CHAPTER 33

Shipment and Sale of Trees, Plants, and Shrubs

**SECTION 46‑33‑10.** Inspection of out‑of‑state shipments into State.

Every person engaged in the nursery business at a place without this State who ships trees or plants into this State shall have them examined by the State Crop Pest Commission, and no such shipment shall be made until and unless such plants have been inspected by the Commission and shall have had placed thereon a tag prepared by the Commission, showing that such trees or plants have been duly inspected and are free from disease.

The provisions of this section shall not apply to persons engaged in the nursery business in any state which recognizes and accepts the inspection made by the Commission on shipments made from this State.

HISTORY: 1962 Code Section 3‑124; 1952 Code Section 3‑124; 1942 Code Section 3267; 1932 Code Section 3267; 1926 (34) 957.

**SECTION 46‑33‑20.** Bond required on out‑of‑state shipments into State.

Before any such person engaged in the nursery business at a place without this State, in a state which does not recognize and accept the inspection made by the Commission on shipments made from this State, shall be permitted to sell or deliver trees or plants within this State he shall execute a bond in the sum of five thousand dollars and file same with the Commission. The bond shall be in the form prescribed by the Commission and conditioned upon such person conforming to all the rules, regulations and requirements of the Commission. The Commission shall prepare and furnish all forms necessary to carry out the provisions of this section.

HISTORY: 1962 Code Section 3‑125; 1952 Code Section 3‑125; 1942 Code Section 3267; 1932 Code Section 3267; 1926 (34) 957.

**SECTION 46‑33‑30.** Suits on bond.

Any person who may suffer loss or damage by reason of sales made within this State by a person to whom the provisions of Section 46‑33‑10 apply shall have a right to sue on the bond required by Section 46‑33‑20 in any county in this State.

HISTORY: 1962 Code Section 3‑126; 1952 Code Section 3‑126; 1942 Code Section 3267; 1932 Code Section 3267; 1926 (34) 957.

**SECTION 46‑33‑40.** Appointment of Secretary of State as agent for service of process by out‑of‑state shippers.

As a further condition precedent for doing business in this State any person to whom the provisions of Section 46‑33‑10 apply shall appoint the Secretary of State as his agent to accept service in any suit brought against him for the violation of the conditions of the bond required by Section 46‑33‑20.

HISTORY: 1962 Code Section 3‑127; 1952 Code Section 3‑127; 1942 Code Section 3267; 1932 Code Section 3267; 1926 (34) 957.

**SECTION 46‑33‑50.** Annual license tax on out‑of‑state shippers.

Any person to whom the provisions of Section 46‑33‑10 apply shall pay an annual license tax of one hundred dollars to do business in this State, such amount to be paid to the State Treasurer who shall issue a receipt for it.

HISTORY: 1962 Code Section 3‑128; 1952 Code Section 3‑128; 1942 Code Section 3267; 1932 Code Section 3267; 1926 (34) 957.

**SECTION 46‑33‑60.** Penalty on out‑of‑state shippers.

Any person to whom the provisions of Section 46‑33‑10 apply failing or refusing to file the bond or pay the license tax as aforesaid shall be guilty of a misdemeanor and be subject to a fine of not more than five hundred dollars or imprisonment for not more than two years, or both such fine and imprisonment within the discretion of the court.

HISTORY: 1962 Code Section 3‑129; 1952 Code Section 3‑129; 1942 Code Section 3267; 1932 Code Section 3267; 1926 (34) 957.

**SECTION 46‑33‑70.** Sale of diseased plants is a misdemeanor.

It shall be unlawful to sell, offer for sale or transport plants, buds, trees, shrubs, vines, tubers, bulbs, roots or cuttings known to be infested with dangerous or injurious insects or plant diseases; and any person violating the provisions of this section shall be deemed guilty of a misdemeanor and, upon conviction, shall be fined in a sum not exceeding one hundred dollars or imprisoned in the county jail for not exceeding thirty days.

HISTORY: 1962 Code Section 3‑130; 1952 Code Section 3‑130; 1942 Code Section 5806‑21; 1932 Code Section 1334; Cr. C. '22 Section 224; Cr. C. '12 Section 518; Cr. C. '02 Section 366; 1900 (23) 703.

**SECTION 46‑33‑80.** Fees, phytosanitary certificate, export or import of plants to or from foreign destinations.

Fees for phytosanitary certificates issued for export or import of plants to or from foreign destinations must be assessed in accordance with the federal fee schedule. The fees must be retained by the State Crop Pest Commission for use in the administration of this chapter.

HISTORY: 1994 Act No. 454, Section 1, eff June 16, 1994.

**SECTION 46‑33‑85.** Phytosanitary certificate or permit; fumigation using methyl bromide.

A phytosanitary certificate or a permit may be issued by an inspector for intrastate and interstate shipments of conifer and hardwood seedlings to verify that they are apparently free of pests and diseases. To ensure pest and disease‑free plant material, the preferred method of treatment is fumigation using methyl bromide in seedling plant beds prior to seeding.

HISTORY: 2007 Act No. 25, Section 1, eff May 14, 2007.

**SECTION 46‑33‑90.** Definitions; registration requirements.

(A) For purposes of this section:

(1) "Nursery" means any place where nursery stock is grown for sale.

(2) "Nursery stock" means all fruit, nut, and shade trees, all ornamental plants and trees, bush fruits, buds, grafts, scions, vines, roots, bulbs, seedlings, slips, or other portions of plants (excluding true seeds) grown or kept for propagation, sale, or distribution.

(3) "Nurseryman" means a person who operates a nursery for the production of nursery stock.

(4) "Registered nursery dealer" means any person other than a grower of nursery stock who buys certified nursery stock for resale with annual sales of five thousand dollars or more, and any nurseryman who operates a sales lot separately from his nursery with annual sales of five thousand dollars or more. Registered and unregistered nursery dealers are required to produce sales records to agents of the commission upon request.

(5) "Hobbyist" and "backyard gardener" mean any person selling nursery stock who has less than five thousand dollars in gross sales per calendar year. Hobbyist and backyard gardeners are required to produce sales records to agents of the commission upon request. Hobbyist and backyard gardeners are exempt from registration.

(6) "Gross annual sales" means the total sales of nursery stock or related live plant material made by a nursery or registered nursery dealer that occurs during a given calendar year.

(7) "Person" means an individual, firm, corporation, partnership, association, state or federal agency, school, other group, or organization.

(8) "Sales lot" means the individual physical area or property where a nursery or registered nursery dealer grows, collects, or distributes nursery stock or related live plant material for sale.

(9) "Turfgrass" means the top layer of earth comprised of grass leaf blades, stolons, thatch, and roots grown for commercial harvesting and sale such as sod, sprigs, or any other part thereof, excluding seed.

(10) "Turfgrass grower" means any person engaged in the production of turfgrass.

(B) All persons engaged in sale or distribution of nursery stock must register with the commission and pay the fees required by this section. The commission is authorized to collect and retain fees from nursery inspection and registration, nursery dealer registration, plant pest inspection, and all other plant pest certification activities.

(C)(1) Nursery registration fees shall be on a graduated scale and may not exceed two hundred dollars per year. All registration certificates expire on September thirtieth and are renewable on or before October first annually. In cases where nursery stock is grown at more than one location by one nursery, the fees shall be based upon the nursery's aggregate number of acres in production of the nursery. In cases where the nursery consists of a combination of greenhouses and acreage, a single license fee must be assessed at the higher rate of the two categories.

(2)(a) The following nursery registration fees shall be paid annually:

(i) Nursery stock, except turfgrass, with a production acreage of ten or less; greenhouses with less than six thousand square feet; or a turfgrass production acreage of two hundred fifty or less shall be $75.00.

(ii) Nursery stock, except turfgrass, with a production acreage of eleven to twenty‑five; greenhouses with six thousand to thirty thousand square feet; or a turfgrass production acreage of two hundred fifty‑one to five hundred shall be $125.00.

(iii) Nursery stock, except turfgrass, with a production acreage of twenty‑five or more; greenhouses with more than thirty thousand square feet; or a turfgrass production acreage of five hundred one or more shall be $200.00.

(b) The following nursery dealer fees shall be paid annually:

(i) Nursery dealer locations for which annual gross sales equal $10,000.00 or less shall pay $0.00.

(ii) Nursery dealer locations for which annual gross sales are between $10,001.00 to $100,000.00 shall pay $50.00.

(iii) Nursery dealer locations for which annual gross sales are over $100,000.00 shall pay $100.00.

(D) Growers who produce transplants or seedlings grown solely for the purpose of being distributed for production of agricultural commodities must register with the commission but are exempt from nursery registration fees. No ornamental bedding plants or nursery stock may be grown in conjunction with exempt agricultural transplants unless the fees required by this section are paid.

(E) Governmental and nonprofit organizations which are not in the business of commercial sale of nursery stock are exempt from the payment of fees and registration required by this section; however, governmental and nonprofit organizations which are not in the business of commercial sale of nursery stock are subject to all commission rules and regulations. The Forestry Commission is exempt from paying fees required by this section. All persons selling Christmas trees from November to January who are not otherwise required by this section to either register or pay the fees are exempt from registering and paying the fees.

HISTORY: 2000 Act No. 378, Section 1, eff June 14, 2000; 2017 Act No. 31 (S.570), Section 1, eff May 10, 2017.

Effect of Amendment

2017 Act No. 31, Section 1, inserted (A)(6) to (A)(10), relating to definitions of "gross annual sales", "person", "sales lot", "turfgrass", and "turfgrass grower"; rewrote (C)(2), relating to nursery registration fees; and made other nonsubstantive changes.

**SECTION 46‑33‑100.** Stop sale, use, or distribution orders; appeals.

If a person, subject to this chapter or another chapter under the cognizance of the commission, is selling, distributing, or growing plant material in violation of this chapter or other chapters, agents of the commission shall issue to the owner or custodian of the material a written stop sale, use, or distribution order. The material may not be sold, used, or distributed until the provisions of the chapter or other chapters have been brought into compliance and the material released by the director. A stop sale order may be appealed in writing to the director within fifteen days after the issuance of the order. The director shall respond in writing within ten days after receipt of the appeal.

HISTORY: 2005 Act No. 39, Section 2, eff April 15, 2005.