

TITLE 22
AGRICULTURE AND HORTICULTURE

CHAPTER 23
NURSERIES AND FLORISTS

22-2301. STATEMENT OF PURPOSE. The legislature and the Idaho nursery and florist industry find and declare that the propagation and raising of nursery and florist stock is an agricultural pursuit that should be regulated and assisted by the department of agriculture to provide a high quality and pest free product to the citizens of Idaho and Idaho's external trading partners. A nursery and floral services program shall be maintained within the department for the purpose of carrying out and enforcing the provisions of this chapter.

[22-2301, added 1998, ch. 89, sec. 1, p. 305.]

22-2302. DEFINITION OF TERMS. For the purpose of this chapter:

(1) The singular and plural forms of any word or term in this chapter shall be interchangeable and equivalent within the meaning of this chapter.

(2) "Agent" means any person only soliciting orders in this state for the purchase or sale of nursery or florist stock for any principal who is not licensed under this chapter.

(3) "Dealer":

(a) Means any person who deals in, sells, handles, consigns, or accepts on consignment, imports, stores, displays or advertises nursery or florist stock which he has not grown.

(b) The term does not include persons whose business is located out-of-state and who import and sell such nursery or florist stock not grown in Idaho into this state and who only solicit such nursery or florist stock sales through salesmen or representatives or by mail or advertisement. Such a person to be exempt as a dealer must not own, lease, control, or maintain buildings, warehouses or any location or place in Idaho in which or through which such nursery or florist stock is stored, sold, offered for sale, or held for sale or delivered therefrom. The nursery or florist stock must be shipped direct from the out-of-state location or place of business to the grower, wholesaler, retailer, or ultimate consumer or user in Idaho.

(4) "Department" means the Idaho department of agriculture.

(5) "Director" means the director of the Idaho department of agriculture.

(6) "Florist stock" shall include all cut flowers, foliage and ferns, all potted plants or cuttings or bedding plants, and all flowering bulbs and rooted herbaceous plants used for ornamental or decorative purposes and all corms, whether grown in boxes, benches, pots, under glass or other artificial covering, or in the field or open ground or cuttings therefrom.

(7) "Grower" means any person who grows nursery stock.

(8) "Landscape contractor" shall be construed as applying to any person or persons engaged in landscaping property for which he, she, or they will furnish the plants, trees, or shrubs either from his, her, or their own nurseries or by purchase or on contract from other nurseries.

(9) "Not regularly engaged in the business" shall be construed to mean sales of nursery and/or florist stock incident to farming and gardening operations by persons who do not display such nursery and/or florist stock for

sale by use of signboards, placards, newspapers, radio, or other circulation medium.

(10) "Nursery and/or floral shop" shall be construed to mean any grounds, buildings, greenhouses, or premises either privately or publicly owned on or in which nursery stock or florist stock is propagated or grown for sale, either at the present or at some future time; or any grounds, buildings, greenhouses, vehicles, or premises on or in which nursery or florist stock is being stored, packed, or offered for sale.

(11) "Nursery stock" includes all botanically classified plants or any part thereof, such as aquatic or herbaceous plants, bulbs, sod, buds, corms, culms, roots, scions, grafts, cuttings, fruit pits, seeds of fruits, forest and ornamental trees, and shrubs, berry plants, and all trees, shrubs, vines, and plants collected in the wild that are grown or kept for propagation or sale. The term does not include field and forage crops, seeds of grasses, cereal grains, vegetable crops and flowers, bulbs and tubers of vegetable crops, vegetables or fruit used for food or feed, cut trees or cut flowers unless stems or other portions thereof are intended for propagation.

(12) "Nurseryman or florist" shall be construed to mean the person who owns, leases, manages, or is in charge of a nursery or flower shop or grows nursery or florist stock on shares or on contract.

(13) "Person" includes, but is not limited to, any individual, partnership, corporation, company, firm, society, association, organization, government agency, or any other entity.

(14) "Pest" means any biotic agent (any living agent capable of reproducing itself) or any of the following that is known to cause damage or harm to the production of agricultural crops or the environment:

(a) Any infectious, transmissible or contagious disease of any plant; or any disorder of any plant which manifests symptoms or behavior which, after investigation, is found and determined by a duly constituted federal, state or local pest prevention agency, to be characteristic of an infectious, transmissible or contagious disease.

(b) Any form of animal life.

(c) Any form of plant life, including noxious weeds as defined and listed in [chapter 4, title 22](#), Idaho Code, and [chapter 24, title 22](#), Idaho Code, and rules promulgated thereunder.

(15) "Sell" or "sale" means to offer, expose, or hold for sale, have for the purpose of sale, or to solicit orders for sale or to deliver, distribute, exchange, furnish, or supply.

(16) "Wholesale" means a sale in quantity to one who intends to resell; selling to retailers or contractors rather than consumers.

[(22-2302) added 1984, ch. 231, sec. 2, p. 554; am. and redesign. 1998, ch. 89, sec. 2, p. 305.]

22-2303. DUTIES OF THE DEPARTMENT. The department is authorized to:

(1) Inspect the nursery or florist stock of growers, dealers, and other persons and places of business provided for under sections [22-2301](#) through [22-2325](#), Idaho Code.

(2) Issue certificates and permits and check the license and licensing of persons affected by the provisions of sections [22-2302](#) and [22-2315](#), Idaho Code.

(3) Investigate violations of the provisions of sections [22-2301](#) through [22-2325](#), Idaho Code.

(4) Publish annually a list of all licensed nurseries, florists and agents. The annual list shall be distributed to the agricultural regulatory authority of each state and upon request to any licensed nurseries and florists within the state.

(5) Issue rules prescribing approved procedures and services as needed for the protection of the industry and to assure access to domestic and foreign markets.

[(22-2303) added 1984, ch. 231, sec. 2, p. 554; am. and redesign. 1998, ch. 89, sec. 3, p. 307.]

22-2304. STATE NURSERY AND FLORIST ADVISORY COMMITTEE. (1) In order to maintain close contact between the department and the nursery and florist industry, there is hereby created a state nursery and florist advisory committee which shall consist of six (6) members appointed by the director of the department of agriculture from a list provided by the Idaho nursery association. Said list will name at least two (2) persons as eligible for each vacancy on the committee. The term of each member shall be for three (3) years beginning on July 1 of the year of appointment. A member shall continue to serve until a successor is appointed and qualified. Vacancies in office shall be filled by appointment for the unexpired term.

(2) No member of the committee shall receive any salary or other compensation, but each member of the committee shall be reimbursed for each day spent in actual attendance in meetings of the committee at the same rate as is allowed state employees for travel expenses.

(3) The functions of the committee shall be to advise and counsel with the department in the administration of the provisions of this chapter.

(4) The committee shall meet at the call of the chairman or the director of the Idaho department of agriculture. A majority of the members present at any meeting shall constitute a quorum, and a majority vote of the quorum at any meeting shall constitute an official act of the committee.

(5) At the first meeting after July 1 in each year, the committee shall select a chairman. The dean of the school of agriculture at the University of Idaho and the director of the Idaho department of agriculture, or their representatives, shall be ex-officio members without the right to vote.

[(22-2304) added 1984, ch. 231, sec. 2, p. 555; am. and redesign. 1998, ch. 89, sec. 4, p. 307.]

22-2305. LICENSE REQUIRED -- SCHEDULE OF FEES. (1) It shall be unlawful for any person to engage in, conduct, or carry on the business of propagating, growing, selling, dealing in, or importing into this state, for sale or distribution, any nursery or florist stock, or to engage in landscape designing, or to act as agent, salesman, or solicitor for any nurseryman, florist, landscape contractor, or dealer in nursery or florist stock without first obtaining a license to do so from the Idaho department of agriculture, and it shall be unlawful for any person to falsely represent that he is the agent, salesman, solicitor, or representative of any nurseryman, florist, landscape contractor, or dealer in nursery or florist stock.

(2) The provisions of this chapter shall not apply to the sale of plants, shrubs, scions, or florist stock by any person not regularly engaged in that business when said sales are only incident to the seller's farming or gardening operations and the total amount of gross annual sales by such seller does not exceed five hundred dollars (\$500). The department shall

have the authority to inspect any nursery or florist stock in the possession of any person exempted by this subsection, when it has reason to believe that there may be a pest concern or quarantine violation.

(3) Every nurseryman or florist, landscape contractor, dealer, or importer of nursery or florist stock, or collector of native plants for sale shall make application for a license to the Idaho department of agriculture upon a form to be prescribed and furnished by said department, pay to said department the license fee as provided in subsection (4) of this section. No license shall be issued until the applicant shall have paid the fee hereinafter provided.

(4) Nurseries required to be licensed shall consist of nurserymen, florists, dealers, landscape contractors, and importers of nursery or florist stock, and collectors of native plants for sale, and they shall pay a license fee of one hundred dollars (\$100) for their principal place of business. Nurseries with more than one (1) retail outlet shall identify the number and location of such additional outlets on the license application and pay an additional one hundred dollars (\$100) for each such additional outlet. The license number shall be prominently displayed in each outlet. Should the holder of a nursery license add one (1) or more outlets during the license year, the department must be notified and the one hundred dollar (\$100) surcharge for each such outlet paid immediately.

(5) Dealers shall keep accurate records of their sales and transactions involving nursery or florist stock and shall produce the same at any time when so required by the Idaho department of agriculture. At any hearing in which the amount of license fee to be paid by any person is involved or any questions as to such person's claim for exemption from the provisions of this chapter, such person shall have the burden of proof to establish his claim.

(6) A license fee for an agent as defined in section [22-2302](#), Idaho Code, is twenty-five dollars (\$25.00) per annum for each principal that the agent represents. Agents soliciting sales only from persons licensed under this chapter shall be exempt from licensing fees.

(7) The fees for nursery or florist stock inspection and special services performed for persons not required to be licensed shall be as provided in rules promulgated by the director.

[(22-2305) added 1984, ch. 231, sec. 2, p. 556; am. and redesign. 1998, ch. 89, sec. 5, p. 308; am. 1999, ch. 83, sec. 1, p. 279; am. 2008, ch. 130, sec. 1, p. 364.]

22-2306. TEMPORARY NURSERY OR FLORIST SALE LICENSE OR LOCATION -- APPLICATION FEE -- CONDITION. (1) Upon payment of a fee of twenty-five dollars (\$25.00), a temporary nursery or florist sale license may be issued by the department for holding of a nursery stock sale conducted by or for the benefit of a duly registered nonprofit organization where such sale does not exceed seven (7) consecutive days in any calendar year.

(2) Application for a temporary nursery or florist license shall be made on a form furnished by the department, and shall be accompanied by the license fee as required for each sale.

(3) The department may prescribe the conditions of such temporary nursery and florist sale license, which conditions shall be stated in the license. Any such license may be revoked or suspended by the department for violation of any of the conditions stated therein.

(4) A licensed nursery or florist with a previously established place of business may conduct business from a temporary location, provided the location is not utilized for more than six (6) weeks in any calendar year.

[(22-2306) added 1984, ch. 231, sec. 2, p. 556; am. and redesign. 1998, ch. 89, sec. 6, p. 309.]

22-2307. RENEWAL OF LICENSE. (1) The fees for the renewal of the annual license required by this chapter shall be paid with the application for license renewal before January 1 of each year. Any license not renewed by February 1 of each year shall be assessed an additional twenty-five dollar (\$25.00) fee along with the required license fee specified in section [22-2305](#), Idaho Code.

(2) Failure to pay the fees when due forfeits the right to operate as a grower, dealer, or agent.

(3) Any person who has been previously licensed to grow or sell nursery or florist stock and whose right to grow or sell has been forfeited shall not be issued a renewal license except upon written application to the department accompanied by a sum of money equal to the regular license fee as provided in section [22-2305](#), Idaho Code.

[(22-2307) added 1984, ch. 231, sec. 2, p. 556; am. and redesign. 1998, ch. 89, sec. 7, p. 309.]

22-2308. AGENT'S LICENSE. (1) No agent's license shall be issued or valid unless the agent's principal has given the department written authorization to issue the license.

(2) An agent's license shall be automatically suspended during any period when he is not acting as an agent or the principal has withdrawn or cancelled the authorization.

(3) If his license has not expired, an agent may revive his license by giving notice to the department that he is again acting as an agent. If the agent represents a principal other than the one who gave the written authorization to issue the license, subsection (1) of this section applies.

[(22-2308) added 1984, ch. 231, sec. 2, p. 557; am. and redesign. 1998, ch. 89, sec. 8, p. 310.]

22-2309. LICENSE NOT TRANSFERABLE -- MOVING PLACE OF BUSINESS. (1) A license is personal to the applicant and may not be transferred. A new license is necessary if the business entity of the licensee is changed or if the membership of a partnership is changed, irrespective of whether or not the business name is changed.

(2) The license issued to a grower or dealer applies to the particular premises named in the license. However, if prior approval is obtained from the department, the place of business may be moved to other premises or locations without the necessity of relicensing.

[(22-2309) added 1984, ch. 231, sec. 2, p. 557; am. and redesign. 1998, ch. 89, sec. 9, p. 310.]

22-2310. SUSPENSION, REVOCATION, OR REFUSAL OF LICENSE. The department may suspend, revoke, or refuse to issue or renew the license of any person when it is satisfied that:

(1) The applicant or licensee has been guilty of fraud, deception, or misrepresentation in the procurement of a license; or

(2) The licensee was guilty of violating any of the provisions of this chapter.

[(22-2310) added 1984, ch. 231, sec. 2, p. 557; am. and redesign. 1998, ch. 89, sec. 10, p. 310.]

22-2311. ADVERTISEMENT OF NURSERY OR FLORIST STOCK FOR SALE. No person may advertise in any media, any plant material covered under this chapter as being for sale without disclosing the person's company name or license number.

[22-2311, added 1998, ch. 89, sec. 11, p. 310.]

22-2312. WHOLESALE SALES. No licensed nursery or florist may make wholesale sales of plant material for resale to an unlicensed nursery, florist, or landscape contractor.

[22-2312, added 1998, ch. 89, sec. 12, p. 311.]

22-2313. ISSUANCE OF SHIPPING PERMIT NUMBERS. (1) The department may issue a shipping permit number to any licensee who requests or requires one.

(2) When authorized or required by the department, the shipping permit number shall accompany all shipments and deliveries of nursery or florist stock. Authorization for such use of a shipping permit number shall be renewed at least annually, subject to rules promulgated by the director. Use of a shipping permit number without proper authorization shall constitute a violation of this chapter.

[(22-2313) added 1984, ch. 231, sec. 2, p. 558; am. and redesign. 1998, ch. 89, sec. 13, p. 311.]

22-2314. INSPECTION OF LICENSED AND UNLICENSED NURSERIES -- ADDITIONAL INSPECTIONS AND SPECIAL SERVICES -- FEES. (1) The department shall inspect each licensed nursery and florist as often as the department considers necessary to determine and control pests.

(2) The department may make additional inspections and perform special services as needed in addition to those in paragraph (a) of this subsection including, but not limited to:

(a) Inspections for and issuance of phytosanitary certificates and other certificates required for entrance of nursery or florist stock into other states and foreign countries;

(b) Services performed to verify compliance with import regulations of other states and foreign countries; and

(c) Observing application of pesticides, including fumigants, on nursery or florist stock for phytosanitary purposes.

(3) The director shall maintain a schedule of fees for such additional inspections as may be required or requested.

[(22-2314) added 1984, ch. 231, sec. 2, p. 558; am. and redesign. 1998, ch. 89, sec. 14, p. 311.]

22-2315. SUBSTITUTION OR TRANSPORTATION OF UNINSPECTED NURSERY OR FLORIST STOCK PROHIBITED. No person shall:

(1) Substitute other nursery or florist stock for nursery or florist stock covered by an inspection certificate; or

(2) Transport or accept for transportation within the state of Idaho nursery or florist stock that does not carry the official inspection tag authorized by the department.

[(22-2315) added 1984, ch. 231, sec. 2, p. 558; am. and redesign. 1998, ch. 89, sec. 15, p. 311.]

22-2316. MISREPRESENTATION OF NURSERY STOCK BY GROWER, DEALER, OR AGENT PROHIBITED -- TAGS OR LABELS REQUIRED ON FRUIT TREES -- NURSERY OR FLORIST STOCK AS HORTICULTURAL PRODUCT. (1) No grower, dealer, or agent shall:

(a) Sell nursery or florist stock representing it to be a name, age, or variety different from what the nursery or florist stock actually is; or

(b) Represent that any nursery or florist stock is a new variety when, in fact, it is a standard variety and has been given a new name; or

(c) Sell or present cormels as corms or bulblets as bulbs.

(2) In addition the grower, dealer, or agent shall attach to every bundle of fruit-bearing trees sold or shipped within this state a tag or label specifying the name of the variety of trees contained therein. If the bundle shall contain trees of different varieties, such label or tag shall be attached to each tree or group of trees of the same variety.

[(22-2316) added 1984, ch. 231, sec. 2, p. 559; am. and redesign. 1998, ch. 89, sec. 16, p. 312.]

22-2317. KNOWINGLY SELLING, ADVERTISING, OR DISPLAYING DAMAGED, MISREPRESENTED, OR MISLABELED NURSERY OR FLORIST STOCK PROHIBITED. (1) No person shall knowingly offer to sell, advertise, or display nursery or florist stock:

(a) That is dead, in a dying condition, seriously broken, desiccated, frozen or damaged by freezing, or materially damaged in any way;

(b) By any methods which have the capacity and tendency or effect of deceiving any purchaser or prospective purchaser as to the quantity, size, grade, kind, species, name, age, variety, maturity, condition, vigor, hardiness, number of times transplanted, growth ability, growth characteristics, rate of growth, or time required before flowering or fruiting, price, origin, or place where grown, or in any other material respect;

(c) That fails to meet the grade with which it is labeled;

(d) By making other false or fraudulent representations in connection with the sale of nursery or florist stock.

[(22-2317) added 1984, ch. 231, sec. 2, p. 559; am. and redesign. 1998, ch. 89, sec. 17, p. 312.]

22-2318. KNOWINGLY SELLING, MOVING, OR STORING INFECTED OR INFESTED NURSERY OR FLORIST STOCK PROHIBITED -- SEIZURE. (1) No person shall knowingly offer to sell nursery or florist stock that is infected or infested.

(2) Unless the nursery or florist stock is held for separation or treatment under the supervision of an officer, employee, or inspector of the de-

partment, no person shall advertise, display, transport, move, store, or warehouse nursery or florist stock that is infected or infested.

(3) Any infected or infested nursery or florist stock may be seized.

(a) As used in this section, "infected" means any appearance of a disease symptom or causal agent that may, in the opinion of the department, be a menace to other nursery or florist stock or any products or properties.

(b) As used in this section, "infested" means when the mature or immature form of any plant pest, including noxious weeds as defined by the department, is found in such numbers as, in the opinion of the department, to be a menace to other nursery or florist stock or any product or properties.

[(22-2318) added 1984, ch. 231, sec. 2, p. 559; am. and redesign. 1998, ch. 89, sec. 18, p. 312.]

22-2319. STOP SALE ORDER -- CONDEMNATION. (1) The department may issue and enforce a written or printed "stop-sale" order to any dealer, agent, grower, or other person who is the owner or custodian of any nursery or florist stock when the department finds such nursery or florist stock is being offered for sale in violation of any of the provisions of this chapter.

(2) The "stop-sale" order shall be in effect until the provisions of this chapter have been complied with and said nursery or florist stock is released by order, in writing, of the department. If the nursery or florist stock under "stop-sale" order is determined after a reasonable period to be in such condition that neither treatment nor passage of time will enable it to meet the requirements of this chapter for sale, the department may order such nursery or florist stock destroyed.

[(22-2319) added 1984, ch. 231, sec. 2, p. 559; am. and redesign. 1998, ch. 89, sec. 19, p. 313.]

22-2320. IMPORTED NURSERY OR FLORIST STOCK TO BEAR CERTIFICATE OF ORIGIN -- CONTENTS. Nursery or florist stock imported into Idaho must be accompanied by a certificate from the place of origin, signed by an authorized agent or representative of the agency supervising and responsible for carrying out the nursery and florist stock laws of such originating state or country. The certificate shall contain additional information as may be required by the department to carry out and enforce the provisions of this chapter.

[(22-2320) added 1984, ch. 231, sec. 2, p. 559; am. and redesign. 1998, ch. 89, sec. 20, p. 313.]

22-2321. NURSERY STOCK STANDARDS. Nursery stock standard for grade, quality and size shall be those as published by the American nursery and landscape association. The department shall not actively enforce these standards except in the case of a complaint or dispute.

[22-2321, added 1998, ch. 89, sec. 21, p. 313.]

22-2322. RECIPROCITY. The department will honor the nursery and florist license of a company doing business in, but not physically located in or having an agent in the state, provided that the license is issued by the

appropriate regulatory authority in the state of origin, and that authority accepts the licenses issued by the Idaho department of agriculture for Idaho companies doing business in the same manner within that state.

[22-2322, added 1998, ch. 89, sec. 22, p. 314.]

22-2323. DISPOSITION AND USE OF MONEY RECEIVED. Fees collected shall be paid into the state treasury and credited to the agriculture inspection account created by section [22-104](#), Idaho Code, and such fees shall be used only to carry out the provisions of this chapter. Additionally, twenty-five dollars (\$25.00) from each license fee collected under this chapter shall be credited to a special nursery research and education account. The state nursery and florist advisory committee shall approve the distribution of research and education funds to further educational outreach and research into nursery and floral production and pest control.

[(22-2323) added 1984, ch. 231, sec. 2, p. 559; am. and redesisg. 1998, ch. 89, sec. 23, p. 314; am. 2007, ch. 52, sec. 1, p. 124.]

22-2324. VIOLATION. (1) Any person who shall violate or fail to comply with any of the provisions of this chapter shall be deemed guilty of a misdemeanor.

(2) Any person who violates or fails to comply with any of the provisions of this chapter or any rules promulgated under this chapter may be assessed a civil penalty by the department or its duly authorized agent of not more than five hundred dollars (\$500) for each offense and shall be liable for reasonable attorney's fees. Assessment of a civil penalty may be made in conjunction with any other administrative action of the department. No civil penalty may be assessed unless the person charged was given notice and opportunity for a hearing pursuant to the Idaho administrative procedure act. If the department is unable to collect such penalty or if any person fails to pay all or a set portion of the civil penalty as determined by the department, it may recover such amount by action in the appropriate district court. Any person against whom the department has assessed a civil penalty under the provisions of this section may, within thirty (30) days of the final action by the agency making the assessment, appeal the assessment to the district court of the county in which the violation is alleged by the department to have occurred. Moneys collected pursuant to this section shall be remitted to the agricultural inspection account.

(3) Nothing in this chapter shall be construed as requiring the director to report minor violations for prosecution when he believes that the public interest will be best served by suitable warnings or other administrative action.

[(22-2324) added 1984, ch. 231, sec. 2, p. 559; am. and redesisg. 1998, ch. 89, sec. 24, p. 314.]

22-2325. SEVERABILITY. The provisions of this act are hereby declared to be severable and if any provision of this act or the application of such provision to any person or circumstance is declared invalid for any reason, such declaration shall not affect the validity of remaining portions of this act.

[(22-2325) added 1984, ch. 231, sec. 2, p. 559; am. and redesign. 1998, ch. 89, sec. 25, p. 315.]