scion wood, and~~
9 similar)) plant parts used for propagative purposes(~~(, or to~~
10 olericultural plants)).

11 (5) "Horticultural facilities" means, but is not limited to, the
12 premises where horticultural plants are grown, stored, handled or
13 delivered for sale or transportation, or where records required under
14 this chapter are stored or kept, and all vehicles and equipment(~~(,~~
15 ~~whether aerial or surface,~~) used to transport (~~(such))~~ horticultural
16 plants.

17 (6) "Plant pests" means, but is not limited to (~~(any)),~~ a living
18 stage of (~~(any)) insect((s)), mite((s)), or other arthropod;~~
19 nematode((s,))i slug((s)), snail((s)), or other mollusk; protozoa((,))
20 or other invertebrate animals((,))i bacteria(~~(, fungi, other parasitic~~
21 plants, weeds, or reproductive parts thereof, viruses))i fungus; virus;
22 viroid; phytoplasma; weed or parasitic plant; or any organisms similar
23 to or allied with any of the (~~(foregoing,~~) plant pests listed in this
24 section; or any infectious substance(~~(,))i~~ which can directly or
25 indirectly injure or cause disease or damage (~~(in))~~ to any plant or
26 (~~(parts thereof, or any processed, manufactured, or other products of~~
27 plants)) plant product or that threatens the diversity or abundance of
28 native species.

29 (7) "Inspection and/or certification" means, but is not limited to,
30 the inspection by the director of (~~(any))~~ horticultural plants at any
31 time prior to, during, or subsequent to harvest(~~(,))~~ or sale(~~(, by the~~
32 ~~director,~~) and the issuance by the director of a written certificate
33 stating (~~(the grades, classifications, and))~~ if (~~(such))~~ the
34 horticultural plants (~~(meet Washington requirements for freedom from~~
35 infestation by plant pests and)) are in compliance with (~~(all other))~~
36 the provisions of this chapter and rules adopted (~~(hereunder))~~ under
37 this chapter. Inspection may include, but is not limited to,
38 examination of horticultural plants, taking samples, destructive

1 testing, conducting interviews, taking photographs, and examining
2 records.

3 (8) "Nursery dealer" means any person who sells(~~(, holds for sale,~~
4 ~~or offers for sale,~~) horticultural plants or plants, grows, receives,
5 or handles horticultural plants(~~(, including turf for sale or for~~
6 ~~planting, including lawns,~~) for the purpose of selling or planting for
7 another person.

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

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

15 (11) "Certificate" or "certificate of inspection" means an official
16 document certifying compliance with the requirements of this chapter.
17 The term "certificate" includes labels, rubber stamp imprints, tags,
18 permits, written statements, or ((a)) any other form of certification
19 document that accompanies the movement of inspected and certified plant
20 material.

21 (12) "Turf" means field-cultivated turf grass sod consisting of
22 grass varieties, or blends of grass varieties, and dichondra for use in
23 residential and commercial landscapes.

24 (~~("Collected horticultural plant" means a noncultivated native~~
25 ~~plant, collected in its native habitat and sold for horticultural~~
26 ~~purposes. For purposes of this chapter, such plants shall be regarded~~
27 ~~as collected horticultural plants for the first calendar year after~~
28 ~~collection.)) "This chapter" means this chapter and the rules adopted
29 under this chapter.~~

30 (14) "Compliance agreement" means a written agreement between the
31 department and a person engaged in growing, handling, or moving
32 articles, plants, or plant products regulated under this chapter or
33 title, in which the person agrees to comply with stipulated
34 requirements.

35 (15) "Consignor" means the person named in the invoice, bill, or
36 other shipping document accompanying a horticultural plant as the
37 person from whom the horticultural plant has been received for
38 shipment.

1 **Sec. 2.** RCW 15.13.260 and 1993 c 120 s 2 are each amended to read
2 as follows:

3 The director shall enforce the provisions of this chapter and may
4 adopt any rule necessary to carry out its purpose and provisions
5 including but not limited to the following:

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

9 (2) The director (~~(may)~~) shall adopt rules for labeling or tagging
10 (~~(and)~~) horticultural plants.

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

14 (~~((+3))~~) (4) The director shall adopt rules establishing fees for
15 nursery dealer licenses and for inspection of horticultural plants and
16 methods of fee collection (~~((thereof))~~).

17 (~~((+4))~~) (5) The director may adopt rules prescribing minimum
18 informational requirements for advertising for the sale of
19 horticultural plants within the state.

20 (~~((+5) The director shall when adopting rules or regulations under~~
21 ~~the provisions of this chapter, hold a public hearing and satisfy all~~
22 ~~the requirements of chapter 34.05 RCW (administrative procedure act),~~
23 ~~concerning the adoption of rules and regulations.))~~

24 (6) The director may adopt rules establishing categories of sales
25 and fees for permits established in RCW 15.13.270.

26 NEW SECTION. **Sec. 3.** A new section is added to chapter 15.13 RCW
27 to read as follows:

28 Chapter 34.05 RCW governs the rights, remedies, and procedures
29 respecting the administration of this chapter, including rule making,
30 assessment of civil penalties, emergency actions, and license
31 suspension, revocation, or denial.

32 **Sec. 4.** RCW 15.13.265 and 1993 c 120 s 7 are each amended to read
33 as follows:

34 (1) The director may enter (~~((upon))~~) and inspect the (~~((premises))~~)
35 horticultural facilities of a nursery dealer at reasonable times for
36 the purpose of carrying out the provisions of this chapter.

1 (2) If the director is denied access, the director may apply to a
2 court of competent jurisdiction for a search warrant authorizing access
3 to the premises. The court may upon such application issue the search
4 warrant for the purposes requested. The warrant shall be issued on
5 probable cause. It is sufficient probable cause to show (a) the
6 inspection is pursuant to a general administrative practice to
7 determine compliance with this chapter or (b) the director has reason
8 to believe that a violation of this chapter has occurred, is occurring,
9 or may occur.

10 (3) Denial of access to the director to perform inspections may
11 subject a nursery dealer to revocation of the nursery license (~~as~~
12 ~~provided in RCW 15.13.350~~)).

13 **Sec. 5.** RCW 15.13.270 and 1993 c 120 s 3 are each amended to read
14 as follows:

15 The provisions of this chapter relating to licensing do not apply
16 to: (1) Persons making casual or isolated sales that do not exceed one
17 hundred dollars annually; (2) any garden club, conservation district,
18 or charitable nonprofit association conducting not more than three
19 sales per year for not more than four consecutive days each of
20 horticultural plants (~~as defined in RCW 15.13.250 and~~) which are
21 grown by or donated to its members; (3) educational organizations
22 associated with private or public secondary schools. However, such a
23 club, conservation district, association, or organization shall apply
24 to the director for a permit to conduct such sales. (~~The director may~~
25 ~~adopt rules establishing categories of sales and fees for the permit.~~
26 ~~The fees shall be deposited in the agricultural local fund.~~)

27 All horticultural plants sold under such a permit (~~issued by the~~
28 ~~director~~) shall be (~~subject to all the other~~) in compliance with the
29 provisions of this chapter (~~except licensing as set forth herein~~)).

30 **Sec. 6.** RCW 15.13.280 and 1993 c 120 s 4 are each amended to read
31 as follows:

32 (1) No person shall act as a nursery dealer without a license for
33 each place of business where horticultural plants are sold except as
34 provided in RCW 15.13.270. Any person applying for such a license
35 shall apply through the master license system. The application shall
36 be accompanied by ((a)) the appropriate fee (~~established by the~~
37 ~~director by rule~~). The director shall establish (~~by rule, in~~

1 accordance with chapter 34.05 RCW,) a schedule of fees for retail and
2 wholesale nursery dealer licenses ((and a schedule of fees for
3 wholesale nursery dealer licenses which shall be)) based upon the
4 ((amount of a)) person's ((retail or wholesale)) gross annual sales of
5 horticultural plants ((and turf)) at each place of business. The
6 schedule for retail licenses shall include((, but shall not be limited
7 to,)) separate fees for at least the following two categories:

8 (a) A ((fee for a)) person whose gross ((business)) annual sales of
9 ((such materials)) horticultural plants do not exceed two thousand five
10 hundred dollars; and

11 (b) ((a fee for)) A person whose gross ((business)) annual sales of
12 ((such materials)) horticultural plants exceed two thousand five
13 hundred dollars.

14 (2) ((Except as provided in RCW 15.13.270,)) A person conducting
15 both retail and wholesale sales of horticultural plants at ((a)) the
16 same place of business shall secure ((for the place of business)) one
17 of the following:

18 (a) A retail nursery dealer license if retail sales of the
19 horticultural plants ((and turf)) exceed such wholesale sales((,))i or

20 (b) A wholesale nursery dealer license if wholesale sales of the
21 horticultural plants ((and turf)) exceed such retail sales.

22 (3) ((For)) The director may issue a wholesale nursery dealer
23 license to a person operating as a farmers market((s that are
24 registered as nonprofit associations with the office of the secretary
25 of state and)) at which individual producers are selling directly to
26 consumers ((as provided in RCW 36.71.090, the director may allow a
27 farmers market, as an alternative to licensing of individual producers,
28 to obtain one wholesale nursery dealer)). The license((, as provided
29 in subsection (1) of this section,)) shall be at the appropriate level
30 to cover all ((producers)) persons selling horticultural plants at each
31 site at which the ((market)) person operates a market.

32 (4) The licensing fee that must accompany an application for a new
33 license shall be based upon the applicant's estimated gross
34 ((business)) sales of horticultural plants ((and turf)) for the ensuing
35 licensing year. The fee for renewing a license shall be based upon the
36 licensee's gross sales of ((such)) these products during the preceding
37 licensing year.

38 (5) The license ((shall)) expires on the master license expiration
39 date unless it has been revoked or suspended prior to the expiration

1 date by the director for cause. Each license shall be posted in a
2 conspicuous place open to the public in the location for which it was
3 issued.

4 (6) The department may audit licensees during normal business hours
5 to determine that appropriate fees have been paid.

6 **Sec. 7.** RCW 15.13.285 and 1992 c 23 s 1 are each amended to read
7 as follows:

8 The director may, with the advice of the nursery advisory committee
9 (~~created under RCW 15.13.335~~), establish by rule a surcharge (~~to be~~
10 ~~added~~) to the fee (~~established~~) for a nursery dealer license (~~under~~
11 ~~RCW 15.13.280~~). The surcharge (~~applied to each license annually~~)
12 shall not exceed twenty percent (~~times the amount~~) of the license fee
13 (~~without the surcharge. Such a surcharge~~) and shall be paid at the
14 same time that the (~~licensing~~) license fee is paid. (~~Revenue~~)
15 Moneys collected from the surcharge shall be deposited in the
16 agricultural local fund (~~under RCW 43.23.230~~) and shall be used
17 solely to support research projects which are of general benefit to the
18 (~~horticultural~~) nursery industry and are recommended by the nursery
19 advisory committee (~~created under RCW 15.13.335~~).

20 **Sec. 8.** RCW 15.13.290 and 1982 c 182 s 21 are each amended to read
21 as follows:

22 If any application for renewal of a nursery dealer license is not
23 filed prior to the master license expiration date, the master license
24 delinquency fee shall be assessed under chapter 19.02 RCW and shall be
25 paid by the applicant before the renewal license (~~shall be~~) is
26 issued.

27 **Sec. 9.** RCW 15.13.300 and 1982 c 182 s 22 are each amended to read
28 as follows:

29 Application for a license (~~shall be made through the master~~
30 ~~license system and~~) shall include:

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

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

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

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

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

8 **Sec. 10.** RCW 15.13.310 and 1993 c 120 s 5 are each amended to read
9 as follows:

10 (1) ~~((There is hereby levied))~~ An annual assessment shall be levied
11 on the gross sale price of the wholesale market value for all fruit
12 trees, fruit tree related ornamental trees, and fruit tree rootstock
13 produced in Washington, and sold within the state or shipped from the
14 state ((of Washington)) by any licensed nursery dealer during any
15 license period((, as set forth in this chapter)). Fruit tree related
16 ornamental ((tree)) nursery stock shall be limited to the genera,
17 Chaenomeles, Cydonia, Crataegus, Malus, Prunus, Pyrus, and Sorbus.
18 This annual assessment is based on the first sale price of such nursery
19 stock except for rootstocks which are replanted and/or grafted or
20 budded and planted for growing-on in the nursery. The director shall
21 by rule ((subsequent to a hearing)) determine the rate of an assessment
22 ((conforming with the costs necessary)) needed to carry out the fruit
23 tree certification and nursery improvement programs ((specified)) set
24 forth in RCW 15.13.470 and chapter 15.14 RCW.

25 ~~((Such))~~ The wholesale market price may be determined by the
26 wholesale catalogue price of the seller of ~~((such))~~ the fruit trees,
27 fruit tree related ~~((ornamental trees))~~ ornamentals, or fruit tree
28 rootstock or of the shipper moving such ~~((fruit trees, fruit tree~~
29 ~~related ornamentals, or fruit tree rootstock))~~ nursery stock out of the
30 state. If the seller or shipper ~~((do))~~ does not have a catalogue, then
31 ~~((such))~~ the wholesale market price may be based on the actual selling
32 price or an average wholesale market price. The director in
33 determining ~~((such))~~ the average wholesale market price may use
34 catalogues of various businesses licensed under the provisions of this
35 chapter or any other reasonable method.

36 (2) ~~((Such))~~ The assessment ~~((shall be))~~ is due and payable on the
37 first day of July of each year.

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

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

6 **Sec. 11.** RCW 15.13.320 and 1993 c 120 s 6 are each amended to read
7 as follows:

8 An advisory committee is hereby established to advise the director
9 in the administration of the fruit tree (~~and fruit tree related~~
10 ~~ornamental tree~~) certification and nursery improvement program.

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

13 (2) (~~The director shall appoint~~) When appointing this committee
14 (~~from~~), the director shall consider names submitted by the Washington
15 state nursery and landscape association.

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

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

23 **Sec. 12.** RCW 15.13.335 and 1990 c 261 s 6 are each amended to read
24 as follows:

25 (~~An~~) A nursery advisory committee is hereby established to advise
26 the director in the administration of this chapter.

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

34 (2) The terms of the members of the committee shall be staggered
35 and the members shall serve a term of three years and until their
36 successors have been appointed (~~and qualified~~).

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

5 **Sec. 13.** RCW 15.13.340 and 1971 ex.s. c 33 s 10 are each amended
6 to read as follows:

7 (1) (~~There is hereby levied on all delinquent and unpaid~~
8 ~~assessments a collection charge~~) A late fee of twenty percent of the
9 amount due (~~and to be added thereto for each license period such~~)
10 shall be levied on all delinquent assessments for each license period
11 the assessment is delinquent.

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

15 **Sec. 14.** RCW 15.13.360 and 1971 ex.s. c 33 s 12 are each amended
16 to read as follows:

17 The director may issue subpoenas to compel the attendance of
18 witnesses and/or production of books, documents, and records (~~in~~) for
19 purposes of investigating compliance with this chapter or for any
20 hearing (~~in the county where the person licensed under this chapter~~
21 ~~resides affecting the authority or privilege granted by a license~~
22 ~~issued under the provisions of~~) under this chapter. (~~Witnesses~~
23 ~~except complaining witnesses, shall be entitled to fees for attendance~~
24 ~~and travel as provided for in chapter 2.40 RCW, as enacted or hereafter~~
25 ~~amended.~~)

26 **Sec. 15.** RCW 15.13.370 and 1993 c 120 s 8 are each amended to read
27 as follows:

28 (1) Any person licensed under the provisions of this chapter may
29 request(~~, upon the payment of actual costs to the department as~~
30 ~~prescribed by the director,~~) the services of a (~~nursery plant~~
31 ~~services~~) department inspector at (~~such~~) the licensee's place of
32 business or point of shipment during the shipping season. Subsequent
33 to inspection the inspector shall issue to (~~such~~) the licensee a
34 certificate of inspection signed by the inspector covering any
35 horticultural plants which the inspector finds (~~not~~) to be (~~infected~~

1 with ~~plant pests and~~) in compliance with the provisions of this
2 chapter (~~and rules adopted under this chapter~~)).

3 (2) Any person financially interested in any horticultural plants
4 may request inspection and/or certification services provided for
5 horticultural plants under this chapter.

6 (3) To facilitate the movement of agricultural commodities, the
7 director may provide, if requested, special inspections or
8 certifications not otherwise authorized under this chapter and shall
9 prescribe a fee for that service.

10 **Sec. 16.** RCW 15.13.380 and 1990 c 261 s 9 are each amended to read
11 as follows:

12 (~~The director shall prescribe, in addition to those costs provided~~
13 ~~for in RCW 15.13.370, any other necessary fees to be charged the owner~~
14 ~~or the owner's agent for the inspection and certification of any~~
15 ~~horticultural plant subject to the provisions of this chapter or rules~~
16 ~~adopted hereunder, and for the inspection and certification when such~~
17 ~~inspection and certification is performed at the request of any person~~
18 ~~financially interested in any horticultural plants which are, or are~~
19 ~~not subject to the provisions of this chapter or rules adopted~~
20 ~~hereunder, produced in or imported into this state.))~~

21 (1) The inspection fees provided for in this chapter shall become
22 due and payable upon billing by the department.

23 (2) A late charge of one and one-half percent per month shall be
24 assessed on the unpaid balance against persons more than thirty days in
25 arrears.

26 (3) In addition to any other penalties, the director may refuse to
27 perform any inspection or certification service for any person who is
28 in arrears or who fails to pay any assessment due under the provisions
29 of this chapter or assessments required by law to any agricultural
30 commodity commission unless the person makes payment in full prior to
31 such inspection or certification service.

32 **Sec. 17.** RCW 15.13.390 and 1993 c 120 s 9 are each amended to read
33 as follows:

34 It is unlawful for any person to sell, ship, or transport any
35 horticultural plant in this state unless it meets standards established
36 in rule for freedom from infestation by plant pests(~~. No person shall~~
37 ~~sell, ship, or transport any horticultural plant in this state unless~~

1 ~~it meets the)) and the other~~ requirements of this chapter (~~(or rules~~
2 ~~adopted under this chapter))~~).

3 **Sec. 18.** RCW 15.13.400 and 1993 c 120 s 10 are each amended to
4 read as follows:

5 (1) It is unlawful for any person to ship or deliver any
6 horticultural plant into this state unless (~~(such horticultural plant))~~
7 it is accompanied by an inspection certificate from the state or
8 country of origin stating that (~~(such))~~ the horticultural plant meets
9 (~~(Washington requirements for freedom from infestation by plant pests~~
10 ~~and is in conformance with not less than the minimal))~~ the requirements
11 of this chapter (~~(or rules adopted under this chapter))~~). The director
12 may require the shipper or receiver to file a copy of the manifest of
13 nursery cargo or shipment of horticultural plants into this state with
14 the director (~~(in Olympia, Washington,))~~ on or before the date (~~(such))~~
15 the horticultural plants enter into the state (~~(of Washington))~~).

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

23 (3) Any shipment found not to be in compliance with the
24 requirements of this chapter may be returned to the consignor at the
25 consignor's expense. The consignor may subsequently request a hearing
26 which shall be held in conformance with RCW 34.05.479 or other
27 applicable provision of chapter 34.05 RCW.

28 **Sec. 19.** RCW 15.13.410 and 1993 c 120 s 11 are each amended to
29 read as follows:

30 Each shipment of horticultural plants transported or shipped into
31 the state and/or offered for retail sale within the state shall be
32 legibly marked or tagged in a conspicuous manner.

33 (~~((1) The department shall by rule establish marking or tagging~~
34 ~~requirements for the following plant types:~~

35 ~~(a) Fruit trees and ornamental trees and shrubs;~~

36 ~~(b) Perennial plants;~~

37 ~~(c) Flowering and nonflowering annuals and biennials;~~

1 ~~(d) Turf grasses;~~

2 ~~(e) Collected horticultural plants; and~~

3 ~~(f) Aquatic and semi-aquatic plants.~~

4 ~~(2) When plants, other than floricultural products are on display~~
5 ~~for retail sale, each unit of sale shall be tagged as prescribed in~~
6 ~~rule.~~

7 ~~(3))~~ The director may, whenever the director finds that any
8 horticultural plant is not properly marked, order it off sale until it
9 is properly marked, or order that it be returned to the consignor for
10 proper marking.

11 **Sec. 20.** RCW 15.13.420 and 1993 c 120 s 12 are each amended to
12 read as follows:

13 It ~~((shall be))~~ is unlawful for any person:

14 (1) To falsely ~~((represent that the person is the))~~ claim to be an
15 agent or representative of any nursery dealer in horticultural plants;

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

18 ~~(3) To bring into this state or to sell, offer for sale, hold for~~
19 ~~sale, distribute, ship or deliver any horticultural plants not in~~
20 ~~conformity with standards established in rule concerning infestation by~~
21 ~~plant pests;~~

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

30 ~~((5))~~ (3) To alter an official certificate or other official
31 inspection document for plant materials covered by this chapter or to
32 falsely represent a document as an official certificate ~~((when such is~~
33 ~~not the case))~~;

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

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

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

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

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

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

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

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

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

22 ~~(i) That bulblets are bulbs;~~

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

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

30 ~~(8)) (4) To substitute any ((other)) horticultural plant or~~
31 ~~agricultural commodity for a horticultural plant or agricultural~~
32 ~~commodity covered by an inspection certificate((;~~

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

36 **Sec. 21.** RCW 15.13.425 and 1993 c 120 s 13 are each amended to
37 read as follows:

1 No publisher, radio and television broadcast licensee, advertising
2 agency, or agency or medium for the dissemination of an advertisement,
3 except the grower, packer, distributor, or seller of the article to
4 which the advertisement relates, shall be subject to the penalties of
5 RCW 15.13.490(2) by reason of dissemination of any false advertisement,
6 unless the person has refused on the request of the director to furnish
7 the name and address of the grower, packer, distributor, seller, or
8 advertising agency in the state of Washington, who caused dissemination
9 of the false advertisement.

10 **Sec. 22.** RCW 15.13.430 and 1993 c 120 s 14 are each amended to
11 read as follows:

12 When the ((department)) director has cause to believe that any
13 horticultural plants are damaged or are infested or infected by any
14 plant pest, ((chemical or other damage,)) the director may issue a hold
15 order on such ((horticulture)) horticultural plants. A hold order may
16 prescribe conditions under which plants must be held to prevent spread
17 of the infestation or infection. Treatment or other corrective
18 measures shall be the sole responsibility of the persons holding the
19 plant material for sale. It ((shall be)) is unlawful to sell((, offer
20 for sale,)) or move such plants until released in writing by the
21 director.

22 **Sec. 23.** RCW 15.13.440 and 1993 c 120 s 15 are each amended to
23 read as follows:

24 The director shall condemn any ((or all)) horticultural plants ((in
25 a shipment or)) shipped or sold when ((any)) such horticultural plants
26 ((are held for sale, or offered for sale and they)) are found to be
27 dead, in a dying condition, seriously broken, diseased((,)) or infested
28 ((with harmful insects)) to the extent that treatment is not practical,
29 damaged ((or)), frozen, or abnormally potbound ((and)). The director
30 shall order such horticultural plants to be destroyed or returned at
31 shipper's option.

32 **Sec. 24.** RCW 15.13.445 and 1993 c 120 s 16 are each amended to
33 read as follows:

34 Upon issuance of an order or upon action by the director under RCW
35 15.13.400, 15.13.410, 15.13.430, or 15.13.440, the ((seller or holder))

1 consignor of the plant material (~~((is entitled to))~~) may request a
2 hearing under chapter 34.05 RCW.

3 NEW SECTION. Sec. 25. A new section is added to chapter 15.13 RCW
4 to read as follows:

5 No state court shall allow the recovery of damages from
6 administrative action, hold order, or condemnation order if the court
7 finds there was probable cause for the action.

8 **Sec. 26.** RCW 15.13.450 and 1971 ex.s. c 33 s 21 are each amended
9 to read as follows:

10 The director may bring an action to enjoin the violation of any
11 provision of this chapter or any rule adopted (~~((pursuant to))~~) under
12 this chapter in the superior court in Thurston county or the county in
13 which (~~((such))~~) the violation occurs, notwithstanding the existence of
14 other remedies at law.

15 **Sec. 27.** RCW 15.13.455 and 1983 1st ex.s. c 73 s 7 are each
16 amended to read as follows:

17 (1) The director (~~((is hereby authorized to))~~) may apply to the
18 superior court of Thurston county for a prompt hearing on, and (~~((such))~~)
19 the court shall have jurisdiction upon, and for cause shown the court
20 shall, without proof that an adequate remedy at law does not exist,
21 grant(~~((, a temporary or permanent))~~) an injunction restraining any
22 person from operating as a nursery dealer without a valid license.

23 (2) An order restraining any person from operating as a nursery
24 dealer without a valid license shall contain such provision for the
25 payment of pertinent court costs and reasonable attorneys' fees and
26 administrative expenses as is equitable and the court deems appropriate
27 in the circumstances.

28 **Sec. 28.** RCW 15.13.470 and 1999 c 144 s 16 are each amended to
29 read as follows:

30 (1) Except as provided in RCW 15.13.285 and in subsections (2) and
31 (3) of this section, all moneys collected under this chapter shall be
32 paid to the director, deposited in an account within the agricultural
33 local fund, and used solely for carrying out this chapter (~~((and rules~~
34 ~~adopted under this chapter))~~). No appropriation is required for the
35 disbursement of moneys from the account by the director.

1 (2) All fees collected for fruit tree, fruit tree related
2 ornamental tree, and fruit tree rootstock assessments as set forth in
3 this chapter shall be deposited in the planting stock certification
4 account within the agricultural local fund to be used only for the
5 Washington fruit tree and fruit tree related ornamental tree
6 certification and nursery improvement programs as set forth in this
7 chapter and chapter 15.14 RCW.

8 (3) All moneys collected for civil penalties under this chapter
9 shall be deposited in the nursery research account within the
10 agricultural local fund.

11 NEW SECTION. Sec. 29. A new section is added to chapter 15.13 RCW
12 to read as follows:

13 The director may enter into compliance agreements with any person
14 for the purpose of carrying out the provisions of this chapter.

15 **Sec. 30.** RCW 15.13.480 and 1993 c 120 s 18 are each amended to
16 read as follows:

17 The director may cooperate with and enter into contracts or
18 agreements with governmental agencies of this state~~((7))~~ and other
19 states ~~((and))~~ agencies of the federal government, and any other
20 organization in order to carry out the purpose and provisions of this
21 chapter.

22 The director may enter into agreements with the United States
23 department of agriculture for the ~~((issuance of))~~ purpose of issuing
24 phytosanitary certificates and other inspection documents, according to
25 federal procedures, to facilitate the export of ~~((nursery))~~ products
26 from the state.

27 **Sec. 31.** RCW 15.13.490 and 1990 c 261 s 14 are each amended to
28 read as follows:

29 ~~((A))~~ Any person who fails to comply with this chapter ~~((or the~~
30 ~~rules adopted under it))~~ may be ~~((subjected))~~ subject to:

31 (1) Denial, revocation, or suspension of the person's nursery
32 dealer license; and/or

33 (2) A civil penalty~~((as determined by the director))~~ in an
34 amount of not more than one thousand dollars for each violation. Each
35 violation shall be a separate and distinct offense. Every person who,
36 through an act of commission or omission, procures, aids, or abets in

1 the violation shall be considered to have violated this section and may
2 be subject to the civil penalty provided in this section.

3 NEW SECTION. **Sec. 32.** RCW 15.13.460, 15.13.930, and 15.13.950 are
4 each decodified.

5 NEW SECTION. **Sec. 33.** A new section is added to chapter 15.09 RCW
6 to read as follows:

7 Funding of the operating budget of a horticultural pest and disease
8 board may be derived from any or all of the following:

9 (1) Moneys from the county general fund or other general revenues,
10 as appropriated by the board of county commissioners or other county
11 legislative authority;

12 (2) A horticultural tax, as authorized in RCW 15.08.260, levied by
13 the county board of commissioners or other county legislative
14 authority; or

15 (3) An assessment against all lands.

16 NEW SECTION. **Sec. 34.** A new section is added to chapter 15.09 RCW
17 to read as follows:

18 (1) Prior to the levying of an assessment authorized in section 33
19 of this act, the horticultural pest and disease board shall hold a
20 public hearing at which it will gather information to serve as a basis
21 for classification and then classify the lands into suitable
22 classification, including but not limited to orchard lands, range
23 lands, dry lands, nonuse lands, forest lands, or federal lands.

24 (2) The board shall develop and forward to the county board of
25 commissioners or other county legislative authority, as a proposed
26 level of assessment for each class, an amount that seems just. The
27 assessment rate shall be either uniform per acre in its respective
28 class, a flat rate per parcel, or a flat rate per parcel rate plus a
29 uniform rate per acre: PROVIDED, That if no benefits are found to
30 accrue to a class of land, a zero assessment may be levied.

31 (3) The county board of commissioners or other county legislative
32 authority, upon receipt of the proposed levels of assessment from the
33 horticultural pest and disease board, after a hearing, shall accept or
34 modify by resolution, or refer back to the horticultural pest and
35 disease board for its reconsideration, all or any portion of the
36 proposed levels of assessment.

1 (4) The amount of the assessment constitutes a lien against the
2 property. The assessments shall be subject to the same provisions as
3 those for property tax collections, as provided in RCW 84.56.020, and
4 shall be collected by the county treasurer under the authority in RCW
5 84.56.035.

6 NEW SECTION. **Sec. 35.** A new section is added to chapter 15.09 RCW
7 to read as follows:

8 The horticultural pest and disease board may enter into contracts
9 and agreements with federal, state, and local government agencies,
10 Indian tribes, and any other organization to perform any duties
11 pursuant to the identification, detection, control, or eradication of
12 horticultural pests and diseases.

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

- 15 (1) RCW 15.09.130 (Operating moneys) and 1969 c 113 s 13; and
16 (2) RCW 15.13.350 (Denial, suspension, revocation of license--
17 Grounds) and 1990 c 261 s 7, 1989 c 175 s 43, & 1971 ex.s. c 33 s 11.

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