

2007 DRAFTING REQUEST

Bill

Received: **09/20/2006**

Received By: **btradewe**

Wanted: **As time permits**

Identical to LRB:

For: **Administration-Budget**

By/Representing: **Miner**

This file may be shown to any legislator: **NO**

Drafter: **btradewe**

May Contact:

Addl. Drafters:

Subject: **Agriculture - miscellaneous**

Extra Copies:

Submit via email: **NO**

Pre Topic:

DOA:.....Miner, BB0043 -

Topic:

Penalties for nursery and plant quarantine laws

Instructions:

See Attached

Drafting History:

<u>Vers.</u>	<u>Drafted</u>	<u>Reviewed</u>	<u>Typed</u>	<u>Proofed</u>	<u>Submitted</u>	<u>Jacketed</u>	<u>Required</u>
/?							
/1	btradewe 09/29/2006	jdyer 09/29/2006	rschluet 09/29/2006	_____	lparisi 09/29/2006		

FE Sent For:

<END>

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For: **Administration-Budget 266-1103**

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May Contact:

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Subject: **Agriculture - miscellaneous**

Extra Copies:

Submit via email: **YES**

Requester's email:

Carbon copy (CC:) to: **Barb.Knapp@datcp.state.wi.us**

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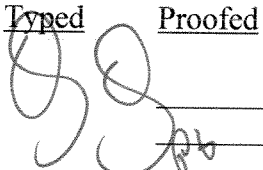
Penalties for nursery and plant quarantine laws

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/?	btradewe	1/9/29 jld					
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FE Sent For:

<END>

2007-09 Budget Bill Statutory Language Drafting Request

- Topic: Emerald Ash Borer 3—Increase penalty for violating nursery and quarantine laws
- Tracking Code: BB0043
- SBO team: Environmental and Commercial Resources
- SBO analyst: Andrew Miner
 - Phone: 266-1103
 - Email: Andrew.Miner@Wisconsin.gov
- Agency acronym: DATCP
- Agency number: 115
- Priority (Low, Medium, High): High

emergencies resulting from enemy action or 30 days as to emergencies resulting from natural or man-made disaster, unless either is extended by joint resolution of the legislature. A copy of the proclamation shall be filed with the secretary of state. The proclamation may be revoked at the discretion of either the governor by written order or the legislature by joint resolution.

(10) EXEMPTION FROM LIABILITY. No person who provides equipment or services under the direction of the governor, the adjutant general, the head of emergency management services in any county, town, municipality or federally recognized American Indian tribe or band in this state, the department of health and family services if that department is designated by the governor under s. 166.03(1)(b)1., the department of agriculture trade and consumer protection if that department is designated by the governor under s. 166.03(1)(b)1., or a local health department acting under s. 251.05(3)(e) during a state of emergency declared by the governor is liable for the death of or injury to any person or damage to any property caused by his or her actions, except where the trier of fact finds that the person acted intentionally or with gross negligence. This subsection does not affect the right of any person to receive benefits to which he or she would otherwise be entitled under the worker's compensation law or under any pension law, nor does it affect entitlement to any other benefits or compensation authorized by state or federal law.

Penalties

Explanation:

Under s. 94.77, the current penalty for violating Wisconsin's nursery and quarantine laws is a fine of \$0 to \$200 or 6 months in jail, or both. These penalties are very small, given that a violation of the laws could cost the state millions of dollars. In addition, the current penalty structure does not allow for civil forfeitures. All violations require criminal sanctions. Finally, the current penalties are very small when compared both to violations of similar laws the department oversees and to other states. Violations of Wisconsin's pesticide laws, for example, carry a penalty of up to \$5000 per offense; penalties can double if there are repeat violations within 5 years. Civil sanctions for quarantine violations in Michigan range from \$0 to \$10,000, and criminal sanctions for knowing and intentional violations include fines and potential jail terms of up to 5 years. This proposed statutory change, which is similar to the current provision for animal health (s. 95.99, Stats.) 1) increases the allowable penalties for violating the nursery and quarantine laws and 2) creates both civil forfeiture and criminal penalty options.

Statutory Language

Section 94.77 is repealed and recreated to read:

94.77 Penalties (1) Any person who violates this chapter, or an order issued or a rule adopted under this chapter, for which a specific penalty is not prescribed shall, for the

first offense, be fined not more than \$1,000; and for any subsequent offense fined not less than \$500 nor more than \$5,000 or imprisoned not more than 6 months or both.

(2) The department may seek an injunction restraining any person from violating this chapter or any rule promulgated under this chapter.

(3) A person who violates this chapter or any rule promulgated or order issued under this chapter, for which a specific penalty is not prescribed, may be required to forfeit not less than \$200 nor more than \$5,000 for the first offense and may be required to forfeit not less than \$400 nor more than \$10,000 for the 2nd or subsequent offense committed within 5 years of an offense for which a penalty has been assessed under this section. A forfeiture under this section is in lieu of a criminal penalty under sub (1).



State of Wisconsin
2007 - 2008 LEGISLATURE

LRB-0323/1

RCT:.....

In 9/29

Jld

DOA:.....Miner, BB0043 - Penalties for nursery and plant quarantine laws
FOR 2007-09 BUDGET -- NOT READY FOR INTRODUCTION

don't gen

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

Analysis by the Legislative Reference Bureau

AGRICULTURE ✓

* Under ^{currently} current law, DATCP administers laws regulating nurseries and laws related to plant pests, which include authorization of quarantines and orders for treatment of infested plants. A person violating these laws is subject to criminal penalties consisting of a fine of up to \$200 or imprisonment for not more than 6 months or both. ^{or six}

* This bill modifies the penalties for violating laws regulating nurseries and laws related to plant pests. Under the bill, a person violating these laws may be fined up to \$1,000 for a first offense and fined not less than \$500 nor more than \$5,000 or imprisoned for not more than 6 months, or both, for a subsequent offense. The bill also provides that, in lieu of the criminal penalties, a person violating these laws may be required to pay a forfeiture (civil penalty) of not less than \$200 nor more than \$5,000 or, for an offense committed within 5 years of a previous offense, may be required to pay a forfeiture of not less than \$400 nor more than \$10,000. ^{maybe} ^{or five}

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

2 SECTION 1. 94.77 of the statutes is renumbered 94.77 (1) and amended to read: ✓

1 94.77 (1) Any person who violates any provision of this chapter for which a
2 specific penalty is not prescribed ~~shall, or an order issued or rule promulgated under~~
3 such a provision, may be fined not to exceed \$200 more than \$1,000 for the first
4 offense and may be fined not less than \$500 nor more than \$5,000 or imprisoned in
5 the county jail not to exceed not more than 6 months or both for each subsequent
6 offense.

7 History: 1999 a. 83.

8 **SECTION 2.** 94.77 (2) of the statutes is created to read:

9 94.77 (2) In lieu of the criminal penalty under sub. (1), a person who violates
10 any provision of this chapter for which a specific penalty is not prescribed, or an order
11 issued or rule promulgated under such a provision, may be required to forfeit not less
12 than \$200 nor more than \$5,000 or, for an offense committed within 5 years of an
13 offense for which a penalty has been assessed under this section, may be required to
14 forfeit not less than \$400 nor more than \$10,000.

15 **SECTION 3.** 94.77 (3) of the statutes is created to read:

16 94.77 (3) The department may seek an injunction restraining any person from
17 violating this chapter or a rule promulgated under this chapter.

18 **SECTION 9303. Initial applicability; Agriculture, Trade and Consumer
19 Protection.**

20 (1) PLANT INDUSTRY PENALTIES. The renumbering and amendment of section
21 94.77 of the statutes and the creation of section 94.77 (2) and (3) of the statutes first
22 apply to violations committed on the effective date of this subsection.

(END)



State of Wisconsin
2007 - 2008 LEGISLATURE

LRB-0323/1
RCT:jld:rs

DOA:.....Miner, BB0043 - Penalties for nursery and plant quarantine laws
FOR 2007-09 BUDGET -- NOT READY FOR INTRODUCTION

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

Analysis by the Legislative Reference Bureau

AGRICULTURE

Currently, DATCP administers laws regulating nurseries and laws related to plant pests, which include authorization of quarantines and orders for treatment of infested plants. A person violating these laws is subject to criminal penalties consisting of a fine of up to \$200 or imprisonment for not more than six months or both.

This bill modifies the penalties for violating laws regulating nurseries and laws related to plant pests. Under the bill, a person violating these laws may be fined up to \$1,000 for a first offense and may be fined not less than \$500 nor more than \$5,000 or imprisoned for not more than six months, or both, for a subsequent offense. The bill also provides that, in lieu of the criminal penalties, a person violating these laws may be required to pay a forfeiture (civil penalty) of not less than \$200 nor more than \$5,000 or, for an offense committed within five years of a previous offense, may be required to pay a forfeiture of not less than \$400 nor more than \$10,000.

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

2 SECTION 1. 94.77 of the statutes is renumbered 94.77 (1) and amended to read:

