



2007 ASSEMBLY BILL 554

October 30, 2007 - Introduced by Representatives A. OTT, MUSSER, GUNDERSON, HAHN, GRONEMUS and ZEPNICK, cosponsored by Senators VINEHOUT, OLSEN, SCHULTZ and LASSA. Referred to Committee on Agriculture.

1 **AN ACT to repeal** 94.10 (3) (cm); **to renumber** 94.10 (7) (a) 1.; **to renumber and**
2 **amend** 94.10 (1) (d); **to consolidate, renumber and amend** 94.10 (7) (a)
3 (intro.) and 2.; **to amend** 94.10 (1) (a), 94.10 (1) (e), 94.10 (1) (f), 94.10 (2) (b)
4 2. and 5., 94.10 (2) (c), 94.10 (2) (f) 1. and 2., 94.10 (3) (b) 2., 3. and 5., 94.10 (3)
5 (c), 94.10 (3) (d), 94.10 (3) (f) 1. and 2., 94.10 (3g) (c), 94.10 (3g) (e), 94.10 (3m)
6 (b), 94.10 (4) (a) (intro.) and 2., 94.10 (4) (b) (intro.) and 2., 94.10 (4) (c), 94.10
7 (5) (b) and 94.10 (7) (b) 3.; **to repeal and recreate** 94.10 (2) (e), 94.10 (3) (e),
8 94.10 (3g) (d) and 94.10 (4) (title); and **to create** 94.10 (1) (d) 2., 94.10 (2) (c) 8.
9 and 94.10 (7) (c) of the statutes; **relating to:** nursery dealers, nursery growers,
10 Christmas tree growers, and granting rule-making authority.

Analysis by the Legislative Reference Bureau

Under current law, the Department of Agriculture, Trade and Consumer Protection (DATCP) licenses nursery growers, nursery dealers, and Christmas tree growers. A nursery grower is a person who grows nursery stock for sale. A nursery dealer is a person, other than a nursery grower, who sells or distributes nursery stock. This bill makes changes in the laws related to nursery growers, nursery dealers, and Christmas tree growers.

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The bill authorizes DATCP to change by rule the annual license fees for nursery growers, nursery dealers, and Christmas tree growers.

Under current law, a nursery grower who also sells nursery stock obtained from another source is not required to obtain a nursery dealer license. This bill requires a nursery grower who sells nursery stock obtained from another source to obtain a nursery dealer license, in addition to a nursery grower license.

Under current law, a nursery grower who also grows Christmas trees is not required to obtain a Christmas tree grower license, but is required to pay an additional fee equal to the fee paid by Christmas tree growers. Under this bill, a nursery grower who also grows Christmas trees must obtain a Christmas tree grower license, in addition to a nursery grower license. The bill does not change the total amount of fees that the nursery grower must pay.

The bill increases the annual license fee that must be paid by a nursery dealer who spends more than \$3,000,000 in a year for nursery stock.

The bill clarifies that nursery growers, nursery dealers, and Christmas tree growers may operate from more than one location under a single license.

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:

1 **SECTION 1.** 94.10 (1) (a) of the statutes is amended to read:

2 94.10 (1) (a) “Christmas tree grower” means a person who grows evergreen
3 trees in this state for eventual harvest cutting and sale as Christmas trees, ~~except~~
4 that “Christmas tree grower” does not include a person who grows evergreen trees
5 for eventual harvest and sale as Christmas trees if the person also grows nursery
6 stock for sale and if the person is licensed under sub. (3).

7 **SECTION 2.** 94.10 (1) (d) of the statutes is renumbered 94.10 (1) (d) (intro.) and
8 amended to read:

9 94.10 (1) (d) (intro.) “Nursery dealer” means a person, ~~other than a nursery~~
10 ~~grower~~, who sells, offers for sale, or distributes nursery stock from ~~a location~~ one or
11 more locations in this state, except that “nursery dealer” does not include an
12 employee any of the following:

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1 1. ~~An employee of a person licensed under this section sub. (2).~~

2 **SECTION 3.** 94.10 (1) (d) 2. of the statutes is created to read:

3 94.10 (1) (d) 2. A nursery grower licensed under sub. (3) who only sells, offers
4 for sale, or distributes nursery stock that the nursery grower has grown.

5 **SECTION 4.** 94.10 (1) (e) of the statutes is amended to read:

6 94.10 (1) (e) "Nursery grower" means a person who owns or operates a nursery
7 in this state, except that "nursery grower" does not include an employee of a person
8 licensed under sub. (3).

9 **SECTION 5.** 94.10 (1) (f) of the statutes is amended to read:

10 94.10 (1) (f) "Nursery stock" means plants and plant parts that can be
11 propagated or grown, excluding except that "nursery stock" does not include seeds,
12 sod, cranberry cuttings, annuals and evergreen trees grown for eventual harvest and
13 sale as, or cut Christmas trees.

14 **SECTION 6.** 94.10 (2) (b) 2. and 5. of the statutes are amended to read:

15 94.10 (2) (b) 2. The address of each location in this state at which the applicant
16 proposes to hold nursery stock for sale or distribution.

17 5. Other information reasonably required by the department for licensing
18 purposes, including information related to the types and sources of nursery stock
19 that the applicant sells or distributes from locations in this state.

20 **SECTION 7.** 94.10 (2) (c) of the statutes is amended to read:

21 94.10 (2) (c) *License fee.* ~~A~~ Except as otherwise provided by the department
22 by rule, a nursery dealer shall pay the following annual license fee, based on the
23 nursery dealer's annual purchases calculated according to determined under par. (e):

24 1. If the nursery dealer buys has annual purchases of no more than \$5,000
25 ~~worth of nursery stock for resale,~~ \$30.

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1 2. If the nursery dealer ~~buys~~ has annual purchases of more than \$5,000 but not
2 more than \$20,000 ~~worth of nursery stock for resale,~~ \$50.

3 3. If the nursery dealer ~~buys~~ has annual purchases of more than \$20,000 but
4 not more than \$100,000 ~~worth of nursery stock for resale,~~ \$100.

5 4. If the nursery dealer ~~buys~~ has annual purchases of more than \$100,000 but
6 not more than \$200,000 ~~worth of nursery stock for resale,~~ \$150.

7 5. If the nursery dealer ~~buys~~ has annual purchases of more than \$200,000 but
8 not more than \$500,000 ~~worth of nursery stock for resale,~~ \$200.

9 6. If the nursery dealer ~~buys~~ has annual purchases of more than \$500,000 but
10 not more than \$2,000,000 ~~worth of nursery stock for resale,~~ \$300.

11 7. If the nursery dealer ~~buys~~ has annual purchases of more than \$2,000,000
12 ~~worth of nursery stock for resale~~ but not more than \$3,000,000, \$400.

13 **SECTION 8.** 94.10 (2) (c) 8. of the statutes is created to read:

14 94.10 (2) (c) 8. If the nursery dealer has annual purchases of more than
15 \$3,000,000, the amount of the nursery dealer's annual purchases times 0.0005.

16 **SECTION 9.** 94.10 (2) (e) of the statutes is repealed and recreated to read:

17 94.10 (2) (e) *Annual purchases; nursery dealer.* 1. For the purposes of par. (c)
18 the amount of a nursery dealer's annual purchases is the total cost that the nursery
19 dealer incurred during the nursery dealer's last completed fiscal year for all nursery
20 stock that the nursery dealer acquired for sale or distribution from locations in this
21 state, except as provided in subd. 2. The amount of a nursery dealer's annual
22 purchases does not include the cost of nursery stock that the nursery dealer grows
23 under a license under sub. (3) or an equivalent license in another state.

24 2. If a nursery dealer made no purchases of nursery stock during the nursery
25 dealer's last completed fiscal year, the amount of annual purchases is the nursery

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1 dealer's good faith prediction of purchases described in subd. 1. during the nursery
2 dealer's current fiscal year.

3 **SECTION 10.** 94.10 (2) (f) 1. and 2. of the statutes are amended to read:

4 94.10 (2) (f) 1. A person ~~whose only sales of nursery stock are~~ who sells or
5 distributes nursery stock only at retail and whose total sales totaling less than from
6 all locations in this state during the license year do not exceed \$250 annually.

7 2. A person ~~selling or offering to sell~~ who sells or distributes nursery stock solely
8 for the benefit of a nonprofit organization, for a period total of not more than 7
9 consecutive days in this state during the license year.

10 **SECTION 11.** 94.10 (3) (b) 2., 3. and 5. of the statutes are amended to read:

11 94.10 (3) (b) 2. The address of each location in this state at which the applicant
12 operates a nursery, ~~grows evergreen trees for eventual sale as Christmas trees or~~
13 holds nursery stock ~~or Christmas trees for sale~~ or distribution.

14 3. The license fee required under par. (c) ~~and under par. (cm), if applicable.~~

15 5. Other information reasonably required by the department for licensing
16 purposes, including information related to the types of nursery stock that the
17 applicant grows in this state.

18 **SECTION 12.** 94.10 (3) (c) of the statutes is amended to read:

19 94.10 (3) (c) *License fee.* ~~A~~ Except as otherwise provided by the department
20 by rule, a nursery grower shall pay the following annual license fee, based on the
21 nursery grower's annual sales calculated according to determined under par. (e),
22 plus the additional license fee under par. (cm), if applicable:

23 1. If the nursery grower ~~annually sells~~ has annual sales of no more than \$5,000
24 ~~worth of nursery stock,~~ \$40.

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1 2. If the nursery grower ~~annually sells~~ has annual sales of more than \$5,000
2 but not more than \$20,000 worth of nursery stock, \$75.

3 3. If the nursery grower ~~annually sells~~ has annual sales of more than \$20,000
4 but not more than \$100,000 worth of nursery stock, \$125.

5 4. If the nursery grower ~~annually sells~~ has annual sales of more than \$100,000
6 but not more than \$200,000 worth of nursery stock, \$200.

7 5. If the nursery grower ~~annually sells~~ has annual sales of more than \$200,000
8 but not more than \$500,000 worth of nursery stock, \$350.

9 6. If the nursery grower ~~annually sells~~ has annual sales of more than \$500,000
10 but not more than \$2,000,000 worth of nursery stock, \$600.

11 7. If the nursery grower ~~annually sells~~ has annual sales of more than
12 \$2,000,000 worth of nursery stock, \$1,200.

13 **SECTION 13.** 94.10 (3) (cm) of the statutes is repealed.

14 **SECTION 14.** 94.10 (3) (d) of the statutes is amended to read:

15 94.10 (3) (d) *Surcharge for operating without a license.* In addition to the fee
16 required under par. (c) ~~and under par. (cm), if applicable,~~ an applicant for a nursery
17 grower license shall pay a surcharge equal to the amount of that fee if the department
18 determines that, within 365 days before submitting that application, the applicant
19 operated as a nursery grower without a license in violation of par. (a). Payment of
20 the surcharge does not relieve the applicant of any other penalty or liability that may
21 result from the violation, but does not constitute evidence of a violation of par. (a).

22 **SECTION 15.** 94.10 (3) (e) of the statutes is repealed and recreated to read:

23 94.10 (3) (e) *Annual sales; nursery grower.* 1. For the purposes of par. (c) the
24 amount of a nursery grower's annual sales is the nursery grower's gross receipts,
25 during the nursery grower's last completed fiscal year, from the sale, consignment,

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1 or other distribution of nursery stock that the nursery grower grew at nurseries in
2 this state, except as provided in subd. 2.

3 2. If, during a nursery grower's last completed fiscal year, the nursery grower
4 made no sales of nursery stock that the nursery grower grew at nurseries in this
5 state, the amount of annual sales is the nursery grower's good faith prediction of
6 sales described in subd. 1. during the nursery grower's current fiscal year.

7 **SECTION 16.** 94.10 (3) (f) 1. and 2. of the statutes are amended to read:

8 94.10 (3) (f) 1. A nursery grower ~~whose~~ who sells or distributes nursery stock
9 ~~only sales of nursery stock and Christmas trees are at retail and whose total~~ sales
10 ~~totaling less than~~ from all locations in this state during the license year do not exceed
11 \$250 annually.

12 2. A person growing ~~who sells or distributes~~ nursery stock ~~only for sale solely~~
13 ~~for the benefit of a nonprofit organization, for a period total~~ of not more than 7 days
14 consecutive days in this state during the license year.

15 **SECTION 17.** 94.10 (3g) (c) of the statutes is amended to read:

16 94.10 (3g) (c) *License fee.* ~~A~~ Except as otherwise provided by the department
17 by rule, a Christmas tree grower shall pay the following annual license fee, based on
18 the Christmas tree grower's annual sales calculated ~~according to~~ determined under
19 par. (d):

20 1. If the Christmas tree grower ~~annually sells~~ has annual sales of no more than
21 \$5,000 ~~worth of Christmas trees,~~ \$20.

22 2. If the Christmas tree grower ~~annually sells~~ has annual sales of more than
23 \$5,000 but not more than \$20,000 ~~worth of Christmas trees,~~ \$55.

24 3. If the Christmas tree grower ~~annually sells~~ has annual sales of more than
25 \$20,000 but not more than \$100,000 ~~worth of Christmas trees,~~ \$90.

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1 4. If the Christmas tree grower ~~annually sells~~ has annual sales of more than
2 \$100,000 but not more than \$200,000 worth of Christmas trees, \$150.

3 5. If the Christmas tree grower ~~annually sells~~ has annual sales of more than
4 \$200,000 but not more than \$500,000 worth of Christmas trees, \$250.

5 6. If the Christmas tree grower ~~annually sells~~ has annual sales of more than
6 \$500,000 but not more than \$2,000,000 worth of Christmas trees, \$450.

7 7. If the Christmas tree grower ~~annually sells~~ has annual sales of more than
8 \$2,000,000 worth of Christmas trees, \$900.

9 **SECTION 18.** 94.10 (3g) (d) of the statutes is repealed and recreated to read:

10 94.10 **(3g)** (d) *Annual sales; Christmas tree grower.* 1. For the purposes of par.
11 (c) the amount of a Christmas tree grower's annual sales is the Christmas tree
12 grower's gross receipts, during the Christmas tree grower's last completed fiscal
13 year, from the sale, consignment, or other distribution of Christmas trees that the
14 Christmas tree grower grew at locations in this state, except as provided in subd. 2.

15 2. If, during a Christmas tree grower's last completed fiscal year, the Christmas
16 tree grower made no sales of Christmas trees that the Christmas tree grower grew
17 at locations in this state, the amount of annual sales is the Christmas tree grower's
18 good faith prediction of sales described in subd. 1. during the Christmas tree grower's
19 current fiscal year.

20 **SECTION 19.** 94.10 (3g) (e) of the statutes is amended to read:

21 94.10 **(3g)** (e) *Exemption.* Paragraph (a) does not apply to a Christmas tree
22 grower ~~whose only sales of~~ who sells or distributes Christmas trees are only at retail
23 and whose total Christmas tree sales totaling less than in this state during the
24 license year do not exceed \$250 annually.

25 **SECTION 20.** 94.10 (3m) (b) of the statutes is amended to read:

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1 94.10 (3m) (b) The holder of a nursery grower license shall notify the
2 department in writing before adding, during the license year, any new location at
3 which the license holder will operate a nursery, ~~grow evergreen trees for eventual~~
4 ~~sale as Christmas trees or hold Christmas trees or nursery stock for sale.~~ The license
5 holder shall specify the address of the new location in the notice.

6 **SECTION 21.** 94.10 (4) (title) of the statutes is repealed and recreated to read:

7 94.10 (4) (title) RECORDS.

8 **SECTION 22.** 94.10 (4) (a) (intro.) and 2. of the statutes are amended to read:

9 94.10 (4) (a) *Nursery dealers; records of nursery stock received.* (intro.) ~~A~~ Each
10 nursery dealer, nursery grower, and Christmas tree grower shall keep a record of
11 every shipment of nursery stock received by the nursery dealer, nursery grower, or
12 Christmas tree grower. The nursery dealer, nursery grower, or Christmas tree
13 grower shall include all of the following in the record:

14 2. The name and address of the source ~~from which the nursery dealer received~~
15 of the shipment.

16 **SECTION 23.** 94.10 (4) (b) (intro.) and 2. of the statutes are amended to read:

17 94.10 (4) (b) *Nursery growers and dealers; records of shipments to other nursery*
18 *growers and dealers stock shipped.* (intro.) Each nursery grower and nursery dealer
19 shall keep a record of every shipment of nursery stock that the nursery grower or
20 nursery dealer sells or distributes to another nursery grower ~~or, nursery dealer, or~~
21 Christmas tree grower. The nursery grower or nursery dealer shall include all of the
22 following in the record:

23 2. The name and address of the nursery grower ~~or, nursery dealer, or Christmas~~
24 tree grower receiving the shipment.

25 **SECTION 24.** 94.10 (4) (c) of the statutes is amended to read:

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1 94.10 (4) (c) *Records retained and made available.* ~~A nursery grower or nursery~~
2 ~~dealer~~ person who is required to keep records under par. (a) or (b) shall retain those
3 records for at least 3 years and shall make those records available ~~to the department~~
4 for inspection and copying by the department upon request.

5 **SECTION 25.** 94.10 (5) (b) of the statutes is amended to read:

6 94.10 (5) (b) ~~Growers and dealers to report unlabeled~~ Unlabeled shipments.
7 ~~Whenever any person tenders to a~~ Each nursery grower ~~or, nursery dealer, and~~
8 Christmas tree grower shall promptly report to the department any shipment of
9 nursery stock tendered to the nursery grower, nursery dealer, or Christmas tree
10 grower that is not fully labeled according to par. (a), ~~the nursery grower or nursery~~
11 ~~dealer shall promptly report that unlabeled shipment to the department.~~

12 **SECTION 26.** 94.10 (7) (a) (intro.) and 2. of the statutes are consolidated,
13 renumbered 94.10 (7) (a) and amended to read:

14 94.10 (7) (a) *Nursery dealers.* No nursery dealer may ~~do any of the following:~~
15 ~~2. Misrepresent~~ misrepresent that the nursery dealer is a nursery grower.

16 **SECTION 27.** 94.10 (7) (a) 1. of the statutes is renumbered 94.10 (7) (b) 1m.

17 **SECTION 28.** 94.10 (7) (b) 3. of the statutes is amended to read:

18 94.10 (7) (b) 3. Misrepresent the name, origin, grade, variety, quality, or
19 hardiness of any nursery stock ~~offered for sale~~ or make any other false or misleading
20 representation in the advertising or sale of nursery stock.

21 **SECTION 29.** 94.10 (7) (c) of the statutes is created to read:

22 94.10 (7) (c) *Christmas tree grower.* No Christmas tree grower may obtain
23 nursery stock from any source other than an officially inspected source.

24 **SECTION 30. Initial applicability.**

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1 (1) The treatment of section 94.10 (1) (a), (e), and (f), (2) (b) 2. and 5., (e), and
2 (f) 1. and 2., (3) (b) 2., 3., and 5., (c), (cm), (d), (e), and (f) 1. and 2., (3g) (c), (d), and
3 (e), and (3m) (b) of the statutes, the renumbering and amendment of section 94.10
4 (1) (d) of the statutes, the amendment of section 94.10 (2) (c) of the statutes, and the
5 creation of section 94.10 (1) (d) 2. and (2) (c) 8. of the statutes first apply to
6 applications made and fees paid for the license year that begins on February 21,
7 2009.

8

(END)