



## 2007 SENATE BILL 297

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.

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*Analysis by the Legislative Reference Bureau*

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

**SENATE BILL 297****SECTION 1**

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:

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

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

15           94.10 (1) (d) 2. A nursery grower licensed under sub. (3) who only sells, offers  
16 for sale, or distributes nursery stock that the nursery grower has grown.

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

18           94.10 (1) (e) “Nursery grower” means a person who owns or operates a nursery  
19 in this state, except that “nursery grower” does not include an employee of a person  
20 licensed under sub. (3).

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

22           94.10 (1) (f) “Nursery stock” means plants and plant parts that can be  
23 propagated or grown, ~~excluding~~ except that “nursery stock” does not include seeds,  
24 sod, cranberry cuttings, annuals ~~and evergreen trees grown for eventual harvest and~~  
25 ~~sale as,~~ or cut Christmas trees.

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

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

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

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

8           94.10 **(2)** (c) *License fee.* ~~A~~ Except as otherwise provided by the department  
9 by rule, a nursery dealer shall pay the following annual license fee, based on the  
10 nursery dealer's annual purchases ~~calculated according to~~ determined under par. (e):

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

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

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

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

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

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

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

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

**SENATE BILL 297****SECTION 8**

1           94.10 (2) (c) 8. If the nursery dealer has annual purchases of more than  
2           \$3,000,000, the amount of the nursery dealer's annual purchases times 0.0005.

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

4           94.10 (2) (e) *Annual purchases; nursery dealer.* 1. For the purposes of par. (c)  
5           the amount of a nursery dealer's annual purchases is the total cost that the nursery  
6           dealer incurred during the nursery dealer's last completed fiscal year for all nursery  
7           stock that the nursery dealer acquired for sale or distribution from locations in this  
8           state, except as provided in subd. 2. The amount of a nursery dealer's annual  
9           purchases does not include the cost of nursery stock that the nursery dealer grows  
10          under a license under sub. (3) or an equivalent license in another state.

11          2. If a nursery dealer made no purchases of nursery stock during the nursery  
12          dealer's last completed fiscal year, the amount of annual purchases is the nursery  
13          dealer's good faith prediction of purchases described in subd. 1. during the nursery  
14          dealer's current fiscal year.

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

16          94.10 (2) (f) 1. A person ~~whose only sales of nursery stock are~~ who sells or  
17          distributes nursery stock only at retail and whose total sales totaling less than from  
18          all locations in this state during the license year do not exceed \$250 annually.

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

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

23          94.10 (3) (b) 2. The address of each location in this state at which the applicant  
24          operates a nursery, ~~grows evergreen trees for eventual sale as Christmas trees or~~  
25          holds nursery stock ~~or Christmas trees for sale~~ or distribution.

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

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

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

6           94.10 (3) (c) *License fee.* ~~A~~ Except as otherwise provided by the department  
7 by rule, a nursery grower shall pay the following annual license fee, based on the  
8 nursery grower's annual sales calculated according to determined under par. (e),  
9 plus the additional license fee under par. (cm), if applicable:

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

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

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

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

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

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

22           7. If the nursery grower ~~annually sells~~ has annual sales of more than  
23 ~~\$2,000,000 worth of nursery stock,~~ \$1,200.

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

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

**SENATE BILL 297****SECTION 14**

1           94.10 (3) (d) *Surcharge for operating without a license.* In addition to the fee  
2 required under par. (c) ~~and under par. (cm), if applicable,~~ an applicant for a nursery  
3 grower license shall pay a surcharge equal to the amount of that fee if the department  
4 determines that, within 365 days before submitting that application, the applicant  
5 operated as a nursery grower without a license in violation of par. (a). Payment of  
6 the surcharge does not relieve the applicant of any other penalty or liability that may  
7 result from the violation, but does not constitute evidence of a violation of par. (a).

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

9           94.10 (3) (e) *Annual sales; nursery grower.* 1. For the purposes of par. (c) the  
10 amount of a nursery grower's annual sales is the nursery grower's gross receipts,  
11 during the nursery grower's last completed fiscal year, from the sale, consignment,  
12 or other distribution of nursery stock that the nursery grower grew at nurseries in  
13 this state, except as provided in subd. 2.

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

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

19           94.10 (3) (f) 1. A nursery grower whose who sells or distributes nursery stock  
20 only sales of nursery stock and Christmas trees are at retail and whose total sales  
21 totaling less than from all locations in this state during the license year do not exceed  
22 \$250 annually.

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

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

2           94.10 **(3g)** (c) *License fee.* ~~A~~ Except as otherwise provided by the department  
3 by rule, a Christmas tree grower shall pay the following annual license fee, based on  
4 the Christmas tree grower's annual sales calculated according to determined under  
5 par. (d):

6           1. If the Christmas tree grower ~~annually sells~~ has annual sales of no more than  
7 \$5,000 ~~worth of Christmas trees,~~ \$20.

8           2. If the Christmas tree grower ~~annually sells~~ has annual sales of more than  
9 \$5,000 but not more than \$20,000 ~~worth of Christmas trees,~~ \$55.

10           3. If the Christmas tree grower ~~annually sells~~ has annual sales of more than  
11 \$20,000 but not more than \$100,000 ~~worth of Christmas trees,~~ \$90.

12           4. If the Christmas tree grower ~~annually sells~~ has annual sales of more than  
13 \$100,000 but not more than \$200,000 ~~worth of Christmas trees,~~ \$150.

14           5. If the Christmas tree grower ~~annually sells~~ has annual sales of more than  
15 \$200,000 but not more than \$500,000 ~~worth of Christmas trees,~~ \$250.

16           6. If the Christmas tree grower ~~annually sells~~ has annual sales of more than  
17 \$500,000 but not more than \$2,000,000 ~~worth of Christmas trees,~~ \$450.

18           7. If the Christmas tree grower ~~annually sells~~ has annual sales of more than  
19 \$2,000,000 ~~worth of Christmas trees,~~ \$900.

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

21           94.10 **(3g)** (d) *Annual sales; Christmas tree grower.* 1. For the purposes of par.  
22 (c) the amount of a Christmas tree grower's annual sales is the Christmas tree  
23 grower's gross receipts, during the Christmas tree grower's last completed fiscal  
24 year, from the sale, consignment, or other distribution of Christmas trees that the  
25 Christmas tree grower grew at locations in this state, except as provided in subd. 2.

**SENATE BILL 297****SECTION 18**

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

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

7           94.10 **(3g)** (e) *Exemption.* Paragraph (a) does not apply to a Christmas tree  
8 grower ~~whose only sales of~~ who sells or distributes Christmas trees are only at retail  
9 and whose total Christmas tree sales totaling less than in this state during the  
10 license year do not exceed \$250 annually.

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

12           94.10 **(3m)** (b) The holder of a nursery grower license shall notify the  
13 department in writing before adding, during the license year, any new location at  
14 which the license holder will operate a nursery, ~~grow evergreen trees for eventual~~  
15 ~~sale as Christmas trees or hold Christmas trees or~~ nursery stock for sale. The license  
16 holder shall specify the address of the new location in the notice.

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

18           94.10 **(4)** (title) RECORDS.

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

20           94.10 **(4)** (a) ~~Nursery dealers; records of nursery stock received.~~ (intro.) A Each  
21 nursery dealer, nursery grower, and Christmas tree grower shall keep a record of  
22 every shipment of nursery stock received by the nursery dealer, nursery grower, or  
23 Christmas tree grower. The nursery dealer, nursery grower, or Christmas tree  
24 grower shall include all of the following in the record:



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

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

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

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

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

13           94.10 (4) (c) *Records retained and made available.* ~~A nursery grower or nursery~~  
14 ~~dealer~~ person who is required to keep records under par. (a) or (b) shall retain those  
15 records for at least 3 years and shall make those records available ~~to the department~~  
16 for inspection and copying by the department upon request.

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

18           94.10 (5) (b) *Growers and dealers to report unlabeled* Unlabeled shipments.  
19 ~~Whenever any person tenders to a~~ Each nursery grower ~~or, nursery dealer, and~~  
20 Christmas tree grower shall promptly report to the department any shipment of  
21 nursery stock tendered to the nursery grower, nursery dealer, or Christmas tree  
22 grower that is not fully labeled according to par. (a), ~~the nursery grower or nursery~~  
23 ~~dealer shall promptly report that unlabeled shipment to the department.~~

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

