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**ENGROSSED SENATE BILL 5378**

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**State of Washington**

**53rd Legislature**

**1993 Regular Session**

**By** Senators M. Rasmussen, Barr, Loveland and Winsley; by request of Department of Agriculture

Read first time 01/26/93. Referred to Committee on Agriculture.

1 AN ACT Relating to horticultural plants and facilities; amending  
2 RCW 15.13.250, 15.13.260, 15.13.270, 15.13.280, 15.13.310, 15.13.320,  
3 15.13.370, 15.13.390, 15.13.400, 15.13.410, 15.13.420, 15.13.430,  
4 15.13.440, 15.13.470, and 15.13.480; and adding new sections to chapter  
5 15.13 RCW.

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

7 **Sec. 1.** RCW 15.13.250 and 1990 c 261 s 1 are each amended to read  
8 as follows:

9 For the purpose of this chapter:

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

12 (2) "Director" means the director of the department or the  
13 director's duly appointed representative.

14 (3) "Person" means a natural person, individual, firm, partnership,  
15 corporation, company, society and association, and every officer, agent  
16 or employee thereof.

17 (4) "Horticultural plant" includes, but is not limited to, any  
18 horticultural, floricultural, and viticultural plant, for planting,  
19 propagation or ornamentation growing or otherwise. The term does not

1 apply to cut plant material, except cuttings, budsticks, scion wood,  
2 and similar plant parts used for propagative purposes, or to  
3 olericultural plants.

4 (5) "Horticultural facilities" means, but is not limited to, the  
5 premises where horticultural plants are grown, stored, handled or  
6 delivered for sale or transportation, and all vehicles and equipment,  
7 whether aerial or surface, used to transport such horticultural plants.

8 (6) "Plant pests" means, but is not limited to any living stage of  
9 any insects, mites, nematodes, slugs, snails, protozoa, or other  
10 invertebrate animals, bacteria, fungi, other parasitic plants, weeds,  
11 or reproductive parts thereof, viruses or any organisms similar to or  
12 allied with any of the foregoing, or any infectious substance, which  
13 can directly or indirectly injure or cause disease or damage in any  
14 plant or parts thereof, or any processed, manufactured, or other  
15 products of plants.

16 (7) "Inspection and/or certification" means, but is not limited to,  
17 the inspection of any horticultural plants at any time prior to,  
18 during, or subsequent to harvest, or sale, by the director, and the  
19 issuance by the director of a written certificate stating the grades,  
20 classifications, and if such horticultural plants (~~(are free of)~~) meet  
21 Washington requirements for freedom from infestation by plant pests and  
22 are in compliance with all ((the)) other provisions of this chapter and  
23 rules adopted hereunder.

24 (8) "Nursery dealer" means any person who sells, holds for sale, or  
25 offers for sale, or plants, grows, receives, or handles horticultural  
26 plants, including turf for sale or for planting, including lawns, for  
27 another person.

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

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

35 (11) "Certificate" or "certificate of inspection" means an official  
36 document certifying compliance with the requirements of this chapter.  
37 The term "certificate" includes labels, rubber stamp imprints, tags,  
38 permits, written statements, or a form of certification document that  
39 accompanies the movement of inspected and certified plant material.

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

4       (13) "Collected horticultural plant" means a noncultivated native  
5 plant, collected in its native habitat and sold for horticultural  
6 purposes. For purposes of this chapter, such plants shall be regarded  
7 as collected horticultural plants for the first calendar year after  
8 collection.

9       **Sec. 2.** RCW 15.13.260 and 1990 c 261 s 2 are each amended to read  
10 as follows:

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

14       (1) The director may adopt rules establishing grades and/or  
15 classifications for any horticultural plant and standards for such  
16 grades and/or classifications.

17       (2) The director may adopt rules for labeling or tagging and for  
18 the inspection and/or certification of any horticultural plant as to  
19 variety, quality, size and freedom from infestation by plant pests.

20       (3) The director shall adopt rules establishing fees for inspection  
21 of horticultural plants and methods of collection thereof.

22       (4) The director may adopt rules prescribing minimum informational  
23 requirements for advertising for the sale of horticultural plants  
24 within the state.

25       (5) The director shall when adopting rules or regulations under the  
26 provisions of this chapter, hold a public hearing and satisfy all the  
27 requirements of chapter 34.05 RCW (administrative procedure act) (~~as~~  
28 enacted or hereafter amended)), concerning the adoption of rules and  
29 regulations.

30       **Sec. 3.** RCW 15.13.270 and 1990 c 261 s 3 are each amended to read  
31 as follows:

32       The provisions of this chapter relating to licensing do not apply  
33 to: (1) Persons making casual or isolated sales that do not exceed one  
34 hundred dollars annually; (2) any garden club, conservation district,  
35 or charitable nonprofit association conducting not more than three  
36 sales per year for not more than four consecutive days each of  
37 horticultural plants as defined in RCW 15.13.250 and which are grown by

1 or donated to its members; (3) educational organizations associated  
2 with private or public secondary schools. However, such a club,  
3 conservation district, association, or organization shall apply to the  
4 director for a permit to conduct such sales. The director (~~shall~~)  
5 may adopt rules establishing (~~a fee~~) categories of sales and fees for  
6 the permit. The fees shall be deposited in the agricultural local  
7 fund.

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

11 **Sec. 4.** RCW 15.13.280 and 1987 c 35 s 1 are each amended to read  
12 as follows:

13 (1) No person shall act as a nursery dealer without a license for  
14 each place of business where horticultural plants are sold except as  
15 provided in RCW 15.13.270. Any person applying for such a license  
16 shall apply through the master license system. The application shall  
17 be accompanied by a fee established by the director by rule. The  
18 director shall establish by rule, in accordance with chapter 34.05 RCW,  
19 a schedule of fees for retail nursery dealer licenses and a schedule of  
20 fees for wholesale nursery dealer licenses which shall be based upon  
21 the amount of a person's retail or wholesale sales of horticultural  
22 plants and turf. The schedule for retail licenses shall include, but  
23 shall not be limited to, separate fees for at least the following two  
24 categories: (a) A fee for a person whose gross business sales of such  
25 materials do not exceed two thousand five hundred dollars; and (b) a  
26 fee for a person whose gross business sales of such materials exceed  
27 two thousand five hundred dollars.

28 (2) Except as provided in RCW 15.13.270, a person conducting both  
29 retail and wholesale sales of horticultural plants at a place of  
30 business shall secure for the place of business (a) a retail nursery  
31 dealer license if retail sales of the plants and turf exceed such  
32 wholesale sales, or (b) a wholesale nursery dealer license if wholesale  
33 sales of the plants and turf exceed such retail sales.

34 (3) For farmers markets that are registered as nonprofit  
35 associations with the office of the secretary of state and at which  
36 individual producers are selling directly to consumers as provided in  
37 RCW 36.71.090, the director may allow a farmers market, as an  
38 alternative to licensing of individual producers, to obtain one

1 wholesale nursery dealer license, as provided in subsection (1) of this  
2 section, at the appropriate level to cover all producers at each site  
3 at which the market operates.

4 (4) The licensing fee that must accompany an application for a new  
5 license shall be based upon the estimated gross business sales of  
6 horticultural plants and turf for the ensuing licensing year. The fee  
7 for renewing a license shall be based upon the licensee's gross sales  
8 of such products during the preceding licensing year.

9 ~~((+4))~~ (5) The license shall expire on the master license  
10 expiration date unless it has been revoked or suspended prior to the  
11 expiration date by the director for cause. Each license shall be  
12 posted in a conspicuous place open to the public in the location for  
13 which it was issued.

14 ~~((+5))~~ (6) The department may audit licensees during normal  
15 business hours to determine that appropriate fees have been paid.

16 **Sec. 5.** RCW 15.13.310 and 1990 c 261 s 4 are each amended to read  
17 as follows:

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

32 Such wholesale market price may be determined by the wholesale  
33 catalogue price of the seller of such fruit trees, fruit tree related  
34 ornamental trees, or fruit tree rootstock or of the shipper moving such  
35 fruit trees, fruit tree related ornamentals, or fruit tree rootstock  
36 out of the state. If the seller or shipper do not have a catalogue,  
37 then such wholesale market price may be based on the actual selling  
38 price or an average wholesale market price. The director in

1 determining such average wholesale market price may use catalogues of  
2 various businesses licensed under the provisions of this chapter or any  
3 other reasonable method.

4 (2) Such assessment shall be due and payable on the first day of  
5 July of each year.

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

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

11 **Sec. 6.** RCW 15.13.320 and 1990 c 261 s 5 are each amended to read  
12 as follows:

13 An advisory committee is hereby established to advise the director  
14 in the administration of the fruit tree and fruit tree related  
15 ornamental tree certification and nursery improvement program.

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

18 (2) The director shall appoint this committee from names submitted  
19 by the Washington state ((~~nurserymen's~~)) nursery and landscape  
20 association.

21 (3) The terms of the members of the committee shall be staggered  
22 and the members shall serve a term of three years and until their  
23 successor has been appointed and qualified.

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

28 NEW SECTION. **Sec. 7.** A new section is added to chapter 15.13 RCW  
29 to read as follows:

30 The director may enter upon the premises of a nursery dealer at  
31 reasonable times for the purpose of carrying out the provisions of this  
32 chapter. If the director is denied access, the director may apply to  
33 a court of competent jurisdiction for a search warrant authorizing  
34 access to the premises. The court may upon such application issue the  
35 search warrant for the purposes requested. Denial of access to the  
36 director to perform inspections may subject a nursery dealer to  
37 revocation of the nursery license as provided in RCW 15.13.350.

1       **Sec. 8.** RCW 15.13.370 and 1990 c 261 s 8 are each amended to read  
2 as follows:

3       Any person licensed under the provisions of this chapter may  
4 request, upon the payment of actual costs to the department as  
5 prescribed by the director, the services of a (~~horticultural~~) nursery  
6 plant services inspector at such licensee's place of business or point  
7 of shipment during the shipping season. Subsequent to inspection  
8 (~~such horticultural~~) the inspector shall issue to such licensee a  
9 certificate of inspection signed by the inspector covering any  
10 horticultural plants which the inspector finds not to be infected with  
11 plant pests and in compliance with the provisions of this chapter and  
12 rules adopted (~~hereunder~~) under this chapter.

13       **Sec. 9.** RCW 15.13.390 and 1971 ex.s. c 33 s 15 are each amended to  
14 read as follows:

15       It (~~shall be~~) is unlawful for any person to sell, ship, or  
16 transport any horticultural plant in this state unless it (~~is~~  
17 ~~apparently free~~) meets standards established in rule for freedom from  
18 infestation by plant pests. No person shall sell, ship, or transport  
19 any horticultural plant in this state unless it meets the requirements  
20 of this chapter or rules adopted (~~hereunder~~) under this chapter.

21       **Sec. 10.** RCW 15.13.400 and 1971 ex.s. c 33 s 16 are each amended  
22 to read as follows:

23       (1) It (~~shall be~~) is unlawful for any person to ship or deliver  
24 any horticultural plant into this state unless such horticultural plant  
25 is accompanied by an inspection certificate from the state or country  
26 of origin stating that such horticultural plant (~~is apparently free~~  
27 ~~of~~) meets Washington requirements for freedom from infestation by  
28 plant pests and is in conformance with not less than the minimal  
29 requirements of this chapter or rules adopted (~~hereunder~~) under this  
30 chapter. The director may require the shipper or receiver to file a  
31 copy of the manifest of nursery cargo or shipment of horticultural  
32 plants into this state with the director in Olympia, Washington, on or  
33 before the date such horticultural plants enter into the state of  
34 Washington.

35       (2) The director may by rule require that any or all such  
36 horticultural plants delivered or shipped into the state be inspected  
37 for conformance with the requirements of this chapter and rules adopted

1 (~~hereunder~~) under this chapter, prior to release by the person  
2 delivering or transporting such horticultural plants into this state  
3 even though accompanied by acceptable inspection certificates issued by  
4 the state or country of origin.

5 **Sec. 11.** RCW 15.13.410 and 1990 c 261 s 10 are each amended to  
6 read as follows:

7 Each shipment of horticultural plants transported or shipped into  
8 the state and/or offered for retail sale within the state shall be  
9 legibly marked or tagged in a conspicuous manner(~~, and shall include~~  
10 ~~the following:~~)).

11 (1) ~~The ((common name; botanical name; and variety or color~~  
12 ~~picture))~~ department shall by rule establish marking or tagging  
13 requirements for the following plant types:

14 (a) Fruit trees and ornamental trees and shrubs;

15 (b) Perennial plants;

16 (c) Flowering and nonflowering annuals and biennials;

17 (d) Turf grasses;

18 (e) Collected horticultural plants; and

19 (f) Aquatic and semi-aquatic plants.

20 (2) When plants, other than floricultural products are on display  
21 for retail sale, each unit of sale shall be tagged as prescribed  
22 (~~above. On mixed lots or blocks, each plant shall be tagged as~~  
23 ~~prescribed above~~) in rule.

24 (3) (~~Any other necessary information prescribed, by rule, by the~~  
25 ~~director.~~) The director may, whenever the director finds that any  
26 horticultural plant is not properly marked, order it off sale until it  
27 is properly marked, or order that it be returned to the consignor for  
28 proper marking.

29 (~~(4) If the plant is a patented plant or is produced under a~~  
30 ~~grower agreement, that fact shall be noted on the label or tag.))~~

31 **Sec. 12.** RCW 15.13.420 and 1990 c 261 s 11 are each amended to  
32 read as follows:

33 It shall be unlawful for any person:

34 (1) To falsely represent that the person is the agent or  
35 representative of any nursery dealer in horticultural plants;

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



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

6       (4) To sell, offer for sale, hold for sale, solicit orders for or  
7 distribute horticultural plants by any method which has the capacity  
8 and tendency or effect of deceiving any purchaser or prospective  
9 purchaser as to the quantity, size, grade, kind, species, age,  
10 maturity, condition, vigor, hardiness, number of times transplanted,  
11 growth ability, growth characteristics, rate of growth or time required  
12 before flowering or fruiting, price, origin or place where grown, or in  
13 any other material respect;

14       (5) To (~~advertise the price of horticultural plants without~~  
15 ~~denoting the size of the plant material~~) alter an official certificate  
16 or other official inspection document for plant materials covered by  
17 this chapter or to represent a document as an official certificate when  
18 such is not the case;

19       (6) To make the following representations directly or indirectly,  
20 without limiting the effects of this section:

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

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

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

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

32       (e) That any horticultural plant cannot be purchased through usual  
33 outlets, or that limited stocks are available, when such is not the  
34 fact;

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

1 (g) That the appearance of any horticultural plant is normal or  
2 usual when the appearance so represented is in fact abnormal or  
3 unusual;

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

7 (i) That bulblets are bulbs;

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

10 (7) To sell, offer for sale or hold for sale, or plant for another  
11 person any horticultural plants on the basis of grade, unless such  
12 horticultural plants have been graded and/or classified and meet the  
13 standards prescribed by the director for such grades and/or  
14 classifications;

15 (8) To substitute any other horticultural plant for a horticultural  
16 plant covered by an inspection certificate;

17 (9) To sell, offer for sale, or hold for sale, or plant for another  
18 person, any horticultural plant which is dead, in a dying condition,  
19 seriously broken, frozen, or damaged, or abnormally potbound((+

20 ~~(10) To sell, offer for sale, or hold for sale, or plant for~~  
21 ~~another person as other than collected horticultural plant any such~~  
22 ~~collected horticultural plant within one year after its collection in~~  
23 ~~its natural habitat unless it is conspicuously marked or labeled as a~~  
24 ~~collected horticultural plant.~~

25 ~~No publisher, radio and television broadcast licensee, advertising~~  
26 ~~agency, or agency or medium for the dissemination of an advertisement,~~  
27 ~~except the grower, packer, distributor, or seller of the article to~~  
28 ~~which the advertisement relates, shall be subject to the penalties of~~  
29 ~~RCW 15.13.490 by reason of dissemination of any false advertisement,~~  
30 ~~unless the person has refused on the request of the director to furnish~~  
31 ~~the name and address of the grower, packer, distributor, seller, or~~  
32 ~~advertising agency in the state of Washington, who caused dissemination~~  
33 ~~of such false advertisement)).~~

34 NEW SECTION. Sec. 13. A new section is added to chapter 15.13 RCW  
35 to read as follows:

36 No publisher, radio and television broadcast licensee, advertising  
37 agency, or agency or medium for the dissemination of an advertisement,  
38 except the grower, packer, distributor, or seller of the article to

1 which the advertisement relates, shall be subject to the penalties of  
2 RCW 15.13.490 by reason of dissemination of any false advertisement,  
3 unless the person has refused on the request of the director to furnish  
4 the name and address of the grower, packer, distributor, seller, or  
5 advertising agency in the state of Washington, who caused dissemination  
6 of the false advertisement.

7 **Sec. 14.** RCW 15.13.430 and 1971 ex.s. c 33 s 19 are each amended  
8 to read as follows:

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

18 **Sec. 15.** RCW 15.13.440 and 1990 c 261 s 12 are each amended to  
19 read as follows:

20 The director shall condemn any or all horticultural plants in a  
21 shipment or when any such horticultural plants are held for sale, or  
22 offered for sale and they are found to be dead, in a dying condition,  
23 seriously broken, diseased, infested with harmful insects to the extent  
24 that treatment is not practical, damaged or frozen or abnormally  
25 potbound and shall order such horticultural plants to be destroyed or  
26 returned at shipper's option. (~~The director's order shall be final~~  
27 ~~fifteen days after the date of issuance, unless within such time the~~  
28 ~~superior court of the county where the condemnation occurred shall~~  
29 ~~issue an order requiring the director to show cause why the order~~  
30 ~~should not be stayed.))~~

31 NEW SECTION. **Sec. 16.** A new section is added to chapter 15.13 RCW  
32 to read as follows:

33 Upon issuance of an order by the director under RCW 15.13.430 or  
34 15.13.440, the seller or holder of the plant material is entitled to a  
35 hearing under chapter 34.05 RCW.

1       **Sec. 17.** RCW 15.13.470 and 1990 c 261 s 13 are each amended to  
2 read as follows:

3       All moneys collected under this chapter shall be paid to the  
4 director, deposited in an account within the agricultural local fund,  
5 and used solely for carrying out this chapter and rules adopted under  
6 this chapter. No appropriation is required for the disbursement of  
7 moneys from the account by the director. Any residual balance of funds  
8 remaining in the nursery inspection fund on July 26, 1987, shall be  
9 transferred to that account within the agricultural local fund:  
10 PROVIDED, That all fees collected for fruit tree, fruit tree related  
11 ornamental tree, and fruit tree rootstock assessments as set forth in  
12 this chapter shall be deposited in the northwest nursery fund to be  
13 used only for the Washington fruit tree and fruit tree related  
14 ornamental tree certification and nursery improvement programs as set  
15 forth in this chapter and chapter 15.14 RCW. (~~For the purpose of~~  
16 ~~testing and improvement of fruit trees, fruit tree related ornamental~~  
17 ~~trees, fruit tree rootstock, or other plant material used for the~~  
18 ~~propagation of such stock, the director may, with advice from the~~  
19 ~~advisory committee under RCW 15.13.320, expend up to fifty percent of~~  
20 ~~the money collected from assessments during each fiscal year ending~~  
21 ~~June 30. At no time may such contribution allow the balance of the~~  
22 ~~northwest nursery fund to fall below the combined program cost of the~~  
23 ~~two previous fiscal years. The amount of this minimum balance shall be~~  
24 ~~determined by the director on June 30 of each year.))~~

25       **Sec. 18.** RCW 15.13.480 and 1971 ex.s. c 33 s 26 are each amended  
26 to read as follows:

27       The director may cooperate with and enter into agreements with  
28 governmental agencies of this state, other states and agencies of the  
29 federal government in order to carry out the purpose and provisions of  
30 this chapter.

31       The director may enter into agreements with the United States  
32 department of agriculture for the issuance of phytosanitary  
33 certificates and other inspection documents, according to federal  
34 procedures, to facilitate the export of nursery products from the  
35 state.

--- END ---