

CERTIFICATION OF ENROLLMENT

ENGROSSED SENATE BILL 5401

60th Legislature
2007 Regular Session

Passed by the Senate April 14, 2007
YEAS 47 NAYS 2

President of the Senate

Passed by the House April 4, 2007
YEAS 96 NAYS 0

Speaker of the House of Representatives

Approved

Governor of the State of Washington

CERTIFICATE

I, Thomas Hoemann, Secretary of the Senate of the State of Washington, do hereby certify that the attached is **ENGROSSED SENATE BILL 5401** as passed by the Senate and the House of Representatives on the dates hereon set forth.

Secretary

FILED

**Secretary of State
State of Washington**

ENGROSSED SENATE BILL 5401

AS AMENDED BY THE HOUSE

Passed Legislature - 2007 Regular Session

State of Washington 60th Legislature 2007 Regular Session

By Senators Rasmussen, Swecker, Shin, Schoesler and Hatfield

Read first time 01/18/2007. Referred to Committee on Agriculture & Rural Economic Development.

1 AN ACT Relating to Christmas tree grower licensure; amending RCW
2 15.13.250, 15.13.260, 15.13.265, 15.13.270, 15.13.340, 15.13.370,
3 15.13.390, 15.13.400, 15.13.420, 15.13.430, 15.13.440, 15.13.455,
4 15.13.470, and 15.13.490; adding new sections to chapter 15.13 RCW; and
5 providing an expiration date.

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

7 **Sec. 1.** RCW 15.13.250 and 2000 c 144 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 authorized representative.

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

17 (4) "Horticultural plant" includes, but is not limited to, any
18 horticultural, floricultural, or viticultural plant, or turf, for

1 planting, propagation or ornamentation growing or otherwise. The term
2 does not apply to potato, garlic, or onion planting stock or to cut
3 plant material, except plant parts used for propagative purposes.

4 (5) "Horticultural facilities" means, but is not limited to, the
5 premises where horticultural plants or Christmas trees are grown,
6 stored, handled or delivered for sale or transportation, or where
7 records required under this chapter are stored or kept, and all
8 vehicles and equipment used to transport horticultural plants or
9 Christmas trees.

10 (6) "Plant pests" means, but is not limited to, a living stage of
11 insect, mite, or other arthropod; nematode; slug, snail, or other
12 mollusk; protozoa or other invertebrate animals; bacteria; fungus;
13 virus; viroid; phytoplasma; weed or parasitic plant; or any organisms
14 similar to or allied with any of the plant pests listed in this
15 section; or any infectious substance; which can directly or indirectly
16 injure or cause disease or damage to any plant or plant product or that
17 threatens the diversity or abundance of native species.

18 (7) "Inspection and/or certification" means, but is not limited to,
19 the inspection by the director of horticultural plants or Christmas
20 trees at any time prior to, during, or subsequent to harvest or sale
21 and the issuance by the director of a written certificate stating if
22 the horticultural plants or Christmas trees are in compliance with the
23 provisions of this chapter and rules adopted under this chapter.
24 Inspection may include, but is not limited to, examination of
25 horticultural plants or Christmas trees, taking samples, destructive
26 testing, conducting interviews, taking photographs, and examining
27 records.

28 (8) "Nursery dealer" means any person who sells horticultural
29 plants or plants, grows, receives, or handles horticultural plants for
30 the purpose of selling or planting for another person.

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

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

1 (11) "Certificate" or "certificate of inspection" means an official
2 document certifying compliance with the requirements of this chapter.
3 The term "certificate" includes labels, rubber stamp imprints, tags,
4 permits, written statements, or any other form of certification
5 document that accompanies the movement of inspected and certified plant
6 material, including Christmas trees.

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

10 (13) "This chapter" means this chapter and the rules adopted under
11 this chapter.

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

17 (15) "Consignor" means the person named in the invoice, bill, or
18 other shipping document accompanying a horticultural plant as the
19 person from whom the horticultural plant has been received for
20 shipment.

21 (16) "Christmas tree" means a cut evergreen tree:

22 (a) Of a marketable species;

23 (b) Managed to produce trees meeting United States number 2 or
24 better standards for Christmas trees as specified by the United States
25 department of agriculture; and

26 (c) Evidencing periodic maintenance practices of shearing or
27 culturing, or both; weed and brush control; and one or more of the
28 following practices: Basal pruning, fertilization, insect and disease
29 control, stump culture, soil cultivation, and irrigation.

30 (17) "Christmas tree grower" means any person who grows Christmas
31 trees for sale.

32 **Sec. 2.** RCW 15.13.260 and 2000 c 144 s 2 are each amended to read
33 as follows:

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

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

3 (2) The director shall adopt rules for labeling or tagging
4 horticultural plants.

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

8 (4) The director may adopt rules for the inspection and/or
9 certification of any Christmas tree as to freedom from infestation by
10 plant pests.

11 (5) The director shall adopt rules establishing fees for nursery
12 dealer licenses and for inspection of horticultural plants and methods
13 of fee collection.

14 ~~((+5))~~ (6) The director may adopt rules prescribing minimum
15 informational requirements for advertising for the sale of
16 horticultural plants within the state.

17 ~~((+6))~~ (7) The director may adopt rules establishing categories of
18 sales and fees for permits established in RCW 15.13.270.

19 (8) The director may adopt rules establishing fees for Christmas
20 tree grower licenses and for inspection of Christmas trees and methods
21 of fee collection.

22 **Sec. 3.** RCW 15.13.265 and 2000 c 144 s 4 are each amended to read
23 as follows:

24 (1) The director may enter and inspect the horticultural facilities
25 of a nursery dealer at reasonable times for the purpose of carrying out
26 the provisions of this chapter.

27 (2) If the director is denied access, the director may apply to a
28 court of competent jurisdiction for a search warrant authorizing access
29 to the premises. The court may upon such application issue the search
30 warrant for the purposes requested. The warrant shall be issued on
31 probable cause. It is sufficient probable cause to show (a) the
32 inspection is pursuant to a general administrative practice to
33 determine compliance with this chapter or (b) the director has reason
34 to believe that a violation of this chapter has occurred, is occurring,
35 or may occur.

36 (3) Denial of access to the director to perform inspections may

1 subject a nursery dealer or Christmas tree grower to license revocation
2 (~~of the nursery license~~)).

3 **Sec. 4.** RCW 15.13.270 and 2000 c 144 s 5 are each amended to read
4 as follows:

5 The provisions of this chapter relating to nursery dealer licensing
6 do not apply to: (1) Persons making casual or isolated sales that do
7 not exceed one hundred dollars annually; (2) any garden club,
8 conservation district, or charitable nonprofit association conducting
9 not more than three sales per year for not more than four consecutive
10 days each of horticultural plants which are grown by or donated to its
11 members; (3) educational organizations associated with private or
12 public secondary schools. However, such a club, conservation district,
13 association, or organization shall apply to the director for a permit
14 to conduct such sales.

15 All horticultural plants sold under such a permit shall be in
16 compliance with the provisions of this chapter.

17 NEW SECTION. **Sec. 5.** A new section is added to chapter 15.13 RCW,
18 to be codified after RCW 15.13.310, to read as follows:

19 (1) Any Christmas tree grower owning Christmas trees, whose
20 business consists solely of retail sales to the ultimate consumer, is
21 exempt from the requirements of this section if:

22 (a) The grower has less than one acre of Christmas trees; or

23 (b) The grower harvests, by u-cut or otherwise, fewer than four
24 hundred Christmas trees per year.

25 (2) Licensed nursery dealers who furnish live plants for planting
26 to Christmas tree growers are exempt from the requirements of this
27 section.

28 (3) No person may operate as a Christmas tree grower without first
29 obtaining a license from the department.

30 (a) The application must be accompanied by an annual fee, as
31 established by the director in rule. The annual fee must not exceed
32 forty dollars as a basic charge and a maximum of four dollars per acre
33 as an acreage assessment. The annual Christmas tree grower license fee
34 for any person may not exceed five thousand dollars.

35 (b) The department may audit licensees during normal business hours
36 to determine that appropriate fees have been paid.

1 NEW SECTION. **Sec. 6.** A new section is added to chapter 15.13 RCW,
2 to be codified after RCW 15.13.310, to read as follows:

3 Application for a Christmas tree grower license shall include:

4 (1) The full name of the person applying for the license, whether
5 the applicant is an individual, receiver, trustee, firm, partnership,
6 association, or corporation, and if the applicant is a firm or
7 partnership the full name of each member of the firm or partnership,
8 and if the applicant is an association or corporation the names of the
9 officers of the association or corporation;

10 (2) The principal business address of the applicant in the state
11 and elsewhere;

12 (3) The address and acreage of Christmas trees for each location
13 included in the application;

14 (4) The names of the persons authorized to receive and accept
15 service of summons and legal notices of all kinds for the applicant;
16 and

17 (5) Any other information prescribed by the director.

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

20 The department shall immediately suspend any license issued under
21 this chapter if the holder of the license has been certified pursuant
22 to RCW 74.20A.320 by the department of social and health services as a
23 person who is not in compliance with a support order. If the person
24 has continued to meet all other requirements for licensure during the
25 suspension, reissuance of the license shall be automatic upon the
26 department's receipt of a release issued by the department of social
27 and health services stating that the person is in compliance with the
28 order.

29 NEW SECTION. **Sec. 8.** A new section is added to chapter 15.13 RCW,
30 to be codified between RCW 15.13.310 and 15.13.315, to read as follows:

31 (1) An advisory committee is established to advise the director in
32 the administration of the Christmas tree program.

33 (2) When appointing this committee, the director shall consider
34 names submitted by Christmas tree growers and by established Christmas
35 tree grower associations having members in the state.

1 (3) The committee consists of no fewer than five members,
2 representing the interests of licensed Christmas tree growers and the
3 Christmas tree industry, and the director or the director's designee.

4 (4) The terms of the members of the committee shall be staggered
5 and the members shall serve a term of three years or until their
6 successor has been appointed.

7 (5) In the event a committee member resigns, is disqualified, or
8 vacates a position on the committee for any other reason, the vacancy
9 shall be filled by the director under the provisions of this section
10 governing appointments.

11 **Sec. 9.** RCW 15.13.340 and 2000 c 144 s 13 are each amended to read
12 as follows:

13 (1) A late fee of twenty percent of the amount due shall be levied
14 on all delinquent assessments for each license period the assessment is
15 delinquent.

16 (2) The director shall not issue a nursery dealer license or
17 Christmas tree grower license to any applicant who has failed to pay
18 any assessment due under the provisions of this chapter.

19 **Sec. 10.** RCW 15.13.370 and 2002 c 215 s 3 are each amended to read
20 as follows:

21 (1) Any person licensed under the provisions of this chapter may
22 request the services of a department inspector at the licensee's place
23 of business or point of shipment during the shipping season.
24 Subsequent to inspection the inspector shall issue to the licensee a
25 certificate of inspection signed by the inspector covering any
26 horticultural plants or Christmas trees which the inspector finds to be
27 in compliance with the provisions of this chapter.

28 (2) Any person financially interested in any horticultural plants
29 or Christmas trees may request inspection and/or certification services
30 provided for horticultural plants or Christmas trees under this
31 chapter.

32 (3) To facilitate the marketing of agricultural commodities and
33 other plant products, the director may provide, if requested, special
34 inspections or certifications not otherwise authorized under this
35 chapter and shall prescribe a fee for that service.

1 **Sec. 11.** RCW 15.13.390 and 2000 c 144 s 17 are each amended to
2 read as follows:

3 It is unlawful for any person to sell, ship, or transport any
4 horticultural plant or Christmas tree in this state unless it meets
5 standards established in rule for freedom from infestation by plant
6 pests and the other requirements of this chapter.

7 **Sec. 12.** RCW 15.13.400 and 2000 c 144 s 18 are each amended to
8 read as follows:

9 (1) It is unlawful for any person to ship or deliver any
10 horticultural plant into this state unless it is accompanied by an
11 inspection certificate from the state or country of origin stating that
12 the horticultural plant meets the requirements of this chapter. The
13 director may require the shipper or receiver to file a copy of the
14 manifest of nursery cargo or shipment of horticultural plants into this
15 state with the director on or before the date the horticultural plants
16 enter into the state.

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

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

29 **Sec. 13.** RCW 15.13.420 and 2000 c 144 s 20 are each amended to
30 read as follows:

31 It is unlawful for any person:

32 (1) To falsely claim to be an agent or representative of any
33 nursery dealer in horticultural plants or Christmas tree grower;

34 (2) To sell or distribute horticultural plants by any method which
35 has the capacity and tendency or effect of deceiving any purchaser or
36 prospective purchaser as to the quantity, size, grade, kind, species,

1 age, method of propagation, maturity, condition, vigor, hardiness,
2 number of times transplanted, growth ability, growth characteristics,
3 rate of growth or time required before flowering or fruiting, price,
4 origin or place where grown, or in any other material respect;

5 (3) To alter an official certificate or other official inspection
6 document for plant materials, including Christmas trees, covered by
7 this chapter or to falsely represent a document as an official
8 certificate;

9 (4) To substitute any horticultural plant, Christmas tree, or
10 agricultural commodity for a horticultural plant, Christmas tree, or
11 agricultural commodity covered by an inspection certificate.

12 **Sec. 14.** RCW 15.13.430 and 2000 c 144 s 22 are each amended to
13 read as follows:

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

24 **Sec. 15.** RCW 15.13.440 and 2000 c 144 s 23 are each amended to
25 read as follows:

26 The director shall condemn any horticultural plants shipped or sold
27 when such horticultural plants are found to be dead, in a dying
28 condition, seriously broken, diseased or infested to the extent that
29 treatment is not practical, damaged, frozen, or abnormally potbound.
30 The director shall condemn any Christmas trees shipped or sold if they
31 are found to be diseased, infected, or infested to the extent that
32 treatment is not practical. The director shall order such
33 horticultural plants or Christmas trees to be destroyed or returned at
34 shipper's option.

1 **Sec. 16.** RCW 15.13.455 and 2000 c 144 s 27 are each amended to
2 read as follows:

3 (1) The director may apply to the superior court of Thurston county
4 for a prompt hearing on, and the court shall have jurisdiction upon,
5 and for cause shown the court shall, without proof that an adequate
6 remedy at law does not exist, grant an injunction restraining any
7 person from operating as a nursery dealer or Christmas tree grower
8 without a valid license.

9 (2) An order restraining any person from operating as a nursery
10 dealer or Christmas tree grower without a valid license shall contain
11 such provision for the payment of pertinent court costs and reasonable
12 attorneys' fees and administrative expenses as is equitable and the
13 court deems appropriate in the circumstances.

14 **Sec. 17.** RCW 15.13.470 and 2002 c 215 s 4 are each amended to read
15 as follows:

16 (1) Except as provided in RCW 15.13.285 and in subsections (2)
17 (~~and~~), (3), and (4) of this section, all moneys collected under this
18 chapter shall be paid to the director, deposited in an account within
19 the agricultural local fund, and used solely for carrying out this
20 chapter. No appropriation is required for the disbursement of moneys
21 from the account by the director.

22 (2) All fees collected under RCW 15.13.310 shall be deposited in
23 the planting stock certification account within the agricultural local
24 fund to be used only for the Washington grapevine and fruit tree
25 certification and nursery improvement programs as set forth in this
26 chapter and chapter 15.14 RCW.

27 (3) All fees collected under section 5 of this act shall be
28 deposited in the Christmas tree account within the agricultural local
29 fund to be used only for the Washington Christmas tree program as
30 established under this chapter, which may include market surveys and
31 research related to Christmas trees.

32 (4) All moneys collected for civil penalties under this chapter
33 shall be deposited in the nursery research account within the
34 agricultural local fund.

35 **Sec. 18.** RCW 15.13.490 and 2000 c 144 s 31 are each amended to
36 read as follows:

1 Any person who fails to comply with this chapter may be subject to:

2 (1) Denial, revocation, or suspension of the person's nursery
3 dealer license or Christmas tree grower license; and/or

4 (2) A civil penalty in an amount of not more than one thousand
5 dollars for each violation. Each violation shall be a separate and
6 distinct offense. Every person who, through an act of commission or
7 omission, procures, aids, or abets in the violation shall be considered
8 to have violated this section and may be subject to the civil penalty
9 provided in this section.

10 NEW SECTION. **Sec. 19.** This act expires July 1, 2014.

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