

CHAPTER 94.

PROMOTION OF AGRICULTURE.

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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.

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.

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.

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.

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.

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.

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.

94.08 State aid to county fairs and agricultural societies. State aid to the amount appropriated by s. 20.140 (28) shall be paid to counties and agricultural societies, associations or boards, subject to the following conditions:

(1) (a) To each county, and any such organized agricultural society, association, or board in the state, 80 per cent of the first \$5,000 actually paid in net premiums and 50 per cent of all net premiums paid in excess of \$5,000 at its annual fair upon livestock, 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 \$35 to a single person, or \$75 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.

(b) In order to have a more equitable distribution of state aid among fairs and to effect wider participation and interest by the public in exhibits, the department may prescribe uniform premium lists setting forth classes of exhibits which will be approved for the purposes of state aid, premium awards in such classes and entry qualifications, fees and charges for exhibitors.

(2) Except as provided in subsection (3) hereof, state aid shall be paid on the premiums awarded at only one fair in each county. If the county conducts a fair such state aid shall be paid to the county. If the county does not conduct a fair such state aid shall be paid to the one society, board or association which conducts a fair and is designated by the county board.

(3) All societies, boards and associations which received state aid in 1950 shall continue to remain eligible therefor so long as they continue to operate a fair each year in conformity with the applicable law and the regulations.

(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. Such officers shall cause to be made and published in a newspaper of general circulation in the county in which the fair is held, within 120 days after any fair held by their organization, a financial statement showing the financial condition of the organization before and after the fair. Such financial statement shall include all such receipts, disbursements, accounts receivable and accounts payable in connection with the operation of the fair as the state department of agriculture may require.

(5) Not later than 30 days after the close of the fair 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 or to be paid 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 fair grounds 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 are the net amount actually paid or to be paid in cash to bona fide exhibitors, it shall certify to the director of budget and accounts in favor of each such county agricultural society, association or board the amounts due under the provisions of subsection (1) and the director of budget and accounts 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).

History: 1951 c. 336; 1957 c. 459.

94.09 Use of funds. Subject to the provisions of s. 94.08, 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 bylaws, 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 livestock, 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, association 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.

History: 1957 c. 459.

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.

94.10 Agricultural boards; 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.

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.

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.

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.

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.

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.

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.

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.

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.

94.20 Noxious weeds. (1) The term "noxious weeds" as used in this chapter includes the following: Canada thistle, leafy spurge and field bindweed (creeping Jenny) and any other such weeds as the governing body of any municipality or the county board of any county by ordinance or resolution declares to be noxious within its respective boundaries.

(2) Every person shall destroy all noxious weeds on all lands which he shall own, occupy or control. The person having immediate charge of any public lands shall destroy all noxious weeds on such lands. The highway patrolman on all federal, state or county trunk highways shall destroy all noxious weeds on that portion of the highway which he patrols. The town board shall cause to be destroyed all noxious weeds on the town highways.

(3) The term "destroy" means the complete killing of weeds or the killing of weed plants above the surface of the ground by the use of chemicals, cutting, tillage, cropping system, pasturing live stock, or any or all of these in effective combination, at such time and in such manner as will effectually prevent such plants from maturing to the bloom or flower stage.

(4) The chairman of each town, the president of each village and the mayor or manager of each city shall annually on or before May 15 cause to be posted in at least 3 conspicuous places in his municipality and published at least once each week for 2 consecutive weeks in one or more newspapers having general circulation in the municipality a notice that every person is required by law to destroy all noxious weeds, as defined in s. 94.20, on lands in the municipality which he owns, occupies or controls.

History: 1953 c. 381; 1957 c. 337, 560.

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.

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 neglects to destroy any weeds as required by s. 94.20, he shall, after first giving 5 days' written notice by mail to the owner or occupant and in cities of the first class without giving such written notice, destroy or cause all such weeds to be destroyed, and may devote as many days to doing so as the officer appointing him directs, 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 ch. 76, 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 and in cities of the first class without giving such written notice, enter upon any lands upon which any of the weeds mentioned in s. 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.

History: 1957 c. 39.

In the absence of actual knowledge as to who is the owner, weed commissioner may serve the written notice on the holder of the record title. 39 Atty. Gen. 87.

94.23 County weed commissioner; deputies. 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 ss. 94.20 to 94.22. Each town chairman, village president or city mayor may appoint one or more deputy weed commissioners, who shall work in co-operation with the county weed commissioner in the district assigned by the appointing officer.

History: 1953 c. 381.

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.

94.25 Vehicles and machinery on highways. No operator of a vehicle or farm machinery shall move any such equipment on a highway unless it is in a reasonably clean condition and free from all seeds of noxious weeds.

History: 1953 c. 381.

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.

Dams across navigable waters for the purpose of aiding in cranberry culture may not be constructed without the permission of the public service commission. 45 Atty. Gen. 36.

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.

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.

94.29 Appeal. If either party shall not be satisfied with the award he may, within 10 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, \$5 for state tax and \$8 clerk's fees; 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 2 or more sureties, to be approved by at least 2 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 2 of them, shall, within 10 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 \$5 state tax and \$8 clerk's fees; 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.

History: 1955 c. 157.

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.

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.

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.

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.

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.

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.

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.

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*), wild radish (*raphanus raphanistrum*), yellow rocket (*barbarea vulgaris*) 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 ss. 94.38 to 94.46.

(8) The meaning of all other terms used in labeling seed under ss. 94.38 to 94.46 shall be as defined in the federal seed act or in the rules and regulations adopted thereunder.

History: 1957 c. 100.

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 35 grams of timothy, alsike clover, orchard grass, reed canary grass, white clover and seeds of similar size and weight, and mixtures of such seeds.

3. One seed in 50 grams of smooth brome grass, red clover, rape, alfalfa, sweet clover, rye grasses, millets, flax and seeds of similar size and weight, and mixtures of such seeds.

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

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

6. 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.

(3) For agricultural or vegetable seed which bears or contains any economic poison as defined by s. 94.67 (1):

(a) The common name (if available) and the technical name of the substance used in treating the seed.

(b) A warning statement if the seed is unfit for feed or food.

(c) The manufacturer's recommended treatment in case of poisoning.

History: 1953 c. 203; 1957 c. 337.

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 ss. 94.38 to 94.46.

(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 s. 94.39 (1) (i) 1.

(b) One seed in 10 grams of the agricultural seeds named in s. 94.39 (1) (i) 2 and 3.

(c) One seed in 25 grams of the agricultural seeds named in s. 94.39 (1) (i) 4.

(d) One seed in 50 grams of agricultural seeds named in s. 94.39 (1) (i) 5.

(e) One seed in 100 grams of agricultural seeds named in s. 94.39 (1) (i) 6.

(3) Any agricultural seed containing weed seeds in excess of one percent by weight or containing the weed seed, white cockle (*lychnis alba*), in excess of .25 per cent by weight.

(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 ss. 94.38 to 94.46.

(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, vernal, ladak or ranger 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.

History: 1955 c. 24; 1957 c. 101, 337.

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 ss. 94.38 to 94.46.

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.

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.

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 ss. 94.38 to 94.46 have been violated, the department may certify the facts to the proper district attorney.

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.

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

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.

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*.

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.

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.

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.

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.

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.

94.60 Nursery stock; inspection; licensing nurserymen. (1) **DEFINITIONS.** As used in this section:

(a) "Nursery stock" means all trees, shrubs, vines, evergreens and other plants, and plant parts thereof for propagation, except field, vegetable and flower seeds, annual bedding plants and bulbs.

(b) "Nursery" includes any grounds or premises in this state on or in which nursery stock is propagated or grown for sale purposes. The term "nursery" shall not be construed to mean a dealer's premises or heeling-in grounds on or in which nursery stock is held for purposes other than propagation or growth.

(c) "Nurseryman" includes the person who owns, leases, manages, or is in charge of a nursery. All persons engaged in operating a nursery are farmers and are engaged in farming for all statutory purposes.

(d) "Dealer" applies to any person other than a nurseryman who sells, offers to sell, solicits orders for or otherwise traffics in nursery stock.

(e) "Agent" means any person selling or soliciting orders for nursery stock not from a supply on hand, for a nurseryman or dealer at a place other than the nurseryman's or dealer's place of business.

(f) "Place of business" means each separate store, stand, sales ground, lot, truck, railway car, or other vehicle or any other place at or from which nursery stock is being sold or offered for sale where one or more sales persons are in attendance.

(2) INSPECTION OF NURSERY STOCK. (a) No nursery stock shall be removed from any premises unless such stock has been inspected by the department and certified to be apparently free from injurious insects, plant diseases and other plant pests. The department may authorize the removal of nursery stock to a place designated by it for inspection. All nurseries, heeling-in grounds and all other premises in which nursery stock is kept for sale in the state shall be inspected at least once each year. Every person receiving any nursery stock from a foreign country shall notify the department of the arrival of such shipment, the contents thereof and the name of the consignor, and shall hold such shipment until inspected and certified as provided in this subsection.

(b) Nurserymen's application for inspection and certification of nursery stock to be sold shall be made before June 1 of each year on a form prescribed by the department, accompanied by the proper fee. The amount of such fees shall be as follows: An initial fee for one acre or less, \$10; each additional acre up to 10, \$2 per acre; additional acres in excess of 10, \$1. The application shall be accompanied by the initial inspection fee of \$10 and the balance of such fees shall be payable after inspection. A fee of \$10 shall be paid for each additional place of business where nursery stock is sold from a supply on hand.

(c) Dealer's application for inspection of premises and certification of stock to be sold shall be made in writing on a form prescribed by the department, and shall provide for at least one annual inspection of the premises and one inspection of heeling-in grounds up to one acre. Application for such inspection shall be made at the time of application for dealer's license and shall be accompanied by a fee of \$10 for each such place of business.

(d) Inspection certificates issued by the department shall bear the date of issue and shall be valid until December 31 following their issuance, provided that the department shall limit such expiration date whenever it is necessary to insure freedom from pests of the plants so inspected. Such expiration date shall be set forth on the certificate.

(e) Persons failing to comply with any provision of the section applicable to them, such failure necessitating special inspection, investigation or other expenses to the department and persons applying for any special inspection and certification of nursery stock or other material as to freedom from infestation or infection shall pay a reasonable fee to cover travel and other expenses of the department.

(3) NURSERYMAN'S LICENSE; NONLICENSED GROWERS. (a) No person shall engage as a nurseryman in this state without a license from the department. Such license shall expire on March 31 of each year. Applications for license shall be in writing, on a form prescribed by the department, and shall be accompanied by a fee of \$15. Every nurseryman shall have proper facilities and shall keep nursery stock in a viable condition pending its sale. It is unlawful for any nurseryman to sell, offer for sale or have in his possession any nursery stock which has not been officially inspected as provided in this section. Each applicant for nursery license shall certify that he will buy and distribute only nursery stock which has been officially inspected, and that he will, on request of the department, furnish a list of all sources from which he secures nursery stock and all locations where he sells such stock. No such license is transferable. License may be denied, suspended or revoked if the applicant or holder thereof is not fit or qualified to engage as a nurseryman or violates any of the laws or regulations relating to the conduct of his business.

(b) Plant growers not generally considered nurserymen whose sales do not exceed \$500 per year, will not be required to obtain a nurseryman's license. Such growers shall pay the nursery inspection fees provided for in sub. (2) (b).

(4) DEALER'S LICENSE. (a) Every dealer before offering nursery stock for sale or distributing or soliciting orders for nursery stock in Wisconsin shall secure a dealer's license from the department. Each applicant for license shall certify that he will buy and distribute only nursery stock which has been officially inspected, and that he will maintain with the department a list of all sources from which he secures nursery stock and all locations where he sells such stock. License applications shall be in writing before March 31, on a form prescribed by the department and shall be accompanied by a fee based on the total number of places of business where nursery stock will be sold by the applicant. The amount of such fee shall be \$15 for each such place of business. A dealer's license shall expire on March 31 of each year.

(b) Every dealer selling nursery stock from a supply kept on hand shall have proper facilities for keeping all nursery stock in a viable condition and shall keep stock in such a condition pending its sale. It shall be unlawful for any dealer to sell, offer for sale or have in his possession any nursery stock which has not been officially inspected as provided in this section.

(5) **RECIPROCAL AGREEMENTS.** (a) Nonresident nurserymen desiring to sell or solicit orders for nursery stock in the state shall, upon complying with all other provisions of ch. 94 and all rules and regulations promulgated thereunder, and upon payment of a fee of \$15, be entitled to a license permitting such persons to sell or solicit orders for nursery stock in this state.

(b) Notwithstanding par. (a), the department may enter into reciprocal agreements with the responsible officers of other states for the recognition of official inspection certificates, under which nursery stock owned by nurserymen from such states may be sold and delivered in this state without the payment of a Wisconsin license fee, if like privileges are accorded to Wisconsin nurserymen in such other states, and the department finds that such other states, before issuing official inspection certificates, require inspection equal to that required in Wisconsin, except that any nonresident nurseryman having a place of business in this state shall obtain a dealer's license and pay all fees therefor as required in this section.

(6) **AGENTS.** All agents selling or soliciting orders for nursery stock in Wisconsin must be registered with the department by their principal. Names and addresses of such agents shall not be divulged by the department.

(7) **LABELING NURSERY STOCK; RETAIL SALES.** (a) Every person selling or shipping nursery stock in this state shall attach to the outside of each package, box, bale or lot shipped or otherwise delivered, the certificate of inspection for such nursery stock, or a copy thereof, except that a licensed nurseryman or dealer may attach a tag or label bearing the name, address and license number of such licensee and a certification by him that such nursery stock has been inspected as required by sub. (2).

(b) It is unlawful to accept for shipment any nursery stock unless it bears a certificate as provided in par. (a). In case any nursery stock is shipped in or into this state without the certificate 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 department shall notify it 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 the order of the department.

(c) Nursery stock sold at retail, in addition to the certificate provided for in par. (a), shall bear a tag or label giving the common name or the botanical name of such plants.

(8) **MISREPRESENTATION.** It is unlawful for any person:

(a) To misrepresent the name, origin, grade, variety, quality or hardiness of any nursery stock offered for sale, or to make any other false or misleading representation of any kind, in connection with the advertising or sale of nursery stock.

(b) To represent, by name or otherwise, that he is a nurseryman or conducts a nursery business when such is not the case.

(c) To make a false declaration of nursery stock acreage to the department, or to conceal nursery stock to avoid inspection. Every person selling nursery stock, upon the request of the department, must furnish copies of his order forms, contracts and agreements with his customers.

(d) To sell or ship any nursery stock bearing an outdated, altered or otherwise invalid certificate.

History: 1955 c. 168, 652.

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.

94.64 Commercial fertilizer. (1) **DEFINITIONS.** When used in this section:

(a) "Commercial fertilizer" or "plant food" includes both mixed fertilizer or fertilizer materials.

(b) "Fertilizer material" means any substance containing nitrogen, phosphoric acid, potash, or any recognized plant food element or compound which is used primarily for its plant food content or for compounding mixed fertilizers except unmanipulated animal and vegetable manures and sludge sold at sewage plants at retail.

(c) "Mixed fertilizer" means any combination or mixture of fertilizer materials de-

signed for use or claimed to have value in promoting plant growth, with or without inert materials.

(d) "Distributor" means any person who offers for sale, sells, barter, or otherwise supplies commercial fertilizers.

(e) The terms "sell," "sale" or "sold" include delivering, shipping, consigning, exchanging, offering or exposing for sale, or having in possession with intent to sell.

(f) "Grade" means the minimum percentages of total nitrogen, available phosphoric acid, and soluble potash stated in the order given in this paragraph and, when applied to mixed fertilizers, shall be in whole numbers only. For fertilizer materials it shall include the common name.

(g) "Brand" means a term, design or trademark used in connection with one or several grades of fertilizer.

(h) "Official sample" means any sample of commercial fertilizer taken by an authorized agent of the department according to methods prescribed by this section.

(i) "Ton" means a net ton of 2,000 pounds avoirdupois.

(j) The terms "per cent" and "percentage" mean the percentage by weight.

(k) "Specialty fertilizer" means any mixed fertilizer distributed principally for use on gardens, lawns and ornamental plants, including fertilizers used for research or experimental purposes.

(2) REGISTRATION. (a) No distributor shall sell any grade of commercial fertilizer unless it has been registered with the department. Application for registration shall be on a form furnished by the department and shall be accompanied by a fee of \$25 for each grade to be sold. All registrations expire on June 30 of each year. The application shall disclose the following information:

1. The name and address of the distributor guaranteeing registration.

2. The grade and brands applicable to each grade.

3. The guaranteed analysis showing the minimum percentage of plant food in the following order and form:

Total nitrogen per cent

Available phosphoric acid per cent

Soluble potash per cent

Unacidulated mineral phosphate materials and basic slag shall be guaranteed as to both total and available phosphoric acid, and the percentage passing through a standard 200-mesh screen; the available phosphoric acid content shall be stated as zero (0) if none is guaranteed. In the case of bone, tankage, and other natural organic phosphate materials, only the total phosphoric acid need be guaranteed. In the case of a mixed fertilizer to be labeled or otherwise represented as suitable for use as tobacco fertilizer, a guarantee that the chlorine content does not exceed 2 per cent must be given.

4. The minimum percentages of each other plant food constituent if guaranteed to be present. In case boron is guaranteed both the percentage of soluble boron, elemental basis, and its equivalent in pounds of borax (sodium tetraborate, $10H_2O$) per ton shall be stated. If soluble boron is present in amounts of 5 pounds of such borax equivalent per ton or more, the presence shall be declared as stated above.

(b) The distributor of any brand and grade of commercial fertilizer shall not be required to register the same if it has already been registered under this section by a person entitled to do so and such registration is then in effect.

(3) LABELING. (a) Any commercial fertilizer sold in this state in bags, barrels or other containers shall have placed on or affixed to the container the net weight and the data, in written or printed form, required by sub. (2) (a) 1, 2, 3 and 4 printed either 1. on tags to be affixed to the end of the package midway between the ears or 2. directly on the package in which case for bags containing 50 pounds or more the grade shall appear also on the end or side of the package in type that is plainly legible. The size of the grade figures (such as 10-10-10) shall be at least as large as any others which have reference to analysis. The guarantee of total nitrogen, total and available phosphoric acid and soluble potash shall be shown in type of equal prominence under the heading "guaranteed analysis." The guarantee of any other plant food constituents shall be separately shown following the heading "additional guarantees." With the acceptance of registration, the department shall issue a concise and complete warning statement to appear on the bag, tag or container if in the opinion of the department such cautions and instructions are deemed necessary for consumer protection.

(b) For each grade sold in bulk, the net weight and the data, in written or printed form, in duplicate, as required by paragraph (a) shall accompany delivery and be supplied to each and every purchaser.

(4) TONNAGE FEE. (a) There shall be paid to the department for all commercial fertilizers sold or distributed in this state an inspection fee at the rate of 5 cents per ton;

provided, that products sold to manufacturers or exchanged between them are hereby exempted when used exclusively for manufacturing purposes.

(b) Payment of the inspection fee levied by paragraph (a) of this subsection shall be made on the basis of semiannual tonnage reports subscribed and sworn to before a notary. The tonnage reports shall cover the semiannual periods ending June 30 and December 31 of each year and shall be filed with the department not later than 30 days (which may be extended for cause an additional 30 days, on written request to the department) after the close of each semiannual period. Remittance to cover the inspection fee at the rate prescribed in paragraph (a) shall accompany each tonnage report; provided also that each tonnage report shall grant to the department permission to verify the records upon which such statement of tonnage is based. When more than one distributor is involved in the distribution of a commercial fertilizer, the one which sells to the ultimate dealer or consumer in Wisconsin is responsible for reporting the tonnage and paying the inspection fee.

(5) INSPECTION. (a) It shall be the duty of the department to sample, inspect and make analyses of commercial fertilizers sold within this state at such time and place and to such an extent as may be necessary to determine whether such commercial fertilizers are in compliance with the provisions of this section. The department is authorized to stop vehicles transporting fertilizer for the purpose of sampling the load and verifying the label statement accompanying such load.

(b) An official fertilizer sample shall be one drawn, from a lot or shipment of fertilizer sold or exposed for sale, in this state in the manner prescribed by the association of official agricultural chemists. In sampling a lot of commercial fertilizer packaged in small containers (less than 10 pounds each) a single package may constitute the official sample.

(c) The methods of analysis shall be those adopted by the association of official agricultural chemists unless none are provided, in which case the methods prescribed by the department shall be used.

(d) At the request of the purchaser the deliverer of any load or lot of each grade of bulk fertilizer shall, in the presence of the purchaser or his representative, draw a sample for analysis. Each sample shall consist of a composite of at least 3 vertical cores. Such sample, together with a copy of the grade certificate, shall be packed and sealed in an individual tamper-proof container in the presence of the purchaser or his representative and given to him for mailing to the department laboratory at his option. The department, however, need not analyze more of such samples than the equivalent of 10 per cent of official samples analyzed under this statute.

(6) MINIMUM PLANT FOOD CONTENT. No person shall sell any superphosphate containing less than 18 per cent available phosphoric acid, nor any rock phosphate or material of similar source or origin containing less than 18 per cent of total phosphoric acid; and no person shall sell any mixed fertilizer in which the sum of the guarantees for the nitrogen, available phosphoric acid and soluble potash totals less than 24 per cent, nor any natural mineral fertilizer in which the sum of such guarantees totals less than 15 per cent. If an acute fertilizer shortage should occur the department shall have the authority to reduce the minimum requirement for mixed fertilizers for the duration of such shortage. The provisions of this subsection shall not apply to specialty fertilizers.

(7) MISBRANDING. It shall be unlawful to sell, offer for sale or distribute a misbranded commercial fertilizer in this state. A commercial fertilizer is misbranded if any of the statements on the container or in any advertising or promotional matter issued by a distributor are false or misleading or are in conflict with registration representations.

(8) STATISTICAL REPORTS. Semiannually each person registering commercial fertilizer under this section shall furnish the department with a confidential written statement of the tonnage of each grade of fertilizer sold by him in the state. Said statements shall include all sales for the periods of July 1 to December 31 and of January 1 to June 30 of each year. The department may cancel the registration of any person failing to comply with this subsection if the above statements are not made within 30 days from date of the close of each period. No tonnage payments, tonnage reports or information furnished under this section shall be disclosed in such a way as to divulge the operations of any person.

(9) PUBLICATION. The department shall publish at least annually, in such form as it may deem proper, information concerning the sales of commercial fertilizers, together with such data on their production and use as it may consider advisable, and a report of the results of the analyses based on official samples of commercial fertilizers sold within the state as compared with the analyses guaranteed under subsections (2) and (3); provided that the information concerning production and use of commercial fertilizers shall be

shown separately for the periods July 1 to December 31 and January 1 to June 30 of each year, and that no disclosure shall be made of the operations of any person.

(10) **STOP SALE ORDERS.** It shall be the duty of the department to issue and enforce a written or printed "stop sale, use, or removal" order to the owner or custodian of any lot of commercial fertilizer which is sold in violation of any of the provisions of this section or any regulation issued thereunder, until the same has been complied with and said commercial fertilizer is released in writing by the department.

(11) **SEIZURE.** Any lot of commercial fertilizer not in compliance with the provisions of this section shall be subject to seizure on complaint of the department made to a court of competent jurisdiction. In the event the court finds that the commercial fertilizer is in violation of this section and orders the seizure thereof, it shall be disposed of in any manner consistent with the character of the commercial fertilizer and the laws of this state; provided, that in no instance shall the disposition of said commercial fertilizer be ordered by the court without first giving the claimant an opportunity to apply to the court for release of said fertilizer or for permission to process or relabel said commercial fertilizer under supervision of the department in compliance with this section.

(12) **INJUNCTION.** Upon petition of the department any court having equity jurisdiction may grant a temporary or permanent injunction restraining any person from violating or continuing to violate any of the provisions of this section or any rule or regulation promulgated under it notwithstanding the existence of other remedies at law.

(13) **PENALTIES.** (a) Any person who violates any of the provisions of this section or any rule or regulation issued thereunder is guilty of a misdemeanor and upon conviction thereof shall be punished by a fine of not to exceed \$50 for the first offense and by a fine of not to exceed \$200 for any subsequent conviction.

(b) Nothing in this section shall be construed as requiring the department to report for prosecution or for the institution of seizure proceedings, minor violations of the section when it believes that the public interests will be best served by a suitable notice of warning in writing.

(c) It shall be the duty of each district attorney to whom any violation is reported to cause appropriate proceedings to be instituted and prosecuted in a court of competent jurisdiction without delay.

(14) **EXEMPTIONS.** Nothing in this section shall be construed to restrict or avoid sales or exchanges of commercial fertilizers to each other by importers, manufacturers, or manipulators who mix fertilizer material for sale or as preventing the free and unrestricted shipments of commercial fertilizers to manufacturers or manipulators who have registered their brands as required by the provisions of this section.

History: 1951 c. 729; 1953 c. 61.

94.65 Cultures of micro-organisms. 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. Permits may be denied, suspended or revoked on such products which are considered to be of questionable value. Application for permits shall be made on a form supplied by the department and shall be accompanied by a fee of \$25 for each material carrying a distinguishing brand or trade name. All permits shall expire on December 31 next following the date of issuance.

History: 1951 c. 729.

94.66 Sale of agricultural lime; license; penalty. (1) Unless the context requires otherwise:

(a) "Agricultural lime" for the purposes of this section includes and means ground, crushed or pulverized limestone used for liming soils, which limestone contains all of the finer material produced in the grinding process. Quick lime, hydrated lime, marl, wood ashes, paper mill sludge, beet sugar factory waste, mine tailings, limestone screenings, gypsum and other industrial by-products are not included in the definition of "agricultural lime."

(b) "Person" means an individual, firm, association, corporation or county.

(2) No person shall engage in the business of selling or distributing agricultural lime in this state without first obtaining a license therefor from the department of agriculture unless he is engaged in the business of selling or distributing such product produced by another already licensed to do business under this section.

(3) Application for license shall be made upon blanks furnished upon request by the department and shall state the applicant's name and business address, the exact location of places of manufacture of his products, a description of the products which are to be

sold, and such other information as the department may require. An application may be amended upon written notice from the applicant.

(4) Each application shall be accompanied by a fee of \$10.

(5) Licenses to engage in the selling or distribution of agricultural lime shall expire on December 31 next following date of issue.

(6) (a) Every person engaged in the business of selling or distributing agricultural lime shall furnish each purchaser on final delivery of a lot or order of agricultural lime a written statement showing total amount delivered in tons and the grade thereof as defined in paragraph (b). Each vehicle transporting agricultural lime not sold on a scale weight basis shall have plainly marked thereon the ton weight capacity when level full, assuming for the purpose of this provision that a ton of agricultural lime occupies 20 cubic feet. A written statement setting forth the grade of the agricultural lime being transported shall accompany each vehicle when making delivery.

(b) "Grade A agricultural lime" designates a product of which at least 90 per cent passes a standard 8 mesh sieve and either at least 50 per cent passes a standard 60 mesh sieve or at least 30 per cent passes a standard 100 mesh sieve and has a minimum neutralizing value of 85 per cent. "Standard grade agricultural lime" designates a product of which at least 80 per cent passes a standard 8 mesh sieve and either at least 35 per cent passes a standard 60 mesh sieve or at least 20 per cent passes a standard 100 mesh sieve and has a minimum neutralizing value of 80 per cent and gives a figure equal to or in excess of 0.72 when the percentage neutralizing value expressed decimally is multiplied by the percentage, expressed decimally, passing an 8 mesh sieve. "Substandard grade agricultural lime" designates a product which does not meet the minimum specifications of "standard grade agricultural lime."

(c) All weights as called for under paragraph (a) shall be expressed on the basis of not more than 8 per cent of moisture. For the purposes of the specifications in paragraph (b), neutralizing value means the percentage calcium carbonate equivalent expressed on the oven dry basis. In addition to the grade designation, the actual screen analysis and neutralizing value may be given. Any misleading representation on the written statement of guarantee is unlawful.

(7) The department shall enforce the provisions of this section by inspectors, chemical analyses and other appropriate methods, but all samples shall be taken from the operating mill, and for such purposes employes and agents of the department shall have free access during business hours to all places of business, buildings and vehicles used in the manufacture, transportation, sale or storage of agricultural lime.

(8) The department may revoke a license, after reasonable notice, only for wilful failure to comply with any of the provisions of this section and in the event the license is revoked the licensee may have the order of revocation reviewed by the circuit court of the county wherein the producing plant is located and the review by the court shall be of all questions therein whether of fact or law; any such appeal must be taken within 20 days of the date of the service of the order of revocation upon the licensee.

History: 1951 c. 223, 729.

94.67 Economic poisons; definitions. In sections 94.67 to 94.71:

(1) "Economic poison" means:

(a) Any substance or mixture of substances labeled, designed or intended for use in preventing, destroying, repelling or mitigating any insects, rodents, predatory animals, fungi, nematodes, weeds, and other forms of plant or animal life or viruses which the department declares a pest, and

(b) Any substance or mixture of substances labeled, designed or intended to change the structure, function or maturity of any plants.

(2) "Insecticide" means any substance or mixture of substances labeled, designed or intended for use in preventing, destroying, repelling or mitigating insects in any state of development.

(3) "Fungicide" means any substance or mixture of substances labeled, designed or intended for use in preventing, destroying, repelling or mitigating any fungi.

(4) "Rodenticide" means any substance or mixture of substances labeled, designed or intended for use in preventing, destroying, repelling or mitigating rodents or any other vertebrate animal which the department declares a pest.

(5) "Herbicide" means any substance or mixture of substances labeled, designed or intended for use in preventing, destroying, repelling or mitigating any weed.

(6) "Nematocide" means any substance or mixture of substances labeled, designed or intended for use in preventing, destroying, repelling or mitigating any worms belonging to the class Nematoda, including roundworms, pinworms, trichinae and Guinea worms.

(7) "Insect" means a small invertebrate animal generally having the body more or less obviously segmented, for the most part belonging to the class Insecta, comprising 6-legged, usually winged forms, and includes beetles, bugs, bees, flies, moths and other

allied classes of arthropods whose members are wingless and usually have more than 6 legs, including spiders, mites, ticks, centipedes and wood lice.

(8) "Fungi" means any nonchlorophyll-bearing thallophytes (any nonchlorophyll-bearing plants of a lower order than mosses and liverworts) and includes rusts, smuts, mildews, molds, yeasts and bacteria, except those on or in living man or other animals.

(9) "Weed" means any plant which grows where not wanted.

(10) The term "ingredient statement" means either:

(a) A statement of the name and percentage of each active ingredient, together with the total percentage of the inert ingredients, in the economic poison; or

(b) A statement of the name of each active ingredient, together with the name of each and total percentage of the inert ingredients, if any there be, in the economic poison (except option (a) shall apply to all agricultural poisons and to all economic poisons which are highly toxic to man, determined as provided in section 94.68 (2)); and, in addition to (a) or (b) in case the economic poison contains arsenic in any form, a statement of the percentages of total and water soluble arsenic, each calculated as elemental arsenic.

(11) "Active ingredient" means any ingredient which will prevent, destroy, repel or mitigate insects, fungi, nematodes, rodents, predatory animals, weeds or other pests, or which will change the structure, function or maturity of plants.

(12) "Inert ingredient" means an ingredient which is not an active ingredient.

(13) "Registrant" means the person registering any economic poison pursuant to the provisions of section 94.68.

(14) "Label" means the written, printed or graphic matter on, or attached to, the economic poison or the immediate container thereof, or the outside container or wrapper of the retail package.

(15) "Labeling" includes all labels as defined in subsection (14) and written, printed or graphic matter accompanying the economic poison at any time, or such matter to which reference is made on the label or in literature accompanying the economic poison, except current official publications of any public agency authorized by law to conduct research in the field of economic poisons, and accurate, nonmisleading references thereto.

History: 1951 c. 516.

94.675 Economic poisons; adulteration. An economic poison is "adulterated":

(1) If the strength or purity falls below the standard or quality expressed on labeling or under which it is sold;

(2) If any substance has been substituted wholly or in part for the articles;

(3) If any valuable constituent of the article has been wholly or in part abstracted.

History: 1951 c. 516.

94.676 Economic poisons; misbranding. An economic poison is "misbranded":

(1) If its labeling bears any statement, design or graphic representation relative thereto, or to its ingredients, which is false or misleading in any particular;

(2) If it is an imitation of or is offered for sale under the name of another economic poison;

(3) If the labeling bears any reference to registration under ss. 94.67 to 94.71;

(4) If the labeling does not contain instructions for use which are necessary for effective results and which, if complied with, are adequate for the protection of the user and public;

(5) If the label does not contain a warning or caution statement which, if complied with, is adequate to prevent injury to man and vertebrate animals;

(6) If the label does not bear an ingredient statement on the immediate container, and also on the outside container or wrapper (if there is one through which the ingredient statement on the immediate container cannot be clearly read);

(7) If any word, statement or other information required by or under the authority of ss. 94.67 to 94.71 to appear on the labeling is not prominently placed thereon with such conspicuousness (as compared with other words, statements, designs or graphic matter in the labeling) and in such terms as to render it likely to be read and understood by the ordinary individual under customary conditions of purchase and use.

History: 1951 c. 516; 1953 c. 61.

94.68 Economic poisons; registration. (1) Every economic poison which is distributed, sold or offered for sale within this state or delivered for transportation or transported in intrastate commerce or between points within this state through any point outside this state shall be registered annually in the office of the department; such registration expires on December 31 of each year, but in the discretion of the department, a change in the labeling or formulas of an economic poison may be made within the current period of registration, without requiring a re-registration of the product. Registration is

not required for an economic poison shipped from one plant within this state to another plant within this state operated by the same person.

(2) The registrant shall file with the department a statement including:

(a) The name and address of the registrant which will appear on the label, as manufacturer, packer or dealer;

(b) The name of the economic poison;

(c) A complete copy of the labeling accompanying the economic poison and a statement of all claims made and to be made for it and a statement of directions for use; and

(d) If requested by the department, the complete formula and a full description of the tests made and the results thereof upon which the claims are based. In the case of renewal of registration, a statement shall be required only with respect to information which is different from that furnished when the product was last registered.

(3) Each calendar year, the registrant shall pay a fee of \$10 for each economic poison registered. After any registrant has paid fees aggregating \$100 in any calendar year, no fee shall be required for the registration of additional brands.

(4) If it appears to the department that the proposed claims for the product are correct, and if the product and its labeling and other material required to be submitted comply with the requirements of sections 94.67 to 94.71, the department shall register the product.

(5) If it appears to the department that the proposed claims for the product are not correct, or if the product and its labeling and other material required to be submitted do not comply with the provisions of sections 94.67 to 94.71, the department shall refuse to register the product but shall notify the registrant of the reasons for refusal, so as to afford the registrant an opportunity to make the necessary corrections.

(6) The department may, for cause at any time, after written notice to the registrant, cancel the registration.

History: 1951 c. 516.

94.69 Economic poisons; departmental regulations. The department is authorized, after public hearing:

(1) To declare as a pest any form of plant or animal life or virus which is injurious to plants, men, animals or substances;

(2) To determine whether economic poisons are highly toxic to man;

(3) To determine standards of coloring or discoloring for economic poisons; and

(4) To make appropriate regulations for carrying out the provisions of sections 94.67 to 94.71 including provisions for the collection and examination of samples.

History: 1951 c. 516.

94.70 Economic poisons; prohibited acts. (1) No person shall distribute, sell, offer for sale or deliver for transportation or transport in intrastate commerce or between points within this state through any point outside this state any economic poison:

(a) Which has not been registered pursuant to the provisions of section 94.68;

(b) About which claims are made, or directions for use are given, which differ in substance from the representations made in connection with its registration;

(c) Which differs in composition from the composition represented in connection with its registration;

(d) Unless it is in registrant's unbroken immediate container, and there is affixed to such container and to the outside container or wrapper of the retail package (if there is one through which the required information on the immediate container cannot be clearly read) a label stating: the name and address of the registrant, and his designation as manufacturer, packer or dealer; the name, brand or trade-mark of the economic poison; the minimum net weight or measure of the contents.

(e) Which contains any substance in quantities highly toxic to man, determined as provided in section 94.69, unless the label bears in addition to any other required matter: the skull and crossbones; the word "poison" prominently, in red, on a background of distinct contrasting color; and a statement of an antidote for the poison, which means the most practical immediate treatment in case of poisoning.

(f) Which the department by regulation requires to be distinctly colored, unless it has been so colored; but the department may exempt any economic poison to the extent that such coloring for specific uses is not necessary for the protection of the public health or safety.

(g) Which is adulterated or misbranded.

(2) The prohibitions of subsection (1) shall not apply to:

(a) Any carrier while engaged in transporting an economic poison within this state, if such carrier permits the department on request to copy all records showing the transactions in and movement of the products.

(b) Public officials of this state and the federal government engaged in the performance of their official duties.

(c) The manufacturer or shipper of an economic poison which is to be used experimentally:

1. By or under the supervision of an agency of this state or of the federal government authorized by law to conduct research in the field of economic poisons; or

2. By others if the economic poison is not sold and if the container thereof is plainly and conspicuously marked "For experimental use only—Not to be sold," together with the manufacturer's name and address. If a written permit is obtained from the department, an economic poison may be sold for experimental purposes subject to such restrictions and conditions as are set forth in the permit.

(d) Articles consigned for shipment to another state or for export to a foreign country, if prepared or packed according to the specifications or directions of the purchaser.

(3) No person shall:

(a) Detach, alter, deface or destroy, in whole or in part, any label or labeling provided for in sections 94.67 to 94.71, or by regulations promulgated thereunder, or add any substance to, or take any substance from, an economic poison in a manner that may defeat the purpose of those sections.

(b) Use for his own advantage or reveal, other than to the department or proper officials or employes of the state or to the courts of this state in response to a subpoena, or to physicians, or in emergencies to pharmacists and other qualified persons, for use in the preparation of antidotes, any information relative to formulas of products acquired by authority of section 94.68.

History: 1951 c. 516.

94.71 Economic poisons; penalties; enforcement. (1) **PENALTIES.** Whoever violates ss. 94.67 to 94.71 or regulations made pursuant thereto shall be fined not less than \$100 nor more than \$200 or imprisoned not more than 30 days, or both. For any subsequent offense the fine shall be not less than \$200 nor more than \$500, and the imprisonment not less than 30 days nor more than 90 days, or both. Any offense committed more than 5 years after a previous conviction shall be considered a first offense.

(2) **SEIZURES.** If the department has reasonable cause to believe that any economic poison is in violation of the provisions of sections 94.67 to 94.71, it may deliver to the owner or custodian thereof an order prohibiting the sale or movement of such economic poison until an analysis or examination has been completed. Such holding order shall not be effective for more than 14 days from the time of delivery thereof. The economic poison described in any such holding order shall not be sold or moved for any purpose without the approval of the department. If the department, after analysis or examination, determines that the economic poison described in such order is not in violation of any of the provisions of sections 94.67 to 94.71, it shall promptly notify by registered mail the owner or custodian thereof and such notice shall terminate the holding order. If the analysis or examination shows that the economic poison is in violation of the provisions of ss. 94.67 to 94.71, the owner or custodian thereof shall be so notified by registered mail within the effective time of the holding order; upon receipt of such notice the owner or custodian may dispose of the economic poison only in a manner authorized by the department; the owner or custodian may within 10 days of receipt of such notice petition for a hearing as provided in s. 93.18.

(3) **ENFORCEMENT.** Examination of economic poisons shall be made under the direction of the department for the purpose of determining whether they comply with the requirements of ss. 94.67 to 94.71. The department or any person may refer the facts to the district attorney for the county in which the violation shall have occurred.

History: 1951 c. 516; 1953 c. 61; 1955 c. 10.

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 application 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 cent of crude protein, crude fat, calcium, phosphorus or iodine, or a larger per cent 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 subsection (2) (i), 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 punished as in section 94.77 (2).

(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.

History: 1951 c. 223; 1951 c. 261 s. 10.

Mixed bulk screenings, ordinarily bought by dealers for the purpose of sale to farmers for the purpose of feed for animals, and fed either without mixing or by mixing with other ingredients, are embraced in the word "feeds" as used in (14) (b). The wrongful act is the sale of the adulterated feed, and not the act of mixing or adulterating the feed with the injurious substance, so that, to establish a violation of the statute in a civil action for damages, it is not necessary to prove that someone mixed or adulterated the feed in question with the injurious substance, but it is sufficient to prove that the

feed contained an injurious substance that was not an element in the natural growth or production of such feed. *McAleavy v. Lowe*, 259 W 463, 49 NW (2d) 487.

Where one defendant, a wholesaler, sold to the other defendant, a retail feed dealer, screenings containing mercury, a substance injurious to livestock, and the latter defendant sold some of the screenings to the plaintiff, who fed them to his pigs, and such sales were in violation of 94.72 and where, although neither defendant was responsible for the presence of the mercury and neither had any knowledge of its presence, yet its presence could have been detected by chemical analysis, the case was not within any recognized exception to the rule that one who violates a criminal statute will be held negligent per se in a civil action for damages based on such violation; hence, both defendants were liable to the plaintiff for the death of the pigs from eating the adulterated screenings. *McAleavy v. Lowe*, 259 W 463, 49 NW (2d) 487.

Allegations in the instant complaint, that the defendant seller had bought pork livers from a processor and mixed them with other ingredients for sale to the plaintiff, that the mixture was unwholesome, contaminated and diseased, and that the plaintiff lost mink as a result of feeding the mixture, were sufficiently construable as an averment

that the mixture was "injurious to the health of livestock" so as to state a cause of action against such defendant seller for violation of (14) (b). *Cohan v. Associated Fur Farms, Inc.* 261 W 584, 53 NW (2d) 788.

(14) (b), making it a misdemeanor to sell any "feeds mixed or adulterated with any substance . . . injurious to the health of livestock," does not apply to a processor who sold allegedly contaminated pork livers to a mink breeder, who mixed the pork livers with other ingredients and sold the resulting mixture to another mink breeder, and such statute affords no right to the latter to recover damages against such processor for negligence based on a violation thereof. *Cohan v. Associated Fur Farms, Inc.* 261 W 584, 53 NW (2d) 788.

Botulinic toxin is not a natural part of the food itself, but is an injurious substance produced by a bacteria which is foreign to the food, and the presence of such toxin in food constitutes an adulteration, so that when the food so adulterated is sold (14) (b) is violated, the wrongful act which is prohibited by the statute being the sale of the adulterated food and not the act of mixing or adulterating the food with an injurious substance. *Arndt Brothers Minkery v. Medford Fur Foods*, 274 W 627, 80 NW (2d) 776.

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.

94.755 Mink research. (1) **RESEARCH FUNDS.** The department shall use the funds appropriated under s. 20.140 (47) for the purpose of promoting research in the breeding and raising of domestic mink. Such funds may be used for gifts, grants, compensation, awards or other payment to any person or institution in the manner which the director deems will best promote such research.

(2) **DIRECTOR MAY APPOINT ADVISORY COMMITTEE.** To advise him in the administration of this section, the director may appoint an advisory committee. The committee members shall be persons engaged in or interested in the breeding or raising of domestic mink. They shall receive no compensation or expenses and shall serve at the pleasure of the director.

History: 1955 c. 246.

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 infected 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.

(d) The department shall charge fees sufficient to cover the reasonable cost of any inspection performed at the request of the owner for the purpose of enabling the interstate movement of bees or beekeeping appliances, and may bring an action to recover the same.

(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.

History: 1951 c. 61.

94.761 Beekeepers, etc.; agricultural pursuit. The moving, raising and producing of bees, beeswax, honey and honey products shall be deemed an agricultural pursuit. Any keeper of 50 or more hives of bees who is engaged in the foregoing activities is a farmer and engaged in farming for all statutory purposes.

History: 1955 c. 266.

94.765 Indemnity for bee colonies destroyed; exceptions. (1) From the funds paid to the state treasurer required under section 70.423, there may be paid to the owner, upon certification of the department, an indemnity of \$3 per colony for each colony of bees found infected with American foulbrood and destroyed on the order and under the supervision of the department. A colony of bees shall consist of live queen or queen cell or cells, brood and adult bees, along with bottom board, cover, and one or more hive bodies with not less than 8 frames of comb.

(2) No indemnity shall be paid under this section for the following:

(a) Bees owned by the United States, this state, or any county, city, town or village.

- (b) Bees brought into this state contrary to any provision of law.
- (c) Bees afflicted with contagious or infectious disease when acquired by the owner if the owner knew or had reason to suspect such affliction at the time he acquired them.
- (d) Bees diseased at the time of arrival in this state.
- (e) Bees which the owner has negligently or wilfully exposed to contagious or infectious disease by exposing combs or any other method of spreading infection.
- (f) Bees brought into the state and found infected within 3 weeks of the time of importation.
- (g) When the infected premises have not been disinfected to the satisfaction of the department in such manner as to prevent further spread of the disease.
- (h) Bees acquired less than 14 days prior to the inspection which disclosed the disease.
- (i) When the owner, after receiving a prior indemnity, has introduced into his apiary any American foulbrood contrary to law or the regulations of the department, or has failed to comply with any department regulation governing control and eradication of bee disease.
- (j) For any colony which shall have been entered or tampered with in any manner in the absence of a department inspector between the time of inspection and the destruction thereof.
- (k) Unless he shall have paid the occupational tax upon the apiaries in which the diseased colonies are found.
- (l) For any colonies in immovable hives or equipment.
- (m) When the owner has failed to comply with the written instructions of the department or its deputy regarding the clean-up or treatment of such apiary or apiaries.

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 this chapter for which a specific penalty is not prescribed shall be fined not to exceed \$200 or imprisoned in the county jail not to exceed 6 months or both.

History: 1951 c. 223 s. 5, 6.

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 live stock breeders' association, the Wisconsin co-operative poultry improvement association and the Wisconsin co-operative sugar beet growers shall on and after July 1 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 director of budget and accounts and he shall draw his warrant and the state treasurer shall pay to the respective treasurers of each of said societies named in this section the amount of the appropriation made available for each such society by s. 20.140 (25) to (28). 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.

History: 1953 c. 251.