

# COLORADO



## DEPARTMENT OF AGRICULTURE

### DIVISION OF PLANT INDUSTRY

# COLORADO NURSERY ACT

## TITLE 35 ARTICLE 26

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**COLORADO DEPARTMENT OF AGRICULTURE  
DIVISION OF PLANT INDUSTRY  
700 KIPLING STREET, SUITE 4000  
LAKEWOOD, COLORADO 80215-8000**

Office: (303) 239-4154 • Internet Address: [www.colorado.gov/ag/dpi](http://www.colorado.gov/ag/dpi)

**TITLE 35  
AGRICULTURE**

**ARTICLE 26  
Colorado Nursery Act**

35-26-101 - 115 CRS (2009)

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**35-26-101. Short title.**

This article shall be known and may be cited as the "Colorado Nursery Act".

**35-26-102. Definitions.**

As used in this article, unless the context otherwise requires:

- (1) "Advertisement" means the attempt by publication, dissemination, solicitation, or circulation, visual, oral, or written, to induce directly or indirectly any person to enter into any obligation or to acquire any title or interest in any property.
- (1.5) (Deleted by amendment, L. 91, p. 151, § 5, effective July 1, 1991.)
- (1.7) "Body politic" means any agency of this state or of the federal government, or any unit of local government, including any county, city, town, school district, local improvement or service district, or special district, or any other governmental unit

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- having authority under the law to tax or impose assessments, including special assessments.
- (2) "Botanical name" means that name used in the binomial system of nomenclature consisting of the genus and the species of a particular plant and, if there be one, the variety name of the species.
  - (3) "Collected nursery stock" means any nursery stock removed from its original native habitat.
  - (4) "Collector" means any person who collects nursery stock for sale purposes.
  - (5) "Commissioner" means the commissioner of agriculture.
  - (6) "Common name" means the name of any plant which is in common and widest use in the state, to designate the kind and variety of a plant.
  - (7) "Dead or dying condition" means a condition in which a plant is without living tissue, or is weakened to a point that it is unlikely to grow with reasonable vigor when given reasonable care.
  - (8) (Deleted by amendment, L. 91, p. 151, § 5, effective July 1, 1991.)
  - (9) "Department" means the department of agriculture.
  - (9.5) "Grown within Colorado" means propagated from seed or cuttings or by budding or grafting in Colorado, or grown as a native stand of trees or shrubs or other stock growing on property owned or leased in Colorado by the nursery who intends to collect and sell such stock.
  - (10) "Insect pests" means the small invertebrate animal in the phylum anthropoda comprising the class insecta which generally have segmented bodies, are six-legged, and are usually winged, such as beetles, bugs, bees, and flies, including a similar class of arthropods whose members are wingless and generally have more than six legs, such as spiders, mites, ticks, centipedes, and wood lice which are injurious to nursery stock.
  - (11) "Landscape contractor" means a person who provides nursery stock for compensation or value as part of a site development or landscaping service.
  - (12) "Nursery" means any grounds or premises on or in which nursery stock is propagated, held, or grown for sale purposes.
  - (13) "Nurseryman" means any person owning, leasing, or managing a nursery. All persons engaged in the operation of a nursery are farmers and are engaged in agriculture for all statutory purposes.
  - (14) "Nursery stock" means all plants, whether field grown, container grown, or collected native plants; trees, shrubs, vines; turfgrass sod, seedlings, perennials, biennials; and buds, cuttings, grafts, and scions thereof, grown or collected or kept for propagation, sale, or distribution; except that it does not mean dormant bulbs, tubers, roots, corms, rhizomes, pips, field, vegetable, or flower seeds, bedding plants, annual plants, and florists' greenhouse plants, flowers, or cuttings commonly known as greenhouse stock.
  - (15) (Deleted by amendment, L. 91, p. 151, § 5, effective July 1, 1991.)
  - (16) "Orchard plants" means trees, shrubs, and vines which are grown solely for their fruit or other products.
  - (17) "Person" means any firm, partnership, association, corporation, society, individual, or combination of individuals.

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- (18) "Place of business" means each separate nursery, store, stand, sales ground, lot, or any location from which nursery stock is being sold, offered for sale, or distributed.
- (19) "Plant diseases" means the pathological condition in nursery stock caused by fungi, bacteria, nematodes, viruses mycoplasmas, or parasitic seed plants.
- (20) "Stop-sale order" means a written order prohibiting the sale of nursery stock.
- (21) "Turfgrass sod" means a strip or section of one or more grasses or other plants acceptable for lawn plantings which, when severed from its growing site, contains sufficient plant roots to remain intact, and does not contain weeds in excess of the amounts specified by the commissioner.
- (22) "Weed" means any plant which grows where not wanted.

### **35-26-103. Inspections.**

- (1) (a) Except as otherwise provided in this section, premises in this state on which nursery stock is kept for sale or offered for sale and all areas in this state that are sources of collected nursery stock may be inspected by the commissioner or the commissioner's authorized agents using a risk-based approach. If any person requests an inspection of crops, plant material, or other articles or premises for pests, the commissioner shall provide such inspection and issue a certificate setting forth the facts of said inspection. Inspections may also be made by the commissioner or the commissioner's authorized agents at any time deemed appropriate by the commissioner based on information known to the commissioner or based on any complaint received by the commissioner alleging failure to comply with any provision of this article or any rule promulgated pursuant to this article.
  - (b) Any nursery that only sells nursery stock that is grown within Colorado and does not export such stock outside of Colorado is exempt from the inspection requirements specified in paragraph (a) of this subsection (1); except that such nursery may be inspected upon request if the required inspection fee is paid.
- (2) No person shall sell in this state any nursery stock except from sources available for inspection.
- (3) The commissioner may promulgate rules establishing minimum standards for the qualification of individuals who are authorized to make inspections as agents of the commissioner under this article and who are not employees of the department. The commissioner may charge an annual fee for qualifying such individuals as inspectors pursuant to this subsection (3). Such fee shall be in an amount sufficient to defray the costs of qualifying inspectors pursuant to this subsection (3).
- (4) On an annual basis, the commissioner shall make public the results of such inspections in order to inform the public as to the major sale sources of nursery stock found not to be of the quality permitted to be sold, and the location where such nursery stock was offered for sale. Publication of such reports shall be as provided for in sections [35-1-107](#) (3) and 24-1-136, C.R.S.

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### **35-26-104. Labeling.**

- (1) There shall be securely attached to each item of nursery stock when offered for sale or delivered, or to each bundle or lot when sold as a single lot of the same kind, grade, size, and variety, a label showing the correct botanical or accepted common name and the grade or size of such nursery stock.
- (2) The grade or size shall meet the specifications established by rules or regulations after public hearing and publication by the commissioner.
- (3) The labeling required in subsection (1) of this section shall not apply to turfgrass sod. Each and every lot of turfgrass sod sold shall be labeled by stating on the sales contract, invoice, or bill of lading such information as required by the commissioner.

### **35-26-105. Prohibited acts - removal from sale - advisory alerts.**

- (1) No person shall sell or offer for sale:
  - (a) Nursery stock in a dead or dying condition;
  - (b) Nursery stock infested or infected with insect pests or plant diseases; or
  - (c) Nursery stock in violation of any other provision of this article or any rules or regulations promulgated pursuant to this article.
- (2) The commissioner or his authorized agents shall issue a stop-sale order to any person offering nursery stock for sale in violation of any provision of this article or any rules or regulations promulgated pursuant to this article. Any person receiving a stop-sale order shall remove such stock from sale immediately.
- (3) Failure to comply with any stop-sale order may result in penalties as set forth in section [35-26-109](#).
- (4) If the commissioner makes a finding, after notice and opportunity for a hearing, that substandard plant material is being sold by a nursery outside of Colorado to any nursery in this state, the commissioner may ban any products from said nursery from sale or distribution in Colorado and any further shipments of nursery stock from said nursery may be seized and destroyed. Upon such banning, the commissioner shall issue an alert to all persons registered under this article setting forth the commissioner's finding and advising registrants that the purchase of plant material from such offending nursery constitutes a violation of this article.

### **35-26-106. Colorado nursery fund - transfer of moneys to plant health, pest control, and environmental protection cash fund - fees.**

- (1) A person shall not engage in the business of selling nursery stock in this state, nor shall he advertise with the intent and purpose of selling nursery stock in this state, without having first obtained a registration issued by the commissioner. Such registration shall expire on December 31 of each year. Application for registration shall be submitted on a form prescribed by the commissioner. The commissioner shall, by rule or regulation, establish a

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registration fee for each place of business. Such fee shall not exceed one hundred dollars. Applicants for a registration who were registered at any time during the calendar year immediately preceding the year for which application is made shall apply for a registration by March 1 or pay an amount double the registration fee. No registration is transferable. All registrants shall inform the commissioner in writing of any change of address prior to any such change of address. All registrants shall meet the requirements of this article and the rules and regulations promulgated pursuant to this article.

- (2) Collectors shall produce upon demand, written evidence of authorization to have collected any and all nursery stock held or offered for sale. Such evidence of authorization shall provide information as required by rule and regulation promulgated pursuant to this article.
- (3) A charge for the actual cost incurred in making inspections shall be collected to defray the costs of inspections made pursuant to this article. The commissioner shall, by rule or regulation, establish a minimum charge per inspection, and shall determine the actual cost incurred in making inspections and establish the charge therefore.
- (4) All fees and charges collected pursuant to this article shall be transmitted to the plant health, pest control, and environmental protection cash fund created in section [35-1-106.3](#). Within sixty days after July 1, 2009, the unexpended and unencumbered balance of the Colorado nursery fund, as that fund existed prior to July 1, 2009, shall be transferred to the plant health, pest control, and environmental protection cash fund.

#### **[35-26-107. Advisory committee - sunset review. \(Repealed\)](#)**

#### **[35-26-108. Access to locations and records - administrative subpoena - complaints and investigations.](#)**

- (1) (a) At any time during regular business hours, the commissioner shall have free and unimpeded access upon consent or upon issuing or obtaining an administrative search warrant to all buildings, yards, warehouses, and storage facilities owned or operated by a registrant in which any nursery stock is kept, stored, handled, processed, or transported for the purpose of carrying out any provision of this article or any rule made pursuant to this article.
- (b) At any time during regular business hours, the commissioner shall have free and unimpeded access upon consent or upon issuing or obtaining an administrative search warrant to all records required to be kept at any reasonable time and may make copies of such records for the purpose of carrying out any provision of this article or any rule made pursuant to this article.
- (2) The commissioner, upon his own motion or upon the complaint of any person, may make any and all investigations necessary to ensure compliance with this article.

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### **35-26-109. Penalties.**

- (1) Any person who intentionally violates any provision of this article or the rules or regulations promulgated pursuant to this article commits a class 3 misdemeanor and shall be punished as provided in section [18-1.3-501](#), C.R.S.
- (2) Any person who violates any provision of this article, or any rule or regulations made pursuant to this article is subject to a civil penalty, as determined by the commissioner. The maximum penalty shall not exceed one thousand dollars per violation.
- (3) No civil penalty may be imposed unless the person charged is given notice and opportunity for a hearing pursuant to article [4](#) of title [24](#), C.R.S.
- (4) If the commissioner is unable to collect such civil penalty or if any person fails to pay all of the civil penalty or a set portion as determined by the commissioner, the commissioner may bring suit to recover such amount plus costs and attorney fees by action in any court of competent jurisdiction.
- (5) Before imposing any civil penalty under this section, the commissioner may consider the effect of such penalty on the ability of the person charged to stay in business.
- (6) (Deleted by amendment, L. 91, p. 155, § 12, effective July 1, 1991.)

### **35-26-110. Out-of-state nurseries.**

- (1) The commissioner shall require out-of-state nurseries selling nursery stock in the state of Colorado to deliver to the commissioner a certified copy of the "state of origin" certificate of inspection of the nursery. This requirement may be satisfied by delivering to the commissioner a list of inspected and certified nurseries from the "state of origin" in lieu of individual certificates of inspection from each nursery. Each shipment of nursery stock entering the state of Colorado shall be accompanied by a certificate of inspection which states that the nursery stock has the appearance of freedom from insect pests and plant diseases.
- (1.5) An out-of-state nursery advertising and selling nursery stock in Colorado and having no duly appointed resident agent in this state upon whom process may be served as provided by law shall be deemed to have appointed the secretary of state as the agent of said nursery upon whom service of process may be had in the event of any suit against said nursery. Service on the secretary of state of any such process shall be made by delivering to and leaving with him or with his deputy, an assistant, or a clerk two copies of such process. The secretary of state shall also require a statement which contains the name and address of the nonresident's home or home office. After receipt of such process the secretary of state shall forward to the defendant a copy of the process by registered mail, return receipt requested. The person so serving the secretary of state shall immediately send or give to the commissioner a notice of such service and a copy of the process. The secretary of state shall collect at the time of any service of process on him as resident agent a fee which shall be determined and collected pursuant to section [24-21-104](#) (3), C.R.S.
- (2) (Deleted by amendment, L. 91, p. 156, § 13, effective July 1, 1991.)

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### **35-26-111. Rules and regulations.**

The commissioner is hereby authorized and directed to promulgate such rules and regulations as he may deem necessary and proper for the furtherance and enforcement of the provisions of this article. Such rules and regulations shall be promulgated in accordance with applicable provisions of article 4 of title 24, C.R.S.

### **35-26-112. Delegation of duties.**

The powers and duties vested in the commissioner by this article may be delegated to qualified employees of the department.

### **35-26-113. Bodies politic.**

- (1) All growing fields and all other premises in this state on which nursery stock is being grown or held by bodies politic for the purpose of planting on public or private grounds shall be inspected at least once each year by the commissioner or his authorized agents.
- (2) A body politic shall not plant nursery stock infested with insect pests or infected by plant diseases on public or private grounds.
- (3) A body politic shall be subject to the inspection fees set forth in section 35-26-106 (3).

### **35-26-114. Enforcement.**

- (1) After an investigation, the commissioner may, through the attorney general, institute and prosecute the proper proceedings for the enforcement of any of the provisions of this article, or for the recovery of any money due the department, or any penalty provided for in this article, and shall defend in like manner all suits, actions, or proceedings brought against the commissioner or the department.
- (2) The commissioner may deny, suspend, or revoke a registration if the applicant or holder thereof does not engage in the sale of nursery stock.
- (3) (a) Whenever the commissioner has reasonable cause to believe a violation of any provision of this article or any rule made pursuant to this article has occurred and immediate enforcement is deemed necessary, he may issue a cease-and-desist order, which may require any person to cease violating any provision of this article or any rule made pursuant to this article. Such cease-and-desist order shall set forth the provisions alleged to have been violated, the facts alleged to have constituted the violation, and the requirement that all actions be ceased forthwith.

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- (b) In the event that any person fails to comply with a cease-and-desist order within twenty-four hours, the commissioner may bring a suit for a temporary restraining order and injunctive relief to prevent any further or continued violation of such order.
  - (c) No stay of a cease-and-desist order shall be issued before a hearing thereon involving both parties.
  - (d) Matters brought before a court pursuant to this section shall have preference over other matters on the court's calendar.
- (4) The commissioner shall have full authority to administer oaths and take statements, to issue administrative subpoenas requiring the attendance of witnesses before him and the production of all books, memoranda, papers, and other documents, articles, or instruments, and to compel the disclosure by such witnesses of all facts known to them relative to the matters under investigation. Upon the failure or refusal of any witness to obey an administrative subpoena, the commissioner may petition the district court, and, upon a proper showing, the court may enter an order compelling the witness to appear and testify or produce documentary evidence. Failure to obey such an order of the court shall be punishable as a contempt of court.
- (5) Whenever it appears to the commissioner, upon sufficient evidence satisfactory to the commissioner, that any person has engaged in or is about to engage in any act or practice constituting a violation of any provision of this article or of any rule or of any order promulgated under this article, he may apply to any court of competent jurisdiction to temporarily or permanently restrain or enjoin the act or practice in question and to enforce compliance with this article or any rule or order promulgated under this article. In any such action, the commissioner shall not be required to plead or prove irreparable injury or the inadequacy of the remedy at law. Under no circumstances shall the court require the commissioner to post a bond.
- (6) Complaints of record made to the commissioner and the results of his investigations may, in the discretion of the commissioner, be closed to public inspection, except as provided by court order, during the investigatory period and until dismissed or until notice of hearing and charges are served on a registrant.
- (7) The commissioner may deny, revoke, or suspend any registration for any of the following:
- (a) If the party has violated any provision of this article or any rules promulgated pursuant to this article;
  - (b) If the party has had a felony conviction related to the conduct regulated by this article;
  - (c) If there has been fraud or deception in the procurement or attempted procurement of a registration;
  - (d) If the party has failed to comply with a lawful order of the commissioner;
  - (e) If the party has knowingly misrepresented information on his application;
  - (f) If the party has had an equivalent registration or license revoked or suspended by any authority; and
  - (g) If the party has forged or otherwise falsified a certificate of inspection.

**35-26-115. Termination of function - repeal of article. (Deleted by amendment)**

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