SPONSOR: Rep. Carson & Rep. Dorsey Walker & Sen. Huxtable
Rep. Vanderwende; Sen. Wilson

HOUSE OF REPRESENTATIVES
152nd GENERAL ASSEMBLY

HOUSE BILL NO. 211
AS AMENDED BY
HOUSE AMENDMENT NO. 1

AN ACT TO AMEND TITLE 3, CHAPTER 13 OF THE DELAWARE CODE RELATING TO NURSERIES AND NURSERY STOCK.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF DELAWARE:

Section 1. Amend § 1301, Title 3 of the Delaware Code by making deletions as shown by strike through and insertions as shown by underline as follows:

§ 1301. Definitions.

The following words shall, for purposes of this chapter, be defined as follows:

(4) "Certificate" — a document authorized or prepared by an authorized federal or state regulatory official that affirms, declares, or verifies that a plant or other regulated article meets phytosanitary (quarantine), nursery inspection, pest freedom, plant registration or certification, or other legal requirements. Such documents are known by their purpose of issuance: phytosanitary certificate [for the purpose of verifying compliance with phytosanitary (quarantine) requirements]; nursery ~~stock~~ inspection certificate (for the purpose of verifying compliance with nursery inspection and pest freedom standards); registration or certification tags, seals (for the purpose of verifying compliance with registration or certification requirements); etc.

(22) "Mail-order merchant(s)" — includes but is not limited to, any person, dealer, or producer who sells or markets, wholesale or retail, any of its orders or business by drop shipment, catalog, telemarketing, telephone, ~~mail-order~~ mail-order, online sales, or other indirect means.

(23) "Mark" — the Department shall affix, for purposes of identification or separation, a conspicuous official indicator to, on, around, or near, plants or plant material, known or suspected to be, infected or infested with a dangerously injurious plant ~~pest.~~ pest or determined to be a public nuisance. This includes, but is not limited to, paint, markers, tags, seals, stickers, tape, signs or placards.

(26) "Nursery ~~industry~~ license" — a document issued by the Department authorizing a person(s) to engage in a nursery or nursery related business at a particular location under a specified business name.

HD : GOG : DS : 0081520005
LC : HVW : CBM : 5081520102
Released: 01/18/2024 01:42 PM

Section 2. Amend § 1302, Title 3 of the Delaware Code by making deletions as shown by strike through and insertions as shown by underline as follows:

§ 1302. Nursery ~~industry~~ licensing requirements.

(a) Any person(s), grower(s), agent(s), broker(s), dealer(s), mail-order merchant(s), commission merchant(s), consignor(s), landscaper(s), florist(s), greenhouse operator(s), chain store operator(s), garden center operator(s), roadside market operator(s), producer(s) or owner(s) engaged directly with the distribution of plants, plant products, plant material, nursery stock or horticultural products, is required to inform the Department of the existence of their operation and to obtain a nursery ~~industry~~ license prior to initiating business operations.

(b) The aforementioned person(s) are required to obtain a nursery ~~industry~~ license for each of their businesses or sale/retail locations where multiple businesses or sales/retail locations exist.

(c) The aforementioned person or persons are required to renew their nursery ~~industry~~ license prior to January 1 each year that they remain in operation. Nursery ~~industry~~ licenses issued by the Department shall be valid for a period of 1 year, beginning January 1 and ending December 31 of the same year.

(d) ~~A nursery industry license application must be filed with the Department on forms provided by the Department. The application for license shall include, as applicable, the following:~~ The aforementioned person or persons must complete the Nursery Industry License Application (NILA) online. The Department will make accommodations if internet access is not available. The NILA will include, as applicable, the following:

(1) Name ~~and address~~ of the owner(s) or agent of the business to be licensed.

(2) Name and address of the business to be licensed.

(3) Location of all plant, plant material or nursery stock fields or storage areas.

(4) The number of acres in plant or nursery stock production or the square footage of the sales area devoted to plants, plant material or nursery stock.

(5) A list of the names, addresses, and plants, plant material, etc. received from all suppliers, producers, growers, etc. providing plants or nursery stock to the business. Upon request of the Department an updated list and/or invoices must be provided for the current year.

(6) Address of all sales locations.

(e) Licenses issued by the Department shall be prominently displayed at the business location.

Section 3. Amend § 1303, Title 3 of the Delaware Code by making deletions as shown by strike through and insertions as shown by underline as follows:

§ 1303. Inspection of nurseries and businesses, ~~nursery stock certification.~~ and issuance of nursery inspection certificate.

(a) After receiving the nursery ~~industry~~ license application, the Department or its representatives shall examine or inspect all plants, plant material, or nursery stock located or grown on the business location or any other applicable location. Nurseries must maintain adequate weed control so a thorough inspection of the nursery stock can be made.

(b) The Department shall conduct the aforementioned inspection or examination yearly or as directed by the Secretary, at such time as it deems best, with or without notice. The Department reserves the right to conduct unannounced inspections as frequently as it deems necessary to ~~insure~~ ensure compliance with all sections of this chapter.

(c) Upon the successful completion of an annual inspection, the Department shall issue a nursery ~~stock~~ inspection certificate ~~of inspection~~ to any business licensed under § 1302 of this title. The nursery ~~stock~~ inspection certificate shall state:

The nursery ~~(or business premises) from which this shipment was made has been visually inspected and found to be in compliance with National Plant Board standards of pest freedom.~~ stock of this location has been examined and is apparently free from dangerously injurious plant pests.

(d) The nursery ~~stock~~ inspection certificate ~~of inspection~~ issued by the Department shall be valid for a period of 1 year, beginning January 1 and ending December 31 of the same year.

Section 4. Amend § 1305, Title 3 of the Delaware Code by making deletions as shown by strike through and insertions as shown by underline as follows:

§ 1305. Shipping, labeling and certification requirements.

(a) No person(s) shall sell, ship or give away, by private carrier, commercial carrier or any other means, any plants, plant materials or nursery stock from any nursery, business, or premises within the State, without an accompanying nursery ~~stock~~ inspection certificate as prescribed in § 1303 of this title. The aforementioned information shall be plainly printed upon a tag, label, etc. that is not easily destroyed, which shall be firmly affixed on the exterior and in a conspicuous position upon each carload, box, container, package, etc. It is the responsibility of both the consignee and consignor to contact the Department to obtain a current nursery ~~stock~~ inspection certificate and to examine all shipments for the presence of all certification requirements.

Section 5. Amend § 1306, Title 3 of the Delaware Code by making deletions as shown by strike through and insertions as shown by underline as follows:

§ 1306. Shipment of nursery stock into state; labeling and certification

When any plants, plant materials or nursery stock are shipped, sent or mailed into this State, to any person in this State, every carload, container, box, package, etc., shall be conspicuously labeled on the exterior with the name of the consignor, the state of origin and the name of the consignee. The aforementioned shipment shall have conspicuously affixed to its exterior, a nursery ~~stock~~ inspection certificate from the state of origin showing that the contents have been examined by a qualified state or federal officer and found apparently free from all dangerously injurious plant pests. It is the responsibility of both the consignee and consignor to examine all shipments for the presence of current and applicable nursery stock certifications.

Section 6. Amend § 1307, Title 3 of the Delaware Code by making deletions as shown by strike through and insertions as shown by underline as follows:

§ 1307. Transportation companies; receiving uncertified nursery stock; failure to notify Department.

Any person(s) who acts as the representative of a transportation company, private carrier, commercial shipper, common carrier, express parcel carrier or other transportation entity, and receives, ships or moves a carload, box, container, package, etc., of plants, plant materials or nursery stock, that does not have a nursery ~~stock~~ inspection certificate or proper phytosanitary certificates attached as provided for in § 1303 or § 1305 of this title, and fails to immediately notify the Department shall be subject to §§ 1310 through 1313 of this title.

Section 7. Amend § 1309, Title 3 of the Delaware Code by making deletions as shown by strike through and insertions as shown by underline as follows:

§ 1309. Reciprocal agreements.

The Department shall have the authority to make reciprocal agreements with the responsible officials of other states. Nursery stock or plants from any other state may be sold or delivered in Delaware under the same conditions required for sale, delivery, or distribution of Delaware nursery stock or plant materials. An official directory of certified nurseries and related nursery ~~industry~~ businesses will be accepted from other states in lieu of individual nursery licenses/certificates.

Section 8. Amend § 1310, Title 3 of the Delaware Code by making deletions as shown by strike through and insertions as shown by underline as follows:

§ 1310. Violations.

(a) Any person(s) who has in their possession plants, plant materials or nursery stock that is uncertified, uninspected, and/or falsely or misleadingly labeled or advertised possesses an illegal regulated commodity. The aforementioned plants shall be considered infested or infected with dangerously injurious plant pests and therefore deemed a public nuisance. Public nuisances shall be abated as prescribed in § 1304 of this title. If the Secretary determines that the

provisions of this section have been violated, he or she shall order and direct that the nuisance be abated by the destruction of all of the plants in question, unless the aforementioned person(s)(as applicable):

(1) Submits to the nursery ~~stock~~ certification process.

(2) Provides proper phytosanitary pre-clearance, phytosanitary certification or nursery ~~stock~~ certification.

(3) Agrees to have the plants, plant materials or nursery stock returned to the consignor.

(4) Provides proper documentation, certification or compliance to support advertising claims.

The abatement of this public nuisance shall be at the expense of the aforementioned person(s) and shall be without any form of compensation.

(b) Under this chapter, any person(s) who wilfully or knowingly:

(1) Misrepresents or falsifies information on a nursery industry license application;

(2) Fails to obtain a nursery ~~industry~~ license;

(3) Fails to renew a nursery ~~industry~~ license, but continues business operations;

(4) Fails to display their nursery ~~industry~~ license;

(5) Falsely displays a nursery ~~industry~~ license;

(6) Misrepresents or falsifies their nursery ~~industry~~ license status;

(7) Misrepresents or falsifies information on a nursery ~~stock of inspection;~~ inspection certificate;

(8) Fails to submit to a nursery inspection;

(9) Fails to provide the cooperation necessary to conduct a successful nursery inspection;

(10) Fails to satisfactorily pass the nursery inspection, but continues business operations;

(11) Possesses uncertified plants, plant materials or nursery stock;

(12) Possesses an illegal regulated commodity;

(13) Defies a Department hold order;

(14) Violates a quarantine imposed by the Department;

(15) Fails to obtain nursery ~~stock~~ inspection certification;

(16) Fails to obtain phytosanitary certification;

(17) Fails to obtain phytosanitary pre-clearance;

(18) Creates or possesses a public nuisance;

(19) Misrepresents or falsifies information to obtain nursery ~~stock~~ inspection certification, phytosanitary certification or phytosanitary pre-clearance;

(20) Defaces, mutilates or destroys a nursery ~~stock~~ inspection certificate, phytosanitary certificate or phytosanitary pre-clearance certificate or other Department mark;

(21) Fails to notify the Department of an uncertified shipment of plant, plant materials or nursery stock;

(22) Transports uncertified plants, plant materials or nursery stock;

(23) Misrepresents or falsifies plant advertisement or label information; or

(24) Fails to comply with the nursery ~~industry~~ license advertising requirements;

(25) Commits any violation of this chapter as determined by the Secretary or the Secretary's designee;

shall be subject to the assessment of a civil penalty, the confiscation or destruction of any and all plants, plant materials or nursery stock found on the premises or contained in the shipment in question, and/or the suspension or revocation of their current nursery ~~industry~~ license or any future operation privileges granted under this chapter.

Section 9. Amend § 1311, Title 3 of the Delaware Code by making deletions as shown by strike through and insertions as shown by underline as follows:

§ 1311. Hearing procedures.

(a) No civil penalty shall be imposed until an administrative hearing is held before the Secretary of Agriculture and the Secretary's designee. No civil penalty shall be assessed unless the person charged shall have been given notice and opportunity for a hearing on such charge in accordance with Chapter 101 of Title 29. The Secretary or the Secretary's designee shall ~~mail~~ issue a written decision to the alleged violator within 30 days of the conclusion of the administrative hearing.

(b) The person(s) charged with a violation of this chapter will be notified in writing of the date and time of the ~~aforementioned~~ administrative hearing. The ~~aforementioned~~ person(s) charged with a violation of this chapter shall have the right to appear in person, to be represented by counsel, and to provide witnesses in ~~his or her~~ the person's own behalf.

(c) The Secretary, for the purposes of investigation of a possible violation of this chapter and for its hearings, may issue subpoenas, compel the attendance of witnesses, administer oaths, take testimony and compel the production of documents. In case any person summoned to testify or to produce any relevant or material evidence refuses to do so without reasonable cause, the Department of Agriculture may compel compliance with the subpoena by filing a motion to compel in Superior Court which shall have jurisdiction over this matter.

(d) The Department shall preserve a full record of the proceedings and a transcript may be purchased by any interested ~~person.~~ on payment to the Department at the cost of preparing such transcript.

Section 10. Amend § 1312, Title 3 of the Delaware Code by making deletions as shown by strike through and insertions as shown by underline as follows:

§ 1312. Appeals.

A person who feels aggrieved by ~~the~~ an action of the Department ~~as a result of~~ resulting from the administrative hearing held under the authority of this chapter may take appeal, within 30 days of the written decision or other action of the Department, to the Superior Court. After full hearing, the Court shall make such decree as seems just and proper. Written notice of such appeal, together with the ~~grounds,~~ grounds therefore, shall be served upon the Secretary of the Department of Agriculture.

Section 11. Amend § 1313, Title 3 of the Delaware Code by making deletions as shown by strike through and insertions as shown by underline as follows:

§ 1313. Civil penalties.

(a) The civil penalty for violation of any section of this chapter not already stated will be one or more of the following:

(1) ~~the~~ The assessment of a civil ~~penalty,~~ penalty of no less than $100 nor more than $1000 on each count.

(2) ~~the~~ The confiscation or destruction of any and all plants, plant materials or nursery stock found on the premises or contained in the shipment in ~~question,~~ question.

(3) ~~and/or the~~ The suspension or revocation of their current nursery ~~industry~~ license or any future operation privileges granted under this chapter.

(b) Any person who violates any section of this chapter or interferes with the Department or its representatives in the enforcement of this chapter, as determined in an administrative hearing, shall be assessed a civil penalty of no less than $100 nor more than $1000 on each count.

(c) The proceeds of any fines or penalties imposed under this chapter shall be deposited into an appropriated special fund account in the Department of Agriculture. These funds shall be used to support the nursery inspection programs of the Department of Agriculture.