

CHAPTER 94.

PROMOTION OF AGRICULTURE.

94.01 Horticultural society; corporate powers; duties.	94.39 Agricultural seeds; sale; label.
94.02 Executive committee; secretary's report.	94.40 Prohibitions.
94.03 County agricultural societies; organization; officers; powers.	94.41 Exemptions.
94.035 Federal projects.	94.42 Permits.
94.04 Certificates of stock.	94.43 Authority.
94.05 Assessments, how made and collected.	94.44 Stop-sale.
94.06 Members; officers, election of.	94.45 Powers of the department.
94.07 Filing list of officers.	94.46 Seed testing.
94.08 State aid to county fairs and agricultural societies.	94.47 Penalty.
94.09 Use of funds.	94.51 Definition of terms.
94.095 Entry fee to exhibit may be charged.	94.52 Inspection of nurseries.
94.10 Agricultural boards; police power.	94.53 Power to prevent removal or shipment of infected materials.
94.11 Action to recover entrance fee.	94.54 Harmful barberries, eradication of.
94.12 Fraud as to record or name of horse.	94.544 Permits for shipment of insects and pathogens.
94.13 False premium list or statement.	94.55 Plant diseases or insects; European corn borer.
94.15 Policy of co-operative marketing adopted.	94.555 Grasshoppers, army worms and chinch bugs; control of.
94.16 Farm stabilization funds.	94.56 Presence of plant disease or insects.
94.17 Contracts for promotional fund.	94.57 Notice of infection of nursery, orchard, etc.; destruction.
94.18 State contribution to promotional fund.	94.58 Application for inspection.
94.19 Extension of stabilization.	94.59 Certificate of inspection.
94.20 Noxious weeds.	94.60 Dealer's and agent's certificate.
94.21 Weed commissioner; appointment, oath, term; exception.	94.61 Misrepresentation of nursery stock.
94.22 Duties; powers; collection of tax.	94.62 Tags and labels on shipments of nursery stock.
94.23 County weed commissioner.	94.63 Rehearing.
94.24 Weed seed on highways.	94.64 Commercial fertilizers; labels on, sample, etc.
94.25 Threshing machines to be cleaned of noxious weeds.	94.65 Analysis; license; fee; unlawful sale.
94.26 Cranberry culture; maintenance of dams, etc.	94.66 Samples, how sealed; publication of analysis.
94.27 Liability for damages.	94.67 Insecticides and fungicides, adulteration or misbranding.
94.28 Arbitrators to fix damages.	94.68 Definition of terms.
94.29 Appeal.	94.69 Adulteration defined.
94.30 Rights on payment.	94.70 Misbranding defined.
94.31 Service of notice.	94.71 Immunity by wholesaler's guaranty.
94.32 Pay of arbitrators.	94.72 Commercial feed.
94.33 Trespass on cranberry lands.	94.74 Coloring grain.
94.34 Larceny of cranberries.	94.75 Seed, feed and fertilizer laboratories.
94.35 Cranberry growers association.	94.76 Inspection of apiaries.
94.36 Ginseng protected.	94.77 Penalties.
94.37 Hicberries, not to use rake, etc.	94.78 Provisions of sections 94.15 to 94.19 severable.
94.375 Wild rice conservation.	94.80 Annual reports to department.
94.38 Agricultural seeds and vegetable seeds defined.	94.90 Wisconsin rural electrification co-ordination division.

Cross Reference: See definitions in 93.01.

94.01 Horticultural society; corporate powers; duties. The Wisconsin state horticultural society is a body corporate by that name, with the general powers and privileges of a corporation so far as applicable. It shall be the duty of the society to aid in the formation and maintenance of county and local horticultural societies, to promote the horticultural interests of the state by holding meetings for discussion thereof, by the collection and dissemination of information in regard to the cultivation of fruits, flowers, and trees adapted to the soil and climate of this state, the harvesting, packing, storing and marketing of fruits and vegetables, and in other proper ways to advance the fruit and tree growing interests thereof; and for such purposes only it may take, hold and convey real and personal property, the former not exceeding five thousand dollars in value. [1935 c. 550 s. 26]

Note: Employes of state horticultural society are not entitled to compensation from state when injured while on duty. Society may purchase liability insurance to cover its employes. 24 Atty Gen. 329.

94.02 Executive committee; secretary's report. The executive committee of said society shall consist of the president, secretary and treasurer thereof, and one member from each congressional district in the state, these to be chosen annually at such time and in such manner as the society may prescribe. The executive committee may fix the time and

place for holding the annual meeting of the state society, if the last meeting thereof failed to do so, and may call such meeting by giving at least thirty days' notice to each member; said committee may also fill all vacancies in the offices of the society. The secretary of the society shall on and after July first of each year make a report to the state department of agriculture setting forth in detail the receipts and disbursements of the society for the preceding fiscal year in such form and with such other information and detail as the department may require. [1935 c. 535, 550 s. 27; 1943 c. 229]

94.03 County agricultural societies; organization; officers; powers. Citizens of any county in which no such society exists, or of two such counties jointly, may meet and organize a county agricultural society, adopt a constitution and elect such officers as shall be prescribed in the constitution; and upon filing a certificate of such organization, signed by the president and secretary, with a copy of the constitution, in the office of the register of deeds of such county, such society shall become a corporation with all the powers necessary to promote the objects thereof, and may purchase or take by gift and hold any real or personal property necessary for its purposes, and which shall be used exclusively therefor, sell and convey and mortgage the same. All conveyances and mortgages of such real estate shall be executed by the president and secretary. All amendments to the constitution or articles of such society shall be filed in the office of the register of deeds for such county. All county agricultural societies now in existence are continued with all the powers and privileges enjoyed by societies organized under this section. [1935 c. 550 s. 28]

94.035 Federal projects. County agricultural societies organized or existing under section 94.03 are declared to be public agencies with power to accept and receive grants or loans from federal agencies and to enter into contracts or agreements with such federal agencies in accordance with federal and state law for the use of such grants or loans, the ownership and title of property and improvements acquired, in whole or in part, by the use of such grants or loans, and the maintenance and operation thereof. Except in pursuance of a contract or agreement theretofore entered into, the powers conferred by this section shall not be exercised after December 31, 1941. [1939 c. 477]

Note: Legislature may declare county agricultural societies to be public agencies with power to sponsor WPA projects, accept and receive grants or loans and enter into contracts. 28 Atty. Gen. 493.

94.04 Certificates of stock. Every such society shall have power to fix a valuation to the aggregate of its property and divide such valuation into equal shares, and issue to its members certificates of stock signed by the president and secretary, specifying the number of shares of its property owned by the respective members to whom issued. Such shares shall be deemed personal property and may be transferred according to such regulations as shall be prescribed by such society; and any person becoming a shareholder shall be a member and have all the rights and be subject to all the liabilities appertaining to his membership; and every person ceasing to be a shareholder of any society which shall have issued certificates of stock in accordance with this section shall cease to be a member thereof. [1935 c. 550 s. 29]

94.05 Assessments, how made and collected. Every county agricultural society which shall have fixed the aggregate value of its property, divided such valuation into shares and issued certificates to its members under section 94.04 may, whenever its cash funds are insufficient to pay its obligations, make an assessment upon all its members sufficient to pay such obligations in the manner herein provided. Such assessment shall be proportionately levied upon each share of stock as the unit. Such society shall, at its annual meeting, by resolution to be entered of record, determine and assess the sum to be paid by all the members thereof and the time when and the officers to whom the same shall be paid; and the secretary shall immediately notify every member by letter sent to his usual post-office address of the amount of such assessment and the sum due from him, and the time when and the officer to whom payment thereof is to be made, which time shall be not less than sixty nor more than ninety days. If any member shall neglect or refuse payment of any such assessment for thirty days after the same shall have become due and payable and after he shall have been so notified thereof the stock of such member may be sold by the executive committee of such society at public auction, after at least thirty days' notice of such sale by posting notices thereof, stating the place and the day and hour of such sale, in three conspicuous places in the county where such society is situated. The proceeds of such sale shall be first applied in payment of the assessment and the expense of the sale, the residue, if any, shall be refunded to the owner; but if such proceeds shall not be sufficient to pay such assessment and expense such member shall remain liable to the society for the deficiency. The purchaser at such sale shall be entitled to all the rights of a member to the extent of the shares so bought. Every assessment when collected shall be paid to the treasurer of such society and applied to the payment of the obligations on account of which it was made. [1935 c. 550 s. 30]

94.06 Members; officers, election of. Such societies shall be open and free alike to all the citizens of the county where organized who may wish to become members thereof and shall comply with their regulations; and other citizens of this state or any other state may become members thereof upon such terms and conditions as shall be provided by their by-laws and pay the prescribed fees. They shall hold an annual election of their officers, and the time and place of holding the same shall be published in some newspaper of the county, or if there be none, then in one in an adjoining county. The term of office of all officers of such society shall be one year and until their successors are elected. [1935 c. 550 s. 31]

94.07 Filing list of officers. The secretary of each county agricultural society and of each industrial society claiming any money from the state shall, immediately after the annual election of its officers, file in the office of the department a list of the officers of such society, giving the post-office address of the president, secretary and treasurer thereof. [1935 c. 550 s. 32]

94.08 State aid to county fairs and agricultural societies. State aid to the amount appropriated by subsection (11) of section 20.61 shall be paid to counties and agricultural societies, associations or boards, subject to the following conditions:

(1) To each county, and any such organized agricultural society, association, or board in the state, eighty per cent of the first five thousand dollars actually paid in net premiums and fifty per cent of all net premiums paid in excess of five thousand dollars at its annual fair upon live stock, articles of production, educational exhibits, agricultural implements and tools, domestic manufactures, mechanical implements and productions, for which premium lists have been submitted to the department not later than May 1 of each year; but no one premium so paid shall exceed the sum of thirty-five dollars to a single person, or seventy-five dollars for any township or other group premium. No fair, association, or board shall receive state aid unless its premium list, entry fees, and charges shall have been submitted to the department on or before May 1, and approved by it in writing, both as to premiums offered, amounts to be paid, entry fees to be charged, and all other charges for exhibiting.

(2) After July 1, 1925, state aid shall be paid to only such counties as conduct fairs, and to but one society, board or association in any county which does not conduct a fair, such society, board or association to be designated by the county board of such county, except that societies, boards or associations in counties having a population of 10,000 or more according to the last federal census, which have received aid hereunder for fairs held during the calendar year 1920 or which have conducted a bona fide fair each year for 4 or more consecutive years immediately prior to making claim for state aid under this section and paid during such period premiums averaging at least \$1,000 annually may, upon compliance with the conditions prescribed by this subsection, receive or continue to receive state aid, as the case may be, until otherwise provided by law.

(3) Whenever there are two or more societies, boards or associations in any county only one of which is entitled to aid, that one shall be selected to which the county has appropriated at least five thousand dollars for the purchase of land or the erection of buildings, or both.

(4) It shall be the duty of the proper officers of each county agricultural society, association, or board entitled to state aid under this subsection, to submit to the department a complete accounting system for such society, association, or board and no state aid shall be paid to such society, association, or board until a satisfactory system of accounts has been approved by said department, and installed according to its instructions.

(5) On or before the last day of October in each year the county clerk, or the person appointed therefor by the county board, agricultural society, association or board claiming state aid, shall file with the department, on blanks provided by it, an itemized statement verified on oath, showing net premiums actually paid in cash at the preceding fair, which premiums must correspond with the list approved by the department, as required by subsection (1). This report shall also include a statement of receipts and disbursements, attendance, and such other information as the department may require; including also a statement that at such fair all gambling devices whatsoever, the sale of intoxicating liquors excepting fermented malt beverages, and exhibitions of immoral character were prohibited and excluded from the fairgrounds and all adjacent grounds under their authority or control.

(6) If it appears from such report, and the department shall be satisfied that such county agricultural fairs have been maintained pursuant to the rules and regulations prescribed by it, and that the premiums paid are the net amount actually paid in cash to bona fide exhibitors, it shall certify to the secretary of state in favor of each such county agricultural society, association, or board the amounts due under the provisions of subsection (1) and the secretary of state shall then audit such report. If it appears from any

such report that any premiums have been paid to other than bona fide exhibitors, or that premiums have been paid or used in any way contrary to the intent of this subsection, then the department may withhold payment of such state aid until suitable adjustment is made.

(7) The department shall have the power to visit and inspect, when necessary, the records, grounds, buildings, or other property of any society, association, or board receiving state aid under this subsection, and it shall have access to the grounds, buildings, and records at all time.

(8) The department shall annually submit to the governor a detailed statement showing receipts and disbursements of each fair receiving state aid, together with a classified statement of premiums paid, and the amount of state aid claimed and allowed.

(9) Incorporated dairy or live stock associations, upon substantial compliance with the provisions of subsections (1) to (8), shall be entitled to the state aid therein provided for upon premiums paid for dairy products or live stock or upon articles pertaining to the production or manufacture of such products or the raising of such live stock, in any county in which no annual fair is held by any organized agricultural society, association or board. State aid shall be paid to but one such dairy or live stock association in any one county. All moneys received by any such association shall be paid out by it for the premiums provided for in this subsection substantially as provided in section 94.09.

(10) To each county, and any such organized agricultural society, association or board in the state, for the purpose of encouraging and fostering the breeding, development and improvement of standard bred horses in this state, fifty per cent of each purse of four hundred dollars and fifty per cent of each purse of five hundred dollars paid by it to the owners of the successful contestants in a two-year-old trot, two-year-old pace, three-year-old trot and three-year-old pace. Any such organization may stage any or all of said events but shall not receive state aid for more than one each of said events in any calendar year. No colt shall be eligible to enter or start therein unless owned by one or more duly qualified electors of this state or trained continuously within the state for not less than sixty days prior to the fifteenth day of June of the year in which the event is contested. After the year 1934 no two-year-old colt and after the year 1935 no three-year-old colt shall be eligible to enter or start therein, unless owned, raised and trained by one or more duly qualified electors of this state, and unless it is the foal of a mare owned at the time of foaling by one or more qualified electors of this state. Required number of entries and starters shall be six to enter and four to start. An owner may enter any number of colts but shall not be allowed to start more than two colts in the same event. Entry fees for each colt shall not exceed two per cent of the purse and shall be payable on or before a closing date to be fixed by the organization. The organization may, at its option, increase any such purse and may also add the entrance money to the purse and divide such added sums among the starters as it sees fit. Money divisions and conditions other than those herein prescribed shall be uniform throughout the state and shall be fixed annually for the next succeeding year by a joint resolution adopted by the boards of directors of the Wisconsin breeders and harness horse association and Wisconsin association of fairs, and certified to the state department of agriculture on or before the last day of December in each year. In the event the boards of directors of said associations fail in any year to adopt and certify said resolution as aforesaid, then such money divisions and conditions for the next succeeding year shall be fixed by such department. On or before the last day in December in each year, the county clerk, or the person therefor appointed by the society, association or board claiming state aid, shall file with the state department of agriculture, on blanks provided by it, a statement, verified on oath, showing a true and correct summary of the results of each colt event, the name and address of, and the amount paid to, the owner of each colt, and that the event was in all things conducted as herein provided. Thereupon, state aid shall be certified and paid as provided by subsection (6). [1931 c. 67 s. 123; 1931 c. 339; 1935 c. 550 s. 33; 1937 c. 327; 1941 c. 212; 1943 c. 229]

Note: In requirement that fairs to receive state aid shall report all cash premiums on or before December 31 [Stats. 1931] time is directory and aid may be paid where reports are made later. 20 Atty. Gen. 1214.

Purses for colt races must be approved by commissioners of department of agriculture and markets as premiums are approved, before state aid can be given. 22 Atty. Gen. 886.

94.09 Use of funds. All moneys received by any such society, association or board, either from the state or any other source, after paying the necessary incidental expenses thereof, shall be paid out annually, by bank check or draft in each individual case, for premiums awarded, in such sums as its by-laws, rules and regulations shall direct, on such live animals, articles of production, educational exhibits, agricultural implements and tools, domestic manufactures, mechanical implements and productions as are the growth and manufacture of the district which such society, association or board represents, but live stock, the growth of any other county, state or country, may receive the same premiums as those which are the growth of the district where fair is located, should the society, asso-

ciation or board governing so decide. Provided, that moneys received by any such society, association or board from a source other than from the state, may be paid out for trials or exhibitions of speed, or other contests, for which published premiums have been offered. [1935 c. 550 s. 34]

94.095 Entry fee to exhibit may be charged. Any board, fair association, society or other agency conducting an agricultural fair or exhibition may charge an entry fee for each exhibit which shall not exceed ten per cent of the total amount of the value of the premiums offered for the class of which such proposed exhibit will be a part if entered. [1935 c. 341; 43.08 (2)]

94.10 Agricultural board; police power. The department and the principal officers of the Northern Wisconsin state fair and of any county agricultural or industrial society have full jurisdiction and control of the grounds on which said department or society may exhibit, and all the streets and alleys and other grounds adjacent to the same during all such exhibitions, so far as may be necessary to exclude therefrom all other exhibitions, booths, stands or other temporary places for the retail or sale of any kind of spirituous or fermented liquors or other articles that they deem objectionable. The department, the president of any such society, or, in his absence, any vice president acting in his stead, may appoint necessary policemen to assist in preserving the peace and enforcing the regulations upon the ground and adjacent streets, who, for such purpose, shall have all the powers of a constable and be entitled to similar fees. [1935 c. 550 s. 35; 1943 c. 229]

94.11 Action to recover entrance fee. Any person entering any horse for any race under the auspices of any agricultural society shall be liable to such society for the entrance fee which shall be due and payable at the time the race shall be called for which such horse is entered; and upon failure to pay such fee when due such society may maintain an action therefor against the person so entering such horse. No horse entered in any race shall be exempt from execution or attachment issued in an action brought for the recovery of the whole or any part of such entrance fee. [1935 c. 550 s. 36]

94.12 Fraud as to record or name of horse. (1) No person shall knowingly enter or cause to be entered, drive or ride in competition for any purse or prize offered by any agricultural, trotting, racing, industrial or other corporation or association, or by any person any horse under an assumed name or out of its proper class where such purse or prize is to be decided by a contest of speed nor shall any person knowingly misrepresent or fraudulently conceal the public performance, in any former contest or trial of speed, of any horse which he enters or proposes to enter for competition in any such contest.

(2) The name of any horse for the purpose of entering the same in competition within the meaning of this section, shall be that by which such animal has once contested for a purse or prize except as provided by the code or printed rules of the corporation or association under which the contest for which any subsequent entry of such animal is advertised to be conducted; and the class to which any such animal belongs for the purpose of being entered in a contest of speed within the meaning of this section shall be determined by its public performance in any previous contest or trial of speed as provided by the printed rules under which the contest was conducted. The penalty provided for knowingly misrepresenting or fraudulently concealing the public performance in any former contest of any such animal shall be imposed whether the person guilty thereof succeeds or fails in an attempt to make an entry thereof. [1935 c. 550 s. 37]

94.13 False premium list or statement. No officer of any organized agricultural society, association or board in this state, in pretended compliance with the provisions of section 94.08, shall wilfully make or file any false or fraudulent list or statement. [1933 c. 140 s. 3; 1933 c. 159 s. 32; 1935 c. 550 s. 38]

94.14 [Repealed by 1941 c. 49 s. 92]

94.15 Policy of co-operative marketing adopted. The history of the farm marketing problem in the state and nation, as well as throughout the world, points to a solution chiefly through co-operative marketing efforts of producers. It is, hence, declared to be the policy of this state, in advancing the general good and public welfare, to assist in the organization and development of co-operative associations for production and marketing purposes along lines of dairy and other farm products. [1935 c. 550 s. 40]

94.16 Farm stabilization funds. There are established one or more "farm stabilization funds" to be administered by the state department of agriculture. Payments therefrom shall be made by the state treasurer under rules and regulations to be adopted by the department. The said funds shall be used exclusively for the development of a centralized system of the co-operative marketing of dairy and other farm products, as outlined in subsection (6) of section 93.06 and subsection (17) of section 93.07, and for the payment of the expenses of the department incurred in connection with the particular product for which such stabilization fund was created. [1935 c. 550 s. 41; 1943 c. 229]

94.17 Contracts for promotional fund. (1) Commodity contracts approved by the state department of agriculture for use by co-operative marketing associations with their producer members may provide for the setting aside of a promotional fund by such associations, to be used according to rules and regulations approved by the department. In dairy marketing contracts the producer members shall pay into such promotional fund on the basis of the equivalent quantity of the fluid milk having a three and five-tenths per cent butter fat content in such dairy products. The rate of such levy shall be fixed annually by the association with the approval of the department, at a figure which is estimated to yield a revenue sufficient to give financial stability to the centralized system of the co-operative marketing of dairy products through the respective co-operative marketing associations. [1935 c. 550 s. 42; 1943 c. 229]

94.18 State contribution to promotional fund. An amount equal to one-half of the amounts paid by the members of co-operative marketing associations into the promotional funds of such associations pursuant to section 94.17, but not exceeding in the case of dairy marketing contracts one cent for the equivalent of each one hundred pounds of milk having a three and five-tenths per cent butter fat content upon which such payments into the promotional funds are made, shall be paid from the general fund into the farm stabilization fund. [1935 c. 550 s. 43]

94.19 Extension of stabilization. (1) When the state department of agriculture, with the approval of the governor, shall have determined that it is advisable to centralize the marketing of any farm product, other than dairy products, that it is equipped to do so efficiently, it may proceed under a similar plan as provided in sections 94.16 to 94.18 for dairy marketing. The payments from the general fund into the farm stabilization fund for such other farm products shall not exceed one per cent of the average market value of the products upon which payments are made into the promotional funds of the co-operative marketing associations, as determined by the department from year to year.

(2) If payments are made from the general fund into the farm stabilization fund for more than one product, the amounts so paid on account of each product shall be kept distinct and shall constitute a farm stabilization fund separate from other farm stabilization funds. Each such fund shall be chargeable only with such part of the expenses of the state department of agriculture as are incurred in connection with the particular product in question, plus a proportionate part of the moneys set aside as a co-operative educational fund. [1935 c. 550 s. 44; 1943 c. 229]

94.20 Noxious weeds. (1) The term "noxious weeds" as used herein shall include the following: Class I, Canadian thistle, marijuana that is not grown or cultivated for lawful commercial purposes, English charlock, or wild mustard, field bindweed, commonly known as "creeping Jenny", goatsbeard, quack or quitch grass; Class II, field dodder, Indian mustard, oxeye daisy, snapdragon or butter and eggs, and perennial sow thistle. Every person shall destroy or cut upon all lands which he shall own, occupy or control, all weeds named in Class I at such time and in such manner as shall effectually prevent them from bearing seed or spreading to adjoining property. In case of weeds having underground rootstocks and where the destruction of weeds in standing crops will result in the sacrifice of the crops, the department may determine the time and method of eradication.

(2) Annual notice to cut or destroy all noxious weeds listed in Class I shall be given in the following manner to every person owning, occupying or controlling any land. It shall be the duty of each town chairman, village president or city mayor to cause such notice to be posted in at least four conspicuous places in each weed district, such district being defined and established by section 94.21. Such notice shall also be published for two consecutive weeks in two or more papers having general circulation in such town, village or city. Said notice shall be published for the first time on or before the fifteenth day of June in each year. Failure on the part of officials to post or publish notice as herein provided shall not relieve any landowner or renter of property from the provisions of sections 94.20 to 94.22. In all cases said notice given as above provided shall be deemed legal and sufficient notice.

(3) Whenever, in the opinion of any town chairman, village president or city mayor, any weeds listed in Class II, or any other weed not included in Class II, shall become a nuisance on any farm or in any locality, he may declare such weed to be included temporarily in Class I. Such weeds shall be so classified and all the provisions of sections 94.20 to 94.22 shall apply thereto, provided that no weed shall be so classified until after proper notice has been given as provided in subsection (2).

(4) It shall be the duty of the officer or board having immediate charge or control of any lands owned by the state or by any county, city, village, town or school district, to see

that all noxious weeds thereon are destroyed as specified in subsection (1). Notice to destroy noxious weeds on such public lands shall be given to such officer or board in the same manner as to the owner or occupant of privately owned lands, and failure to comply with such notice within six days after the last day of publication shall render such officer and every member of such board subject to the fine specified for violation of the provisions of subsections (1) and (2) and in addition such officer or board member shall be liable for the cost of destroying such weeds, which shall be collected along with the fine and such cost paid into the local treasury. [1931 c. 283; 1935 c. 550 s. 45; 1939 c. 49, 384; 1941 c. 19, 155]

Note: Counties and towns must see that weeds in highways which they patrol. 21 weeds are destroyed on lands under their control. Patrolmen must destroy noxious Atty. Gen. 559.

94.21 Weed commissioner; appointment, oath, term; exception. The chairman of each town, the president of each village, and the mayor of each city, shall appoint one or more commissioners of noxious weeds therein, and shall report the names of such appointees to the department on or before the fifteenth day of May in each year; such weed commissioner shall take the official oath, which oath shall be filed in the office of the town, village or city clerk, and shall hold his office for one year and until his successor has qualified. If more than one commissioner is appointed, the town, city or village shall be divided into districts by the officer making the appointment, and each commissioner shall be assigned to a different district. At his discretion the town chairman, village president or city mayor may appoint a resident of any district to serve as weed commissioner in any other district of the same town, village or city. Between the first and fifteenth days of September, in each year, each appointing officer shall report to the department whether or not the commissioners of weeds appointed by him have faithfully performed their duties. This section shall not apply to cities of the first class, but in such cities the ward superintendent shall perform the duties of commissioners of weeds. [1935 c. 550 s. 46]

94.22 Duties; powers; collection of tax. (1) Every weed commissioner shall carefully investigate concerning the existence of noxious weeds in his district; and if any person therein shall neglect to destroy any weeds as required by section 94.20, he shall, after first giving five days' written notice by mail to the owner or occupant, destroy or cause all such weeds to be destroyed, and may devote as many days to doing so as the officer appointing him shall direct, and for each day he shall receive such compensation as shall be determined by the town board, village board or city council upon presenting to the proper treasurer his account therefor, verified by his oath and approved by the appointing officer. Such account shall specify by separate items the amount chargeable to each piece of land, describing the same, and shall, after being paid by the treasurer, be filed with town, city or village clerk, who shall enter the amount chargeable to each tract of land in the next tax roll in a column headed "For the Destruction of Weeds," as a tax on the lands upon which such weeds were destroyed, which tax shall be collected as other taxes are, except in case of lands which are exempt from taxation in the usual way. In case of railroad or other lands not taxed in the usual way the amount chargeable against the same shall be certified by the town, city or village clerk to the state treasurer who shall add the amount designated therein to the sum due from the company owning, occupying or controlling the lands specified, and he shall collect the same therefrom as prescribed in chapter 76 of the statutes, and return the amount collected to the town, city or village from which such certificate was received. Any such commissioner may after written notice given as herein provided enter upon any lands upon which any of the weeds mentioned in section 94.20 are growing, and cut or otherwise destroy them, without being liable to an action for trespass or any other action for damages resulting from such entry and destruction, if reasonable care is exercised in the performance of the duty hereby imposed.

(2) For each day consumed by the commissioners in carrying out their duties other than the destruction of weeds, they shall receive such compensation as may be determined by the village board, town board or city council to be paid out of the city, village or town treasury. [1935 c. 258, 550 s. 47]

Note: See note to 74.19, citing 24 Atty. Gen. 801.

94.23 County weed commissioner. Any county may by resolution adopted by its county board provide for the appointment of a county weed commissioner, define his duties and fix his term of office and compensation. When any such weed commissioner has been appointed and has qualified, he shall have all the powers and duties of the weed commissioners provided for in sections 94.20 to 94.22 and thereupon the offices of such weed commissioners are abolished. [1935 c. 550 s. 48]

94.24 Weed seed on highways. No person shall transport upon the public highways any grain screenings containing weed seed, except the same be securely sacked or confined

in sufficiently closed receptacles, to prevent the scattering of such screenings or weed seed. [1935 c. 550 s. 49]

94.25 Threshing machines to be cleaned of noxious weeds. Every person operating a threshing machine on any farm shall take all reasonable precautions to keep the said machine in a reasonably clean condition, and to remove therefrom all seeds of noxious weeds before removing the said machine from one farm to another. [1935 c. 550 s. 50]

94.26 Cranberry culture; maintenance of dams, etc. Any person owning lands adapted to the culture of cranberries may build and maintain on any land owned by him such dams upon any watercourse or ditch as shall be necessary for the purpose of flowing such lands, and construct and keep open upon, across and through any lands such drains and ditches as shall be necessary for the purpose of bringing and flooding or draining and carrying off the water from such cranberry growing lands, or for the purpose of irrigation, fertilization and drainage of any other lands owned by such person; provided, that no such dams or ditches shall injure any other dams or ditches theretofore lawfully constructed and maintained for a like purpose by any other person. [1935 c. 550 s. 51]

Note: Where land owner constructs or maintains artificial drainage ditch for benefit of his own land and such ditch crosses existing highway, land owner is liable for construction and maintenance of bridge over such ditch. Liability extends to grantee of person who constructed ditch if grantee continues ditch. If land owner fails to meet his obligations authorities charged with maintenance of highways may, upon due notice, make necessary repairs and collect cost from land owner. 30 Atty. Gen. 444.

94.27 Liability for damages. The person so building or maintaining any such dam or constructing or keeping open any such ditch or drain shall be liable to the persons whose lands are overflowed or otherwise injured by such dam, ditch or drain for the full sum of damages so sustained, which shall be ascertained and recovered in the manner following and not otherwise. If the person claiming any such damages cannot agree with the person liable to pay the same he shall select one disinterested arbitrator and give notice thereof to the person from whom such damages are claimed, who shall, within ten days after the receipt of such notice, select another disinterested arbitrator, not of kin to any of the parties interested in maintaining such dams, ditches or drains, and give notice thereof to the claimant and to each of the persons so selected as arbitrators. [1935 c. 550 s. 52]

94.28 Arbitrators to fix damages. The persons so selected as arbitrators shall, within twenty days after such notice, appoint some disinterested third person to act as arbitrator with them and fix a time and place at which they shall meet to determine the damages which the claimant ought to have, and give notice thereof to the parties interested. At the time and place so fixed they shall view the premises and hear the proofs and allegations of the parties, and within ten days thereafter they, or any two of them, shall make duplicate statements of the proceedings had by them and of the amount by them ordered to be paid to the claimant for his damages and the amount to be paid by the respective parties for their fees and the costs of such proceedings, and deliver to each party a copy thereof. Within twenty days thereafter the amount so ordered shall be paid by the party of whom required unless an appeal be taken as hereinafter provided. [1935 c. 550 s. 53]

94.29 Appeal. If either party shall not be satisfied with the award he may, within ten days after the delivery of the copy thereof to him, serve upon either of said arbitrators notice that he appeals from their award to the circuit court of the county in which the lands or any part thereof are situated and pay to such arbitrators the whole amount of their fees and one dollar for state tax; and if the party required to pay such damages shall give notice of an appeal therefrom he shall file with his notice of appeal an undertaking, signed by two or more sureties, to be approved by at least two of said arbitrators, in double the amount of such award, conditioned to pay any judgment that may be rendered against him upon such appeal. Upon filing such notice of appeal and undertaking, when required, the arbitrators, or two of them, shall, within ten days, make and sign a full statement of the proceedings had by them and of their award and file the same with the clerk of said court and pay one dollar state tax; and thereupon the said clerk shall enter an action in which the claimant shall be plaintiff, which shall be deemed then at issue, and proceedings shall be had thereon in like manner as in other civil actions in such court. Unless the appellant shall obtain a more favorable judgment upon such appeal he shall pay costs; otherwise, the respondent. [1935 c. 550 s. 54]

94.30 Rights on payment. If neither party appeals from such award and the party required to pay the damages shall pay the full amount thereof within the time above prescribed or if, upon an appeal, a final judgment shall be rendered in favor of the claimant and the defendant shall pay such judgment and all costs awarded to the claimant within sixty days after such final judgment, then the person so erecting or maintaining such dam

or dams or constructing or maintaining such ditches or drains shall have the perpetual right to maintain and keep the same in good condition and repair; and neither he nor his assigns shall be liable to the payment of any further damages on account thereof; and upon failure to make such payment within the times above prescribed he shall forfeit all right to maintain such dams, ditches or drains under the foregoing provisions. [1935 c. 550 s. 55]

94.31 Service of notice. In all cases arising under the provisions of the five preceding sections when it shall be necessary to serve any notice upon any person who may be out of the state or whose whereabouts shall not be known to the person desiring to serve the same, such notice may be served upon any agent or employe of such person who may be found within this state, and such service shall have the same effect as if it was made upon the party interested. [1935 c. 550 s. 56]

94.32 Pay of arbitrators. The arbitrators shall receive for their services three dollars per day each, to be paid in whole or in part by either party as they shall determine. [1935 c. 550 s. 57]

94.33 Trespass on cranberry lands. No person shall enter upon any cranberry marsh and pick, injure, destroy or remove therefrom any cranberry vines or any fruit thereof without the consent of the owner, and every person violating the provisions of this section shall be deemed guilty of a malicious trespass and forfeit to the owner of such marsh not less than ten dollars as damages in addition to the value of the cranberries taken. [1935 c. 550 s. 58]

94.34 Larceny of cranberries. Any person who shall enter upon and wilfully sever from the soil of another any cranberries or cranberry vines growing thereon and take and convert the same or any part thereof to his own use or the use of another, shall be guilty of larceny of the same degree as if the property so taken and converted had been so severed at some previous time, and shall be punished according to the provisions of section 343.17 for the larceny of other classes of property of the same value. [1935 c. 550 s. 59]

94.35 Cranberry growers association. The Wisconsin cranberry growers association shall obtain and publish information relative to the cultivation and production of cranberries. Said society shall hold semiannual meetings in August and January at such place as it shall determine. The secretary thereof shall report to the governor immediately after each January meeting an itemized and verified account of all disbursements made during the previous year and shall then publish an account in pamphlet form, not to exceed 250 copies of 50 pages each, of the transactions of the association and a summary of the information collected during the previous year relating to the cultivation and production of cranberries, which pamphlets he shall cause to be distributed gratuitously to cranberry growers in this state. [1935 c. 550 s. 60; 1943 c. 132]

94.36 Ginseng protected. (1) **CUTTING.** No person shall between the first day of January and the first day of August cut, root up, gather or destroy ginseng growing in a wild or uncultivated state, except it be on his land.

(2) **EVIDENCE.** The purchase or sale of green ginseng between the first day of January and the first day of August shall be prima facie evidence of a violation of this section.

(3) **PURCHASE WITH KNOWLEDGE.** No person shall purchase ginseng, knowing the same to have been cut, rooted up, or gathered between the first day of January and the first day of August.

(4) **EVIDENCE.** In any prosecution under this section proof that ginseng purchased had been illegally obtained by the vendor shall be prima facie evidence of a violation of this section by the purchaser. [1935 c. 550 s. 61]

94.37 Blueberries, not to use rake, etc. No person, without the consent of the owner, shall pick any blueberries with a rake or other mechanical device. [1935 c. 550 s. 62]

94.375 Wild rice conservation. (1) No person shall, without the written consent of the state through its conservation commission, use any rake, mower or other mechanical device or machinery to pick, cut or remove any wild rice situated or growing in the bed of any navigable lake, pond or bayou within the state.

(2) No person shall, without the written consent of the riparian owners, use any rake, mower or other mechanical device to pick, cut or remove any wild rice situated or growing in the bed of any stream.

(3) No person shall pick, cut or remove in any manner any wild rice situated or growing in the bed of any navigable lake, pond or bayou within the state until such wild rice has matured, excepting for possible experimental purposes and then only with the written consent of the conservation commission. [1937 c. 68]

94.38 to 94.50 [Repealed by 1941 c. 313]

94.38 Agricultural seeds and vegetable seeds defined. (1) The term "agricultural seeds" shall include the seeds of red clover, alsike clover, white clover, sweet clover, alfalfa, fescues, rye grass, timothy, red top, orchard grass, blue grass, reed canary grass, field peas, canning peas, sorghums, seed field corn, sudan grass, seed grains and the seeds of any other field crop and mixtures of such seeds which are sold, exposed for sale or offered for sale within this state.

(2) The term "vegetable seeds" shall include the seeds of those crops that are or may be grown in gardens or on truck farms and are generally known and sold under the name of vegetable seed in this state.

(3) The term "weed seeds" shall mean the seeds of all plants generally recognized as weeds in this state and shall include noxious weed seeds.

(4) Noxious weed seeds shall be divided into 2 classes, namely, "primary noxious weed seeds" and "secondary noxious weed seeds" and are defined as follows:

(a) "Primary noxious weed seeds" shall include the seeds of field bindweed (*convulvulus arvensis*), leafy spurge (*euphorbia esula*), Canada thistle (*cirsium arvense*), quack grass (*agropyron repens*), and any other weed seeds that the department may, after public hearing, declare "primary noxious weed seeds."

(b) "Secondary noxious weed seeds" shall include the seeds of dodder (*cuscuta sp.*), wild mustard (*brassica arvensis*), Indian mustard (*brassica juncea*), buckhorn (*plantago lanceolata*), oxeye daisy (*chrysanthemum leucanthemum*), perennial sow thistle (*sonchus arvensis*) and any other weed seeds that the department may, after public hearing, declare "secondary noxious weed seeds".

(5) The term "label" means the display or displays of written, printed or graphic matter upon or attached to the container of seed.

(6) The term "labeling" includes all labels, and other written, printed and graphic representations, in any form whatsoever, accompanying and pertaining to any seed whether in bulk or in containers and includes invoices.

(7) The term "advertisement" means all representations, other than those on the label, disseminated in any manner or by any means, relating to seed within the scope of sections 94.38 to 94.47.

(8) The meaning of all other terms used in labeling seed under sections 94.38 to 94.47 shall be as defined in the federal seed act or in the rules and regulations adopted thereunder. [1941 c. 313]

94.39 Agricultural seeds; sale; label. Each container of agricultural or vegetable seed which is sold, offered for sale or exposed for sale for seeding purposes shall bear or have attached thereto in a conspicuous place, a plainly written or printed label or tag in the English language, giving the following information:

(1) For agricultural seed:

(a) Lot or identification number.

(b) Commonly accepted name or kind, variety or type of each seed component in excess of 5 per cent of the whole and percentage by weight of each. When more than one component is named, the word "mixed" or "mixture" shall appear in the name of the seed.

(c) Origin of each agricultural seed named on label which has been designated by the department as one on which such knowledge is important if origin is known. If unknown, that fact shall be so stated.

(d) Percentage by weight of all weed seeds including noxious weed seeds.

(e) Percentage by weight of all agricultural seeds other than those named on the label.

(f) Percentage by weight of inert matter.

(g) For each agricultural seed named on the label (1) percentage of germination, including hard seed, (2) percentage of hard seeds, if present, (3) calendar month and year the germination test was completed to determine such percentage.

(h) Name and address of the person who is responsible for the labeling of said seed or who sells, offers or exposes it for sale.

(i) The name and rate of occurrence of each kind of secondary noxious weed seed per ounce, when present singly or collectively in excess of

1. One seed in 25 grams of red top, Canada blue grass, Kentucky blue grass and seeds of similar size and weight, or smaller, and mixtures of such seeds.

2. One seed in 50 grams of timothy, alsike clover, orchard grass, reed canary grass, smooth brome grass, white clover, red clover, rape, alfalfa, sweet clover, rye grasses, millets, flax and seeds of similar size and weight, and mixtures of such seeds.

3. One seed in 150 grams of sudan, proso and seeds of similar size and weight, and mixtures of such seeds.

4. One seed in 300 grams of sorghums, buckwheat and seeds of similar size and weight, and mixtures of such seeds.

5. One seed in 500 grams of vetches, cereals, field corn, beans, field and canning peas, cowpeas and seeds of similar size and weight and mixtures of such seeds.

(2) For vegetable seed:

(a) Name and kind and variety of seed.

(b) Name and address of the person who is responsible for the labeling of said seed or who sells, offers for sale or exposes said seed for sale.

(c) For seed which germinates less than the standard last set by the department (1) percentage of germination, (2) calendar month and year test was made to determine such percentage, (3) the words "below standard" in not less than 8-point type. [1941 c. 313]

94.40 Prohibitions. It shall be unlawful for any person to sell, offer for sale or expose for sale:

(1) Any agricultural seed containing primary noxious weed seeds, subject to tolerances and methods of determination prescribed in the rules and regulations under sections 94.38 to 94.47.

(2) Any agricultural seeds containing secondary noxious weed seeds singly or collectively in excess of:

(a) One seed in 5 grams of the agricultural seeds named in subdivision 1 of paragraph (i) of subsection (1) of section 94.39.

(b) One seed in 10 grams of the agricultural seeds named in subdivision 2 of paragraph (i) of subsection (1) of section 94.39.

(c) One seed in 25 grams of the agricultural seeds named in subdivision 3 of paragraph (i) of subsection (1) of section 94.39.

(d) One seed in 50 grams of agricultural seeds named in subdivision 4 of paragraph (i) of subsection (1) of section 94.39.

(e) One seed in 100 grams of agricultural seeds named in subdivision 5 of paragraph (i) of subsection (1) of section 94.39.

(3) Any agricultural seed containing weed seeds, except ragweed (*ambrosia elatior*) and foxtails (*chaetochla* sp.) at a rate in excess of 5 per cent by weight of the named seed; provided seeds of ragweed and foxtail may be present either singly or collectively at a rate not in excess of 10 per cent by weight of the named seed if the total weed seed content, including ragweed or foxtail, does not exceed 10 per cent.

(4) Any agricultural or vegetable seed unless the test to determine the percentage of germination, as shown by records, shall have been completed within a 12-month period from date of sale, exclusive of the calendar month in which the test was completed.

(5) Any agricultural or vegetable seed not labeled in accordance with the provisions of section 94.39 or having a false labeling, or to detach, deface or destroy any label provided for in section 94.39 or to alter or substitute seed in a manner that may defeat the purpose of sections 94.38 to 94.47.

(6) Any agricultural or vegetable seed pertaining to which there has been a false or misleading advertisement or to disseminate any false or misleading advertisement concerning seed in any manner or means.

(7) Any alfalfa seed represented to be of a grimm, cossack or ladak variety and any field seed corn representing to be hybrid field seed corn, unless such seed is certified as to variety by a seed certifying agency which is approved by the department as satisfactory for the performance of seed certification and the official tag of such agency is properly attached to each seed container. [1941 c. 313]

94.41 Exemptions. The provisions of sections 94.38 and 94.43 shall not apply to seed or grain not intended for sowing purposes, or to seed in storage or consigned to a seed cleaning or processing plant for cleaning or processing; provided, that any labeling or any representation made with respect to such seed shall be subject to the provisions of sections 94.38 to 94.47. [1941 c. 313]

94.42 Permits. No person shall sell, offer or expose for sale any agricultural or vegetable seed without a permit from the department to engage in such business. A separate permit shall be required for each store or place of business where such seed is sold or offered for sale for seeding purposes, provided no permit shall be required from persons selling seeds which have been packed and distributed by a seedsman holding a permit as herein provided. No permit shall be required of persons selling, offering or exposing for sale seed of their own production provided that such seed is sold and delivered only on the farm or premises where grown. Such seed shall be otherwise labeled as required by section 94.39. The fee for issuing permits shall be \$1 each. All permits shall expire on July 1 following the effective date. [1941 c. 313; 1943 c. 401]

94.43 Authority. The department or its authorized agents shall have free access during regular business hours to all places of business, warehouses, freight depots, cars, trucks and all other places where seeds as defined in section 94.38 are stored, transported, sold or exposed for sale. They are empowered to take from any container, samples of seed and shall transmit same to the department for analysis. Upon request, duplicate samples of the seed shall be left with the owner or agent of the seed sampled. They shall have authority to inspect all invoices and records relating to any lot of seed in order to secure evidence as to false advertising or improper labeling of such seed. [1941 c. 313]

94.44 Stop-sale. Whenever the department or any of its duly qualified inspectors shall find in any places of business, warehouse, freight depot, car, truck or any other place, a lot of seed which appears to be offered for sale in violation of the seed laws of this state or regulations promulgated by the department for their enforcement, the inspector shall obtain representative samples of such seed, mark for identification, and forward the same to the department for analysis. At the time of obtaining the samples, the inspector shall notify the owner or custodian of such seed, in writing, that the sale thereof appears to be in violation of the law. The lot of seed shall not thereafter be sold or removed from the premises without permission or release from the department. The department shall cause an analysis to be made of such seed and report its findings to the owner or custodian of the seed. The analysis and report shall be made within 15 days of the date of taking the sample. If it shall appear from the official laboratory examination of any lot of seed that it does not meet the requirements of the statute or is not labeled in accordance with the provisions of law, the department shall notify the vendor of said seed and he shall be given an opportunity to be heard under the rules and regulations as may be prescribed by the department. If, after such hearing, it appears that any of the provisions of sections 94.38 to 94.47 have been violated, the department may certify the facts to the proper district attorney. [1941 c. 313]

94.45 Powers of the department. The department is authorized, after public hearing, to:

- (1) Add to the list of agricultural seeds as specified in subsection (1) of section 94.38.
- (2) Add to or remove from the list of noxious weed seeds as specified in subsection (4) of section 94.38.
- (3) Prescribe regulations relative to the distribution and labeling of lawn seed mixtures.
- (4) Prescribe the methods of sampling, size of samples and methods for making purity and germination tests.
- (5) Prescribe tolerances allowable in purity and germination tests and in rates of occurrence of noxious weed seeds.
- (6) Prescribe regulations and definitions not inconsistent with law governing the labeling and distribution of agricultural and vegetable seed and mixtures of such seeds.
- (7) Prescribe regulations relative to issuing permits to seed dealers. [1941 c. 313]

94.46 Seed testing. The department shall maintain a seed laboratory with necessary equipment and shall fix charges for seed tests and analyses. [1941 c. 313]

94.47 Penalty. Any person who shall violate any of the provisions of sections 94.38 to 94.47 or any of the regulations promulgated thereunder or interfere with any inspector in the discharge of his duties, shall be punished by a fine of not more than \$100 for the first offense and for each subsequent offense not more than \$500. [1941 c. 313]

94.51 Definition of terms. (1) The terms "insect" and "plant diseases" shall include any stage of development of the insects or plant diseases.

(2) The term "nursery stock" shall include all field-grown florist stock, trees, shrubs, vines, cuttings, grafts, scions, buds, fruit pits and other seeds of fruit and ornamental trees and shrubs, and other plants and plant products for propagation, except field, vegetable, and flower seeds, bedding plants, and other herbaceous plants, bulbs and roots.

(3) The term "nursery" shall include any grounds or premises on or in which nursery stock is fumigated, treated, packed, or stored.

(4) The term "nurseryman" shall include the person who owns, leases, manages or is in charge of a nursery.

(5) The term "dealer" means any person not a grower of nursery stock who sells or offers to sell nursery stock either as owner or agent from a supply kept on hand.

(6) The term "agent" means any person selling nursery stock not sold from any stock on hand for display purposes and under the partial or full control of a nurseryman or a dealer or an agent. [1933 c. 470 s. 11, 12; 1935 c. 550 s. 77]

94.52 Inspection of nurseries. All nurseries and all other places in which nursery stock is kept for sale in the state shall be inspected at least once each year. A reasonable

inspection fee may be charged, the amount of such fee to be determined by the department. [1935 c. 550 s. 78]

94.53 Power to prevent removal or shipment of infected materials. (1) The entomologist of the department, with the approval of the department, is empowered to prohibit and prevent the removal of any material from any private or public property, or any area of the state which in his judgment contains dangerously infested or infected nursery stock or plant or other material of any kind, except under such conditions as in his judgment seems necessary to prevent the further spread of the infestation or infection, giving such notice thereof as may be prescribed by the department; and while such order is in force no person shall remove or ship from such area any such material, except it be in compliance with those conditions or by special permission.

(2) The department may seize, destroy or return to the point of origin any material received or transported in the state of Wisconsin in violation of any order, regulations or quarantine promulgated under the authority of subsection (1) of this section, or of subsection (12) of section 93.07, or in violation of any federal quarantine which has been established under the authority of the Act of Congress of August 20, 1912 (Thirty-Seventh United States Statutes, at Large, page 315), or any amendment thereto and which the state department shall by order determine and designate to be necessary to prevent the introduction of any dangerous plant disease or insect infestation into this state.

(3) In the enforcement of any quarantine the department may intercept, stop and detain for official inspection any person, car, vessel, boat, truck, automobile, aircraft, wagon or other vehicles or carriers, whether air, land or water, or any container believed or known to be carrying material in violation of said quarantine or of the orders or regulations issued supplemental thereto, and may seize, possess and destroy any agricultural or horticultural product or other material of any character whatsoever, moved, shipped, transported in violation of such quarantine, order or regulations. [1935 c. 550 s. 79]

94.54 Harmful barberries, eradication of. (1) No person shall receive, ship, accept for shipment, transport, sell, offer for sale, give away, deliver, plant or permit to exist on his or its premises any harmful barberry, or any plant of a species that shall be designated by the department in published regulations to be a host or carrier of a dangerous plant disease or insect pest.

(2) The entomologist of the department may destroy any such plant found growing in the state. If the owner shall refuse or neglect to eradicate such plants within ten days after receiving a written notice so to do, the expense of such eradication shall be certified to the town, city or village clerk and assessed, collected, and enforced against the premises upon which such expense was incurred as taxes are assessed, collected, and enforced, and shall be paid into the treasury of the state.

(3) The term "harmful barberry" shall be interpreted to consist of any species of *Berberis* or *Mahonia* susceptible to infection by *Puccinia graminis*, commonly called black stem rust of grain, but not including Japanese barberry, *B. thunbergii*. [1935 c. 550 s. 80]

94.544 Permits for shipment of insects and pathogens. No person shall sell, barter, offer for sale, or move, transport, deliver, ship, or offer for shipment, any living insects in any stage of their development, or any living plant pathogens without a permit from the department of agriculture, issued upon compliance with the conditions and regulations which the department is authorized and directed to prescribe, except bees, which are covered under section 94.76. Such permit shall be issued only after the department has determined that the insects or plant pathogens in question are not injurious to plants, animals, or other materials, if not already present in the state, or have not been found to be seriously injurious to warrant their being refused entrance, if known to be already established within the border of the state. Such permit shall be affixed to the outside of every container or shipment thereof. [1941 c. 25]

94.55 Plant diseases or insects; European corn borer. (1) It shall be unlawful for any person in this state to knowingly permit any dangerous insect or plant disease to exist in or on his premises. It shall also be unlawful to sell or offer for sale any stock infested or infected with such insect or disease.

(2) In the event of the introduction of the European corn borer into Wisconsin, the department shall take every possible measure to bring this pest under control and shall co-operate to this end with the farm organizations of the district affected and with the United States department of agriculture. In dealing with this pest the department, in addition to the authority conferred upon it with reference to other insect pests, shall have power to require the treatment or destruction of any agricultural or horticultural product, whether in field, feed lot, storage or elsewhere, and any special type of plowing or other farm operation within any district for which a quarantine for the control of this pest is established.

(3) In case the person in charge of such products or land shall fail to comply with any

such order within the time prescribed, after due notice to him, the department may take the action so required and the expense thereof, or such portion of such expense as the department may determine, shall be assessed, collected and enforced as provided in subsection (2) of section 94.54. Such portion of the amount so assessed, collected and enforced against the owner of such premises, as shall represent expenditures thereon by the United States, in carrying out the co-operative control measures hereby authorized, shall, on certification by the secretary of agriculture of the United States and approval by the department, be paid to the United States.

(4) If such person does comply with said order, he shall be reimbursed by the state for the expense of the necessary farm clean-up measures required by the department which in the judgment of such department are additional to those normal and usual in farm operations, and for which he has not been or will not be compensated by the United States. The department shall adopt and enforce regulations defining what expenses shall be regarded as being additional to those usual and normal in farm operations, the manner in which claims shall be filed and the proof required. [1935 c. 550 s. 81]

94.555 Grasshoppers, army worms and chinch bugs; control of. (1) Whenever the entomologist of the state department of agriculture shall have determined that grasshoppers, army worms or chinch bugs exist in destructive numbers on any farm lands or any area of such lands and that control measures are desirable and are being applied to some of the lands involved, he shall have power to require on the remainder of the lands such treatment or control measures as seem necessary to him to control the pests. If any person in charge of such lands fails to comply with any such order within the time specified therein, the department may apply the necessary control measures and the expense thereof shall be assessed, collected and enforced as provided in subsection (3) of section 94.55.

(2) In the event that the state or federal government shall furnish material or money for the purchase of material for use in suppressing or controlling any such outbreak of grasshoppers, army worms or chinch bugs, the county involved shall set up an organization to assist the entomologist in the conduct of the campaign and shall furnish suitable storage for such materials, and the equipment necessary for mixing and handling, including transportation to and from any mixing stations and distribution stations. The town boards of all towns within which such outbreaks may occur shall furnish such reasonable assistance in connection with the orderly and expeditious handling of such material and the suppression of such pests as may be required by the department. [1937 c. 330; 1943 c. 229]

94.56 Presence of plant disease or insects. In case there shall be on any nursery or dealer's premises or any packing ground or in any cellar or building used for storage or sale of nursery stock, any injurious insect or plant diseases, the entomologist of the department shall give written notice thereof to the owner or person having charge of the premises, and shall withhold his certificate, hereinafter provided for, until the premises are freed from such injurious insect or plant disease. It shall be unlawful for any person after receiving such notice to ship or deliver or cause to be shipped or delivered any nursery stock from such premises, without permission. [1935 c. 550 s. 82]

94.57 Notice of infection of nursery, orchard, etc.; destruction. (1) If the entomologist of the department shall find, on examination, any nursery, orchard, small fruit plantation, park, cemetery, or any private or public premises infested with injurious insects or plant diseases, he shall notify the owner or person having charge of such premises to that effect, and the owner or person in charge shall, within ten days after such notice, cause the removal and destruction of infested and infected trees, plants, shrubs or other plant material if they are incapable of successful treatment; otherwise, such owner or person in charge shall cause them to be treated as directed in the notice. No damage shall be awarded to the owner for the destruction of infested or infected trees, plants, shrubs or other material under the provisions of this chapter.

(2) In case the owner or person in charge shall refuse or neglect to comply with the terms of the notice, within ten days after receiving it, the inspectors may proceed to treat or destroy the infested or infected plants or plant material. The expense thereof shall be assessed, collected and enforced as provided in section 94.54. [1935 c. 550 s. 83]

94.58 Application for inspection. (1) Persons desiring to sell or ship nursery stock shall make application in writing before June first of each year, to the department for inspection of their stock. Persons failing to comply with this section, and persons applying for any special inspection or certification of nursery stock or other material as to freedom from infestation or infection, not required by the statutes of Wisconsin or the regulations of the department, shall be liable for extra charges to cover traveling expenses of the nursery inspector of the department.

(2) Every person receiving into this state any nursery stock directly or indirectly from foreign countries shall notify the state entomologist of the arrival of such shipment, the

contents thereof and the name of the consignor; and shall hold such shipment unopened until duly inspected or released by the inspector. [1935 c. 550 s. 84]

94.59 Certificate of inspection. (1) The entomologist of the department shall cause to be issued to owners of nurseries in the state after the stock has been officially inspected, and found to be apparently free from injurious insects or plant diseases, a certificate stating that such inspection has been had and the number of acres or fraction thereof inspected. Said certificates shall be valid until October first following their issue.

(2) It shall be unlawful for any person to sell, to offer for sale, or to remove or ship from a nursery or other premises, any nursery stock unless such stock has been officially inspected and a certificate or permit has been granted. [1935 c. 550 s. 85]

94.60 Dealer's and agent's certificate. (1) Every dealer before offering nursery stock for sale in this state, or distributing or soliciting orders for nursery stock within this state, shall secure a dealer's certificate, which he may do by furnishing an affidavit that he will buy and distribute only stock which has been duly inspected and certified by an inspector of the department; and that he will maintain with the department a list of all sources from which he secures his stock. Upon compliance with the provisions of this section, a dealer's certificate shall be issued upon the payment of a registration fee of five dollars.

(2) (a) Nonresident nurserymen and dealers desiring to solicit orders for nursery stock in the state, shall file a certified copy of their home state certificate with the department, and shall then, upon complying with all other provisions of sections 94.51 to 94.63, and all rules and regulations promulgated thereunder and upon payment of the registration fee of ten dollars be entitled to a certificate permitting such persons to solicit orders for nursery stock in this state.

(b) Notwithstanding paragraph (a) the department may enter into reciprocal agreements with the responsible officers of other states under which nursery stock owned by nurserymen or dealers of such states may be sold or delivered in this state without the payment of a Wisconsin registration fee, provided like privileges are accorded to Wisconsin nurserymen or dealers in such other states, and provided, further, that the department shall find that such other states before issuing their certificates, require inspections equal to those required under the Wisconsin law.

(c) If any of the exemptions provided for in paragraph (b) of this subsection shall be held invalid by any court of competent jurisdiction, the class or classes held to be invalidly exempted shall forthwith become subject to the provisions of paragraph (a) as if no exemption had been provided for. If any provision of this section or the application thereof to any person or circumstance is held unconstitutional, the remainder of this section and the application of such provisions to other persons or circumstances shall not be affected thereby.

(3) All agents selling nursery stock, or soliciting orders for nursery stock, shall secure from the department and carry an agent's certificate bearing a copy of the certificate held by the principal. Said agent's certificate shall be issued only to agents authorized in writing or upon request of their principal. Names and addresses of such agents shall not be divulged by the department. [1943 c. 229, 401]

94.61 Misrepresentation of nursery stock. (1) It shall be unlawful for any person to wilfully misrepresent to any person the grade, character, variety, or quality of stock in a nursery, or of nursery stock offered for sale, or to make a false declaration of acreage, or to conceal stock to avoid inspection.

(2) Every person selling nursery stock in the state shall, upon request of the state entomologist, furnish copies of his order forms, contracts and agreements with his customers. [1935 c. 550 s. 87]

94.62 Tags and labels on shipments of nursery stock. (1) Every person selling or shipping nursery stock in this state shall attach to the outside of each package, box, bale, or carload lot shipped or otherwise delivered, a tag or label on which shall appear an exact copy of his certificate. The use of tags or labels bearing an invalid or altered certificate and the misuse of any valid certificate tag is hereby prohibited.

(2) It shall be unlawful to accept for shipment any nursery stock without a certificate plainly affixed to the outside of the package, bale, box, or car containing the same, showing that the contents have been duly inspected by a state or federal inspector. In case any nursery stock is shipped in or into this state without the certificate of inspection plainly affixed, the fact must be promptly reported to the department by the carrier, stating the consignor and the consignee and the nature of the shipment. Every common carrier when directed by the entomologist of the department shall notify him of any or all shipments of nursery stock, giving the name of the consignor, the consignee, and the nature of the shipment, and shall hold such shipment subject to his order. [1935 c. 550 s. 88]

94.63 Rehearing. (1) Any person affected by any order of the inspector may make application for a hearing thereon pursuant to section 93.18 within 5 days of the service of such order upon him, setting forth in writing specifically and in full detail the order on which a hearing is desired, and every reason why such order is deemed to be unreasonable.

(2) On receipt of the application the department shall with reasonable promptness order a hearing thereon and consider and determine the matters in question. Notice of the time and place of hearing shall be given to the applicant and to such other persons as the department may direct. The application shall not suspend the operation of the order appealed from unless so ordered by said department. [1935 c. 550 s. 15, 89; 1943 c. 401]

94.64 Commercial fertilizers; labels on; sample, etc. (1) Every person who shall, in this state, sell or expose for sale any commercial fertilizer or any material used for fertilizing purposes, excepting agricultural lime and the dung of poultry and domestic animals in their natural condition selling for less than ten dollars per ton, shall affix to every package of such fertilizer or material in a conspicuous place on the outside thereof, a plainly printed statement clearly and truly certifying the number of net pounds therein, name or trade-mark under which the article is sold, name of the manufacturer or shipper, place of manufacture, place of business of the manufacturer and of the following fertilizing constituents, namely: The percentage of nitrogen in an available form, of potash soluble in water and of available phosphoric acid, soluble and reverted, as well as total phosphoric acid. Every such person shall also file with the department, in the month of December in each year, a certified copy of such statement for every such fertilizer or material bearing a distinguishing brand or trade-mark and which he sells or exposes for sale, which copy shall, when required by such department be accompanied by a sealed glass jar or bottle containing at least one pound of such fertilizer or material, and an affidavit that such sample corresponds, within reasonable limits, to the fertilizer or material which it represents in the percentage of the aforesaid constituents, which affidavit shall apply to the remaining portion of the then calendar year. Additional brands of such fertilizer or material may be offered for sale during the year, provided samples and affidavits are so filed at least one month before they are offered, in which case an analysis fee of double the usual amount must be paid. A deposit of the sample of the fertilizer shall be required by said department unless the person selling or offering for sale a fertilizer or material within this section shall certify that its composition for the succeeding year is to be the same as given in the last previously certified statement, in which case the furnishing of a sample shall be at the discretion of said department.

(2) The term "agricultural lime" as used herein shall include all quick lime, both lump and ground, ground limestone, ground or pulverized oyster shells, sulphate of lime or land plaster, hydrated lime, gas lime, marl and all similar products. Persons engaged in quarrying and grinding limestone may sell their own products at the place where ground and quarried without complying with this section. Every manufacturer, person or firm who shall sell, offer or expose for sale or for distribution in the state of Wisconsin, any agricultural lime to be used as a fertilizer or soil improver, shall furnish with each shipment or lot or shall affix to each package or bulk of agricultural lime a statement clearly and truly certifying the kind of lime, the number of net pounds in each shipment or lot or package, the name of the manufacturer, place of business, and for all quick lime, hydrated lime, gas lime, marl, limestone, clam and oyster shells, the following statement of analysis: (a) The maximum approximate percentage of water and the minimum neutralizing value expressed as the percentage of calcium carbonate. (b) In case of marl and ground limestone and clam and oyster shells, the additional analyses concerning fineness as follows: Percentage not passing ten mesh sieve; percentage passing ten mesh sieve, but held on sixty mesh sieve; percentage passing sixty mesh sieve. (c) In the case of sulphate of lime or land plaster the maximum percentage of water and the minimum percentage of sulphur trioxide. Approximate water content as used in this section is to be taken to mean within ten per cent. Neutralizing value is to be determined as follows: A determination of the carbon dioxide content is to be made directly on ground limestone, clam and oyster shells and marl. In the case of quick lime, hydrated lime, gas lime, and other partly slacked and carbonated material, the oxide and hydrate are to be changed to the carbonate and then a determination of the carbon dioxide content is to be made in the same way as with ground limestone. The carbon dioxide value is then to be calculated over to its chemical equivalent as calcium carbonate and from this value the neutralizing value of the dry material compared to pure dry calcium limestone is to be calculated and expressed in terms of per cent.

(3) Before any person shall sell or offer for sale any pure or mixed culture of micro-organisms or other material to be used for promoting directly or indirectly, the growth of higher plants, he shall file with the department a statement under oath specifying the composition of the substance and the kinds of micro-organisms contained therein which

promote the growth of higher plants, and shall secure a permit from the department. [1935 c. 550 s. 90; 1943 c. 401]

Note: Where sales of limestone are con- though sales were solicited at other points summated upon premises where limestone is and delivery is made by quarry owner. 21 quarried and ground, exemption applies even Atty. Gen. 1072.

94.65 Analysis; license; fee; unlawful sale. (1) The department shall analyze all such samples and publish the results of such analysis in a bulletin or report before the first day of the next April. Every manufacturer, importer, agent or seller of any such fertilizer, or culture of micro-organisms or other material shall pay annually to said department for each brand thereof sold within this state the sum of twenty-five dollars, and upon doing so and complying with the other provisions of law shall receive from it a certificate of such compliance which shall be a license for the sale of each brand thereof within the state for the calendar year for which such fee is paid. No person shall sell or expose for sale any commercial fertilizer or agricultural lime, or culture of micro-organisms or material used for fertilizing purposes which is within the provisions of section 94.64 without complying with the foregoing provisions or which contains a substantially smaller percentage of fertilizing constituents than is indicated by the printed statement thereon.

(2) Before any agricultural lime is sold, offered for sale or distribution in this state the person offering the same for sale shall pay annually during the month of December to the department a license fee of ten dollars for each brand or kind of agricultural lime sold or offered for sale and shall receive from said department a license certificate to sell such brand or kind of agricultural lime during the following calendar year. Whenever a manufacturer, importer, agent or seller of agricultural lime desires to sell such material and has not paid the license fee thereof in the preceding month of December he shall pay a license fee prescribed herein before making such sales. [1935 c. 550 s. 91]

94.66 Samples, how sealed; publication of analysis. The department shall annually analyze or cause to be analyzed at least one sample of every material used for fertilizing purposes sold or exposed for sale under the 2 preceding sections and enforce their provisions by causing the prosecution of every person who violates them. The department or its authorized agent may, on tendering the value thereof, take a sample, not exceeding 2 pounds, for analysis from any lot or package of any material used for fertilizing purposes which may be in the possession of any manufacturer, importer, agent or dealer in this state. The sample shall be taken in the presence of the person from whom taken or his representative, be taken from a parcel or a number of packages which shall not be less than 10 per cent of the whole lot sampled, be thoroughly mixed and divided into 2 equal parts, placed in glass vessels and carefully sealed and a label placed on each, stating the name or brand of the material sampled, the name of the party from whose stock the sample was taken, and the time and place of taking. The label shall be signed by the department's agent and the person from whom taken or his representative at the time the sample is taken. One of said duplicates shall be retained by the department and the other by the party whose stock was sampled. The sample retained by the department shall be for comparison with the certified statement named in section 94.64. The result of the analysis of the sample so procured shall be reported to the person requesting the analysis and be published in a report or bulletin to be issued within a reasonable time. [1935 c. 550 s. 92; 1943 c. 229]

94.67 Insecticides and fungicides, adulteration or misbranding. (1) It shall be unlawful for any person to manufacture, sell or offer for sale, within the state of Wisconsin any insecticide or fungicide which is adulterated or misbranded within the meaning of sections 94.67 to 94.71.

(2) It shall be unlawful for any person to misrepresent the value of any treatment applied to trees, shrubs, vines, or other plant material, or to any animal, for preventing, destroying, repelling or mitigating any insect, fungus, or bacterial disease, or for accelerating its growth or productive power.

(3) The department shall promulgate uniform rules and regulations for enforcing this section, including the collection and examination of insecticides and fungicides, manufactured or offered for sale in this state for the purpose of determining whether such articles are adulterated or misbranded within the meaning of this section and including the establishment of chemical and other standards to which insecticides and fungicides not specifically covered by this section, shall conform. [1935 c. 550 s. 93]

94.68 Definition of terms. The term "insecticide" as used in sections 94.67 to 94.71 shall include any substance or mixture of substances intended to be used for preventing, destroying, repelling or mitigating any insects which may infest vegetation, man or other animals, or households, or be present in any environment whatsoever. The term "paris green" shall include the product sold in commerce as paris green and chemically known as the aceto-arsenite of copper. The term "lead arsenate" shall include the product or

products sold in commerce as lead arsenate and consisting chemically of products derived from arsenic acid (H_3AsO_4) by replacing one or more hydrogen atoms by lead. The term "fungicide" shall include any substance or mixture intended to be used for preventing, destroying, repelling or mitigating any fungus that may infest vegetation or be present in any environment whatsoever. [1935 c. 550 s. 94]

94.69 Adulteration defined. For the purpose of sections 94.67 to 94.71, any article shall be deemed to be adulterated:

(1) In the case of paris green: First, if it does not contain at least fifty per cent of arsenious oxide; second, if it contains arsenic in water-soluble forms equivalent to more than three and one-half per cent of arsenious oxide; third, if any substance has been mixed and packed with it so as to reduce or lower or injuriously affect its quality or strength.

(2) In the case of paste lead arsenate: First, if it contains more than fifty per cent of water; second, if it contains total arsenic equivalent to less than twelve and one-half per cent of arsenic oxid (As_2O_3); third, if it contains arsenic in water-soluble forms equivalent to more than seventy-five one hundredths per cent of arsenic oxid; fourth, if any substances have been mixed and packed with it so as to reduce, lower or injuriously affect its quality or strength; that extra water may be added to paste lead arsenate if the resulting mixture is labeled lead arsenate and water, the percentage of extra water being plainly and correctly stated on the label.

(3) In the case of dry or powdered lead arsenate: First, if it contains total arsenic equivalent to less than twenty-five per cent of arsenic oxid; second, if it contains arsenic in water-soluble forms equivalent to more than one and one-half per cent of arsenic oxid; third, if any substances have been mixed and packed with it so as to reduce, lower, or injuriously affect its quality or strength.

(4) In case of insecticides or fungicides, other than paris green and lead arsenate: First, if its strength or purity fall below the professed standard or quality under which it is sold; second, if any substance had been substituted wholly or in part for the article; third, if any valuable constituent of the article has been wholly or in part abstracted; fourth, if it is intended for use on vegetation and shall contain any substance or substances which, although preventing, destroying, repelling or mitigating insects, or fungi, shall be injurious to such vegetation when used; fifth, if it fails to conform to standards promulgated by the department. [1935 c. 550 s. 95]

94.70 Misbranding defined. (1) The term "misbranded" as used herein shall apply to all insecticides, paris greens, lead arsenates or fungicides, and articles which enter into the composition of insecticides or fungicides, the package or label of which shall bear any statement, design or device regarding such article or the ingredients or substances contained therein which shall be false or misleading in any particular, and to all insecticides, paris greens, lead arsenates or fungicides which are falsely branded as to the state, territory or country in which they are manufactured or produced.

(2) For the purpose of sections 94.67 to 94.71, an article shall be deemed to be misbranded:

(a) In the case of insecticides, paris greens, lead arsenates and fungicides: First, if it be an imitation or offered for sale under the name of another article; second, if it be labeled or branded so as to deceive or mislead the purchaser, or if the contents of the package as originally put up shall have been removed in whole or in part and other contents shall have been placed in such package; third, if the quantity of the contents be not plainly and correctly stated on the outside of the package.

(b) In the case of insecticides (other than paris green and lead arsenates) and fungicides: First, if it contains arsenic in any of its combinations or in the elemental form, and the total amount of arsenic present (expressed as per cent of metallic arsenic) is not stated on the label; second, if it contains arsenic in any of its combinations or in the elemental form and the amount of arsenic in water-soluble forms (expressed as per cent of metallic arsenic) is not stated on the label; third, if it consists partially or completely of an inert substance or substances which do not effectively prevent, destroy or repel insects or fungi, and does not have the names and percentage amounts of each and every one of such inert ingredients, and the fact that they are inert plainly and correctly stated on the label; provided, that in lieu of naming and stating the percentage amount of each and every inert ingredient, the producer may at his discretion state plainly upon the label the correct names and percentage amounts of each and every ingredient of the insecticide or fungicide having insecticidal or fungicidal properties, and make no mention of the inert ingredients, except in so far as to state the total percentage of inert ingredients present. [1935 c. 550 s. 96]

94.71 Immunity by wholesaler's guaranty. (1) No dealer or agent shall be prosecuted under the provisions of sections 94.67 to 94.71, when he can establish a guaranty

signed by the wholesaler, jobber, manufacturer or other person residing in the United States, from whom he purchased such articles, to the effect that the same is not adulterated or misbranded within the meaning of sections 94.67 to 94.71. Said guaranty, to afford protection, shall contain the name and address of the person making the sale of such articles to such dealer or agent, and in such case said person shall be amenable to the fines and other penalties, which would otherwise attach to the dealer or agent.

(2) Any insecticide or fungicide that is condemned as being adulterated or misbranded, shall be confiscated and disposed of by destruction, or in such other manner as the inspector may direct. [1935 c. 550 s. 97]

94.72 Commercial feed. (1) **DEFINITION.** The term "commercial feed" shall be held to include all materials used for feeding animals or birds, except the following:

- (a) Unmixed whole seeds or grains; as defined by United States grain standards.
- (b) The unmixed meals made directly from and consisting of the entire grains of corn, wheat, rye, barley, oats, buckwheat, flaxseed, kafir, milo and other seeds or grains. Such unmixed meals shall not be sold in violation of subsection (3).
- (c) Whole hays, straws, cottonseed hulls, stover and silage, when unmixed with other materials.

(2) **LABELING.** All manufacturers, importers, jobbers, firms, associations, corporations or persons shall before selling, offering or exposing for sale or distributing in this state any brand of commercial feed have printed on, or attached to each bag, package, carton or delivered with each bulk lot a plainly printed statement, hereafter referred to as the label, in a conspicuous place on the outside, containing a legible and clearly printed statement in the English language clearly and truly stating:

- (a) The net weight of the contents of the package, bag, carton or bulk lot;
- (b) The brand or trade name of the feed;
- (c) The name and principal address of the manufacturer or person responsible for placing the commodity on the market;
- (d) The minimum percentage of crude protein;
- (e) The minimum percentage of crude fat;
- (f) The maximum percentage of crude fiber;
- (g) The name of each ingredient used in its manufacture. The official names of all materials which have been so defined by the association of American feed control officials shall be used in the declaration of the names of ingredients;
- (h) In the case of mixed feeds containing more than a total of five per cent of one or more mineral ingredients, or other unmixed materials used as mineral supplements, and in the case of mineral feeds, mixed or unmixed, which are manufactured, represented and sold for the primary purposes of supplying mineral elements in rations for animals or birds, and containing mineral elements generally regarded as dietary factors essential for normal nutrition, the minimum percentage of calcium (Ca) phosphorus (P), of iodine (I) and the maximum percentage of salt (NaCl), if the same be present. Provided, that if no nutritional properties other than those of a mineral nature be claimed for a mineral feed product, the per centums of crude protein, crude fat and crude fiber may be omitted;
- (i) In the case of feeds containing for their principal claim dietary factors in forms not expressible by the foregoing chemical components or are thereby inadequately described, a statement of guarantee as shall be specified by ruling of the department.

(j) "Department" means state department of agriculture.

(3) **WEED SEEDS.** No commercial feed or unmixed meal shall be sold, offered or exposed for sale or distributed which contains germinative noxious weed seeds or other germinative weed seed excepting wild buckwheat seeds, in excess of such quantities as are unavoidably present with the most improved commercial practice of manufacture of such commercial feed or unmixed meal, provided that such germinative noxious weed seeds shall not be greater than one one-hundredths of one per cent, or other germinative weed seeds excepting wild buckwheat seed shall not be greater than one-fourth of one per cent, unless such presence is clearly and permanently indicated on the label. The term "noxious weed seeds" as used in this section shall mean the seeds of Canadian thistle, wild mustard and quack grass, either single or combined.

(4) **MATERIALS PROHIBITED.** No compounded commercial feed shall be sold, offered or exposed for sale or distributed which contains peanut shell, peanut hulls, rice chaff, rice straw, corn cobs, humus, peat, sphagnum moss, sawdust or other material of an organic nature having little or no feeding value.

(5) **ANNUAL REGISTRATION.** (a) Before any manufacturer, importer, jobber, firm, association, corporation or person shall sell, offer or expose for sale or distribute in this state any brand of commercial feed, he or they shall make application for registration and file with the department a certified copy of the statement as specified in subsection (2) with the exception of paragraph (a), for each brand of commercial feed; said appli-

cation shall be accompanied, when the department shall so request, by a certified copy of the label or a sealed package containing at least one pound of the commercial feed to be registered in this state, and the company or person furnishing said sample shall thereupon make an affidavit that the said sample is representative of the commercial feed offered for registration. If such application for registration appears to meet the requirements of this section, the department shall issue a certificate of registration for such brand of commercial feed, which registration shall expire December thirty-first following its date of issuance. Each and every importer, jobber, firm, association, corporation or person selling, offering or exposing for sale or distributing in this state any commercial feeds to be used for mixing purposes only, shall be exempted from the payment of any registration fee, inspection tax, or both, provided the said feed is labeled or tagged with the information as provided in subsection (2) and in addition:

1. A declaration that such feed is to be used for mixing purposes in registered brands only;

2. That the registration fee or inspection tax is not to be paid thereon.

(b) For the purpose of this section, commercial feeds shall be considered as distinct and separate brands when differing in:

1. Guaranteed analysis, ingredients, name, brand or trade mark;

2. Identifying information of any kind regarding composition or purpose, but not physical condition;

3. Name of manufacturer or person responsible for placing the commodity on the market;

4. Or when made by different manufacturers under similar labels;

5. Or when the manufacturer or agent, whose name appears on the label, as responsible for placing the commodity on the market is at no time in full possession of the commodity.

(c) For the purpose of this section all commercial feed stored on the premises of retail establishments shall be considered as being offered or exposed for sale unless plainly labeled or placarded that such feed is not being offered for retail sale.

(6) ANNUAL REGISTRATION OR INSPECTION. For the purpose of defraying the expenses connected with the registration, sampling and analysis of commercial feeds sold or offered for sale within the state and for other items incident to carrying out the provisions of this section each and every manufacturer, importer, jobber, firm, association, corporation or person selling, offering or exposing for sale or distributing any commercial feeds as defined in subsection (1) shall pay annually to the department before the first day of February a registration or inspection fee or both in accordance with paragraph (a) or (b) hereof providing that the provisions of one paragraph only shall be followed in any one year.

(a) A registration fee of one dollar for each brand registered plus an inspection fee of five cents per net ton on all such commercial feeds sold or distributed in this state during the preceding calendar year providing that the minimum inspection fee shall be ten dollars. The applicant's statement which shall set forth the number of net tons sold or distributed during the preceding calendar year shall be made under oath, shall be filed with the department and shall include a permit granting to the department permission to verify from applicant's records such applicant's statement of tonnage;

(b) A registration fee of five dollars for a retailer's license authorizing the sale of a brand of commercial feed at one location designated in the license to the ultimate user thereof for feeding purposes and not for resale or a fee of fifteen dollars for a wholesaler's license authorizing the sale of a brand of commercial feed anywhere within the state either for resale or otherwise providing further that a retailer's license may be converted into a wholesaler's license at any time within the calendar year by payment of an additional ten dollar fee.

(7) NO DUPLICATION OF REGISTRATION. Whenever a manufacturer, importer, jobber, firm, association, corporation or person selling, offering or exposing for sale or distributing a brand of commercial feed as defined in subsection (1) shall have filed the statement required by subsection (5) and paid the inspection fee as required by subsection (6) no other agent, importer, jobber, firm, association, corporation or person shall be required to file such statement or pay such fee upon such brand.

(8) REFUSAL OF REGISTRATION OR CHANGE. No commercial feed shall be accepted for registration under a brand or trade name which would be misleading or deceptive, or which would tend to mislead or deceive as to the materials of which it is composed. The department may refuse to allow any manufacturer, importer, jobber, firm, association, corporation or person to lower the guaranteed analysis or change the ingredients of any brand of his or their commercial feeds during the term for which registered, unless satisfactory reasons are presented to the department for making the change.

(9) INSPECTION. The department is authorized to have free access during regular business hours to all places of business, mills, buildings, carriages, cars, vessels and parcels of whatsoever kind used in this state in the manufacture, transportation, importation, sale or storage of any commercial feed, and shall have the power and authority to open any

parcel containing or supposed to contain any commercial feeds and to take therefrom in the manner prescribed in subsection (10) samples for analysis, and said department may cause to be analyzed annually at least one sample so taken of every commercial feed found, sold, offered or exposed for sale or distributed in this state.

(10) **SAMPLING, ANALYSIS.** No action shall be maintained for a violation of the provisions of this section, based upon an analysis of a sample from less than ten separate original packages, unless there be less than ten separate original packages in the lot, in which case portions for the official sample shall be taken from each original package; if the commercial feed is in bulk, portions shall be taken from not less than ten different places in the lot; provided that this does not exclude sampling in bulk when not exposed sufficiently to take portions from ten different places, in which case portions are to be taken from as many places as practicable. If the sample thus procured is larger than is required, it shall be thoroughly mixed and quartered until a sample of suitable size remains. Said sample, if requested, shall be divided into two parts, and shall be placed in suitable containers and sealed, one of said containers so sealed, if requested, shall be delivered to the person apparently in charge of such feeds. In sampling canned or small packaged goods, one entire can or small package shall be deemed sufficient for examination. In sampling liquids or semi-liquids a portion drawn from one container shall be deemed sufficient for examination. The department shall analyze, or cause to be analyzed, the sample so collected, and the result of such analysis, together with such additional information as the said department may deem advisable, shall be promptly transmitted to the manufacturer and to the dealer or person in whose possession the product was sampled, and shall be published annually. The manufacturer or person responsible for the placing of any commodity so sampled upon the market or the dealer or person in whose possession the feed was found shall, upon request to the department within ten days after report is mailed, be furnished with a portion of the official sample. The methods of analysis shall be those in effect at the time by the association of official agricultural chemists of North America.

(11) **HEARING.** If it shall appear from the examination of any sample of feed or other evidence that any of the provisions of this section relating to accuracy of label statements have been violated, the department shall cause notice of such violation to be given to the manufacturer and the dealer from whom said sample was taken; any party so notified shall be given an opportunity to be heard under such rules and regulations as may be prescribed by the department. After such hearing, if it appears that any of the provisions of this section relating to accuracy of label statements have been violated, the department may certify the facts to the proper prosecuting attorney and furnish that officer with a copy of the results of the analysis or other examination of such sample, duly authenticated by the analyst or other officer making the examination, under the oath of such officer.

(12) **STATISTICS.** For the purpose of obtaining information bearing directly on the agricultural situation in Wisconsin each manufacturer, importer, jobber, firm, association, corporation or person shall submit on request of the department a confidential statement of total tonnage of their registered feed sold in the state during any calendar year, the tonnage to be classified as requested by the department. If accurate information is not obtainable estimates shall be made. The department may refuse registration of feeds to those failing to submit report.

(13) **AUTHORITY.** The department may:

(a) Enforce the provisions of this section and prescribe and enforce administrative rules and regulations which shall be in harmony with the provisions of this section and the official pronouncements of the association of American feed control officials;

(b) Temporarily order withdrawn from sale any lot of feed which is found to be sold, offered or exposed for sale or distributed in this state in violation of any of the provisions of this section.

(14) **PENALTY.** (a) Any manufacturer, importer, jobber, firm, association, corporation or person who shall sell, offer or expose for sale or distribute in this state, any commercial feeds, who shall impede, obstruct, hinder or otherwise prevent or attempt to prevent said department or its authorized agent in the performance of his duty in connection with the provisions of this section or who shall sell, offer or expose for sale or distribute in this state any commercial feeds as defined in subsection (1) without complying with the requirements of the provisions of this section or who shall sell, offer or expose for sale or distribute in this state any commercial feed which contains a smaller per centum of crude protein, crude fat, calcium, phosphorus or iodine, or a larger per centum of crude fiber or salt than is certified to be contained therein, or which contains excessive undeclared germinative weed seeds, or which does not comply with label requirements established under paragraph (i) of subsection (2), or who shall fail to properly state the name of each and every ingredient used in its manufacture, or who shall sell any commercial feed

which carries any false or misleading statements upon or attached to the package, or if false or misleading statements regarding its feeding value are made on the package by the corporation, firm or individual registering said commercial feed, or if the number of net pounds set forth upon the package is not correct, or who shall violate any other provision of this section shall be deemed guilty of a misdemeanor and, upon conviction thereof, shall be fined not more than fifty dollars for the first violation and not less than fifty dollars for each subsequent violation.

(b) Any manufacturer, importer, jobber, firm, association, corporation or person who shall sell, offer or expose for sale or distribute any feeds mixed or adulterated with any substance or substances injurious to the health of live stock or poultry shall be deemed guilty of a misdemeanor and in addition to the penalty provided in this section, the lot of feeds shall be subject to seizure by judicial court action, condemnation and disposition as the court may direct, the proceeds from such sale to be paid into the state treasury. The court may in its discretion release the feeds so seized when the requirements of the provisions of this section have been complied with, and upon payment of all costs and expenses incurred by the state in any proceedings connected with such seizure.

(15) SEPARABILITY. If any provision of this section is declared unconstitutional or the applicability thereof to any person, commodity or transaction is held invalid, the validity of the remainder of these sections and the applicability of such provision to other persons, commodities and transactions shall not be affected thereby. [1935 c. 550 s. 98 to 101; 1937 c. 399; 1943 c. 229, 401]

94.73 [Repealed by 1937 c. 399]

94.74 **Coloring grain.** No person shall fumigate barley, wheat or other grain by the use of sulphur or other substance, or in any way or by the use of any chemical, material or process affect the color or healthfulness of such grain, nor shall any person sell or offer for sale any such grain knowing that the same has been so fumigated or the color or the healthfulness thereof so affected. [1935 c. 550 s. 103]

94.75 **Seed, feed and fertilizer laboratories.** The laboratories of the seed, feed, and fertilizer inspection services shall be maintained at the agricultural experiment station of the college of agriculture at the University of Wisconsin. [1935 c. 550 s. 104]

94.76 **Inspection of apiaries.** (1) The department is charged with the function of apiary inspection and regulation, under the immediate supervision and direction of the entomologist of the department as ex officio inspector of apiaries, who is authorized to execute the powers and duties of that office either in person or by a deputy or deputies appointed by the department for that purpose.

(2) The department shall prescribe and issue such reasonable regulations and orders as in its judgment may be necessary to prevent, eradicate, or control the introduction, spread, or dissemination of any and all communicable diseases of honeybees.

(3) The inspector of apiaries and his deputies shall have free access at all reasonable hours to all apiaries, appliances, structures or other premises, where he has reason to believe bees or their products are held or stored, but no dwelling house shall be entered without a search warrant; and may open any package or receptacle of any kind containing, or which he has reason to believe contains any bees, comb, bee products, used beekeeping appliances, or anything else which is capable of transmitting communicable diseases of bees. No person shall deny such access, or hinder, thwart or defeat said inspector or any of his deputies in the performance of official duties.

(4) The inspector of apiaries may order any owner or person in charge of bees dwelling in hives without movable frames and combs, or not permitting of ready examination, to transfer such bees within a specified time to hives with movable frames; failure to obey the order may be followed by destruction of the hive and contents.

(5) Any person who knows that any bees owned, possessed, or controlled by himself are infected with any communicable disease shall at once report such fact to the inspector of apiaries, and all other facts known to him with reference to said contagion or infection.

(6) The inspector of apiaries shall inspect and regulate every apiary, including all appliances, structures, buildings, and bees thereof, which is reported as being infected or which he has reason to believe may be infected with any disease injurious to honeybees in their egg, larval, pupal, or adult stage.

(7) If any apiary, appliances, structures, buildings, or bees are infected, the inspector shall give instructions to the owner or person in charge of such property for such treatment as in the judgment of the inspector seems best for the eradication or control of said infection; and said owner or person in charge shall carry out said instructions within ten days next after a date which shall be specified in said instructions.

(8) If said owner or person in charge refuses or neglects to carry out said instructions within said period of ten days, the inspector may apply said treatment or destroy the in-

fect property. Any expense incurred therein shall become a lien against the property treated, and the inspector or his deputy may seize such property and sell the same in the manner provided by section 289.48. No damage shall be awarded to the owner for the loss of any infected apiary, bees, hive, apiary appliance, or bee product destroyed under the provisions of this section, or any regulation or order made in pursuance thereof.

(9) After inspecting or handling any infected apiary, bees, hive or other apiary appliance, structure or building, and before proceeding to any other apiary, the inspector or his deputy shall thoroughly disinfect every portion of his person and clothing and every tool and appliance used by him that may have been in contact with infected material, and shall cause every assistant with him to do likewise.

(10) (a) No person shall sell, barter, offer for sale or barter, move, transport, deliver, ship or offer for shipment, any apiary, bees, comb or used beekeeping appliances without a permit from the inspector of apiaries. Such permit, or a copy of such certificate, shall be affixed to the outside of every package, box, crate or bundle containing bees, comb or used beekeeping appliances. The inspector may refuse such permit whenever such refusal is necessary, in his judgment, to prevent the dissemination of any communicable disease of bees, or until after he finds by inspection that the said apiary, bees, comb or appliances are not infected with any such disease.

(b) No person shall bring or cause to be brought into this state, or receive from without this state, any package, box, crate or bundle containing bees unless there shall be affixed to the outside of each such package, box, crate or bundle a certificate of an official inspector of the state of origin showing the same to be free of any communicable disease of bees. The person receiving such package, box, crate or bundle shall report the importation thereof to the state department of agriculture, inspector of apiaries, Madison, Wisconsin, within 5 days of the receipt thereof.

(c) No person shall bring or cause to be brought into this state, or receive from without this state any package, box, crate or bundle containing drawn comb or used beekeeping appliances without first obtaining a permit from the inspector of apiaries; application for such permit shall be made on forms furnished by the department and shall state (1) the name of the consignor, (2) name of consignee, (3) date and manner of shipment and (4) such further information as the department may require.

(11) No person shall accept for shipment, ship or transport any bees, comb, or used beekeeping appliances unless such permit or certificate is affixed on the outside of the package, box, crate, or bundle containing the same; and the inspector or any of his deputies may forthwith seize and destroy any such shipment found at any time or place without such permit or certificate affixed as aforesaid.

(12) The use of an invalid or altered permit or certificate and the misuse of any valid permit or certificate are hereby prohibited.

(13) No person shall expose in any place to which bees have access, any bee product, hive, or other apiary appliance in such manner that communicable diseases of bees could be disseminated therefrom. [1935 c. 550 s. 105; 1943 c. 70]

94.77 Penalties. (1) Any person who violates any provision of subsection (1) of section 94.12 shall be punished by imprisonment in the state prison not more than three years nor less than one year or in the county jail not more than one year, or by fine not exceeding one thousand dollars.

(2) Any person who violates any provision of sections 94.13, 94.37, 94.375, or 94.76, or any regulation or order made in pursuance thereof, shall be punished by a fine of not less than twenty-five dollars nor more than one hundred dollars, or by imprisonment in the county jail for not less than twenty days nor more than six months, or by both such fine and imprisonment.

(3) Any person who violates any provision of subsection (1) of section 94.20, sections 94.51 to 94.63, or any rule promulgated under the authority of said sections, shall be punished by a fine of not less than twenty-five dollars nor more than five hundred dollars for each offense.

(4) Any person who violates any provision of sections 94.24, 94.25 or 94.74 shall be punished by a fine of not more than fifty dollars or by imprisonment in the county jail not exceeding thirty days.

(5) Any person who violates any provision of subsection (1) of section 94.65 or sections 94.67 to 94.71 shall be punished by a fine of not more than \$100 for the first offense; and for each subsequent offense not less than \$100 nor more than \$500, or imprisonment in the county jail not to exceed one year or by both such fine and imprisonment.

(6) Any person who violates any provision of section 94.36 shall be punished by a fine of not less than \$5 nor more than \$20. One-half of the fine shall be paid to the prosecutor.

(9) The department shall report any violations of this chapter to the proper district attorney, and such district attorney shall thereupon commence and prosecute appropriate

actions to recover the penalty for such violations. [1935 c. 550 s. 106; 1937 c. 68, 399; 1939 c. 476; 1943 c. 229]

94.78 Provisions of sections 94.15 to 94.19 severable. The provisions of the several sections and subsections of sections 94.15 to 94.19 are declared to be independent and severable, and it is the intent of the legislature that if any of these provisions shall be held invalid or unconstitutional the remainder of these sections shall, nevertheless, remain in full force and effect. [1935 c. 550 s. 107]

94.80 Annual reports to department. The secretaries of the Wisconsin agricultural experiment association, the Wisconsin state horticultural society, the Wisconsin potato growers' association, the foreign type cheesemakers' association, the Wisconsin cheesemakers' association, the central Wisconsin cheesemakers', buttermakers' and dairymen's advancement association, the Wisconsin dairymen's association, the Wisconsin horse breeders' association, the Wisconsin livestock breeders' association, and the Wisconsin co-operative poultry improvement association shall on and after July first of each year make a report to the state department of agriculture, signed by the president, treasurer and secretary of each of said societies setting forth in detail the receipts and disbursements of the society or association for the preceding fiscal year in such form and detail together with such other information as the department may require. On receipt of such reports, if the department is satisfied that the business of each society has been efficiently conducted during the preceding fiscal year and in the interest of and for the promotion of the special agricultural interests of the state and for the purpose for which the society was organized and if the final statement shows that all the receipts together with the state aid have been accounted for and disbursed for the proper and necessary purposes of the society, and in accordance with the laws of the state, then the department shall file a certificate with the secretary of state and he shall draw his warrant and the state treasurer shall pay to the respective treasurers of each of said societies named in this subsection the amount of the appropriation made available for each such society by section 20.61 of the statutes. Any society or association receiving state aid may upon application to the state purchasing agent, upon such terms as he may require, obtain printing for the society or association under the state contract. [1935 c. 535, 551 s. 2; 1939 c. 535; 1943 c. 229]

94.81 to 94.89 [Repealed by 1941 c. 210]

94.90 Wisconsin rural electrification co-ordination division. (1) There is established within the state department of agriculture the Wisconsin rural electrification co-ordination division.

(2) The duties and functions of such division shall be to gather, digest and disseminate all available information on rural electrification to co-operate with the federal government and its agencies and any private or municipal company in carrying out its program of rural electrification, to co-ordinate the efforts of rural electric co-operative associations and private and municipal companies in this state all to the end that electric service shall be made available to all Wisconsin farmers desiring such service and presently without it. [1939 c. 321; 43.08 (2); 1943 c. 229]