

## **Chapter 15**

### **The Utah Nursery Act**

#### **4-15-1 Short title.**

This chapter shall be known and may be cited as "The Utah Nursery Act."

Enacted by Chapter 126, 1981 General Session

#### **4-15-1.5 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.

Enacted by Chapter 411, 2014 General Session

#### **4-15-2 Definitions.**

As used in this part:

- (1) "Balled and burlapped stock" means nursery stock which 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 which 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 which 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 its 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 which 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 outlet" means any place or location where nursery stock is offered for wholesale or retail sale.
- (11) "Nursery stock" means all plants, whether field grown, container grown, or collected native plants; trees, shrubs, vines, grass sod; seedlings, perennials, biennials; and buds, cuttings, grafts, or scions grown or collected or kept for propagation, sale, or distribution; except that it does not include dormant bulbs, tubers, roots, corms, rhizomes, pips; field, vegetable, or flower seeds; or bedding plants, annual plants, florists' greenhouse or field-grown plants, flowers or cuttings.
- (12) "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.
- (13) "Pests of concern" means a nonquarantine pest that is not known to occur in the state, or which has a limited distribution within the state, and has the potential to negatively impact nursery stock health or pose an unacceptable economic or environmental risk.
- (14) "Place of business" means each separate nursery, or nursery outlet, where nursery stock is offered for sale, sold, or distributed.
- (15) "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) a virus or viroid;
  - (f) phytoplasma; or
  - (g) any infectious substance that can injure or cause disease or damage in any plant.
- (16) "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.
- (17) "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 its annual inspection; or
    - (ii) produces stock that meets the National Nursery Stock Compliance Standard.

Amended by Chapter 411, 2014 General Session

**4-15-3 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 such rules as in its judgment are necessary to administer and enforce this chapter.

Amended by Chapter 382, 2008 General Session

**4-15-4 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.

Enacted by Chapter 126, 1981 General Session

**4-15-5 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 it.
  - (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 4-2-2(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 4-2-2(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 4-2-2(2).

Amended by Chapter 179, 2007 General Session

**4-15-6 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 it.

Amended by Chapter 179, 2007 General Session

**4-15-7 Inspection -- Issuance of certificate -- Destruction of infested or diseased stock.**

- (1) Each nursery may be inspected by the department at least once each year. If upon inspection it appears that the nursery and its stock are free of insect pests and plant disease the department shall issue a certificate to that effect to the nursery.
- (2) Each nursery outlet may be inspected by the department at least once each year during the period nursery stock is offered for retail sale. An inspection certificate may be issued by the department 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.

Amended by Chapter 411, 2014 General Session

**4-15-8 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) 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; provided, that 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 stating that the nursery stock has been inspected and certified free from plant pests and disease. The tag shall also bear the name and address of the shipper or consignor. A shipment of nursery stock destined for delivery in this state which is not accompanied with such a tag may be returned to the owner or consignor at such person's expense, or may be destroyed, or otherwise disposed of by the department without compensation to the owner or consignor.

Enacted by Chapter 126, 1981 General Session

**4-15-9 Nursery stock offered or advertised for sale -- Unlawful to misrepresent name, origin, grade, variety, quality or vitality -- Information required in advertisements.**

No person shall misrepresent the name, origin, grade, variety, quality, or indice of vitality of any nursery stock advertised or offered for sale at a nursery or nursery outlet. All advertisements of nursery stock shall clearly state the name, size, and grade of the stock where applicable.

Enacted by Chapter 126, 1981 General Session

**4-15-10 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 which is infested with plant pests, including noxious weeds, or infected with disease or which 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 which states the length of time it has been planted or the date it was planted and may not be offered for sale in any manner which leads a purchaser to believe it 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 which coat the aerial parts of a plant and change the appearance of the plant surface are prohibited.

Amended by Chapter 378, 2010 General Session

**4-15-11 Enforcement -- Inspection -- Stop sale order -- Procedure -- Warrants.**

- (1) 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 4-15-10. The "stop sale" order shall be in writing and no nursery stock subject to it shall be advertised or sold, except upon subsequent written release by the department.
- (2) 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 their business hours. 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.

Amended by Chapter 411, 2014 General Session

**4-15-12 Suspension or revocation -- Grounds -- Notice and hearing.**

The department may suspend or revoke the license of any nursery, nursery outlet, or agent that violates Section 4-15-9 or 4-15-10; provided, that no suspension or revocation shall be effective until after the nursery, nursery outlet, or agent is afforded notice and a hearing.

Enacted by Chapter 126, 1981 General Session

**4-15-14 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.

Enacted by Chapter 411, 2014 General Session