

CERTIFICATION OF ENROLLMENT

**SENATE BILL 6251**

Chapter 144, Laws of 2000

56th Legislature  
2000 Regular Session

HORTICULTURE

EFFECTIVE DATE: 6/8/00

Passed by the Senate February 8, 2000  
YEAS 47 NAYS 0

BRAD OWEN  
**President of the Senate**

Passed by the House March 1, 2000  
YEAS 98 NAYS 0

CLYDE BALLARD  
**Speaker of the  
House of Representatives**

FRANK CHOPP  
**Speaker of the  
House of Representatives**

Approved March 27, 2000

GARY LOCKE  
**Governor of the State of Washington**

CERTIFICATE

I, Tony M. Cook, Secretary of the Senate of the State of Washington, do hereby certify that the attached is **SENATE BILL 6251** as passed by the Senate and the House of Representatives on the dates hereon set forth.

TONY M. COOK  
**Secretary**

FILED

March 27, 2000 - 2:43 p.m.

**Secretary of State  
State of Washington**

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**SENATE BILL 6251**

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Passed Legislature - 2000 Regular Session

**State of Washington                      56th Legislature                      2000 Regular Session**

**By** Senators Rasmussen, Morton, Swecker and Stevens; by request of  
Department of Agriculture

Read first time 01/12/2000. Referred to Committee on Agriculture &  
Rural Economic Development.

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,~~); slug((s)), snail((s)), or other mollusk; protozoa(~~(,~~)  
20 or other invertebrate animals(~~(,~~); bacteria(~~(,~~ fungi, other parasitic  
21 plants, weeds, or reproductive parts thereof, viruses); 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(~~(,~~) 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~~((,))~~ 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.

Passed the Senate February 8, 2000.

Passed the House March 1, 2000.

Approved by the Governor March 27, 2000.

Filed in Office of Secretary of State March 27, 2000.