

3002/1
LRB-2719/1
RCT:bjk&kjf:rs
no charges
stays
Date

2007 BILL

SA ✓

regen.

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.

Analysis by the Legislative Reference Bureau

Under current law, the Department of Agriculture, Trade and Consumer Protection (DATCP) licenses nursery growers, nursery dealers, and Christmas tree growers. A nursery grower is a person who grows nursery stock for sale. A nursery dealer is a person, other than a nursery grower, who sells or distributes nursery stock. This bill makes changes in the laws related to nursery growers, nursery dealers, and Christmas tree growers.

BILL

The bill authorizes DATCP to change by rule the annual license fees for nursery growers, nursery dealers, and Christmas tree growers.

Under current law, a nursery grower who also sells nursery stock obtained from another source is not required to obtain a nursery dealer license. This bill requires a nursery grower who sells nursery stock obtained from another source to obtain a nursery dealer license, in addition to a nursery grower license.

Under current law, a nursery grower who also grows Christmas trees is not required to obtain a Christmas tree grower license, but is required to pay an additional fee equal to the fee paid by Christmas tree growers. Under this bill, a nursery grower who also grows Christmas trees must obtain a Christmas tree grower license, in addition to a nursery grower license. The bill does not change the total amount of fees that the nursery grower must pay.

The bill increases the annual license fee that must be paid by a nursery dealer who spends more than \$3,000,000 in a year for nursery stock.

The bill clarifies that nursery growers, nursery dealers, and Christmas tree growers may operate from more than one location under a single 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.** 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:

BILL

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

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

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

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

6 94.10 (1) (e) "Nursery grower" means a person who owns or operates a nursery
7 in this state, except that "nursery grower" does not include an employee of a person
8 licensed under sub. (3).

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

10 94.10 (1) (f) "Nursery stock" means plants and plant parts that can be
11 propagated or grown, excluding except that "nursery stock" does not include seeds,
12 sod, cranberry cuttings, annuals and evergreen trees grown for eventual harvest and
13 sale as, or cut Christmas trees.

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

15 94.10 (2) (b) 2. The address of each location in this state at which the applicant
16 proposes to hold nursery stock for sale or distribution.

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

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

21 94.10 (2) (c) *License fee.* ~~A~~ Except as otherwise provided by the department
22 by rule, a nursery dealer shall pay the following annual license fee, based on the
23 nursery dealer's annual purchases calculated according to determined under par. (e):

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

BILL

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

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

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

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

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

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

13 ✓
SECTION 8. 94.10 (2) (c) 8. of the statutes is created to read:

14 94.10 (2) (c) 8. If the nursery dealer has annual purchases of more than
15 \$3,000,000, the amount of the nursery dealer's annual purchases times 0.0005.

16 ✓
SECTION 9. 94.10 (2) (e) of the statutes is repealed and recreated to read:

17 94.10 (2) (e) *Annual purchases; nursery dealer.* 1. For the purposes of par. (c)
18 the amount of a nursery dealer's annual purchases is the total cost that the nursery
19 dealer incurred during the nursery dealer's last completed fiscal year for all nursery
20 stock that the nursery dealer acquired in this state or another state for sale or
21 distribution from locations in this state, except as provided in subd. 2. The amount
22 of a nursery dealer's annual purchases does not include the cost of nursery stock that
23 the nursery dealer grows under a license under sub. (3) or an equivalent license in
24 another state.

BILL

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

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

6 94.10 (2) (f) 1. A person ~~whose only sales of nursery stock are~~ who sells or
7 distributes nursery stock only at retail and whose total sales totaling less than from
8 all locations in this state during the license year do not exceed \$250 annually.

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

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

13 94.10 (3) (b) 2. The address of each location in this state at which the applicant
14 operates a nursery, ~~grows evergreen trees for eventual sale as Christmas trees or~~
15 holds nursery stock ~~or Christmas trees~~ for sale or distribution.

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

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

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

21 94.10 (3) (c) *License fee.* ~~A~~ Except as otherwise provided by the department
22 by rule, a nursery grower shall pay the following annual license fee, based on the
23 nursery grower's annual sales calculated according to determined under par. (e),
24 plus the additional license fee under par. (cm), if applicable:

BILL

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

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

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

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

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

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

13 7. If the nursery grower ~~annually sells~~ has annual sales of more than
14 \$2,000,000 worth of nursery stock, \$1,200.

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

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

17 94.10 (3) (d) *Surcharge for operating without a license.* In addition to the fee
18 required under par. (c) ~~and under par. (cm), if applicable,~~ an applicant for a nursery
19 grower license shall pay a surcharge equal to the amount of that fee if the department
20 determines that, within 365 days before submitting that application, the applicant
21 operated as a nursery grower without a license in violation of par. (a). Payment of
22 the surcharge does not relieve the applicant of any other penalty or liability that may
23 result from the violation, but does not constitute evidence of a violation of par. (a).

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

BILL

1 94.10 (3) (e) *Annual sales; nursery grower.* 1. For the purposes of par. (c) the
2 amount of a nursery grower's annual sales is the nursery grower's gross receipts,
3 during the nursery grower's last completed fiscal year, from the sale of nursery stock
4 that the nursery grower grew at nurseries in this state, except as provided in subd.
5 2.

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

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

11 94.10 (3) (f) 1. A nursery grower ~~whose~~ who sells or distributes nursery stock
12 ~~only sales of nursery stock and Christmas trees are at retail and whose total sales~~
13 ~~totaling less than~~ from all locations in this state during the license year do not exceed
14 \$250 annually.

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

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

19 94.10 (3g) (c) *License fee.* ~~A~~ Except as otherwise provided by the department
20 by rule, a Christmas tree grower shall pay the following annual license fee, based on
21 the Christmas tree grower's annual sales calculated according to determined under
22 par. (d):

23 1. If the Christmas tree grower ~~annually sells~~ has annual sales of no more than
24 \$5,000 worth of Christmas trees, \$20.

BILL

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

3 3. If the Christmas tree grower ~~annually sells~~ has annual sales of more than
4 \$20,000 but not more than \$100,000 ~~worth of Christmas trees~~, \$90.

5 4. If the Christmas tree grower ~~annually sells~~ has annual sales of more than
6 \$100,000 but not more than \$200,000 ~~worth of Christmas trees~~, \$150.

7 5. If the Christmas tree grower ~~annually sells~~ has annual sales of more than
8 \$200,000 but not more than \$500,000 ~~worth of Christmas trees~~, \$250.

9 6. If the Christmas tree grower ~~annually sells~~ has annual sales of more than
10 \$500,000 but not more than \$2,000,000 ~~worth of Christmas trees~~, \$450.

11 7. If the Christmas tree grower ~~annually sells~~ has annual sales of more than
12 \$2,000,000 ~~worth of Christmas trees~~, \$900.

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

14 94.10 (3g) (d) *Annual sales; Christmas tree grower.* 1. For the purposes of par.
15 (c) the amount of a Christmas tree grower's annual sales is the Christmas tree
16 grower's gross receipts, during the Christmas tree grower's last completed fiscal
17 year, from the sale of Christmas trees that the Christmas tree grower grew at
18 locations in this state, except as provided in subd. 2.

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

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

BILL

1 94.10 (3g) (e) *Exemption.* Paragraph (a) does not apply to a Christmas tree
2 grower ~~whose only sales of who sells or distributes~~ Christmas trees are only at retail
3 and whose total Christmas tree sales totaling less than in this state during the
4 license year do not exceed \$250 annually.

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

6 94.10 (3m) (b) The holder of a nursery grower license shall notify the
7 department in writing before adding, during the license year, any new location at
8 which the license holder will operate a nursery, ~~grow evergreen trees for eventual~~
9 ~~sale as Christmas trees or hold Christmas trees or nursery stock for sale.~~ The license
10 holder shall specify the address of the new location in the notice.

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

12 94.10 (4) (title) RECORDS.

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

14 94.10 (4) (a) *Nursery dealers; records of nursery stock received.* (intro.) A Each
15 nursery dealer, nursery grower, and Christmas tree grower shall keep a record of
16 every shipment of nursery stock received by the nursery dealer, nursery grower, or
17 Christmas tree grower. The nursery dealer, nursery grower, or Christmas tree
18 grower shall include all of the following in the record:

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

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

22 94.10 (4) (b) *Nursery growers and dealers; records of shipments to other nursery*
23 *growers and dealers stock shipped.* (intro.) Each nursery grower and nursery dealer
24 shall keep a record of every shipment of nursery stock that the nursery grower or
25 nursery dealer sells or distributes to another nursery grower ~~or~~, nursery dealer, or

BILL

1 Christmas tree grower. The nursery grower or nursery dealer shall include all of the
2 following in the record:

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

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

6 94.10 (4) (c) *Records retained and made available.* ~~A nursery grower or nursery~~
7 ~~dealer~~ person who is required to keep records under par. (a) or (b) shall retain those
8 records for at least 3 years and shall make those records available to the department
9 for inspection and copying by the department upon request.

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

11 94.10 (5) (b) ~~Growers and dealers to report unlabeled~~ Unlabeled shipments.
12 ~~Whenever any person tenders to a~~ Each nursery grower ~~or~~, nursery dealer, and
13 Christmas tree grower shall promptly report to the department any shipment of
14 nursery stock tendered to the nursery grower, nursery dealer, or Christmas tree
15 grower that is not fully labeled according to par. (a), ~~the nursery grower or nursery~~
16 ~~dealer shall promptly report that unlabeled shipment to the department.~~

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

19 94.10 (7) (a) *Nursery dealers.* No nursery dealer may ~~do any of the following:~~
20 ~~2. Misrepresent~~ misrepresent that the nursery dealer is a nursery grower.

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

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

23 94.10 (7) (b) 3. Misrepresent the name, origin, grade, variety, quality, or
24 hardness of any nursery stock ~~offered for sale~~ or make any other false or misleading
25 representation in the advertising or sale of nursery stock.

**DRAFTER'S NOTE
FROM THE
LEGISLATIVE REFERENCE BUREAU**

LRB-2719/1dn
RCT:bjk&kjf:rs

3002
Joel
stays

August 13, 2007

Date

Erin Ruby:

Joel Nilsen ✓

This is a draft of the proposal related to nursery dealers, nursery growers, and Christmas tree growers, based on a DATCP draft dated 4/19/07.

It is unnecessary to define "person" because of the definition in s. 990.01 (26).

As in the DATCP draft, this draft provides that the amount of a nursery dealer's annual purchases is based on the amount spent for nursery stock acquired in this state or another state. I wonder whether nursery dealers ever acquire stock from other countries.

The DATCP draft indicated that a nursery grower's annual sales means the gross receipts from "the sale or distribution" of nursery stock. I omitted "distribution" because I did not see how distribution of stock without sale would generate receipts. Please let me know if I am missing something here. The same issue exists for Christmas tree growers.

Please contact me with any questions or redraft instructions. Also, please let me know when you are satisfied with the draft and I will draft the companion bill.

Rebecca C. Tradewell
Managing Attorney
Phone: (608) 266-7290
E-mail: becky.tradewell@legis.wisconsin.gov

**DRAFTER'S NOTE
FROM THE
LEGISLATIVE REFERENCE BUREAU**

LRB-3002/1dn
RCT:bjk&kjf:rs

September 6, 2007

Joel Nilsestuen:

This is a draft of the proposal related to nursery dealers, nursery growers, and Christmas tree growers, based on a DATCP draft dated 4/19/07.

It is unnecessary to define "person" because of the definition in s. 990.01 (26).

As in the DATCP draft, this draft provides that the amount of a nursery dealer's annual purchases is based on the amount spent for nursery stock acquired in this state or another state. I wonder whether nursery dealers ever acquire stock from other countries.

The DATCP draft indicated that a nursery grower's annual sales means the gross receipts from "the sale or distribution" of nursery stock. I omitted "distribution" because I did not see how distribution of stock without sale would generate receipts. Please let me know if I am missing something here. The same issue exists for Christmas tree growers.

Please contact me with any questions or redraft instructions.

Rebecca C. Tradewell
Managing Attorney
Phone: (608) 266-7290
E-mail: becky.tradewell@legis.wisconsin.gov

Parisi, Lori

From: Nilsestuen, Joel
Sent: Thursday, September 06, 2007 10:15 AM
To: LRB.Legal
Subject: Draft Review: LRB 07-3002/1 Topic: Nursery dealers and growers

Please Jacket LRB 07-3002/1 for the SENATE.

-Joel Nilsestuen
Office of Sen. Kathleen Vinehout

Tradewell, Becky

From: Fay, Dennis - DATCP [Dennis.Fay@Wisconsin.gov]
Sent: Friday, September 07, 2007 10:23 AM
To: Tradewell, Becky
Cc: Kuhn, Brian D - DATCP
Subject: Proposed Changes to LRB-2719/1 Nursery Bill

Becky,

I am writing to follow up our telephone conversation. The changes that I am proposing to the bill are as follows:

1. On page 4 in SECTION 9 on line 20 delete, "in this state or another state".
2. On page 7 in SECTION 15 after the word "stock" on line 3 insert, "plus the value of any items received in exchange for nursery stock during the nursery grower's last completed fiscal year". *See later instructions*
3. An Initial Applicability provision that provides, "The provisions of this bill initially become applicable to licenses issued for the license year beginning February 21, 2009."

Thanks,

Dennis Fay

Tradewell, Becky

From: Ruby, Erin
Sent: Wednesday, September 12, 2007 10:59 AM
To: Tradewell, Becky
Subject: LRB 2719 Modifications

Becky,

Just a quick note to let you know to hold off on making the changes to LRB 2719 that Dennis Fay contacted you about.

Apparently there is a problem with one of the suggestions that needs to be worked out.

I'll be in touch once the issue is settled.

Thanks!
Erin

*Erin Ruby
Research Assistant
Clerk, Assembly Committee on Agriculture
Office of State Representative Al Ott
608.266.5831
erin.ruby@legis.wisconsin.gov*

Tradewell, Becky

From: Ruby, Erin
Sent: Tuesday, September 25, 2007 11:28 AM
To: Tradewell, Becky
Subject: FW: Nursery law

Becky,

Dennis Fay from DATCP will be contacting you regarding LRB 2719 (nursery dealers & growers).

The issue that halted the process has been resolved, and we can go ahead with making the modifications.

The Department is proposing to resolve the issue in the following manner:

In SECTION 15 of the bill after the word "sale" on the third line of 94.10 (3) (e) 1. insert, "consignment or other distribution". With this language we would be excluding from the license fee determination the value of items received in an exchange or trade and only counting "cash receipts" that the grower obtained by sale, consignment or other distribution of stock the grower grew.

Thanks, Becky!
Erin

Erin Ruby
Research Assistant
Clerk, Assembly Committee on Agriculture
Office of State Representative Al Ott
608.266.5831
erin.ruby@legis.wisconsin.gov



State of Wisconsin
2007 - 2008 LEGISLATURE

LRB-3002/1
RCT:bjk&kjf:rs

SOON (m 9/25)

stays ym/

2007 BILL

SA ✓

— regen. cat.

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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.
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10 Christmas tree growers, and granting rule-making authority.

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Under current law, the Department of Agriculture, Trade and Consumer Protection (DATCP) licenses nursery growers, nursery dealers, and Christmas tree growers. A nursery grower is a person who grows nursery stock for sale. A nursery dealer is a person, other than a nursery grower, who sells or distributes nursery stock. This bill makes changes in the laws related to nursery growers, nursery dealers, and Christmas tree growers.

BILL

The bill authorizes DATCP to change by rule the annual license fees for nursery growers, nursery dealers, and Christmas tree growers.

Under current law, a nursery grower who also sells nursery stock obtained from another source is not required to obtain a nursery dealer license. This bill requires a nursery grower who sells nursery stock obtained from another source to obtain a nursery dealer license, in addition to a nursery grower license.

Under current law, a nursery grower who also grows Christmas trees is not required to obtain a Christmas tree grower license, but is required to pay an additional fee equal to the fee paid by Christmas tree growers. Under this bill, a nursery grower who also grows Christmas trees must obtain a Christmas tree grower license, in addition to a nursery grower license. The bill does not change the total amount of fees that the nursery grower must pay.

The bill increases the annual license fee that must be paid by a nursery dealer who spends more than \$3,000,000 in a year for nursery stock.

The bill clarifies that nursery growers, nursery dealers, and Christmas tree growers may operate from more than one location under a single 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.** 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:

BILL

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

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

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

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

6 94.10 (1) (e) "Nursery grower" means a person who owns or operates a nursery
7 in this state, except that "nursery grower" does not include an employee of a person
8 licensed under sub. (3).

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

10 94.10 (1) (f) "Nursery stock" means plants and plant parts that can be
11 propagated or grown, excluding except that "nursery stock" does not include seeds,
12 sod, cranberry cuttings, annuals and evergreen trees grown for eventual harvest and
13 sale as, or cut Christmas trees.

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

15 94.10 (2) (b) 2. The address of each location in this state at which the applicant
16 proposes to hold nursery stock for sale or distribution.

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

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

21 94.10 (2) (c) *License fee.* ~~A- Except as otherwise provided by the department~~
22 by rule, a nursery dealer shall pay the following annual license fee, based on the
23 nursery dealer's annual purchases calculated according to determined under par. (e):

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

BILL

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

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

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

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

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

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

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

14 94.10 (2) (c) 8. If the nursery dealer has annual purchases of more than
15 \$3,000,000, the amount of the nursery dealer's annual purchases times 0.0005.

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

17 94.10 (2) (e) *Annual purchases; nursery dealer.* 1. For the purposes of par. (c)
18 the amount of a nursery dealer's annual purchases is the total cost that the nursery
19 dealer incurred during the nursery dealer's last completed fiscal year for all nursery
20 stock that the nursery dealer acquired in this state or another state for sale or
21 distribution from locations in this state, except as provided in subd. 2. The amount
22 of a nursery dealer's annual purchases does not include the cost of nursery stock that
23 the nursery dealer grows under a license under sub. (3) or an equivalent license in
24 another state.

BILL

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

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

6 94.10 (2) (f) 1. A person ~~whose only sales of nursery stock are~~ who sells or
7 distributes nursery stock only at retail and whose total sales totaling less than from
8 all locations in this state during the license year do not exceed \$250 annually.

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

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

13 94.10 (3) (b) 2. The address of each location in this state at which the applicant
14 operates a nursery, ~~grows evergreen trees for eventual sale as Christmas trees or~~
15 holds nursery stock ~~or Christmas trees for sale~~ or distribution.

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

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

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

21 94.10 (3) (c) *License fee.* ~~A~~ Except as otherwise provided by the department
22 by rule, a nursery grower shall pay the following annual license fee, based on the
23 nursery grower's annual sales calculated according to determined under par. (e),
24 plus the additional license fee under par. (cm), if applicable:

BILL

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

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

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

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

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

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

13 7. If the nursery grower ~~annually sells~~ has annual sales of more than
14 \$2,000,000 worth of nursery stock, \$1,200.

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

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

17 94.10 (3) (d) *Surcharge for operating without a license.* In addition to the fee
18 required under par. (c) ~~and under par. (cm), if applicable,~~ an applicant for a nursery
19 grower license shall pay a surcharge equal to the amount of that fee if the department
20 determines that, within 365 days before submitting that application, the applicant
21 operated as a nursery grower without a license in violation of par. (a). Payment of
22 the surcharge does not relieve the applicant of any other penalty or liability that may
23 result from the violation, but does not constitute evidence of a violation of par. (a).

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

BILL

1 94.10 (3) (e) *Annual sales; nursery grower.* 1. For the purposes of par. (c) the
2 amount of a nursery grower's annual sales is the nursery grower's gross receipts,
3 during the nursery grower's last completed fiscal year, from the sale of nursery stock ^{consignment or other distribution}
4 that the nursery grower grew at nurseries in this state, except as provided in subd.
5 2.

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

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

11 94.10 (3) (f) 1. A nursery grower ~~whose~~ who sells or distributes nursery stock
12 ~~only sales of nursery stock and Christmas trees are at retail and whose total sales~~
13 ~~totaling less than~~ from all locations in this state during the license year do not exceed
14 \$250 annually.

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

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

19 94.10 (3g) (c) *License fee.* ~~A~~ Except as otherwise provided by the department
20 by rule, a Christmas tree grower shall pay the following annual license fee, based on
21 the Christmas tree grower's annual sales calculated according to determined under
22 par. (d):

23 1. If the Christmas tree grower ~~annually sells~~ has annual sales of no more than
24 ~~\$5,000 worth of Christmas trees,~~ \$20.

BILL

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

3 3. If the Christmas tree grower ~~annually sells~~ has annual sales of more than
4 \$20,000 but not more than \$100,000 ~~worth of Christmas trees~~, \$90.

5 4. If the Christmas tree grower ~~annually sells~~ has annual sales of more than
6 \$100,000 but not more than \$200,000 ~~worth of Christmas trees~~, \$150.

7 5. If the Christmas tree grower ~~annually sells~~ has annual sales of more than
8 \$200,000 but not more than \$500,000 ~~worth of Christmas trees~~, \$250.

9 6. If the Christmas tree grower ~~annually sells~~ has annual sales of more than
10 \$500,000 but not more than \$2,000,000 ~~worth of Christmas trees~~, \$450.

11 7. If the Christmas tree grower ~~annually sells~~ has annual sales of more than
12 \$2,000,000 ~~worth of Christmas trees~~, \$900.

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

14 94.10 (3g) (d) *Annual sales; Christmas tree grower.* 1. For the purposes of par.
15 (c) the amount of a Christmas tree grower's annual sales is the Christmas tree
16 grower's gross receipts, during the Christmas tree grower's last completed fiscal
17 year, from the sale ^{consignment or other distribution} of Christmas trees that the Christmas tree grower grew at
18 locations in this state, except as provided in subd. 2.

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

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

BILL

1 94.10 (3g) (e) *Exemption.* Paragraph (a) does not apply to a Christmas tree
2 grower ~~whose only sales of~~ who sells or distributes Christmas trees are only at retail
3 and whose total Christmas tree sales totaling less than in this state during the
4 license year do not exceed \$250 annually.

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

6 94.10 (3m) (b) The holder of a nursery grower license shall notify the
7 department in writing before adding, during the license year, any new location at
8 which the license holder will operate a nursery, ~~grow evergreen trees for eventual~~
9 ~~sale as Christmas trees or hold Christmas trees or nursery stock for sale.~~ The license
10 holder shall specify the address of the new location in the notice.

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

12 94.10 (4) (title) RECORDS.

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

14 94.10 (4) (a) *Nursery dealers; records of nursery stock received.* (intro.) ~~A~~ Each
15 nursery dealer, nursery grower, and Christmas tree grower shall keep a record of
16 every shipment of nursery stock received by the nursery dealer, nursery grower, or
17 Christmas tree grower. The nursery dealer, nursery grower, or Christmas tree
18 grower shall include all of the following in the record:

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

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

22 94.10 (4) (b) *Nursery growers and dealers; records of shipments to other nursery*
23 *growers and dealers stock shipped.* (intro.) Each nursery grower and nursery dealer
24 shall keep a record of every shipment of nursery stock that the nursery grower or
25 nursery dealer sells or distributes to another nursery grower ~~or, nursery dealer, or~~

BILL

1 Christmas tree grower. The nursery grower or nursery dealer shall include all of the
2 following in the record:

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

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

6 94.10 (4) (c) *Records retained and made available.* A ~~nursery grower or nursery~~
7 ~~dealer~~ person who is required to keep records under par. (a) or (b) shall retain those
8 records for at least 3 years and shall make those records available ~~to the department~~
9 for inspection and copying by the department upon request.

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

11 94.10 (5) (b) ~~*Growers and dealers to report unlabeled*~~ *Unlabeled shipments.*
12 ~~Whenever any person tenders to a Each nursery grower or, nursery dealer, and~~
13 Christmas tree grower shall promptly report to the department any shipment of
14 nursery stock tendered to the nursery grower, nursery dealer, or Christmas tree
15 grower that is not fully labeled according to par. (a), ~~the nursery grower or nursery~~
16 ~~dealer shall promptly report that unlabeled shipment to the department.~~

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

19 94.10 (7) (a) *Nursery dealers.* No nursery dealer may ~~do any of the following:~~
20 ~~2. Misrepresent~~ misrepresent that the nursery dealer is a nursery grower.

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

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

23 94.10 (7) (b) 3. Misrepresent the name, origin, grade, variety, quality, or
24 hardiness of any nursery stock offered for sale or make any other false or misleading
25 representation in the advertising or sale of nursery stock.

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Insert 11-3

SECTION 1. Initial applicability.

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

end of insert