

HOUSE BILL REPORT

ESB 5401

As Reported by House Committee On:
Agriculture & Natural Resources

Title: An act relating to Christmas tree grower licensure.

Brief Description: Licensing Christmas tree growers.

Sponsors: Senators Rasmussen, Swecker, Shin, Schoesler and Hatfield.

Brief History:

Committee Activity:

Agriculture & Natural Resources: 3/21/07, 3/26/07 [DP].

Brief Summary of Engrossed Bill

- Requires Christmas tree growers, with certain exceptions, to obtain a license from the Department of Agriculture (Department).
- Authorizes the Department to adopt rules for inspection and/or certification of Christmas trees and fees for licensure of Christmas tree growers.
- Authorizes Departmental inspections, certifications, enforcement, licensure, and appointment of an industry advisory committee.

HOUSE COMMITTEE ON AGRICULTURE & NATURAL RESOURCES

Majority Report: Do pass. Signed by 14 members: Representatives B. Sullivan, Chair; Blake, Vice Chair; Kretz, Ranking Minority Member; Dickerson, Eickmeyer, Grant, Hailey, Kagi, Lantz, McCoy, Newhouse, Orcutt, Strow and VanDeWege.

Minority Report: Do not pass. Signed by 1 member: Representative Warnick, Assistant Ranking Minority Member.

Staff: Meg Van Schoorl (786-7105).

Background:

Department of Agriculture Plant Protection Division

This analysis was prepared by non-partisan legislative staff for the use of legislative members in their deliberations. This analysis is not a part of the legislation nor does it constitute a statement of legislative intent.

The Department of Agriculture's (Department) Plant Protection Division administers horticultural plant inspection and licensing programs with the goal of preventing establishment of high risk insects, plant diseases, and weeds. Division staff conducts surveys and regulatory inspections; licenses nursery dealers; enforces agricultural quarantines to prevent pest introductions; provides laboratory services; and carries out projects to eradicate pests. The Department inspects Christmas trees upon request, and these inspections are paid for on a fee-for-service basis. Christmas trees are included under the Department's broad authority in Chapter 17.24 RCW to inspect, investigate, quarantine, prohibit, and issue penalties related to protecting plants from pests and diseases. However, Christmas tree growers are not required to be licensed.

Washington Christmas Tree Industry

According to the Pacific Northwest Christmas Tree Association, there are 25,000 acres of Christmas trees under production by an estimated 300 growers in Washington. In 2006, 2.3 million trees were harvested, for a wholesale value of approximately \$51 million. The Washington counties with the greatest production are Kitsap, Lewis, Mason, and Thurston. Ninety-two percent of all Pacific Northwest Christmas trees are exported out of the region. California is the largest domestic market, receiving 47 percent of Pacific Northwest Christmas trees. Mexico receives about 13 percent, and other western states receive about 11 percent.

License Suspension for Non-Compliance with Child Support Order

All licensing agencies in Washington are required under RCW 74.20A.320 to suspend professional, occupational, or other licenses of persons who are not in compliance with child support orders. Under RCW 74.20A.020 (15), the definition of license includes "license, certificate, registration, permit, approval, or other similar document issued by a licensing entity…" In addition, 42 USC § 666(a) (16) requires all states to have the authority to withhold or suspend licenses, including occupational and professional licenses for non-payment of child support. If a state fails to comply with the license suspension provisions of this section of the U.S. Code, all federal funding received annually by Washington for its child support program could be in jeopardy, as well as part of the federal block grant received for public assistance funding.

Summary of Bill:

Definitions

A "Christmas tree" is defined as a cut evergreen tree of a marketable species which is managed to produce trees at a United States #2 grading standard or better and which shows evidence of specified periodic maintenance practices. A "Christmas tree grower" is any person who grows Christmas trees for sale. The existing definition of "horticultural facilities" is broadened to include the premises where Christmas trees are grown, stored, handled, delivered for sale or transportation, where required records are kept or stored, and all vehicles and equipment used

to transport Christmas trees. Christmas trees are also added to existing definitions of "inspection and/or certification," and "certificate of inspection."

Licensure, Fees, and Exemptions

A grower must obtain a Christmas tree grower's license from the Department prior to operating as a grower. The annual licensing fee will be established by the Department Director (Director) in rule and must not exceed \$40 as a base charge plus a maximum assessment of \$4 per acre. The total annual license fee must not exceed \$5,000. The information required on the license application is specified.

Fees collected will be deposited in the Christmas Tree Account within the Agricultural Local Fund. The fees shall be used only for the Christmas Tree Program established in this chapter, which may include market surveys and research related to Christmas trees.

Exempted from the licensing requirements is any Christmas tree grower who owns trees, whose business consists solely of retail sales to the ultimate consumer, and who either has less than one acre of Christmas trees, or harvests by u-cut or otherwise, fewer than 400 Christmas trees per year. Also exempted are licensed nursery dealers who furnish live plants for planting to growers.

The Department is authorized to audit licensees during normal business hours to determine that required fees have been paid. The Director shall not issue a Christmas tree grower license to any applicant who has failed to pay any assessment due under this chapter. The Director may apply for a court injunction restraining a Christmas tree grower from operating without a license. An order restraining such operation must contain provision for payment of pertinent court costs, reasonable attorneys' fees, and equitable administrative expenses.

Inspections, Certification, and Enforcement

The Department Director is authorized to adopt rules for: inspection and/or certification of Christmas trees as to freedom from plant pest infestation; Christmas tree grower license fees and tree inspection fees; and fee collection methods.

The Director may by rule require that any or all Christmas trees delivered or shipped into Washington be inspected for conformance with the requirements of this chapter prior to release by the person transporting or delivering them, even if the trees are accompanied by acceptable inspection certificates issued by the state or country of origin.

The Director may issue a hold order on Christmas trees when there is cause to believe they are damaged, infested, or infected by a plant pest. The Director may prescribe the conditions for holding the material. The Director shall condemn any Christmas trees shipped or sold if they are found to be diseased, infected, or infested to the extent that treatment is not practical, and shall order such trees either destroyed or returned at the shipper's option.

If the Director is denied access to perform inspections at the horticultural facilities of a Christmas tree grower, the grower may be subject to license revocation.

Any licensee or person financially interested in Christmas trees may request inspection and/or certification services under this chapter for a fee in an amount set by the Director.

Unlawful Actions and Penalty for Non-Compliance

It is unlawful for any person to:

- sell, ship or transport a Christmas tree unless it meets standards in rule for freedom from plant pest infestation and other requirements;
- falsely claim to be a Christmas tree grower;
- alter an official certificate or other inspection document for plant materials including Christmas trees; or
- substitute any Christmas tree for a Christmas tree covered by an inspection certificate.

A person who fails to comply with this chapter may be subject to denial, revocation or suspension of the Christmas tree grower license, or assessed a civil penalty of not more than \$1,000 per violation.

Advisory Committee

A committee is established to advise the Director in administering the Christmas Tree Program. The Director will appoint the committee with consideration given to names submitted by the Puget Sound Christmas Tree Association and the Pacific Northwest Christmas Tree Association. The committee will have at least five members representing licensed Christmas tree grower and industry interests and the Director or designee. Members will serve three-year, staggered terms. Vacancies will be filled by the Director in the same way as initial appointments.

License Suspension for Non-Compliance with Child Support Order

The Department must immediately suspend the Christmas tree grower license if the holder has been certified by the Department of Social and Health Services (DSHS) to be out of compliance with a child support order under Chapter 74.20A.320 RCW. If the holder continues to meet all other licensure requirements during the time of suspension, when the Department receives a release by the DSHS stating that the holder has come into compliance with the child support order, the Department will automatically reissue the license.

This act expires on July 1, 2014.

Appropriation: None.

Fiscal Note: Available.

Effective Date: The bill takes effect 90 days after adjournment of session in which bill is passed.

Staff Summary of Public Testimony:

(In support) The state's Christmas tree industry is requesting this bill. The Puget Sound Christmas Tree Growers Association met last summer and two-thirds of them signed in support. This bill will put our state on a par with Oregon's long-standing Christmas tree grower licensure system which is the structural model for this bill. We have dodged disease and pest "bullets" in the past; this bill will help prevent future harm to Christmas tree growers in export markets. For example, with "sudden oak death" in 2003, Florida and Arizona considered quarantines on cut trees and greens from Washington, but not from Oregon. In case of an adverse event, it is important to be able to identify who and where all growers are. The licensure of Christmas tree growers will mesh into an existing Department structure for nursery stock licensure. The advisory committee created in the bill will help growers establish an ongoing relationship with the Department.

(Neutral) I called 56 Christmas tree growers and found that most of the small u-cut growers were unaware of this bill and all were opposed. Some growers believe this imposes unneeded fees and regulations. I was initially opposed to this bill but with the Senate amendment that exempts very small growers, I am now neutral.

Persons Testifying: (In support) Senator Rasmussen, prime sponsor; Brad Tower, Pacific Northwest Christmas Tree Association; Carolyn Elliott, Trees 'N Bees; Patrick Connor, Washington Farm Bureau; and John Tillman, Northwest Plantations.

(Neutral) Melissa Moeller; and Mary Toohey, Washington State Department of Agriculture.

Persons Signed In To Testify But Not Testifying: None.