

**Effective 7/1/2017**

## **Chapter 15 The Utah Nursery Act**

### **4-15-101 Title.**

This chapter is known as "The Utah Nursery Act."

Renumbered and Amended by Chapter 345, 2017 General Session

### **4-15-102 Background and purpose.**

The Legislature finds that:

- (1) nursery stock can harbor and vector plant pests and diseases;
- (2) unregulated production and shipping of nursery stock presents an unacceptable risk to the state's agricultural, forestry, and horticultural interests, and to the state's general environmental quality; and
- (3) it is necessary to ensure that nurseries produce healthy plants and that nursery stock shipped to other nurseries, brokers, and out-of-state customers meets national nursery stock cleanliness standards.

Renumbered and Amended by Chapter 345, 2017 General Session

### **4-15-103 Definitions.**

As used in this part:

- (1) "Balled and burlapped stock" means nursery stock that is removed from the growing site with a ball of soil containing its root system intact and encased in burlap or other material to hold the soil in place.
- (2) "Bare-root stock" means nursery stock that is removed from the growing site with the root system free of soil.
- (3) "Compliance agreement" means any written agreement between a person and a regulatory agency to achieve compliance with any set of requirements being enforced by the department.
- (4) "Container stock" means nursery stock that is transplanted in soil or in a potting mixture contained within a metal, clay, plastic, or other rigid container for a period sufficient to allow newly developed fibrous roots to form, so that if the plant is removed from the container the plant's root-media ball will remain intact.
- (5) "Etiolated growth" means bleached and unnatural growth resulting from the exclusion of sunlight.
- (6) "Minimum indices of vitality" mean standards adopted by the department to determine the health and vigor of nursery stock offered for sale in this state.
- (7) "National nursery stock cleanliness standards" means nursery stock that:
  - (a) is free from quarantine pests and pests of concern;
  - (b) has all nonquarantine plant pests under effective control;
  - (c) meets the national nursery stock cleanliness standards; and
  - (d) is eligible for nursery stock certification and shipping permits.
- (8) "Nonestablished container stock" means deciduous nursery stock that is transplanted in soil or in a potting mixture contained within a metal, clay, plastic, or other rigid container for a period insufficient to allow the formation of fibrous roots sufficient to form a root-media ball.

- (9) "Nursery" means any place where nursery stock is propagated and grown for sale or distribution.
- (10) "Nursery agent" means a person who solicits or takes order for the sale of nursery stock, other than on the premises of a nursery or nursery outlet.
- (11) "Nursery outlet" means any place or location where nursery stock is offered for wholesale or retail sale.
- (12)
- (a) "Nursery stock" means:
- (i) all plants, whether field grown, container grown, or collected native plants;
  - (ii) trees, shrubs, vines, grass sod;
  - (iii) seedlings, perennials, biennials; and
  - (iv) buds, cuttings, grafts, or scions grown or collected or kept for propagation, sale, or distribution.
- (b) "Nursery stock" does not mean:
- (i) dormant bulbs, tubers, roots, corms, rhizomes, or pips;
  - (ii) field, vegetable, or flower seeds; or
  - (iii) bedding plants, annual plants, florists' greenhouse or field-grown plants, or flowers or cuttings.
- (13) "Packaged stock" means bare-root stock that is packed either in bundles or in single plants with the roots in some type of moisture-retaining material designed to retard evaporation and hold the moisture-retaining material in place.
- (14) "Pests of concern" means a nonquarantine pest that:
- (a) is not known to occur in the state, or that has a limited distribution within the state; and
  - (b) has the potential to negatively impact nursery stock health or pose an unacceptable economic or environmental risk.
- (15) "Place of business" means each separate nursery, or nursery outlet, where nursery stock is offered for sale, sold, or distributed.
- (16) "Plant pests" means:
- (a) the egg, pupal, and larval stage, as well as any other living stage of any insect, mite, nematode, slug, snail, protozoa, or other invertebrate animal;
  - (b) bacteria;
  - (c) fungi;
  - (d) parasitic plant or a reproductive part of a parasitic plant;
  - (e) virus or viroid;
  - (f) phytoplasma; or
  - (g) any infectious substance that can injure or cause disease or damage in any plant.
- (17) "Quarantine pest" means a pest that poses potential negative economic or environmental impact to an area in which the pest currently:
- (a) does not exist; or
  - (b) exists, but its presence is not widely distributed or is being officially controlled.
- (18) "Shipping permit or certificate of inspection" means a sticker, stamp, imprint, or other document that accompanies nursery stock shipped intrastate and documents that the originating nursery:
- (a) is licensed; and
  - (b)
    - (i) has stock that has passed annual inspection; or
    - (ii) produces stock that meets the National Nursery Stock Compliance Standard.

Renumbered and Amended by Chapter 345, 2017 General Session

**4-15-104 Department authorized to make and enforce rules.**

The department is authorized, subject to Title 63G, Chapter 3, Utah Administrative Rulemaking Act, to make and enforce rules necessary to administer and enforce this chapter.

Renumbered and Amended by Chapter 345, 2017 General Session

**4-15-105 Unlawful to offer nursery stock for sale or to solicit orders for nursery stock without license.**

It is unlawful for any person in this state to offer nursery stock for sale at a nursery or nursery outlet, or to solicit or receive orders for nursery stock for a person who regularly engages in the business of operating a nursery or nursery outlet, without a license issued by the department.

Renumbered and Amended by Chapter 345, 2017 General Session

**4-15-106 License -- Application -- Fees -- Expiration -- Renewal.**

- (1)
  - (a) Application for a license to operate a nursery or nursery outlet or to solicit or receive orders of nursery stock for a person regularly engaged in the business of operating a nursery or nursery outlet shall be made to the department on forms prescribed and furnished by the department.
  - (b) Upon receipt of a proper application and compliance with applicable rules, and payment of a license fee determined by the department according to Subsection 4-2-103(2) for each place of business where the applicant intends to offer nursery stock for wholesale or retail sale, or the payment of a fee determined by the department pursuant to Subsection 4-2-103(2) in the case of an agent, the commissioner, if satisfied the convenience and necessity of the industry and the public will be served, shall issue a license to engage in the otherwise proscribed activity through December 31 of the year in which the license is issued, subject to suspension or revocation for cause.
- (2) A license to operate a nursery or nursery outlet or an agent's license is renewable on or before December 31 of each year for a period of one year upon the payment of an annual license renewal fee determined by the department according to Subsection 4-2-103(2).

Renumbered and Amended by Chapter 345, 2017 General Session

**4-15-107 Nursery stock for wholesale or retail sale -- Graded and sized -- Labels and tags -- Information to appear on label or tag.**

- (1) Each type of nursery stock delivered to a nursery or nursery outlet for subsequent wholesale or retail sale shall:
  - (a) be sized and graded in accordance with the applicable rules of the department; and
  - (b) bear a tag or label with the name, grade, size, and variety of the stock.
- (2) Each bundle, single lot, or single nursery stock sold at retail shall bear a secure tag or label with the common or botanical name, grade, size, and variety of the stock legibly printed or written on the bundle, single lot, or single nursery stock.

Renumbered and Amended by Chapter 345, 2017 General Session

**4-15-108 Inspection -- Issuance of certificate -- Destruction of infested or diseased stock.**

- (1)
  - (a) Each nursery may be inspected by the department at least once each year.
  - (b) If, upon the inspection described in Subsection (1)(a), it appears that the nursery and the nursery's stock are free of insect pests and plant disease, the department shall issue an inspection certificate to the nursery.
- (2)
  - (a) Each nursery outlet may be inspected by the department at least once each year during the period nursery stock is offered for retail sale.
  - (b) The department may issue an inspection certificate to a nursery outlet to permit the interstate shipment of nursery stock if the stock contemplated for shipment appears free of insect pests and plant disease.
- (3) Nursery stock found to be infested with insect pests or infected with plant disease shall be destroyed or otherwise treated as determined by the department.

Renumbered and Amended by Chapter 345, 2017 General Session

**4-15-109 Transport of out-of-state nursery stock to Utah -- Certificate of inspection to be filed with department by out-of-state nurseries -- Option in department to accept exchange list in lieu of certificate of inspection -- Imported stock to be tagged -- Treatment of stock not tagged.**

- (1)
  - (a) Subject to Subsection (1)(b), out-of-state nurseries and nursery outlets transporting nursery stock to a nursery or nursery outlet in this state shall annually deliver to the department a certified duplicate copy of the "state of origin" certificate of inspection for each such out-of-state nursery or nursery outlet.
  - (b) The department may accept and exchange a list of certified or licensed out-of-state nurseries or nursery outlets in lieu of a certificate of inspection for each such individual nursery or nursery outlet.
- (2) Nursery stock originating outside and imported into this state for customer delivery or for resale shall bear a tag:
  - (a) stating that the nursery stock has been inspected and certified free from plant pests and disease; and
  - (b) bearing the name and address of the shipper or consignor.
- (3) A shipment of nursery stock destined for delivery in this state that is not accompanied with the tag described in Subsection (2) may be:
  - (a) returned to the owner or consignor at the owner or consignor's expense; or
  - (b) destroyed, or otherwise disposed of, by the department without compensation to the owner or consignor.

Renumbered and Amended by Chapter 345, 2017 General Session

**4-15-110 Nursery stock offered or advertised for sale -- Unlawful to misrepresent name, origin, grade, variety, quality, or vitality -- Information required in advertisements.**

- (1) A person shall not misrepresent the name, origin, grade, variety, quality, or indicia of vitality of any nursery stock advertised or offered for sale at a nursery or nursery outlet.
- (2) All advertisements of nursery stock shall clearly state the name, size, and grade of the stock where applicable.

Amended by Chapter 354, 2020 General Session

**4-15-111 Infested or diseased stock not to be offered for sale -- Identification of "nonestablished container stock" -- Requirements for container stock -- Inspected and certified stock only to be offered for sale -- Prohibition against coating aerial plant surfaces.**

- (1) Nursery stock that is infested with plant pests, including noxious weeds, or infected with disease or that does not meet minimum indices of vitality may not be offered for sale.
- (2) All nonestablished container stock offered for sale shall be identified by the words "nonestablished container stock" legibly printed on a water resistant tag that states the length of time the stock has been planted or the date the stock was planted and may not be offered for sale in any manner that leads a purchaser to believe the stock is container stock.
- (3) All container stock offered for sale shall be established with a root-media mass that will retain its shape and hold together when removed from the container.
- (4) No nursery stock other than officially inspected and certified stock shall be offered for wholesale or retail sale in this state.
- (5) Colored waxes or other materials that coat the aerial parts of a plant and change the appearance of the plant surface are prohibited.

Renumbered and Amended by Chapter 345, 2017 General Session

**4-15-112 Enforcement -- Inspection -- Stop sale order -- Procedure -- Warrants.**

- (1)
  - (a) The department may issue a "stop sale" order to any nursery or nursery outlet upon discovery or notification of a quarantine pest or pest of concern, or if the department has reason to believe the nursery is offering, advertising, or selling nursery stock in violation of Section 4-15-111.
  - (b) The "stop sale" order described in Subsection (1)(a) shall be in writing and no nursery stock subject to the order shall be advertised or sold, except upon subsequent written release by the department.
- (2)
  - (a) The department is authorized for the purpose of ascertaining compliance with this chapter to enter and inspect any nursery or nursery outlet where nursery stock is kept during the nursery or nursery outlet's business hours.
  - (b) If access for the purpose of inspection is denied, the department may proceed immediately to the nearest court of competent jurisdiction and obtain an ex parte warrant or its equivalent to permit inspection of the nursery or nursery outlet.

Renumbered and Amended by Chapter 345, 2017 General Session

**4-15-113 Suspension or revocation -- Grounds -- Notice and hearing.**

- (1) Subject to Subsection (2), the department may suspend or revoke the license of any nursery, nursery outlet, or agent that violates Section 4-15-110 or 4-15-111.
- (2) A suspension or revocation shall not be effective until after the nursery, nursery outlet, or agent is afforded notice and a hearing.

Renumbered and Amended by Chapter 345, 2017 General Session

**4-15-114 Compliance agreements.**

The department may make compliance agreements with the responsible officials of other states and nursery establishments to achieve compliance with any set of requirements being enforced by the department.

Renumbered and Amended by Chapter 345, 2017 General Session