



2001 SENATE BILL 320

November 21, 2001 - Introduced by LAW REVISION COMMITTEE. Referred to
Committee on Labor and Agriculture.

1 **AN ACT to repeal** 93.135 (1) (am) and 93.35; **to amend** 93.22 (1), 93.22 (2), 93.22
2 (3), 94.64 (3) (a) 1., 94.64 (3r) (b) (intro.), 94.65 (2) (a), 94.72 (5) (b) and 799.01
3 (1) (b); and **to create** 93.22 (4) of the statutes; **relating to:** court procedures and
4 time limits in forfeiture actions related to agriculture, consumer protection,
5 and trade regulation; the date of expiration of fertilizer, soil and plant additive,
6 and commercial feed licenses; and weather modification (suggested as remedial
7 legislation by the department of agriculture, trade and consumer protection).

Analysis by the Legislative Reference Bureau

Court procedures and time limits in forfeiture actions

Under current law, actions for the violation of a state statute in which the penalty is a forfeiture (civil penalty) generally are brought in circuit court using the small claims procedures. Generally, these procedures and proceedings are more informal than those for large claims actions. A person may, depending on the complexity of the issue, represent his or her interest in the action without an attorney. The action is started with a summons and complaint that is set forth in the statutes. The small claims procedures do not apply to forfeiture actions in circuit court for violations related to conservation, wildlife, and other natural resources or to traffic forfeiture actions.

Under this bill, the small claims procedures would not apply to a forfeiture action for the violation of a law enforced by the department of agriculture, trade and

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consumer protection (DATCP), including food regulation, animal health, agriculture resource management, and trade and consumer protection. The bill provides that large claims procedures apply to those actions.

License expiration dates

Under current law, DATCP issues licenses for pesticide dealers, pesticide application businesses, the sale of agricultural lime, and the sale of seeds, all of which expire on December 31. DATCP also issues licenses for the manufacture and distribution of fertilizer, which expire on August 14, licenses for the manufacture and distribution of soil or plant additives, which expire on March 31, and licenses for the manufacture and distribution of commercial feed, which expire on February 28.

This bill changes the expiration dates for licenses for the manufacture and distribution of fertilizer, for the manufacture and distribution of soil or plant additives, and for the manufacture and distribution of commercial feed to December 31.

Weather modification

Current law requires DATCP to regulate activities intended to modify the weather. This bill repeals that requirement.

For further information, see the NOTES provided by the law revision committee of the joint legislative council.

For further information see the *state* fiscal estimate, which will be printed as an appendix to this bill.

The people of the state of Wisconsin, represented in senate and assembly, do enact as follows:

LAW REVISION COMMITTEE PREFATORY NOTE: This bill is a remedial legislation proposal, requested by the department of agriculture, trade and consumer protection and introduced by the law revision committee under s. 13.83 (1) (c) 4., stats. After careful consideration of the various provisions of the bill, the law revision committee has determined that this bill makes minor substantive changes in the statutes, and that these changes are desirable as a matter of public policy.

1 **SECTION 1.** 93.135 (1) (am) of the statutes is repealed.

NOTE: Section 1 of this bill eliminates a reference to the weather modification license. According to the department of agriculture, trade and consumer protection, it has not issued a weather modification license or permit since 1977.

2 **SECTION 2.** 93.22 (1) of the statutes is amended to read:

3 93.22 (1) In cases arising under chs. 88 and ~~93~~, 91 to 100, 126, or 136, the
4 department may be represented by its attorney.

NOTE: Sections 2, 3 and 4 of this bill update references to chapters of the statutes that have been renumbered.

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1 **SECTION 3.** 93.22 (2) of the statutes is amended to read:

2 93.22 (2) The department may, with the approval of the governor, appoint
3 special counsel to prosecute or assist in the prosecution of any case arising under chs.
4 88 and ~~93, 91~~ to 100, 126, or 136. The cost of such special counsel shall be charged
5 to the appropriation for the department.

6 **SECTION 4.** 93.22 (3) of the statutes is amended to read:

7 93.22 (3) In any criminal or civil action under chs. 88 and ~~93, 91~~ to 100, 126,
8 or 136, any exception, exemption, proviso, excuse, or qualification contained in any
9 of said chapters, or in any order, standard, or regulation thereunder, may be proved
10 by the defendant, but need not be specified or negatived in the information or
11 complaint, and, if so specified or negatived, no proof in relation to the matters so
12 specified or negatived, shall be required of the plaintiff.

13 **SECTION 5.** 93.22 (4) of the statutes is created to read:

14 93.22 (4) The procedures under ch. 778 that relate to forfeitures imposed for
15 the violation of a state statute and under chs. 801 to 816 apply to cases arising under
16 chs. 88, 93 to 100, 126, or 136 for which the penalty is a forfeiture.

NOTE: Section 5 of this bill allows the department of agriculture, trade and consumer protection to bring civil forfeiture actions for violations of laws enforced by the department, including trade and consumer protection, plant and animal health, agricultural resource management and food regulation, in circuit court. Currently, the department may be required to bring these types of civil forfeiture actions using small claims court procedures. According to the department, small claims court procedures are inappropriate for the types of civil forfeiture proceedings brought by the department. These proceedings often result in large civil forfeiture judgments and are often combined with injunction and restitution claims, which must be brought in circuit court under the large claims procedures.

17 **SECTION 6.** 93.35 of the statutes is repealed.

NOTE: Section 6 of this bill eliminates the statutory provisions containing the weather modification license and permit requirements. According to the department of agriculture, trade and consumer protection, it has not issued a weather modification license or permit since 1977.

18 **SECTION 7.** 94.64 (3) (a) 1. of the statutes is amended to read:

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1 94.64 (3) (a) 1. Except as provided in subd. 2., no person may manufacture or
2 distribute fertilizer in this state without an annual license from the department. A
3 separate license is required for each business location and each mobile unit at which
4 the person manufactures fertilizer. A license shall expire on ~~August 14~~ December
5 31 annually and is not transferable between persons or locations.

NOTE: Section 7 of this bill changes the expiration date for a license for the manufacture and distribution of fertilizer from August 14 of each year to December 31 of each year. According to the department of agriculture, trade and consumer protection, synchronizing the expiration dates of all agrochemical licenses to December 31 will minimize confusion over license renewal dates and will allow affected businesses to use a single application process to apply for up to 7 annual licenses.

6 **SECTION 8.** 94.64 (3r) (b) (intro.) of the statutes is amended to read:

7 94.64 (3r) (b) (intro.) ~~Beginning with the license year that begins on August 15,~~
8 ~~2000,~~ a A person applying for a license under sub. (3) shall pay the following
9 agricultural chemical cleanup surcharges, unless the department establishes lower
10 surcharges under s. 94.73 (15):

NOTE: Section 8 of this bill eliminates the applicability date of August 15, 2000 for an applicant for a license to manufacture and distribute fertilizer to pay specified agricultural chemical cleanup surcharges. As provided in Section 13 of this bill, the changes made in the bill will apply for the license period that begins on August 15, 2001.

11 **SECTION 9.** 94.65 (2) (a) of the statutes is amended to read:

12 94.65 (2) (a) Except as provided under par. (b), no person may manufacture or
13 distribute a soil or plant additive in this state unless the person first obtains an
14 annual license from the department. Application for a license or for renewal of a
15 license shall be made on forms provided by the department and shall be accompanied
16 by an annual license fee of \$25. All licenses expire on ~~March 31~~ December 31
17 annually.

NOTE: Section 9 of this bill changes the expiration date for a license for the manufacture and distribution of soil or plant additives from March 31 of each year to December 31 of each year. According to the department of agriculture, trade and consumer protection, synchronizing the expiration dates of all agrochemical licenses to

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December 31 will minimize confusion over license renewal dates and will allow affected businesses to use a single application process to apply for up to 7 annual licenses.

1 **SECTION 10.** 94.72 (5) (b) of the statutes is amended to read:

2 94.72 (5) (b) Applications for a license shall be made on forms prescribed by the
3 department listing each business location used in the manufacture or distribution
4 of commercial feed in this state and such other information the department requires.
5 Applications shall be accompanied by a license fee of \$25 for each separate place of
6 business used in the manufacture of commercial feed, other than custom-mixed feed,
7 in this state ~~and an inspection fee as required under sub. (6).~~ Applications of
8 manufacturers or distributors having no established place of business in this state,
9 but otherwise subject to a license under this section, shall be accompanied by a
10 license fee of \$25 ~~in addition to the required inspection fees.~~ All licenses shall expire
11 on the last day of February of each year December 31 annually. Licenses are not
12 transferable and no credit or refund may be granted for licenses held for less than
13 a full license year. No new business locations may be put into operation during the
14 license year without the payment of an additional fee of \$25 for each new location.

NOTE: Section 10 of this bill changes the expiration date for a license for the manufacture and distribution of commercial feed from the last date of February each year to December 31 of each year. According to the department of agriculture, trade and consumer protection, synchronizing the expiration dates of all agrochemical licenses to December 31 will minimize confusion over license renewal dates and will allow affected businesses to use a single application process to apply for up to 7 annual licenses.

15 **SECTION 11.** 799.01 (1) (b) of the statutes is amended to read:

16 799.01 (1) (b) *Forfeitures.* Actions to recover forfeitures except as a different
17 procedure is prescribed in s. 93.22 (4) and chs. 23, 66, 345, and 778, or elsewhere, and
18 such different procedures shall apply equally to the state, a county, or a municipality
19 regardless of any limitation contained therein.

NOTE: Section 11 of this bill specifies that department of agriculture, trade and consumer protection civil enforcement actions are exempt from the general requirement to bring forfeiture actions in small claims court. See also the Note after Section 5.

SENATE BILL 320**1 SECTION 12. Nonstatutory provisions; license expiration.**

2 (1) A license issued under section 94.64 (3) of the statutes, as affected by this
3 act, for the license period that begins on August 15, 2001, expires on December 31,
4 2002.

5 (2) A license issued under section 94.65 (2) of the statutes, as affected by this
6 act, for the license period that begins on April 1, 2001, expires on December 31, 2002.

7 (3) A license issued under section 94.72 (5) of the statutes, as affected by this
8 act, for the license period that begins on March 1, 2001, expires on December 31,
9 2002.

NOTE: Section 12 of this bill provides that a license for the manufacture and distribution of fertilizer that begins on August 15, 2001 will expire on December 31, 2002 rather than August 14, 2002. Section 12 also provides that a license for the manufacture and distribution of soil or plant additives issued on April 1, 2001 will expire on December 31, 2002 instead of March 31, 2002. In addition, Section 12 provides that a license for the manufacture and distribution of commercial feed that begins on March 1, 2001 will expire on December 31, 2002 instead of the last day of February 2002.

10 SECTION 13. Initial applicability; license expiration.

11 (1) The treatment of section 94.64 (3) (a) 1. and (3r) (b) (intro.) of the statutes
12 first applies to licenses issued for the license period that begins on August 15, 2001.

13 (2) The treatment of section 94.65 (2) (a) of the statutes first applies to licenses
14 issued for the license period that begins on April 1, 2001.

15 (3) The treatment of section 94.72 (5) (b) of the statutes first applies to licenses
16 issued for the license period that begins on March 1, 2001.

17 SECTION 14. Initial applicability; forfeiture actions.

18 (1) The treatment of sections 93.22 (1), (2), (3), and (4) and 799.01 (1) (b) of the
19 statutes first applies to violations committed on the effective date of this subsection.

20 **SECTION 15. Effective dates.** This act takes effect on the day after publication,
21 except as follows:

