

2007 DRAFTING REQUEST

Bill

Received: **07/24/2007**

Received By: **btradewe**

Wanted: **As time permits**

Identical to LRB:

For: **Kathleen Vinehout (608) 266-8546**

By/Representing: **Joel Nilsestuen**

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

Drafter: **btradewe**

May Contact:

Addl. Drafters:

Subject: **Agriculture - miscellaneous**

Extra Copies:

Submit via email: **YES**

Requester's email: **Sen.Vinehout@legis.wisconsin.gov**

Carbon copy (CC:) to:

Pre Topic:

No specific pre topic given

Topic:

Nursery dealers and growers

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>
/?	btradewe 09/06/2007	bkraft 09/06/2007		_____			State
/1			rschluet 09/06/2007	_____	lparisi 09/06/2007	sbasford 09/06/2007	State
/2	btradewe 09/25/2007	bkraft 09/25/2007	nnatzke 09/26/2007	_____	mbarman 09/26/2007	cduerst 09/26/2007	

FE Sent For: *at intro.*

<END>

2007 DRAFTING REQUEST

Bill

Received: 07/24/2007

Received By: btradewe

Wanted: As time permits

Identical to LRB:

For: Kathleen Vinehout (608) 266-8546

By/Representing: Joel Nilsestuen

This file may be shown to any legislator: NO

Drafter: btradewe

May Contact:

Addl. Drafters:

Subject: Agriculture - miscellaneous

Extra Copies:

Submit via email: YES

Requester's email: Sen.Vinehout@legis.wisconsin.gov

Carbon copy (CC:) to:

Pre Topic:

No specific pre topic given

Topic:

Nursery dealers and growers

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>
/?	btradewe 09/06/2007	bkraft 09/06/2007		_____			State
/1			rschluet 09/06/2007	_____	lparisi 09/06/2007	sbasford 09/06/2007	State
/2	btradewe 09/25/2007	bkraft 09/25/2007	nmatzke 09/26/2007	_____	mbarman 09/26/2007		

FE Sent For:

<END>

2007 DRAFTING REQUEST

Bill

Received: 07/24/2007

Received By: btradewe

Wanted: As time permits

Identical to LRB:

For: Kathleen Vinehout (608) 266-8546

By/Representing: Joel Nilsestuen

This file may be shown to any legislator: NO

Drafter: btradewe

May Contact:

Addl. Drafters:

Subject: Agriculture - miscellaneous

Extra Copies:

Submit via email: YES

Requester's email: Sen.Vinehout@legis.wisconsin.gov

Carbon copy (CC:) to:

Pre Topic:

No specific pre topic given

Topic:

Nursery dealers and growers

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>
/?	btradewe 09/06/2007	bkraft 09/06/2007		_____			State
/1			rschluet 09/06/2007	_____	lparisi 09/06/2007	sbasford 09/06/2007	

1/2 bjk 9/25 nwn
9/25 nwn/rs
9/26

FE Sent For:

<END>

2007 DRAFTING REQUEST

Bill

Received: **07/24/2007**

Received By: **btradewe**

Wanted: **As time permits**

Identical to LRB:

For: **Kathleen Vinehout (608) 266-8546**

By/Representing: **Joel Nilsestuen**

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

Drafter: **btradewe**

May Contact:

Addl. Drafters:

Subject: **Agriculture - miscellaneous**

Extra Copies:

Submit via email: **YES**

Requester's email: **Sen.Vinehout@legis.wisconsin.gov**

Carbon copy (CC:) to:

Pre Topic:

No specific pre topic given

Topic:

Nursery dealers and growers

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>
/?	btradewe 09/06/2007	bkraft 09/06/2007		_____			State
/1			rschluet 09/06/2007	_____	lparisi 09/06/2007		

FE Sent For:

<END>

2007 DRAFTING REQUEST

Bill

Received: 07/24/2007

Received By: btradewe

Wanted: As time permits

Identical to LRB:

For: Kathleen Vinehout (608) 266-8546

By/Representing: Joel Nilsestuen

This file may be shown to any legislator: NO

Drafter: btradewe

May Contact:

Addl. Drafters:

Subject: Agriculture - miscellaneous

Extra Copies:

Submit via email: YES

Requester's email: Sen.Vinehout@legis.wisconsin.gov

Carbon copy (CC:) to:

Pre Topic:

No specific pre topic given

Topic:

Nursery dealers and growers

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>
/?	btradewe	1/bjk 9/6					

FE Sent For:

<END>

Tradewell, Becky

From: Nilsestuen, Joel
Sent: Tuesday, July 24, 2007 12:34 PM
To: Tradewell, Becky
Subject: Nursery Dealer/Grower LRB

Becky,

My boss would like to introduce a companion bill to LRB 2719 that you are drafting for Rep. Ott, RE: nursery dealers and growers. Rep. Ott and Erin are fine w/ this. Plz contact me if you have any questions.

Thank you --Joel

Joel Nilsestuen
Office of Sen. Kathleen Vinehout

PO Box 7882
Madison, WI 53707-7882

(608) 266-8546
Joel.Nilsestuen@legis.wisconsin.gov

Nursery Dealers and Growers

Draft Legislation (4/19/07)

AN ACT to repeal 94.10(3)(cm); **to amend** 94.10(2)(b)2. and 5., (3)(b)2., 3. and 5., (3)(d) and (3m)(b); **to repeal and recreate** 94.10(1)(a) and (d) to (f), (2)(c), (e) and (f), (3)(c), (e) and (f), (3g)(c) to (e), (4), (5)(b) and (7); and **to create** 94.10(1)(gr) of the statutes; **relating to:** nursery dealers, nursery growers and Christmas tree growers.

Analysis

This bill modifies current license requirements for nursery dealers, nursery growers and Christmas tree growers. The Department of Agriculture, Trade and Consumer Protection (DATCP) licenses nursery dealers, nursery growers and Christmas tree growers in order to prevent and control the spread of destructive plant pests and diseases. Among other things, this bill:

- Clarifies that a nursery dealer, nursery grower or Christmas tree grower may operate multiple locations under a single license.
- Changes the license fee formula for nursery dealers that have more than \$3 million in annual nursery stock purchases. This bill authorizes DATCP to adjust license fees by rule.
- Requires a licensed nursery grower to obtain a separate nursery dealer license if the nursery grower also operates as a nursery dealer (reselling nursery stock purchased from outside sources). This clarifies licensing and fee calculations.
- Requires a nursery grower to obtain a separate Christmas tree grower license if the nursery grower also operates as a Christmas tree grower. This clarifies licensing, without affecting fees.

Nursery Dealers

Under current law, a nursery dealer must hold an annual license from DATCP. A nursery dealer means a person (other than a nursery grower) who sells or distributes nursery stock from a location in this state. A nursery dealer is required to pay a license fee based on annual *purchases* of nursery stock. The maximum license fee is \$400 for a nursery dealer who annually purchases more than \$2 million worth of nursery stock.

This bill clarifies that a nursery dealer may sell nursery stock from 2 or more locations under a single license, and is not required to hold a separate license for each location. This bill does not change current license fees (a nursery dealer still pays the same annual license fee regardless of the number of locations), except that this bill increases the current license fee for nursery dealers who annually purchase more than \$3 million in nursery stock.

Under this bill, a nursery dealer who annually purchases more than \$3 million in nursery stock must pay a fee equal to 0.0005 of annual purchases (compared to a flat fee of \$400 under current law). This bill authorizes DATCP to adjust nursery dealer license fees by rule.

This bill clarifies, for purposes of license fee calculations, what is meant by "annual purchases" of nursery stock. Under this bill, "annual purchases" means the total cost that a nursery dealer incurred during the nursery dealer's last completed fiscal year for all nursery stock that the nursery dealer acquired in this state or another state for sale or distribution from locations in this state during any fiscal year. A nursery dealer's "annual purchases" do not include the cost of nursery stock that the nursery dealer has grown pursuant to a nursery *grower* license.

A nursery dealer license application must identify all of the nursery dealer's locations in this state, even though the nursery dealer is not required to obtain a separate license for each location. DATCP may request, in the license application, information related to the types and sources of nursery stock that the nursery dealer offers for sale at locations in this state.

Nursery Growers

Under current law, a nursery grower must hold an annual license from DATCP. A nursery grower means a person who grows nursery stock, at a location in this state, for sale. A nursery grower is required to pay a license fee based on annual *sales* of nursery stock. The maximum license fee is \$1,200 for a nursery grower who annually sells more than \$2 million worth of nursery stock. A licensed nursery grower may resell nursery stock purchased from other sources (without holding a nursery *dealer* license), but those resales must be counted in the nursery grower's license fee calculations.

This bill clarifies that a nursery grower may grow nursery stock at 2 or more locations in this state under a single license, and is not required to hold a separate license for each location. This bill does not change current license fees (a nursery grower still pays the same annual license fee regardless of the number of locations). This bill authorizes DATCP to adjust nursery grower license fees by rule.

This bill clarifies, for purposes of license fee calculations, what is meant by "annual sales" of nursery stock. Under this bill, "annual sales" means the nursery grower's combined gross receipts, during the nursery grower's last completed fiscal year, from the sale of nursery stock that the nursery grower has grown at nurseries in this state.

“Annual sales” does *not* include sales of nursery stock that the nursery grower has grown at a nursery licensed in another state, nor does it include re-sales of nursery stock purchased from outside sources. But under this bill, a licensed nursery grower must also obtain a nursery *dealer* license if the nursery grower resells nursery stock purchased from outside sources (the nursery *grower* license no longer authorizes nursery *dealer* activities).

A nursery grower license application must identify all of the nursery grower’s nursery locations in this state, even though the nursery grower is not required to obtain a separate license for each location. DATCP may request, in the license application, information related to the types of nursery stock grown at locations in this state.

Christmas Tree Growers

Under current law, a Christmas tree grower must hold an annual license from DATCP. A Christmas tree grower is required to pay a license fee based on annual *sales* of Christmas trees. The maximum license fee is \$900 for a Christmas tree grower who annually sells more than \$2 million worth of Christmas trees. A licensed nursery grower who also grows Christmas trees is not required to obtain a separate license as a Christmas tree grower, but must pay supplementary license fees equal to those paid by a licensed Christmas tree grower.

This bill clarifies that a Christmas tree grower may grow Christmas trees at 2 or more locations in this state under a single license, and is not required to hold a separate license for each location. This bill does not change current license fees (a Christmas tree grower still pays the same annual license fee regardless of the number of locations). This bill authorizes DATCP to adjust Christmas grower license fees by rule.

This bill clarifies, for purposes of license fee calculations, what is meant by “annual sales” of Christmas trees. Under this bill, “annual sales” means the Christmas tree grower’s combined gross receipts, during the Christmas tree grower’s last completed fiscal year, from the sale or distribution of Christmas trees that the Christmas tree grower has grown at locations in this state.

Under this bill, a nursery grower who also grows Christmas trees must obtain a separate Christmas tree grower license (rather than an expanded nursery grower license, as under current law). This change will not affect the nursery grower’s overall license costs.

A Christmas tree grower license application must identify all of the locations at which the applicant grows Christmas trees in this state, even though the applicant is not required to obtain a separate license for each location.

Clarifications

This bill also makes a number of minor clarifying changes to current law.

SECTION 1. 94.10(1)(a), (d) to (f) of the statutes are repealed and recreated to read:

94.10(1)(a) "Christmas tree grower" means a person that grows evergreen trees in this state for eventual cutting and sale as Christmas trees.

(d) "Nursery dealer" means a person that sells, offers or distributes nursery stock from one or more locations in this state, except that "nursery dealer" does not include any of the following:

1. An employee of a nursery dealer licensed under sub. (2).
2. A nursery grower licensed under sub. (3) that only sells, offers or distributes nursery stock that the nursery grower has grown.

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

(f) "Nursery stock" means plants and plant parts that can be propagated or grown. "Nursery stock" does not include seeds, annuals, sod, cranberry cuttings or cut Christmas trees.

SECTION 2. 94.10(1)(gr) of the statutes is created to read:

94.10(1)(gr) "Person" means an individual, corporation, partnership, cooperative, limited liability company, trust or other legal entity.

SECTION 3. 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.

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

SECTION 4. 94.10(2)(c), (e) and (f) of the statutes are repealed and recreated to read:

94.10(2)(c) *License fee.* 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 under par. (e):

1. If the nursery dealer has annual purchases of no more than \$5,000, an annual license fee of \$30.
2. If the nursery dealer has annual purchases of more than \$5,000 but not more than \$20,000, a license fee of \$50.
3. If the nursery dealer has annual purchases of more than \$20,000 but not more than \$100,000, an annual license fee of \$100.
4. If the nursery dealer has annual purchases of more than \$100,000 but not more than \$200,000, an annual license fee of \$150.
5. If the nursery dealer has annual purchases of more than \$200,000 but not more than \$500,000, an annual license fee of \$200.
6. If the nursery dealer has annual purchases of more than \$500,000 but not more than \$2 million, an annual license fee of \$300.

7. If the nursery dealer has annual purchases of more than \$2,000,000 but not more than \$3,000,000, an annual license fee of \$400.

8. If the nursery dealer has annual purchases of more than \$3,000,000, a fee equal to 0.0005 of the nursery dealer's annual purchases.

(e) For purposes of par. (c), "annual purchases" means the total cost that a nursery dealer incurred during the nursery dealer's last completed fiscal year for all nursery stock that the nursery dealer acquired in this state or another state for sale or distribution from locations in this state during any fiscal year. A nursery dealer's "annual purchases" do not include the cost of nursery stock that the nursery dealer has grown pursuant to a license under sub. (3) or an equivalent license in another state. If a nursery dealer made no purchases under this paragraph in the nursery dealer's last completed fiscal year, "annual purchases" means the nursery dealer's good faith estimate of annual purchases under this paragraph in the nursery dealer's current fiscal year.

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

1. A nursery dealer who sells or distributes nursery stock only at retail, and whose total sales from all locations in this state during the license year do not exceed \$250.

2. A nursery dealer who sells or distributes nursery stock solely for the benefit of a nonprofit organization, for a combined total at all locations in this state of no more than 7 consecutive days during the license year.

SECTION 5. 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 evergreens for eventual sale as Christmas trees~~ or holds nursery stock ~~or Christmas trees for sale~~ or distribution.

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

(b)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 6. 94.10(3)(c) of the statutes is repealed and recreated to read:

94.10(3)(c)(intro.) *License fee.* Except as otherwise provided by the department by rule, a nursery grower shall pay the following annual license fee based on annual sales under par. (e):

1. If the nursery grower has annual sales of no more than \$5,000, an annual license fee of \$40.
2. If the nursery grower has annual sales of more than \$5,000, but not more than \$20,000, an annual license fee of \$75.
3. If the nursery grower has annual sales of more than \$20,000, but not more than \$100,000, an annual license fee of \$125.
4. If the nursery grower has annual sales of more than \$100,000, but not more than \$200,000, an annual license fee of \$200.
5. If the nursery grower has annual sales of more than \$200,000, but not more than \$500,000, an annual license fee of \$350.
6. If the nursery grower has annual sales of more than \$500,000, but not more than \$2,000,000, an annual license fee of \$600.

7. If the nursery grower has annual sales of more than \$2,000,000, an annual license fee of \$1,200.

SECTION 7. 94.10(3)(cm) of the statutes is repealed.

SECTION 8. 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. (cm), 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 9. 94.10(3)(e) and (f) of the statutes are repealed and recreated to read:

94.10(3)(e) *Annual sales; nursery grower.* For purposes of par. (c), "annual sales" means the nursery grower's combined gross receipts, during the nursery grower's last completed fiscal year, from the sale or distribution of nursery stock that the nursery dealer has grown at the nurseries in this state. If a nursery grower made no sales under this paragraph in the nursery grower's last completed fiscal year, "annual sales" means the nursery grower's good faith estimate of annual sales under this paragraph in the nursery grower's current fiscal year.

94.10(3)(f) *Exemptions.* Paragraph (a) does not apply to any of the following:

1. A nursery grower who sells or distributes nursery stock only at retail, and whose total sales from all locations in this state during the license year do not exceed \$250.

2. A nursery grower who sells or distributes nursery stock solely for the benefit of a nonprofit organization, for a combined total at all locations in this state of no more than 7 consecutive days during the license year.

SECTION 10. 94.10(3g)(c) to (e) of the statutes are repealed and recreated to read:

94.10(3g)(c) *License fee.* Except as otherwise provided by the department by rule, a Christmas tree grower shall pay the following annual license fee based on annual sales under par. (d):

1. If the Christmas tree grower has annual sales of no more than \$5,000, an annual license fee of \$20.
2. If the Christmas tree grower has annual sales of more than \$5,000, but not more than \$20,000, an annual license fee of \$55.
3. If the Christmas tree grower has annual sales of more than \$20,000, but not more than \$100,000, an annual license fee of \$90.
4. If the Christmas tree grower has annual sales of more than \$100,000, but not more than \$200,000, an annual license fee of \$150.
5. If the Christmas tree grower has annual sales of more than \$200,000, but not more than \$500,000, an annual license fee of \$250.
6. If the Christmas tree grower has annual sales of more than \$500,000, but not more than \$2,000,000, an annual license fee of \$450.
7. If the Christmas tree grower has annual sales of more than \$2,000,000, an annual license fee of \$900.

(d) *Annual sales; Christmas tree grower.* For purposes of par. (c), "annual sales" means the Christmas tree grower's combined gross receipts, during the Christmas tree

grower's last completed fiscal year, from the sale or distribution of cut Christmas trees that the Christmas tree grower has grown at locations in this state. If a Christmas tree grower made no sales under this paragraph in the Christmas tree grower's last completed fiscal year, "annual sales" means the Christmas tree grower's good faith estimate of annual sales under this paragraph in the Christmas tree grower's current fiscal year.

(e) *Exemption.* Paragraph (a) does not apply to a Christmas tree grower who sells or distributes Christmas trees only at retail, and whose total Christmas tree sales from all locations in this state during the license year do not exceed \$250.

SECTION 11. 94.10(3m)(b) is amended to read:

97.10(3m)(b) The holder of a nursery grower license shall notify the department in writing before adding, during the license year, any 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.

SECTION 12. 94.10(4), (5)(b) and (7) are repealed and recreated to read:

94.10(4) RECORDS. (a) *Nursery stock received.* Every 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 record shall include all of the following:

1. The types of nursery stock, and the quantity of each type, included in the shipment.

2. The name and address of the shipment source.

(b) *Nursery stock shipped.* Every nursery dealer and nursery grower shall keep a record of every shipment of nursery stock that the nursery dealer or nursery grower sells

or distributes to a nursery dealer, nursery grower or Christmas tree grower. The record shall include all of the following:

1. The types of nursery stock, and the quantity of each type, included in the shipment.

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

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

(5)(b) *Unlabeled shipments.* Every nursery dealer, nursery grower and Christmas tree grower shall promptly report to the department any nursery stock shipment, tendered to the nursery dealer, nursery grower or Christmas tree grower, that is not fully labeled according to par. (a).

(7) PROHIBITIONS. (a) No nursery dealer or nursery grower may do any of the following:

1. Receive, hold, sell or distribute any nursery stock from any source other than an officially inspected source.

2. Sell, offer or distribute any nursery stock that the nursery dealer or nursery grower knows, or has reason to know, is infested with plant pests or plant diseases that may be spread by the sale or distribution of that nursery stock.

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

4. Misrepresent the name, origin, grade, variety, quality or hardiness of any nursery stock, or make any other false or misleading representation in the advertising or sale of nursery stock.

5. Misrepresent that a nursery dealer is a nursery grower.

6. Conceal nursery stock to avoid inspection by the department, falsify any record required under this subsection, or make any false or misleading statement to the department.

(b) No Christmas tree grower may receive nursery stock from any source other than an officially inspected source.

(End)