

2007 Senate Bill 297

Date of enactment: **March 5, 2008**  
Date of publication\*: **March 18, 2008**

## 2007 WISCONSIN ACT 62

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

5. Other information reasonably required by the department for licensing purposes, including informa-

\* Section 991.11, WISCONSIN STATUTES 2005–06 : Effective date of acts. “Every act and every portion of an act enacted by the legislature over the governor’s partial veto which does not expressly prescribe the time when it takes effect shall take effect on the day after its date of publication as designated” by the secretary of state [the date of publication may not be more than 10 working days after the date of enactment].

tion related to the types and sources of nursery stock that the applicant sells or distributes from locations in this state.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

94.10 (3) (d) *Surcharge for operating without a license.* In addition to the fee required under par. (c) ~~and~~

under par. (em), if applicable, an applicant for a nursery grower license shall pay a surcharge equal to the amount of that fee if the department determines that, within 365 days before submitting that application, the applicant operated as a nursery grower without a license in violation of par. (a). Payment of the surcharge does not relieve the applicant of any other penalty or liability that may result from the violation, but does not constitute evidence of a violation of par. (a).

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

94.10 (4) (title) RECORDS.

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

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

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

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

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

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

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

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

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

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

grower or nursery dealer shall promptly report that unlabeled shipment ~~to the department.~~

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

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

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

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

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

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

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

**SECTION 30. Initial applicability.**

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