



State of Wisconsin
1999 - 2000 LEGISLATURE

LRB-0091/3

RCT:kmg:jf

SO ON

redraft
maker
run

DOA:.....Grinde - Plant pest detection and nurseries

FOR 1999-01 BUDGET — NOT READY FOR INTRODUCTION

1 AN ACT <sup>Don't
Gen. Cert.</sup> relating to: the budget.

Analysis by the Legislative Reference Bureau

AGRICULTURE

Under current law, a person may not operate a nursery (a place where plants are grown for sale) in this state without a license from the department of agriculture, trade and consumer protection (DATCP). The license fee is based primarily on total nursery acreage. A nursery operator must pay a surcharge, also primarily based on acreage, which is used for gypsy moth eradication. A person other than the operator of a nursery may not sell nursery stock without a nursery dealer license from DATCP. The nursery dealer license fee is \$25 for each place of business. A nursery dealer must also pay a \$30 surcharge which is used for gypsy moth eradication.

This bill restructures and makes various changes in the law related to nursery operators and nursery dealers. Under the bill, the license fee for a nursery operator (called a nursery grower) is based on annual sales of nursery stock. Under the bill, the nursery dealer license fee is based on annual purchases of nursery stock. The bill eliminates the gypsy moth surcharge and provides that all of the nurser grower and nursery dealer license fees are used for plant protection, including nursery regulation and control of plant pests. The bill requires that Christmas tree growers be licensed as nursery growers. The bill also authorizes DATCP to issue temporary permits to allow the growing and sale of nursery stock for the benefit of nonprofit organizations without a 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1 **SECTION 1.** 20.115 (7) (j) of the statutes is repealed.

 ****NOTE: This SECTION involves a change in an appropriation that must be reflected in the revised schedule in s. 20.005, stats.

2 **SECTION 2.** 20.115 (7) (ja) of the statutes is created to read:

3 20.115 (7) (ja) *Plant protection.* All moneys received under ~~§s.~~ §s. 94.10 (2) and (3)

4 ~~and 94.11~~ for plant protection, including nursery regulation and the detection and

5 control of plant pests.

 ****NOTE: This SECTION involves a change in an appropriation that must be reflected in the revised schedule in s. 20.005, stats.

6 **SECTION 3.** 93.135 (1) (b) of the statutes is amended to read:

7 93.135 (1) (b) A license under s. 94.10 (2) or (3) ~~or (4)~~.

8 **SECTION 4.** 94.10 of the statutes is repealed and recreated to read:

9 **94.10 Nursery stock; inspection and licensing.** (1) **DEFINITIONS.** In this
10 section:

11 (b) “Nonprofit organization” means an organization described in section 501 (c)
12 of the Internal Revenue Code that is exempt from federal income tax under section
13 501 (a) of the Internal Revenue Code.

14 (c) “Nursery” means premises in this state on which a person propagates or
15 grows nursery stock for sale. “Nursery” does not include heeling-in grounds or other
16 premises where a person holds nursery stock for purposes other than propagation or
17 growth.

18 (d) “Nursery dealer” means a person, other than a nursery grower, who sells,
19 offers for sale or distributes nursery stock *from a location in this state*

1 (e) "Nursery grower" means a person who owns or operates a nursery.

2 (f) "Nursery stock" means plants and plant parts that can be propagated or
3 grown, including rooted Christmas trees, but excluding ~~field, vegetable and flower~~
4 seeds, sod, cranberry cuttings and annuals.

5 (g) "Officially inspected source" means any of the following:

6 1. A nursery dealer licensed under sub. (2).

7 2. A nursery grower licensed under sub. (3).

8 3. A source outside this state that the department recognizes under sub. (10)
9 as an officially inspected source.

10 (i) "Rooted Christmas tree" means an evergreen tree that is rooted in the soil ^{and grown}
11 ~~periodically sheared or cultured~~ for eventual harvest and sale as a Christmas tree,
12 ~~subjected to weed and bush control and subjected to one or more of the following:~~

13 1. ~~Basal pruning.~~

14 2. ~~Fertilization.~~

15 3. ~~Insect and disease control.~~

16 4. ~~Stump culture.~~

17 5. ~~Cultivation and irrigation.~~

18 (j) "Sell" means to transfer ownership, for consideration.

19 (2) NURSERY DEALER; ANNUAL LICENSE. (a) *License required.* Except as provided
20 in par. (f), no person may operate as a nursery dealer without an annual license from
21 the department. A nursery dealer license expires on February 20. A nursery dealer
22 license may not be transferred to another person.

23 (b) *Applying for a license.* A person applying for a nursery dealer license under
24 par. (a) shall apply on a form provided by the department. An applicant shall provide
25 all of the following to the department:

1 1. The applicant's legal name and address and any other name under which the
2 applicant does business.

3 2. The address of each location at which the applicant proposes to hold nursery
4 stock for sale.

5 3. The license fee required under par. (c).

6 4. The surcharge required under par. (d), if any.

7 5. Other information reasonably required by the department for licensing
8 purposes.

9 (c) *License fee.* A nursery dealer shall pay the following annual license fee,
10 based on annual purchases calculated according to par. (e):

11 1. If the nursery dealer buys no more than \$5,000 worth of nursery stock for
12 resale to ~~persons in this state,~~ \$55.

13 2. If the nursery dealer buys more than \$5,000 but not more than \$20,000 worth
14 of nursery stock for resale to ~~persons in this state,~~ \$75.

15 3. If the nursery dealer buys more than \$20,000 but not more than \$100,000
16 worth of nursery stock for resale to ~~persons in this state,~~ \$100.

17 4. If the nursery dealer buys more than \$100,000 but not more than \$200,000
18 worth of nursery stock for resale to ~~persons in this state,~~ \$200.

19 5. If the nursery dealer buys more than \$200,000 but not more than \$500,000
20 worth of nursery stock for resale to ~~persons in this state,~~ \$300.

21 6. If the nursery dealer buys more than \$500,000 but not more than \$2,000,000
22 worth of nursery stock for resale to ~~persons in this state,~~ \$400.

23 7. If the nursery dealer buys more than \$2,000,000 worth of nursery stock for
24 resale to ~~persons in this state,~~ \$500.

1 (d) *Surcharge for operating without a license.* In addition to the fee required
2 under par. (c), an applicant for a nursery dealer license shall pay a surcharge equal
3 to the amount of that fee if the department determines that, within 365 days before
4 submitting the application, the applicant operated as a nursery dealer without a
5 license in violation of par. (a). Payment of the surcharge does not relieve the
6 applicant of any other penalty or liability that may result from the violation, but does
7 not constitute evidence of a violation of par. (a).

8 (e) *Calculating annual purchases.* The amount of an applicant's license fee
9 under par. (c) for a license year shall be based on the applicant's purchases of nursery
10 stock during the ^{applicant's} preceding ^{fiscal} license year, except that if the applicant made no
11 purchases of nursery stock during the preceding ^{fiscal} license year the fee shall be based
12 on the applicant's good faith prediction of purchases during the ~~license~~ ^{fiscal} year for which
13 the applicant is applying. STET

14 (f) *Exemptions.* Paragraph (a) does not apply to any of the following:

- 15 1. A person whose only sales of nursery stock are retail sales totaling less than
16 \$250 annually.
- 17 2. A person selling or offering to sell nursery stock pursuant to a valid permit
18 under par. (g).

19 (g) *Temporary permit; sales benefiting nonprofit organization.* The department
20 may issue a temporary permit authorizing the permit holder to sell nursery stock,
21 for the benefit of a nonprofit organization, for a period of not more than 7 consecutive
22 days. An applicant for a temporary permit shall apply on a form provided by the
23 department and shall pay a fee of \$5. The department may impose written conditions
24 on the temporary permit and may summarily suspend or revoke the permit if the
25 permit holder violates those conditions.

1 **(3) NURSERY GROWER; ANNUAL LICENSE.** (a) *License required.* Except as provided
2 in par. (f), no person may operate as a nursery grower without an annual license from
3 the department. A nursery grower license expires on February 20. A nursery grower
4 license may not be transferred to another person.

5 (b) *Applying for a license.* A person applying for a nursery grower license under
6 par. (a) shall apply on a form provided by the department. An applicant shall provide
7 all of the following to the department:

- 8 1. The applicant's legal name and address and any other name under which the
9 applicant does business.
- 10 2. The address of each location in this state at which the applicant operates a
11 nursery or holds nursery stock for sale.
- 12 3. The license fee required under par. (c) or (cm).
- 13 4. The surcharge required under (d), if any.
- 14 5. Other information reasonably required by the department for licensing
15 purposes.

16 (c) *License fee; general.* Except as provided in par. (cm), a nursery grower shall
17 pay the following annual license fee, based on annual sales calculated according to
18 par. (e):

- 19 1. If the nursery grower annually sells no more than \$5,000 worth of nursery
20 stock ~~to persons in this state~~, \$55.
- 21 2. If the nursery grower annually sells more than \$5,000 but not more than
22 \$20,000 worth of nursery stock ~~to persons in this state~~, \$100.
- 23 3. If the nursery grower annually sells more than \$20,000 but not more than
24 \$100,000 worth of nursery stock ~~to persons in this state~~, \$200.

1 4. If the nursery grower annually sells more than \$100,000 but not more than
2 \$200,000 worth of nursery stock ~~to persons in this state~~, \$400.

3 5. If the nursery grower annually sells more than \$200,000 but not more than
4 \$500,000 worth of nursery stock ~~to persons in this state~~, \$600.

5 6. If the nursery grower annually sells more than \$500,000 but not more than
6 \$2,000,000 worth of nursery stock ~~to persons in this state~~, \$1,200.

7 7. If the nursery grower annually sells more than \$2,000,000 worth of nursery
8 stock ~~to persons in this state~~, \$2,400.

9 (cm) *License fee; Christmas tree growers.* A Christmas tree grower shall pay
10 the following annual license fee, based on annual sales calculated according to par.
11 (e):

12 1. No fee if the Christmas tree grower annually sells no more than \$5,000 worth
13 of Christmas trees ~~to persons in this state~~.

14 2. If the Christmas tree grower annually sells more than \$5,000 but not more
15 than \$20,000 worth of Christmas trees ~~to persons in this state~~, \$75.

16 3. If the Christmas tree grower annually sells more than \$20,000 but not more
17 than \$100,000 worth of Christmas trees ~~to persons in this state~~, \$150.

18 4. If the Christmas tree grower annually sells more than \$100,000 but not more
19 than \$200,000 worth of Christmas trees ~~to persons in this state~~, \$300.

20 5. If the Christmas tree grower annually sells more than \$200,000 but not more
21 than \$500,000 worth of Christmas trees ~~to persons in this state~~, \$450.

22 6. If the Christmas tree grower annually sells more than \$500,000 but not more
23 than \$2,000,000 worth of Christmas trees ~~to persons in this state~~, \$900.

24 7. If the Christmas tree grower annually sells more than \$2,000,000 worth of
25 Christmas trees ~~to persons in this state~~, \$1,800.

1 (d) *Surcharge for operating without a license.* In addition to the fee required
2 under par. (c) or (cm), an applicant for a nursery grower license shall pay a surcharge
3 equal to the amount of that fee if the department determines that, within 365 days
4 before submitting that application, the applicant operated as a nursery grower
5 without a license in violation of par. (a). Payment of the surcharge does not relieve
6 the applicant of any other penalty or liability that may result from the violation, but
7 does not constitute evidence of a violation of par. (a).

8 (e) *Calculating annual sales.* The amount of an applicant's license fee under
9 par. (c) or (cm) for a license year shall be based on the applicant's sales of nursery
10 stock during the ^{applicant's} preceding ^{fiscal} license year, except that if the applicant made no sales
11 during the preceding ^{fiscal} license year the fee shall be based on the applicant's good faith
12 prediction of sales during the license year for which the applicant is applying.

13 (f) *Exemptions.* Paragraph (a) does not apply to any of the following:

14 1. A nursery grower whose only sales of nursery stock are retail sales totaling
15 less than \$250 annually.

16 2. A person growing nursery stock for sale pursuant to a valid temporary permit
17 under par. (g).

18 (g) *Temporary permit; sales benefiting nonprofit organization.* The department
19 may issue a temporary permit authorizing the permit holder to sell nursery stock,
20 for the benefit of a nonprofit organization, for a period of not more than 7 consecutive
21 days. An applicant for a temporary permit shall apply on a form provided by the
22 department and shall pay a fee of \$5. The department may impose written conditions
23 on the temporary permit and may summarily suspend or revoke the permit if the
24 permit holder violates those conditions.

1 **(3m) NOTICE OF NEW LOCATIONS.** (a) The holder of a nursery dealer license shall
2 notify the department in writing before adding, during a license year, any new
3 location at which the license holder will hold nursery stock for sale. The license
4 holder shall specify the address of the new location in the notice.

5 (b) The holder of a nursery grower license shall notify the department in
6 writing before adding, during the license year, any new location at which the license
7 holder will operate a nursery or hold nursery stock for sale. The license holder shall
8 specify the address of the new location in the notice.

9 **(4) NURSERY GROWERS AND DEALERS; RECORDS.** (a) *Nursery dealers; records of*
10 *nursery stock received.* A nursery dealer shall keep a record of every shipment of
11 nursery stock received by the nursery dealer. The nursery dealer shall include all
12 of the following in the record:

13 1. A description of the types of nursery stock, and the quantity of nursery stock
14 of each type, included in the shipment.

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

17 (b) *Nursery growers and dealers; records of shipments to other nursery growers*
18 *and dealers.* Each nursery grower and nursery dealer shall record every shipment
19 of nursery stock that the nursery grower or nursery dealer sells or distributes to
20 another nursery grower or nursery dealer. The nursery grower or nursery dealer
21 shall include all of the following in the record:

22 1. A description of the types of nursery stock, and the quantity of nursery stock
23 of each type, included in the shipment.

24 2. The name and address of the nursery grower or nursery dealer receiving the
25 shipment.

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

5 (5) LABELING NURSERY STOCK. (a) *Nursery stock shipped to dealer.* No person
6 may sell or distribute any shipment of nursery stock to a nursery dealer, and no
7 nursery dealer may accept a shipment of nursery stock, unless that shipment is
8 labeled with all of the following:

9 1. The name and address of the person selling or distributing the shipment to
10 the nursery dealer.

11 2. A certification, by the person under subd. 1., that all of the nursery stock
12 included in the shipment is from officially inspected sources.

13 (b) *Growers and dealers to report unlabeled shipments.* Whenever any person
14 tenders to a nursery grower or nursery dealer any shipment of nursery stock that is
15 not fully labeled according to par. (a), the nursery grower or nursery dealer shall
16 promptly report that unlabeled shipment to the department.

17 (c) *Nursery stock sold at retail.* A person selling nursery stock at retail shall
18 ensure that the nursery stock is labeled with the common or botanical name of the
19 nursery stock.

20 (6) CARE OF NURSERY STOCK. (a) *Adequate facilities.* A nursery grower or
21 nursery dealer shall maintain facilities that are reasonably adequate for the care and
22 keeping of nursery stock held for sale, so that the nursery grower or nursery dealer
23 can keep the nursery stock in healthy condition pending sale.

24 (b) *Reasonable examinations.* Nursery growers and nursery dealers shall make
25 reasonable examinations of nursery stock held for sale to determine whether that

1 nursery stock is capable of reasonable growth, is infested with injurious pests or is
2 infected with disease.

3 (7) PROHIBITIONS. (a) *Nursery dealers*. No nursery dealer may do any of the
4 following:

5 1. Obtain, hold, sell, offer to sell or distribute nursery stock from any source
6 other than an officially inspected source.

7 2. Misrepresent that the nursery dealer is a nursery grower.

8 (b) *Nursery growers and dealers*. No nursery grower or nursery dealer may do
9 any of the following:

10 1. Sell, offer to sell or distribute any nursery stock that the nursery grower or
11 nursery dealer knows, or has reason to know, is infested with plant pests or infected
12 with plant diseases that may be spread by the sale or distribution of that nursery
13 stock.

14 2. Sell, offer to sell or distribute any nursery stock that the nursery grower or
15 nursery dealer knows, or has reason to know, will not survive or grow.

16 3. Misrepresent the name, origin, grade, variety, quality or hardiness of any
17 nursery stock offered for sale or make any other false or misleading representation
18 in the advertising or sale of nursery stock.

19 4. Conceal nursery stock to avoid inspection by the department, falsify any
20 record required under this section or make any false or misleading statement to the
21 department.

22 (8) DEPARTMENT INSPECTION. The department may inspect nurseries and
23 premises at which nursery stock is held for sale or distribution.

1 **(9) DEPARTMENT ORDERS.** (a) *Holding orders and remedial orders.* An
2 authorized employe or agent of the department may, by written notice, order a
3 nursery grower or nursery dealer to do any of the following:

4 1. Temporarily hold nursery stock pending inspection by the department.

5 2. Remedy violations of this section.

6 3. Refrain from importing weeds or pests that threaten agricultural production
7 or the environment in this state.

8 4. Permanently withhold nursery stock from sale or distribution, if the sale or
9 distribution would violate this section or an order issued under this section and the
10 violation cannot be adequately remedied in another manner.

11 5. Destroy or return, without compensation from the department, nursery
12 stock that is sold or distributed in violation of this section, or an order issued under
13 this section, if the violation cannot be adequately remedied in another manner.

14 (b) *Hearing.* If the recipient of an order under par. (a) requests a hearing on
15 that order, the department shall hold an informal hearing within 10 days unless the
16 recipient of the order consents to a later date for an informal hearing. The request
17 for a hearing is not a request under s. 227.42 (2). If a contested matter is not resolved
18 at the informal hearing, the recipient of the order is entitled to a class 2 contested
19 case hearing under ch. 227. The department is not required to stay an order under
20 par. (a) pending the outcome of any hearing under this paragraph.

21 **(10) RECIPROCAL AGREEMENTS WITH OTHER STATES.** (a) *General.* The department
22 may enter into reciprocal agreements with other states to facilitate interstate
23 shipments of nursery stock.

1 (b) *Officially inspected sources.* As part of an agreement under par. (a), the
2 department may recognize sources of nursery stock in another state as officially
3 inspected sources.

4 (c) *Inspection and certification standards.* An agreement under par. (a) may
5 specify standards and procedures for all of the following:

- 6 1. Inspecting officially inspected sources of nursery stock.
- 7 2. Inspecting and certifying interstate shipments of nursery stock.

(END)

Insert
8
13-7 ✓

1999

Nonstat File Sequence: **DDD**

LRB 0091 13

\$\$\$ CHANGE

Insert 13-7 ✓

1. In the component bar:

For the action phrase, execute: create → action: → *NS: → \$change

For the budget action phrase, execute: create → action: → *NS: → 92XX

For the text, execute: create → text: → *NS: → \$change

2. Nonstatutory subunits are numbered automatically if "(#1)", "(#2)", etc., is filled in.. Below, for the budget, fill in the 9200 department code; and fill in "___" or "()" only if a "frozen" number is needed.

SECTION # 9204. Appropriation changes;

a.g. agriculture, trade and consumer protection.....

(#1) (u) Plant pest detection.....

~~In the schedule under section 20.005 (3) of the statutes for the appropriation to the under section 20. () () of the statutes, as affected by the acts of 1999, the dollar amount is creased by \$ for fiscal year 1999-00 and the dollar amount is creased by \$ for fiscal year 2000-01 [to crease funding for the [purpose] [purposes] for which the appropriation is made] [to crease funding for~~

→ The unencumbered balance in the appropriation account under section 20.115(?) (j) of 1997 stats, is transferred to the appropriation account under section 20.115(?) (ja) of

* Use the 2nd alternative if the purpose of the increase or decrease is more limited than the purpose or purposes of the appropriation as currently shown in the text of ch. 20, stats.

↳ the statutes, as created by this act.

Tradewell, Becky

From: Grinde, Kirsten [kirsten.grinde@doa.state.wi.us]
Sent: Monday, December 28, 1998 10:49 AM
To: Tradewell, Becky
Subject: LRB 0091/3



Newfees.doc

Becky,

Please make the following change to LRB 0091/3:

Modify the license fees as indicated in the attached file.

<<Newfees.doc>> The file is saved in Word 6.0/95. Let me know if you can't open it.

These changes did not come from DATCP. Please make them after you've completed discussions with the department on this draft.

Let me know if you have any questions.

Thanks,

Kirsten

Nursery Dealer, Grower and Christmas Tree Grower License Fees

Changes to LRB 0091/3

<u>Page</u>	<u>Line</u>	<u>Current</u>	<u>Recommended</u>
4	6	\$55	\$30
4	8	\$75	\$50
4	10	\$100	\$100
4	12	\$200	\$150
4	14	\$300	\$200
4	16	\$400	\$300
4	18	\$500	\$400
6	13	\$55	\$40
6	15	\$100	\$75
6	17	\$200	\$125
6	19	\$400	\$200
6	21	\$600	\$350
6	23	\$1,200	\$600
6	25	\$2,400	\$1,200
7	4-5	\$0	\$20
7	7	\$75	\$55
7	9	\$150	\$90
7	11	\$300	\$150
7	13	\$450	\$250
7	15	\$900	\$450
7	17	\$1,800	\$900



State of Wisconsin
1999 - 2000 LEGISLATURE

SOON

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RCT:kmg:jf

Redraft
Mader
YUN

DOA:.....Grinde - Plant pest detection and nurseries

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21 to the amount of that fee if the department determines that, within 365 days before
22 submitting the application, the applicant operated as a nursery dealer without a
23 license in violation of par. (a). Payment of the surcharge does not relieve the
24 applicant of any other penalty or liability that may result from the violation, but does
25 not constitute evidence of a violation of par. (a).

1 (e) *Calculating annual purchases.* The amount of an applicant's license fee
2 under par. (c) for a license year shall be based on the applicant's purchases of nursery
3 stock during the applicant's preceding fiscal year, except that if the applicant made
4 no purchases of nursery stock during the preceding fiscal year the fee shall be based
5 on the applicant's good faith prediction of purchases during the license year for which
6 the applicant is applying.

7 (f) *Exemptions.* Paragraph (a) does not apply to any of the following:

8 1. A person whose only sales of nursery stock are retail sales totaling less than
9 \$250 annually.

10 2. A person selling or offering to sell nursery stock pursuant to a valid permit
11 under par. (g).

12 (g) *Temporary permit; sales benefiting nonprofit organization.* The department
13 may issue a temporary permit authorizing the permit holder to sell nursery stock,
14 for the benefit of a nonprofit organization, for a period of not more than 7 consecutive
15 days. An applicant for a temporary permit shall apply on a form provided by the
16 department and shall pay a fee of \$5. The department may impose written conditions
17 on the temporary permit and may summarily suspend or revoke the permit if the
18 permit holder violates those conditions.

19 **(3) NURSERY GROWER; ANNUAL LICENSE.** (a) *License required.* Except as provided
20 in par. (f), no person may operate as a nursery grower without an annual license from
21 the department. A nursery grower license expires on February 20. A nursery grower
22 license may not be transferred to another person.

23 (b) *Applying for a license.* A person applying for a nursery grower license under
24 par. (a) shall apply on a form provided by the department. An applicant shall provide
25 all of the following to the department:

1 1. The applicant's legal name and address and any other name under which the
2 applicant does business.

3 2. The address of each location in this state at which the applicant operates a
4 nursery or holds nursery stock for sale.

5 3. The license fee required under par. (c) or (cm).

6 4. The surcharge required under (d), if any.

7 5. Other information reasonably required by the department for licensing
8 purposes.

9 (c) *License fee; general.* Except as provided in par. (cm), a nursery grower shall
10 pay the following annual license fee, based on annual sales calculated according to
11 par. (e):

12 1. If the nursery grower annually sells no more than \$5,000 worth of nursery
13 stock, ~~\$55~~ ^{\$40}

14 2. If the nursery grower annually sells more than \$5,000 but not more than
15 \$20,000 worth of nursery stock, ~~\$100~~ ^{\$75}

16 3. If the nursery grower annually sells more than \$20,000 but not more than
17 \$100,000 worth of nursery stock, ~~\$200~~ ^{\$125}

18 4. If the nursery grower annually sells more than \$100,000 but not more than
19 \$200,000 worth of nursery stock, ~~\$400~~ ^{\$200}

20 5. If the nursery grower annually sells more than \$200,000 but not more than
21 \$500,000 worth of nursery stock, ~~\$800~~ ^{\$350}

22 6. If the nursery grower annually sells more than \$500,000 but not more than
23 \$2,000,000 worth of nursery stock, ~~\$1,200~~ ^{\$600}

24 7. If the nursery grower annually sells more than \$2,000,000 worth of nursery
25 stock, ~~\$2,400~~ ^{\$1,200}

1 (cm) *License fee; Christmas tree growers.* A Christmas tree grower shall pay
2 the following annual license fee, based on annual sales calculated according to par.

3 (e):

4 1. ~~No fee~~ If the Christmas tree grower annually sells no more than \$5,000 worth
5 of Christmas trees, ~~no fee~~ \$20

6 2. If the Christmas tree grower annually sells more than \$5,000 but not more
7 than \$20,000 worth of Christmas trees, ~~\$75~~ \$55

8 3. If the Christmas tree grower annually sells more than \$20,000 but not more
9 than \$100,000 worth of Christmas trees, ~~\$150~~ \$90

10 4. If the Christmas tree grower annually sells more than \$100,000 but not more
11 than \$200,000 worth of Christmas trees, ~~\$300~~ \$150

12 5. If the Christmas tree grower annually sells more than \$200,000 but not more
13 than \$500,000 worth of Christmas trees, ~~\$450~~ \$250

14 6. If the Christmas tree grower annually sells more than \$500,000 but not more
15 than \$2,000,000 worth of Christmas trees, ~~\$900~~ \$450

16 7. If the Christmas tree grower annually sells more than \$2,000,000 worth of
17 Christmas trees, ~~\$1,800~~ \$900

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

1 (e) *Calculating annual sales.* The amount of an applicant's license fee under
2 par. (c) or (cm) for a license year shall be based on the applicant's sales of nursery
3 stock during the applicant's preceding fiscal year, except that if the applicant made
4 no sales during the preceding fiscal year the fee shall be based on the applicant's good
5 faith prediction of sales during the license year for which the applicant is applying.

6 (f) *Exemptions.* Paragraph (a) does not apply to any of the following:

7 1. A nursery grower whose only sales of nursery stock are retail sales totaling
8 less than \$250 annually.

9 2. A person growing nursery stock for sale pursuant to a valid temporary permit
10 under par. (g).

11 (g) *Temporary permit; sales benefiting nonprofit organization.* The department
12 may issue a temporary permit authorizing the permit holder to sell nursery stock,
13 for the benefit of a nonprofit organization, for a period of not more than 7 consecutive
14 days. An applicant for a temporary permit shall apply on a form provided by the
15 department and shall pay a fee of \$5. The department may impose written conditions
16 on the temporary permit and may summarily suspend or revoke the permit if the
17 permit holder violates those conditions.

18 **(3m) NOTICE OF NEW LOCATIONS.** (a) The holder of a nursery dealer license shall
19 notify the department in writing before adding, during a license year, any new
20 location at which the license holder will hold nursery stock for sale. The license
21 holder shall specify the address of the new location in the notice.

22 (b) The holder of a nursery grower license shall notify the department in
23 writing before adding, during the license year, any new location at which the license
24 holder will operate a nursery or hold nursery stock for sale. The license holder shall
25 specify the address of the new location in the notice.

1 (4) NURSERY GROWERS AND DEALERS; RECORDS. (a) *Nursery dealers; records of*
2 *nursery stock received.* A nursery dealer shall keep a record of every shipment of
3 nursery stock received by the nursery dealer. The nursery dealer shall include all
4 of the following in the record:

5 1. A description of the types of nursery stock, and the quantity of nursery stock
6 of each type, included in the shipment.

7 2. The name and address of the source from which the nursery dealer received
8 the shipment.

9 (b) *Nursery growers and dealers; records of shipments to other nursery growers*
10 *and dealers.* Each nursery grower and nursery dealer shall record every shipment
11 of nursery stock that the nursery grower or nursery dealer sells or distributes to
12 another nursery grower or nursery dealer. The nursery grower or nursery dealer
13 shall include all of the following in the record:

14 1. A description of the types of nursery stock, and the quantity of nursery stock
15 of each type, included in the shipment.

16 2. The name and address of the nursery grower or nursery dealer receiving the
17 shipment.

18 (c) *Records retained and made available.* A nursery grower or nursery dealer
19 who is required to keep records under par. (a) or (b) shall retain those records for at
20 least 3 years and shall make those records available to the department for inspection
21 and copying upon request.

22 (5) LABELING NURSERY STOCK. (a) *Nursery stock shipped to dealer.* No person
23 may sell or distribute any shipment of nursery stock to a nursery dealer, and no
24 nursery dealer may accept a shipment of nursery stock, unless that shipment is
25 labeled with all of the following:

1 1. The name and address of the person selling or distributing the shipment to
2 the nursery dealer.

3 2. A certification, by the person under subd. 1., that all of the nursery stock
4 included in the shipment is from officially inspected sources.

5 (b) *Growers and dealers to report unlabeled shipments.* Whenever any person
6 tenders to a nursery grower or nursery dealer any shipment of nursery stock that is
7 not fully labeled according to par. (a), the nursery grower or nursery dealer shall
8 promptly report that unlabeled shipment to the department.

9 (c) *Nursery stock sold at retail.* A person selling nursery stock at retail shall
10 ensure that the nursery stock is labeled with the common or botanical name of the
11 nursery stock.

12 **(6) CARE OF NURSERY STOCK.** (a) *Adequate facilities.* A nursery grower or
13 nursery dealer shall maintain facilities that are reasonably adequate for the care and
14 keeping of nursery stock held for sale, so that the nursery grower or nursery dealer
15 can keep the nursery stock in healthy condition pending sale.

16 (b) *Reasonable examinations.* Nursery growers and nursery dealers shall make
17 reasonable examinations of nursery stock held for sale to determine whether that
18 nursery stock is capable of reasonable growth, is infested with injurious pests or is
19 infected with disease.

20 **(7) PROHIBITIONS.** (a) *Nursery dealers.* No nursery dealer may do any of the
21 following:

22 1. Obtain, hold, sell, offer to sell or distribute nursery stock from any source
23 other than an officially inspected source.

24 2. Misrepresent that the nursery dealer is a nursery grower.

1 (b) *Nursery growers and dealers.* No nursery grower or nursery dealer may do
2 any of the following:

3 1. Sell, offer to sell or distribute any nursery stock that the nursery grower or
4 nursery dealer knows, or has reason to know, is infested with plant pests or infected
5 with plant diseases that may be spread by the sale or distribution of that nursery
6 stock.

7 2. Sell, offer to sell or distribute any nursery stock that the nursery grower or
8 nursery dealer knows, or has reason to know, will not survive or grow.

9 3. Misrepresent the name, origin, grade, variety, quality or hardiness of any
10 nursery stock offered for sale or make any other false or misleading representation
11 in the advertising or sale of nursery stock.

12 4. Conceal nursery stock to avoid inspection by the department, falsify any
13 record required under this section or make any false or misleading statement to the
14 department.

15 (8) DEPARTMENT INSPECTION. The department may inspect nurseries and
16 premises at which nursery stock is held for sale or distribution.

17 (9) DEPARTMENT ORDERS. (a) *Holding orders and remedial orders.* An
18 authorized employe or agent of the department may, by written notice, order a
19 nursery grower or nursery dealer to do any of the following:

20 1. Temporarily hold nursery stock pending inspection by the department.

21 2. Remedy violations of this section.

22 3. Refrain from importing weeds or pests that threaten agricultural production
23 or the environment in this state.

1 4. Permanently withhold nursery stock from sale or distribution, if the sale or
2 distribution would violate this section or an order issued under this section and the
3 violation cannot be adequately remedied in another manner.

4 5. Destroy or return, without compensation from the department, nursery
5 stock that is sold or distributed in violation of this section, or an order issued under
6 this section, if the violation cannot be adequately remedied in another manner.

7 (b) *Hearing*. If the recipient of an order under par. (a) requests a hearing on
8 that order, the department shall hold an informal hearing within 10 days unless the
9 recipient of the order consents to a later date for an informal hearing. The request
10 for a hearing is not a request under s. 227.42 (2). If a contested matter is not resolved
11 at the informal hearing, the recipient of the order is entitled to a class 2 contested
12 case hearing under ch. 227. The department is not required to stay an order under
13 par. (a) pending the outcome of any hearing under this paragraph.

14 (10) **RECIPROCAL AGREEMENTS WITH OTHER STATES.** (a) *General*. The department
15 may enter into reciprocal agreements with other states to facilitate interstate
16 shipments of nursery stock.

17 (b) *Officially inspected sources*. As part of an agreement under par. (a), the
18 department may recognize sources of nursery stock in another state as officially
19 inspected sources.

20 (c) *Inspection and certification standards*. An agreement under par. (a) may
21 specify standards and procedures for all of the following:

- 22 1. Inspecting officially inspected sources of nursery stock.
- 23 2. Inspecting and certifying interstate shipments of nursery stock.

24 **SECTION 9204. Appropriation changes; agriculture, trade and**
25 **consumer protection.**

Tradewell, Becky

From: Grinde, Kirsten
Sent: Monday, January 25, 1999 8:35 AM
To: Tradewell, Becky
Subject: RE: LRB 0091/4

Yes.

-----Original Message-----

From: Tradewell, Becky
Sent: Saturday, January 23, 1999 12:32 PM
To: Grinde, Kirsten
Subject: RE: LRB 0091/4

Kirsten,

Should this be in addition to existing s. 20.115 (7) (q)?

Becky

-----Original Message-----

From: Grinde, Kirsten
Sent: Friday, January 22, 1999 6:26 PM
To: Tradewell, Becky
Subject: LRB 0091/4

Becky,

Please make the following change to LRB 0091/4:

Create an annual appropriation from the conservation fund for plant protection, including nursery regulation and the detection and control of plant pests.

Let me know if you need any more information.

Kirsten



State of Wisconsin
1999 - 2000 LEGISLATURE

SOON

LRB-0091/5

RCT:kmg:jf

redraft
make
run

DOA:.....Grinde - Plant pest detection and nurseries

FOR 1999-01 BUDGET — NOT READY FOR INTRODUCTION

See p. 2

1

Submit Gen Cat
AN ACT relating to: the budget.

Analysis by the Legislative Reference Bureau

AGRICULTURE

Under current law, a person may not operate a nursery (a place where plants are grown for sale) in this state without a license from the department of agriculture, trade and consumer protection (DATCP). The license fee is based primarily on total nursery acreage. A nursery operator must pay a surcharge, also primarily based on acreage, which is used for gypsy moth eradication. A person other than the operator of a nursery may not sell nursery stock without a nursery dealer license from DATCP. The nursery dealer license fee is \$25 for each place of business. A nursery dealer must also pay a \$30 surcharge which is used for gypsy moth eradication.

This bill restructures and makes various changes in the law related to nursery operators and nursery dealers. Under the bill, the license fee for a nursery operator (called a nursery grower) is based on annual sales of nursery stock. Under the bill, the nursery dealer license fee is based on annual purchases of nursery stock. The bill eliminates the gypsy moth surcharge and provides that all of the nurser grower and nursery dealer license fees are used for plant protection, including nursery regulation and control of plant pests. The bill requires that Christmas tree growers be licensed as nursery growers. The bill also authorizes DATCP to issue temporary permits to allow the growing and sale of nursery stock for the benefit of nonprofit organizations without a 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.** 20.115 (7) (j) of the statutes is repealed.

 ****NOTE: This SECTION involves a change in an appropriation that must be reflected in the revised schedule in s. 20.005, stats.

2 **SECTION 2.** 20.115 (7) (ja) of the statutes is created to read:

3 20.115 (7) (ja) *Plant protection.* All moneys received under s. 94.10 (2) and (3)
4 for plant protection, including nursery regulation and the detection and control of
5 plant pests.

 ****NOTE: This SECTION involves a change in an appropriation that must be reflected in the revised schedule in s. 20.005, stats.

6 **SECTION 3.** 93.135 (1) (b) of the statutes is amended to read:

7 93.135 (1) (b) A license under s. 94.10 (2) or (3) ~~or (4)~~.

8 **SECTION 4.** 94.10 of the statutes is repealed and recreated to read:

9 **94.10 Nursery stock; inspection and licensing. (1) DEFINITIONS.** In this
10 section:

11 (b) "Nonprofit organization" means an organization described in section 501 (c)
12 of the Internal Revenue Code that is exempt from federal income tax under section
13 501 (a) of the Internal Revenue Code.

14 (c) "Nursery" means premises in this state on which a person propagates or
15 grows nursery stock for sale. "Nursery" does not include heeling-in grounds or other
16 premises where a person holds nursery stock for purposes other than propagation or
17 growth.

18 (d) "Nursery dealer" means a person, other than a nursery grower, who sells,
19 offers for sale or distributes nursery stock from a location in this state.

1 (e) “Nursery grower” means a person who owns or operates a nursery.

2 (f) “Nursery stock” means plants and plant parts that can be propagated or
3 grown, including rooted Christmas trees, but excluding seeds, sod, cranberry
4 cuttings and annuals.

5 (g) “Officially inspected source” means any of the following:

6 1. A nursery dealer licensed under sub. (2).

7 2. A nursery grower licensed under sub. (3).

8 3. A source outside this state that the department recognizes under sub. (10)
9 as an officially inspected source.

10 (i) “Rooted Christmas tree” means an evergreen tree that is rooted in the soil
11 and grown for eventual harvest and sale as a Christmas tree.

12 (j) “Sell” means to transfer ownership, for consideration.

13 **(2) NURSERY DEALER; ANNUAL LICENSE.** (a) *License required.* Except as provided
14 in par. (f), no person may operate as a nursery dealer without an annual license from
15 the department. A nursery dealer license expires on February 20. A nursery dealer
16 license may not be transferred to another person.

17 (b) *Applying for a license.* A person applying for a nursery dealer license under
18 par. (a) shall apply on a form provided by the department. An applicant shall provide
19 all of the following to the department:

20 1. The applicant’s legal name and address and any other name under which the
21 applicant does business.

22 2. The address of each location at which the applicant proposes to hold nursery
23 stock for sale.

24 3. The license fee required under par. (c).

25 4. The surcharge required under par. (d), if any.

1 5. Other information reasonably required by the department for licensing
2 purposes.

3 (c) *License fee.* A nursery dealer shall pay the following annual license fee,
4 based on annual purchases calculated according to par. (e):

5 1. If the nursery dealer buys no more than \$5,000 worth of nursery stock for
6 resale, \$30.

7 2. If the nursery dealer buys more than \$5,000 but not more than \$20,000 worth
8 of nursery stock for resale, \$50.

9 3. If the nursery dealer buys more than \$20,000 but not more than \$100,000
10 worth of nursery stock for resale, \$100.

11 4. If the nursery dealer buys more than \$100,000 but not more than \$200,000
12 worth of nursery stock for resale, \$150.

13 5. If the nursery dealer buys more than \$200,000 but not more than \$500,000
14 worth of nursery stock for resale, \$200.

15 6. If the nursery dealer buys more than \$500,000 but not more than \$2,000,000
16 worth of nursery stock for resale, \$300.

17 7. If the nursery dealer buys more than \$2,000,000 worth of nursery stock for
18 resale, \$400.

19 (d) *Surcharge for operating without a license.* In addition to the fee required
20 under par. (c), an applicant for a nursery dealer license shall pay a surcharge equal
21 to the amount of that fee if the department determines that, within 365 days before
22 submitting the application, the applicant operated as a nursery dealer without a
23 license in violation of par. (a). Payment of the surcharge does not relieve the
24 applicant of any other penalty or liability that may result from the violation, but does
25 not constitute evidence of a violation of par. (a).

1 (e) *Calculating annual purchases.* The amount of an applicant's license fee
2 under par. (c) for a license year shall be based on the applicant's purchases of nursery
3 stock during the applicant's preceding fiscal year, except that if the applicant made
4 no purchases of nursery stock during the preceding fiscal year the fee shall be based
5 on the applicant's good faith prediction of purchases during the license year for which
6 the applicant is applying.

7 (f) *Exemptions.* Paragraph (a) does not apply to any of the following:

8 1. A person whose only sales of nursery stock are retail sales totaling less than
9 \$250 annually.

10 2. A person selling or offering to sell nursery stock pursuant to a valid permit
11 under par. (g).

12 (g) *Temporary permit; sales benefiting nonprofit organization.* The department
13 may issue a temporary permit authorizing the permit holder to sell nursery stock,
14 for the benefit of a nonprofit organization, for a period of not more than 7 consecutive
15 days. An applicant for a temporary permit shall apply on a form provided by the
16 department and shall pay a fee of \$5. The department may impose written conditions
17 on the temporary permit and may summarily suspend or revoke the permit if the
18 permit holder violates those conditions.

19 **(3) NURSERY GROWER; ANNUAL LICENSE.** (a) *License required.* Except as provided
20 in par. (f), no person may operate as a nursery grower without an annual license from
21 the department. A nursery grower license expires on February 20. A nursery grower
22 license may not be transferred to another person.

23 (b) *Applying for a license.* A person applying for a nursery grower license under
24 par. (a) shall apply on a form provided by the department. An applicant shall provide
25 all of the following to the department:

1 1. The applicant's legal name and address and any other name under which the
2 applicant does business.

3 2. The address of each location in this state at which the applicant operates a
4 nursery or holds nursery stock for sale.

5 3. The license fee required under par. (c) or (cm).

6 4. The surcharge required under (d), if any.

7 5. Other information reasonably required by the department for licensing
8 purposes.

9 (c) *License fee; general.* Except as provided in par. (cm), a nursery grower shall
10 pay the following annual license fee, based on annual sales calculated according to
11 par. (e):

12 1. If the nursery grower annually sells no more than \$5,000 worth of nursery
13 stock, \$40.

14 2. If the nursery grower annually sells more than \$5,000 but not more than
15 \$20,000 worth of nursery stock, \$75.

16 3. If the nursery grower annually sells more than \$20,000 but not more than
17 \$100,000 worth of nursery stock, \$125.

18 4. If the nursery grower annually sells more than \$100,000 but not more than
19 \$200,000 worth of nursery stock, \$200.

20 5. If the nursery grower annually sells more than \$200,000 but not more than
21 \$500,000 worth of nursery stock, \$350.

22 6. If the nursery grower annually sells more than \$500,000 but not more than
23 \$2,000,000 worth of nursery stock, \$600.

24 7. If the nursery grower annually sells more than \$2,000,000 worth of nursery
25 stock, \$1,200.

1 (cm) *License fee; Christmas tree growers.* A Christmas tree grower shall pay
2 the following annual license fee, based on annual sales calculated according to par.

3 (e):

4 1. If the Christmas tree grower annually sells no more than \$5,000 worth of
5 Christmas trees, \$20.

6 2. If the Christmas tree grower annually sells more than \$5,000 but not more
7 than \$20,000 worth of Christmas trees, \$55.

8 3. If the Christmas tree grower annually sells more than \$20,000 but not more
9 than \$100,000 worth of Christmas trees, \$90.

10 4. If the Christmas tree grower annually sells more than \$100,000 but not more
11 than \$200,000 worth of Christmas trees, \$150.

12 5. If the Christmas tree grower annually sells more than \$200,000 but not more
13 than \$500,000 worth of Christmas trees, \$250.

14 6. If the Christmas tree grower annually sells more than \$500,000 but not more
15 than \$2,000,000 worth of Christmas trees, \$450.

16 7. If the Christmas tree grower annually sells more than \$2,000,000 worth of
17 Christmas trees, \$900.

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

1 (e) *Calculating annual sales.* The amount of an applicant's license fee under
2 par. (c) or (cm) for a license year shall be based on the applicant's sales of nursery
3 stock during the applicant's preceding fiscal year, except that if the applicant made
4 no sales during the preceding fiscal year the fee shall be based on the applicant's good
5 faith prediction of sales during the license year for which the applicant is applying.

6 (f) *Exemptions.* Paragraph (a) does not apply to any of the following:

7 1. A nursery grower whose only sales of nursery stock are retail sales totaling
8 less than \$250 annually.

9 2. A person growing nursery stock for sale pursuant to a valid temporary permit
10 under par. (g).

11 (g) *Temporary permit; sales benefiting nonprofit organization.* The department
12 may issue a temporary permit authorizing the permit holder to sell nursery stock,
13 for the benefit of a nonprofit organization, for a period of not more than 7 consecutive
14 days. An applicant for a temporary permit shall apply on a form provided by the
15 department and shall pay a fee of \$5. The department may impose written conditions
16 on the temporary permit and may summarily suspend or revoke the permit if the
17 permit holder violates those conditions.

18 **(3m) NOTICE OF NEW LOCATIONS.** (a) The holder of a nursery dealer license shall
19 notify the department in writing before adding, during a license year, any new
20 location at which the license holder will hold nursery stock for sale. The license
21 holder shall specify the address of the new location in the notice.

22 (b) The holder of a nursery grower license shall notify the department in
23 writing before adding, during the license year, any new location at which the license
24 holder will operate a nursery or hold nursery stock for sale. The license holder shall
25 specify the address of the new location in the notice.

1 (4) NURSERY GROWERS AND DEALERS; RECORDS. (a) *Nursery dealers; records of*
2 *nursery stock received.* A nursery dealer shall keep a record of every shipment of
3 nursery stock received by the nursery dealer. The nursery dealer shall include all
4 of the following in the record:

5 1. A description of the types of nursery stock, and the quantity of nursery stock
6 of each type, included in the shipment.

7 2. The name and address of the source from which the nursery dealer received
8 the shipment.

9 (b) *Nursery growers and dealers; records of shipments to other nursery growers*
10 *and dealers.* Each nursery grower and nursery dealer shall record every shipment
11 of nursery stock that the nursery grower or nursery dealer sells or distributes to
12 another nursery grower or nursery dealer. The nursery grower or nursery dealer
13 shall include all of the following in the record:

14 1. A description of the types of nursery stock, and the quantity of nursery stock
15 of each type, included in the shipment.

16 2. The name and address of the nursery grower or nursery dealer receiving the
17 shipment.

18 (c) *Records retained and made available.* A nursery grower or nursery dealer
19 who is required to keep records under par. (a) or (b) shall retain those records for at
20 least 3 years and shall make those records available to the department for inspection
21 and copying upon request.

22 (5) LABELING NURSERY STOCK. (a) *Nursery stock shipped to dealer.* No person
23 may sell or distribute any shipment of nursery stock to a nursery dealer, and no
24 nursery dealer may accept a shipment of nursery stock, unless that shipment is
25 labeled with all of the following:

1 1. The name and address of the person selling or distributing the shipment to
2 the nursery dealer.

3 2. A certification, by the person under subd. 1., that all of the nursery stock
4 included in the shipment is from officially inspected sources.

5 (b) *Growers and dealers to report unlabeled shipments.* Whenever any person
6 tenders to a nursery grower or nursery dealer any shipment of nursery stock that is
7 not fully labeled according to par. (a), the nursery grower or nursery dealer shall
8 promptly report that unlabeled shipment to the department.

9 (c) *Nursery stock sold at retail.* A person selling nursery stock at retail shall
10 ensure that the nursery stock is labeled with the common or botanical name of the
11 nursery stock.

12 (6) CARE OF NURSERY STOCK. (a) *Adequate facilities.* A nursery grower or
13 nursery dealer shall maintain facilities that are reasonably adequate for the care and
14 keeping of nursery stock held for sale, so that the nursery grower or nursery dealer
15 can keep the nursery stock in healthy condition pending sale.

16 (b) *Reasonable examinations.* Nursery growers and nursery dealers shall make
17 reasonable examinations of nursery stock held for sale to determine whether that
18 nursery stock is capable of reasonable growth, is infested with injurious pests or is
19 infected with disease.

20 (7) PROHIBITIONS. (a) *Nursery dealers.* No nursery dealer may do any of the
21 following:

22 1. Obtain, hold, sell, offer to sell or distribute nursery stock from any source
23 other than an officially inspected source.

24 2. Misrepresent that the nursery dealer is a nursery grower.

1 (b) *Nursery growers and dealers*. No nursery grower or nursery dealer may do
2 any of the following:

3 1. Sell, offer to sell or distribute any nursery stock that the nursery grower or
4 nursery dealer knows, or has reason to know, is infested with plant pests or infected
5 with plant diseases that may be spread by the sale or distribution of that nursery
6 stock.

7 2. Sell, offer to sell or distribute any nursery stock that the nursery grower or
8 nursery dealer knows, or has reason to know, will not survive or grow.

9 3. Misrepresent the name, origin, grade, variety, quality or hardiness of any
10 nursery stock offered for sale or make any other false or misleading representation
11 in the advertising or sale of nursery stock.

12 4. Conceal nursery stock to avoid inspection by the department, falsify any
13 record required under this section or make any false or misleading statement to the
14 department.

15 (8) DEPARTMENT INSPECTION. The department may inspect nurseries and
16 premises at which nursery stock is held for sale or distribution.

17 (9) DEPARTMENT ORDERS. (a) *Holding orders and remedial orders*. An
18 authorized employe or agent of the department may, by written notice, order a
19 nursery grower or nursery dealer to do any of the following:

20 1. Temporarily hold nursery stock pending inspection by the department.

21 2. Remedy violations of this section.

22 3. Refrain from importing weeds or pests that threaten agricultural production
23 or the environment in this state.

1 4. Permanently withhold nursery stock from sale or distribution, if the sale or
2 distribution would violate this section or an order issued under this section and the
3 violation cannot be adequately remedied in another manner.

4 5. Destroy or return, without compensation from the department, nursery
5 stock that is sold or distributed in violation of this section, or an order issued under
6 this section, if the violation cannot be adequately remedied in another manner.

7 (b) *Hearing*. If the recipient of an order under par. (a) requests a hearing on
8 that order, the department shall hold an informal hearing within 10 days unless the
9 recipient of the order consents to a later date for an informal hearing. The request
10 for a hearing is not a request under s. 227.42 (2). If a contested matter is not resolved
11 at the informal hearing, the recipient of the order is entitled to a class 2 contested
12 case hearing under ch. 227. The department is not required to stay an order under
13 par. (a) pending the outcome of any hearing under this paragraph.

14 **(10) RECIPROCAL AGREEMENTS WITH OTHER STATES.** (a) *General*. The department
15 may enter into reciprocal agreements with other states to facilitate interstate
16 shipments of nursery stock.

17 (b) *Officially inspected sources*. As part of an agreement under par. (a), the
18 department may recognize sources of nursery stock in another state as officially
19 inspected sources.

20 (c) *Inspection and certification standards*. An agreement under par. (a) may
21 specify standards and procedures for all of the following:

- 22 1. Inspecting officially inspected sources of nursery stock.
- 23 2. Inspecting and certifying interstate shipments of nursery stock.

24 **SECTION 9204. Appropriation changes; agriculture, trade and**
25 **consumer protection.**

Insert ✓

Section #. CR; 20.117 (2) (gc) ⁽⁵⁾

20.115 (7) (gc) ⁽¹⁾ Plant protection; conservation fund. From the conservation fund, the amounts in the schedule for plant protection, including nursery regulation and control of plant pests.

Note: bud



State of Wisconsin
1999 - 2000 LEGISLATURE

LRB-0091/5
RCT:kmg:lp

DOA:.....Grinde – Plant pest detection and nurseries

FOR 1999-01 BUDGET — NOT READY FOR INTRODUCTION

1 AN ACT ...; relating to: the budget.

Analysis by the Legislative Reference Bureau

AGRICULTURE

Under current law, a person may not operate a nursery (a place where plants are grown for sale) in this state without a license from the department of agriculture, trade and consumer protection (DATCP). The license fee is based primarily on total nursery acreage. A nursery operator must pay a surcharge, also primarily based on acreage, which is used for gypsy moth eradication. A person other than the operator of a nursery may not sell nursery stock without a nursery dealer license from DATCP. The nursery dealer license fee is \$25 for each place of business. A nursery dealer must also pay a \$30 surcharge which is used for gypsy moth eradication.

This bill restructures and makes various changes in the law related to nursery operators and nursery dealers. Under the bill, the license fee for a nursery operator (called a nursery grower) is based on annual sales of nursery stock. Under the bill, the nursery dealer license fee is based on annual purchases of nursery stock. The bill eliminates the gypsy moth surcharge and provides that all of the nurser grower and nursery dealer license fees are used for plant protection, including nursery regulation and control of plant pests. The bill requires that Christmas tree growers be licensed as nursery growers. The bill also authorizes DATCP to issue temporary permits to allow the growing and sale of nursery stock for the benefit of nonprofit organizations without a 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.** 20.115 (7) (j) of the statutes is repealed.

 ****NOTE: This SECTION involves a change in an appropriation that must be reflected in the revised schedule in s. 20.005, stats.

2 **SECTION 2.** 20.115 (7) (ja) of the statutes is created to read:

3 20.115 (7) (ja) *Plant protection.* All moneys received under s. 94.10 (2) and (3)
4 for plant protection, including nursery regulation and the detection and control of
5 plant pests.

 ****NOTE: This SECTION involves a change in an appropriation that must be reflected in the revised schedule in s. 20.005, stats.

6 **SECTION 3.** 20.115 (7) (qc) of the statutes is created to read:

7 20.115 (7) (qc) *Plant protection; conservation fund.* From the conservation
8 fund, the amounts in the schedule for plant protection, including nursery regulation
9 and control of plant pests.

 ****NOTE: This SECTION involves a change in an appropriation that must be reflected in the revised schedule in s. 20.005, stats.

10 **SECTION 4.** 93.135 (1) (b) of the statutes is amended to read:

11 93.135 (1) (b) A license under s. 94.10 (2) or (3) ~~or (4)~~.

12 **SECTION 5.** 94.10 of the statutes is repealed and recreated to read:

13 **94.10 Nursery stock; inspection and licensing. (1) DEFINITIONS.** In this
14 section:

15 (b) “Nonprofit organization” means an organization described in section 501 (c)
16 of the Internal Revenue Code that is exempt from federal income tax under section
17 501 (a) of the Internal Revenue Code.

1 (c) "Nursery" means premises in this state on which a person propagates or
2 grows nursery stock for sale. "Nursery" does not include heeling-in grounds or other
3 premises where a person holds nursery stock for purposes other than propagation or
4 growth.

5 (d) "Nursery dealer" means a person, other than a nursery grower, who sells,
6 offers for sale or distributes nursery stock from a location in this state.

7 (e) "Nursery grower" means a person who owns or operates a nursery.

8 (f) "Nursery stock" means plants and plant parts that can be propagated or
9 grown, including rooted Christmas trees, but excluding seeds, sod, cranberry
10 cuttings and annuals.

11 (g) "Officially inspected source" means any of the following:

- 12 1. A nursery dealer licensed under sub. (2).
- 13 2. A nursery grower licensed under sub. (3).
- 14 3. A source outside this state that the department recognizes under sub. (10)
15 as an officially inspected source.

16 (i) "Rooted Christmas tree" means an evergreen tree that is rooted in the soil
17 and grown for eventual harvest and sale as a Christmas tree.

18 (j) "Sell" means to transfer ownership, for consideration.

19 **(2) NURSERY DEALER; ANNUAL LICENSE.** (a) *License required.* Except as provided
20 in par. (f), no person may operate as a nursery dealer without an annual license from
21 the department. A nursery dealer license expires on February 20. A nursery dealer
22 license may not be transferred to another person.

23 (b) *Applying for a license.* A person applying for a nursery dealer license under
24 par. (a) shall apply on a form provided by the department. An applicant shall provide
25 all of the following to the department:

1 1. The applicant's legal name and address and any other name under which the
2 applicant does business.

3 2. The address of each location at which the applicant proposes to hold nursery
4 stock for sale.

5 3. The license fee required under par. (c).

6 4. The surcharge required under par. (d), if any.

7 5. Other information reasonably required by the department for licensing
8 purposes.

9 (c) *License fee.* A nursery dealer shall pay the following annual license fee,
10 based on annual purchases calculated according to par. (e):

11 1. If the nursery dealer buys no more than \$5,000 worth of nursery stock for
12 resale, \$30.

13 2. If the nursery dealer buys more than \$5,000 but not more than \$20,000 worth
14 of nursery stock for resale, \$50.

15 3. If the nursery dealer buys more than \$20,000 but not more than \$100,000
16 worth of nursery stock for resale, \$100.

17 4. If the nursery dealer buys more than \$100,000 but not more than \$200,000
18 worth of nursery stock for resale, \$150.

19 5. If the nursery dealer buys more than \$200,000 but not more than \$500,000
20 worth of nursery stock for resale, \$200.

21 6. If the nursery dealer buys more than \$500,000 but not more than \$2,000,000
22 worth of nursery stock for resale, \$300.

23 7. If the nursery dealer buys more than \$2,000,000 worth of nursery stock for
24 resale, \$400.

1 (d) *Surcharge for operating without a license.* In addition to the fee required
2 under par. (c), an applicant for a nursery dealer license shall pay a surcharge equal
3 to the amount of that fee if the department determines that, within 365 days before
4 submitting the application, the applicant operated as a nursery dealer without a
5 license in violation of par. (a). Payment of the surcharge does not relieve the
6 applicant of any other penalty or liability that may result from the violation, but does
7 not constitute evidence of a violation of par. (a).

8 (e) *Calculating annual purchases.* The amount of an applicant's license fee
9 under par. (c) for a license year shall be based on the applicant's purchases of nursery
10 stock during the applicant's preceding fiscal year, except that if the applicant made
11 no purchases of nursery stock during the preceding fiscal year the fee shall be based
12 on the applicant's good faith prediction of purchases during the license year for which
13 the applicant is applying.

14 (f) *Exemptions.* Paragraph (a) does not apply to any of the following:

15 1. A person whose only sales of nursery stock are retail sales totaling less than
16 \$250 annually.

17 2. A person selling or offering to sell nursery stock pursuant to a valid permit
18 under par. (g).

19 (g) *Temporary permit; sales benefiting nonprofit organization.* The department
20 may issue a temporary permit authorizing the permit holder to sell nursery stock,
21 for the benefit of a nonprofit organization, for a period of not more than 7 consecutive
22 days. An applicant for a temporary permit shall apply on a form provided by the
23 department and shall pay a fee of \$5. The department may impose written conditions
24 on the temporary permit and may summarily suspend or revoke the permit if the
25 permit holder violates those conditions.

1 **(3) NURSERY GROWER; ANNUAL LICENSE.** (a) *License required.* Except as provided
2 in par. (f), no person may operate as a nursery grower without an annual license from
3 the department. A nursery grower license expires on February 20. A nursery grower
4 license may not be transferred to another person.

5 (b) *Applying for a license.* A person applying for a nursery grower license under
6 par. (a) shall apply on a form provided by the department. An applicant shall provide
7 all of the following to the department:

8 1. The applicant's legal name and address and any other name under which the
9 applicant does business.

10 2. The address of each location in this state at which the applicant operates a
11 nursery or holds nursery stock for sale.

12 3. The license fee required under par. (c) or (cm).

13 4. The surcharge required under (d), if any.

14 5. Other information reasonably required by the department for licensing
15 purposes.

16 (c) *License fee; general.* Except as provided in par. (cm), a nursery grower shall
17 pay the following annual license fee, based on annual sales calculated according to
18 par. (e):

19 1. If the nursery grower annually sells no more than \$5,000 worth of nursery
20 stock, \$40.

21 2. If the nursery grower annually sells more than \$5,000 but not more than
22 \$20,000 worth of nursery stock, \$75.

23 3. If the nursery grower annually sells more than \$20,000 but not more than
24 \$100,000 worth of nursery stock, \$125.

1 4. If the nursery grower annually sells more than \$100,000 but not more than
2 \$200,000 worth of nursery stock, \$200.

3 5. If the nursery grower annually sells more than \$200,000 but not more than
4 \$500,000 worth of nursery stock, \$350.

5 6. If the nursery grower annually sells more than \$500,000 but not more than
6 \$2,000,000 worth of nursery stock, \$600.

7 7. If the nursery grower annually sells more than \$2,000,000 worth of nursery
8 stock, \$1,200.

9 (cm) *License fee; Christmas tree growers.* A Christmas tree grower shall pay
10 the following annual license fee, based on annual sales calculated according to par.

11 (e):

12 1. If the Christmas tree grower annually sells no more than \$5,000 worth of
13 Christmas trees, \$20.

14 2. If the Christmas tree grower annually sells more than \$5,000 but not more
15 than \$20,000 worth of Christmas trees, \$55.

16 3. If the Christmas tree grower annually sells more than \$20,000 but not more
17 than \$100,000 worth of Christmas trees, \$90.

18 4. If the Christmas tree grower annually sells more than \$100,000 but not more
19 than \$200,000 worth of Christmas trees, \$150.

20 5. If the Christmas tree grower annually sells more than \$200,000 but not more
21 than \$500,000 worth of Christmas trees, \$250.

22 6. If the Christmas tree grower annually sells more than \$500,000 but not more
23 than \$2,000,000 worth of Christmas trees, \$450.

24 7. If the Christmas tree grower annually sells more than \$2,000,000 worth of
25 Christmas trees, \$900.

1 (d) *Surcharge for operating without a license.* In addition to the fee required
2 under par. (c) or (cm), an applicant for a nursery grower license shall pay a surcharge
3 equal to the amount of that fee if the department determines that, within 365 days
4 before submitting that application, the applicant operated as a nursery grower
5 without a license in violation of par. (a). Payment of the surcharge does not relieve
6 the applicant of any other penalty or liability that may result from the violation, but
7 does not constitute evidence of a violation of par. (a).

8 (e) *Calculating annual sales.* The amount of an applicant's license fee under
9 par. (c) or (cm) for a license year shall be based on the applicant's sales of nursery
10 stock during the applicant's preceding fiscal year, except that if the applicant made
11 no sales during the preceding fiscal year the fee shall be based on the applicant's good
12 faith prediction of sales during the license year for which the applicant is applying.

13 (f) *Exemptions.* Paragraph (a) does not apply to any of the following:

14 1. A nursery grower whose only sales of nursery stock are retail sales totaling
15 less than \$250 annually.

16 2. A person growing nursery stock for sale pursuant to a valid temporary permit
17 under par. (g).

18 (g) *Temporary permit; sales benefiting nonprofit organization.* The department
19 may issue a temporary permit authorizing the permit holder to sell nursery stock,
20 for the benefit of a nonprofit organization, for a period of not more than 7 consecutive
21 days. An applicant for a temporary permit shall apply on a form provided by the
22 department and shall pay a fee of \$5. The department may impose written conditions
23 on the temporary permit and may summarily suspend or revoke the permit if the
24 permit holder violates those conditions.

1 **(3m) NOTICE OF NEW LOCATIONS.** (a) The holder of a nursery dealer license shall
2 notify the department in writing before adding, during a license year, any new
3 location at which the license holder will hold nursery stock for sale. The license
4 holder shall specify the address of the new location in the notice.

5 (b) The holder of a nursery grower license shall notify the department in
6 writing before adding, during the license year, any new location at which the license
7 holder will operate a nursery or hold nursery stock for sale. The license holder shall
8 specify the address of the new location in the notice.

9 **(4) NURSERY GROWERS AND DEALERS; RECORDS.** (a) *Nursery dealers; records of*
10 *nursery stock received.* A nursery dealer shall keep a record of every shipment of
11 nursery stock received by the nursery dealer. The nursery dealer shall include all
12 of the following in the record:

13 1. A description of the types of nursery stock, and the quantity of nursery stock
14 of each type, included in the shipment.

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

17 (b) *Nursery growers and dealers; records of shipments to other nursery growers*
18 *and dealers.* Each nursery grower and nursery dealer shall record every shipment
19 of nursery stock that the nursery grower or nursery dealer sells or distributes to
20 another nursery grower or nursery dealer. The nursery grower or nursery dealer
21 shall include all of the following in the record:

22 1. A description of the types of nursery stock, and the quantity of nursery stock
23 of each type, included in the shipment.

24 2. The name and address of the nursery grower or nursery dealer receiving the
25 shipment.

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

5 (5) LABELING NURSERY STOCK. (a) *Nursery stock shipped to dealer.* No person
6 may sell or distribute any shipment of nursery stock to a nursery dealer, and no
7 nursery dealer may accept a shipment of nursery stock, unless that shipment is
8 labeled with all of the following:

9 1. The name and address of the person selling or distributing the shipment to
10 the nursery dealer.

11 2. A certification, by the person under subd. 1., that all of the nursery stock
12 included in the shipment is from officially inspected sources.

13 (b) *Growers and dealers to report unlabeled shipments.* Whenever any person
14 tenders to a nursery grower or nursery dealer any shipment of nursery stock that is
15 not fully labeled according to par. (a), the nursery grower or nursery dealer shall
16 promptly report that unlabeled shipment to the department.

17 (c) *Nursery stock sold at retail.* A person selling nursery stock at retail shall
18 ensure that the nursery stock is labeled with the common or botanical name of the
19 nursery stock.

20 (6) CARE OF NURSERY STOCK. (a) *Adequate facilities.* A nursery grower or
21 nursery dealer shall maintain facilities that are reasonably adequate for the care and
22 keeping of nursery stock held for sale, so that the nursery grower or nursery dealer
23 can keep the nursery stock in healthy condition pending sale.

24 (b) *Reasonable examinations.* Nursery growers and nursery dealers shall make
25 reasonable examinations of nursery stock held for sale to determine whether that

1 nursery stock is capable of reasonable growth, is infested with injurious pests or is
2 infected with disease.

3 (7) PROHIBITIONS. (a) *Nursery dealers*. No nursery dealer may do any of the
4 following:

5 1. Obtain, hold, sell, offer to sell or distribute nursery stock from any source
6 other than an officially inspected source.

7 2. Misrepresent that the nursery dealer is a nursery grower.

8 (b) *Nursery growers and dealers*. No nursery grower or nursery dealer may do
9 any of the following:

10 1. Sell, offer to sell or distribute any nursery stock that the nursery grower or
11 nursery dealer knows, or has reason to know, is infested with plant pests or infected
12 with plant diseases that may be spread by the sale or distribution of that nursery
13 stock.

14 2. Sell, offer to sell or distribute any nursery stock that the nursery grower or
15 nursery dealer knows, or has reason to know, will not survive or grow.

16 3. Misrepresent the name, origin, grade, variety, quality or hardiness of any
17 nursery stock offered for sale or make any other false or misleading representation
18 in the advertising or sale of nursery stock.

19 4. Conceal nursery stock to avoid inspection by the department, falsify any
20 record required under this section or make any false or misleading statement to the
21 department.

22 (8) DEPARTMENT INSPECTION. The department may inspect nurseries and
23 premises at which nursery stock is held for sale or distribution.

1 **(9) DEPARTMENT ORDERS.** (a) *Holding orders and remedial orders.* An
2 authorized employe or agent of the department may, by written notice, order a
3 nursery grower or nursery dealer to do any of the following:

4 1. Temporarily hold nursery stock pending inspection by the department.

5 2. Remedy violations of this section.

6 3. Refrain from importing weeds or pests that threaten agricultural production
7 or the environment in this state.

8 4. Permanently withhold nursery stock from sale or distribution, if the sale or
9 distribution would violate this section or an order issued under this section and the
10 violation cannot be adequately remedied in another manner.

11 5. Destroy or return, without compensation from the department, nursery
12 stock that is sold or distributed in violation of this section, or an order issued under
13 this section, if the violation cannot be adequately remedied in another manner.

14 (b) *Hearing.* If the recipient of an order under par. (a) requests a hearing on
15 that order, the department shall hold an informal hearing within 10 days unless the
16 recipient of the order consents to a later date for an informal hearing. The request
17 for a hearing is not a request under s. 227.42 (2). If a contested matter is not resolved
18 at the informal hearing, the recipient of the order is entitled to a class 2 contested
19 case hearing under ch. 227. The department is not required to stay an order under
20 par. (a) pending the outcome of any hearing under this paragraph.

21 **(10) RECIPROCAL AGREEMENTS WITH OTHER STATES.** (a) *General.* The department
22 may enter into reciprocal agreements with other states to facilitate interstate
23 shipments of nursery stock.

1 (b) *Officially inspected sources.* As part of an agreement under par. (a), the
2 department may recognize sources of nursery stock in another state as officially
3 inspected sources.

4 (c) *Inspection and certification standards.* An agreement under par. (a) may
5 specify standards and procedures for all of the following:

- 6 1. Inspecting officially inspected sources of nursery stock.
- 7 2. Inspecting and certifying interstate shipments of nursery stock.

8 **SECTION 9204. Appropriation changes; agriculture, trade and**
9 **consumer protection.**

10 (1) PLANT PEST DETECTION. The unencumbered balance in the appropriation
11 account under section 20.115 (7) (j), 1997 stats., is transferred to the appropriation
12 account under section 20.115 (7) (ja) of the statutes, as created by this act.

13 (END)