

199; Stats. 1923 s. 98.11; 1935 c. 550 s. 301; Stats. 1935 s. 98.15; 1959 c. 42.

In a prosecution under sec. 1494ac, Stats. 1919, intent is not a necessary element of the offense. 9 Atty. Gen. 185.

**98.21 History:** 1923 c. 123; Stats. 1923 s. 125.21; 1935 c. 550 s. 308 to 310; Stats. 1935 s. 98.21; 1943 c. 229; 1961 c. 659.

Wrapped bread in the form of loaves, whether sliced or unsliced, must comply with this section. It is not in package form. *M. Carpenter Baking Co. v. Dept. of Agriculture and Markets*, 217 W 196, 257 NW 606.

**98.22 History:** 1911 c. 566; Stats. 1911 s. 1666b; 1923 c. 291 s. 3; Stats. 1923 s. 125.11; 1935 c. 550 s. 311; Stats. 1935 s. 98.22; 1961 c. 659; 1969 c. 276 s. 583 (2); 1969 c. 309.

See note to 62.11 (5), citing *Brittingham & Hixon L. Co. v. Sparta*, 157 W 345, 147 NW 635.

Where coal is sold to a resident of this state in Michigan and delivered to him by the wagon-load, by a Michigan dealer, the sealer of weights and measures would not be justified in prosecuting for failure to issue delivery tickets. 1 Atty. Gen. 616.

The delivery of coal without being accompanied by the required delivery ticket constitutes a criminal offense. 2 Atty. Gen. 853.

**98.245 History:** 1959 c. 388; Stats. 1959 s. 98.245; 1969 c. 309.

**98.26 History:** 1935 c. 550 s. 315, 316; Stats. 1935 s. 98.26; 1943 c. 229; 1951 c. 223; 1961 c. 659.

Sec. 1664 (2), Stats. 1913, imposing a penalty on one who hinders sealers of weights and measures in the performance of their duties, is not violated by one who refuses to sell ice to a person who has made complaint against him for short weight. An ice dealer may refuse to sell ice to a person without incurring any liability. 2 Atty. Gen. 308.

## CHAPTER 99.

### Cold Storage Warehouses and Refrigerated Food Lockers.

**99.01 History:** 1917 c. 428; Stats. 1917 s. 1684w—1; 1923 c. 291 s. 3; Stats. 1923 s. 111.01; 1929 c. 477; 1935 c. 550 s. 318; Stats. 1935 s. 99.01; 1951 c. 355; 1955 c. 293.

**99.02 History:** 1917 c. 428; Stats. 1917 s. 1684w—2; 1923 c. 291 s. 3; Stats. 1923 s. 111.02; 1935 c. 550 s. 319; Stats. 1935 s. 99.02; 1943 c. 55; 1959 c. 609; 1963 c. 224; 1965 c. 349; 1967 c. 6.

**99.03 History:** 1917 c. 428; Stats. 1917 s. 1684w—3; 1923 c. 291 s. 3; Stats. 1923 s. 111.03; 1935 c. 550 s. 320; Stats. 1935 s. 99.03.

**99.05 History:** 1917 c. 428; Stats. 1917 s. 1684w—5; 1923 c. 291 s. 3; Stats. 1923 s. 111.05; 1935 c. 550 s. 322; Stats. 1935 s. 99.05; 1951 c. 355.

**99.06 History:** 1917 c. 428; Stats. 1917 s. 1684w—6; 1921 c. 520; 1923 c. 291 s. 3; Stats. 1923 s. 111.06; 1935 c. 550 s. 323; Stats. 1935 s. 99.06.

**99.07 History:** 1917 c. 428; Stats. 1917 s. 1684w—7; 1923 c. 291 s. 3; Stats. 1923 s. 111.07; 1929 c. 477; 1935 c. 550 s. 324; Stats. 1935 s. 99.07; 1951 c. 355.

**99.10 History:** 1955 c. 293; Stats. 1955 s. 99.10; 1963 c. 224; 1967 c. 6.

**99.11 History:** 1955 c. 293; Stats. 1955 s. 99.11.

**99.12 History:** 1955 c. 293; Stats. 1955 s. 99.12.

**99.13 History:** 1955 c. 293; Stats. 1955 s. 99.13; 1969 c. 276.

**99.15 History:** 1917 c. 428; Stats. 1917 s. 1684w—12; 1921 c. 56; 1923 c. 291 s. 3; Stats. 1923 s. 111.12; 1935 c. 550 s. 329; Stats. 1935 s. 99.12; 1951 c. 223; 1955 c. 293 s. 4; Stats. 1955 s. 99.15.

## CHAPTER 100.

### Marketing; Warehouses; Trade Practices.

**100.01 History:** 1931 c. 155; 1931 c. 470 s. 6a; Stats. 1931 s. 99.33; 1933 c. 351 s. 2; 1935 c. 44; 1935 c. 550 s. 333; Stats. 1935 s. 100.01; 1939 c. 127, 476; 1943 c. 229; 1943 c. 375 s. 28; 1943 c. 401 s. 26; 1943 c. 515 s. 8; 1945 c. 226; 1953 c. 296.

**100.02 History:** 1933 c. 112; Stats. 1933 s. 348.51; 1935 c. 550 s. 334, 335; Stats. 1935 s. 100.02; 1943 c. 229; 1951 c. 261 s. 10; 1969 c. 276 s. 583 (1).

**100.025 History:** 1959 c. 573, 656; Stats. 1959 s. 100.025; 1961 c. 293.

**100.03 History:** 1947 c. 510; Stats. 1947 s. 100.03; 1953 c. 362; 1955 c. 355; 1957 c. 368; 1959 c. 360; 1969 c. 392 s. 84.

**100.04 History:** 1939 c. 217; Stats. 1939 s. 100.04; 1943 c. 375 s. 30; 1943 c. 401 s. 27; 1943 c. 515 s. 10; 1947 c. 471; 1955 c. 112.

**100.05 History:** 1878 c. 224; R. S. 1878 s. 1494a; Stats. 1898 s. 1494a; 1907 c. 306; 1923 c. 152 s. 89; Stats. 1923 s. 4432—10; 1925 c. 4; Stats. 1925 s. 343.34; 1931 c. 148 s. 2; 1935 c. 550 s. 239; Stats. 1935 s. 97.41; 1969 c. 286 s. 31; Stats. 1969 s. 100.05.

**100.055 History:** 1953 c. 638; Stats. 1953 s. 97.43; 1955 c. 38; 1969 c. 276 s. 583 (1); 1969 c. 286 s. 31; Stats. 1969 s. 100.055.

**100.06 History:** 1939 c. 471; Stats. 1939 s. 100.06; 1941 c. 217; 1943 c. 298; 1947 c. 202; 1949 c. 62, 487; 1953 c. 214; 1957 c. 152; 1965 c. 252; 1969 c. 286 s. 52.

100.06 (4), Stats. 1941, is explained and applied in *Woodke v. Procknow*, 238 W 422, 300 NW 173.

Under the provisions in 100.06 (8), Stats. 1943, the whole of a claim of a producer of dairy products is given the same preference, without any 3-month limitation as to time or limitation as to amount, as is given to labor claims by 128.17 (1) in creditors' actions. In re *Merrick Dairy Co.* 249 W 295, 24 NW (2d) 679.

The department of agriculture, in a proceeding against the surety on the bond of the

drawer of the check, correctly determined that no part of the money due to the payee of the check for the milk delivered by him had been paid to him or to any person authorized by him to receive payment, warranting the allowance of his claim. *Saint Paul-Mercury Ind. Co. v. Dept. of Agriculture*, 259 W 42, 47 NW (2d) 312.

See note to 943.39, citing *State v. Laabs*, 40 W (2d) 162, 161 NW (2d) 249.

**100.07 History:** 1941 c. 325; Stats. 1941 s. 100.07; 1945 c. 273; 1951 c. 223.

**100.12 History:** 1955 c. 696 s. 27; Stats. 1955 s. 100.12.

**100.13 History:** 1933 c. 456; Stats. 1933 s. 99.32; 1935 c. 550 s. 347, 348; Stats. 1935 s. 100.13; 1937 c. 395; 1939 c. 353; 1939 c. 513 s. 27; 1943 c. 229; 1943 c. 401 s. 30; 1943 c. 515 s. 11; 1951 c. 355; 1963 c. 224; 1965 c. 356, 647; 1969 c. 276 s. 583 (1).

The owner or operator of a garage or of automobile parking space for storage of automobiles is not a "warehouseman" as used in 99.32 (1) (a), Stats. 1933. 23 Atty. Gen. 47.

**100.14 History:** 1921 c. 571 s. 2; Stats. 1921 s. 1495-13; 1923 c. 152 s. 230; Stats. 1923 s. 99.13; 1935 c. 550 s. 349; Stats. 1935 s. 100.14; 1943 c. 229.

**100.15 History:** 1917 c. 480; Stats. 1917 s. 1747m; 1923 c. 291 s. 3; Stats. 1923 s. 134.01; 1925 c. 29; 1931 c. 238; 1935 c. 550 s. 350; Stats. 1935 s. 100.15; 1939 c. 52; 1951 c. 261 s. 10; 1957 c. 516.

The first clause of sec. 1747m (1), Stats. 1917, applies to persons, firms and corporations selling within the state to purchasers within the state. But the exception applies to sales made without as well as those made within the state, and permits the vendor to place in the containers "clerk's" or "consumer's" coupons redeemable in cash only, by the person issuing them. The redemption need not be within the state, but a provision in the coupons that they shall not be sent to the party issuing them for redemption, but shall be redeemed only by said New York corporation, which is engaged in the trading stamp business and must be regarded more as an independent contractor than as an agent, is in violation of the statute. *State ex rel. Downey-Farrell Co. v. Weigle*, 168 W 19, 168 NW 385.

There is sufficient compliance with the requirement of a stated cash value if, with no purpose to deceive and as a matter of convenience only, the coupon states the amount of the sale and indicates that the cash value is a certain percentage of that amount. *State ex rel. Downey-Farrell Co. v. Weigle*, 168 W 19, 168 NW 385.

Sec. 1747m, Stats. 1917, is not violated when stamps complying with the statute in form and contents are sold by a trading stamp company to merchants and are redeemable by the company at its office with money furnished by the merchant or by the merchant himself at his place of business. *Sperry & Hutchinson Co. v. Weigle*, 169 W 562, 173 NW 315.

The giving of a coupon without charge is not a violation of 134.01, Stats. 1927. *Rice v. Green*, 199 W 518, 227 NW 22.

See note to sec. 1, art. I, on exercises of police power, citing *Ed. Schuster & Co. v. Steffes*, and *Herzfeld-Phillipson Co. v. Steffes*, 237 W 41, 295 NW 737.

100.15 (2), Stats. 1939, created by ch. 52, Laws 1939, prohibiting the issuance of trading stamps in connection with the resale of goods bought by the reseller with knowledge or notice that the resale price has been fixed or established by the producer or distributor, when the price obtained on the resale less the total redemption value of the trading stamps issued is below the "fixed or established minimum price," and declaring such practice to be an unfair method of competition in business, is complementary to, and is designed to prohibit the issuance of trading stamps solely in connection with the sale at retail of articles which are the subject of fair-trade contracts under 133.25, permitting contracts between producers of trade-marked goods and dealers fixing minimum resale prices. *Ed. Schuster & Co., Inc. v. Steffes*, and *Herzfeld-Phillipson Co. v. Steffes*, 237 W 41, 295 NW 737.

A delivery, to buyers of goods, of sales slips which do not entitle a purchaser to any privilege or thing of value, is not a violation of the trading stamp law, although the manufacturer of the goods has contracted with certain societies, not organized for profit, to reward them for inducing their members or others to make purchases, and agrees to recognize such slips as evidence of having induced sales. 8 Atty. Gen. 491.

Trading stamps which are distributed free by a manufacturer to prospective consumers of his goods and which may be used by them as cash in purchases from retailers of such goods are not issued or used in violation of the trading stamp law. 8 Atty. Gen. 820.

A trading stamp plan is nonetheless in conflict with sec. 1747m, Stats. 1921, because upon presentation for redemption a stamp is canceled and returned to the customer, instead of being kept by the issuing company, or because it consists of a card arranged for entries of credit memoranda covering several successive transactions. 11 Atty. Gen. 573.

It is a violation of sec. 1747m, Stats. 1921, for a merchant to give to his customers, with the purchase of goods, a card punched to show the amount purchased, which card, when filled, will count toward a prize to be given the customer having the largest number of filled cards by a certain date, and will entitle the customer who does not win the prize to receive a certain number of the merchant's regular trading stamps redeemable in cash. 11 Atty. Gen. 684.

A plan by which stores carrying kindred lines co-operate to offer articles free to holders of numbers matching numbers on tags in a window display conflicts with the trading stamp law. 11 Atty. Gen. 737.

Coupons, given with sales of merchandise, which, in addition to being redeemable at a stated cash value, entitle the holder to purchase certain goods at auction sale, participated in exclusively by holders of coupons, conflict with the trading stamp law. 12 Atty. Gen. 76.

Giving tickets with purchases of merchandise, entitling the holder of most tickets at the end of a certain period to an automobile,

is a violation of the trading stamp law. 12 Atty. Gen. 123.

A trading stamp, which states that it is redeemable generally in merchandise, but that in localities where redemption in merchandise is prohibited it is redeemable only in cash, conflicts with the trading stamp law. 10 Atty. Gen. 555; 11 Atty. Gen. 783; 12 Atty. Gen. 151.

Giving tickets redeemable in cash and cash prizes, the latter to be determined in another state, and limiting the redemption value to one dollar, violates the trading stamp law. 12 Atty. Gen. 263.

Trading stamps must be redeemable only in cash, with a redemption privilege on presentation of 25 cents or over in value. If the minimum is above 25 cents, they conflict with the trading stamp law. 12 Atty. Gen. 267.

A scheme by which every purchaser of merchandise receives a coupon and thereafter there is a drawing, and holders of coupons corresponding to numbers drawn are entitled to receive certain articles upon payment of a small sum, insignificant as compared with its value, is in conflict with the antilottery law, but not of the trading stamp law. 12 Atty. Gen. 459.

Giving a prize to the person making the largest number of purchases of greatest value within a certain period, to be determined from slips turned in by the purchaser to a newspaper, is not a violation of the trading stamp law. 12 Atty. Gen. 399, 481.

Where a carton in which merchandise is sold may be exchanged for goods, wares, merchandise privilege or other thing of value and it does not bear upon its face a stated cash value, such carton being obtained with the purchase of the contents, the transaction constitutes a violation of 134.01, Stats. 1923. 12 Atty. Gen. 606.

The distribution by a newspaper of packages, each containing a ticket good at a certain bank for \$1 on savings account when presented with an initial deposit of \$2 or more, the original deposit to be left one year and an additional deposit to be made within 6 months to entitle a ticket holder to secure the initial dollar's credit, is not a violation of the trading stamp law. 12 Atty. Gen. 656.

A coupon, forming part of advertising in a newspaper, which entitles the person presenting it to a calendar, but where the calendar may be obtained without presenting the coupon, as well as with a coupon, does not come within the provisions of the trading stamp law. 13 Atty. Gen. 39.

Giving tickets with purchases of merchandise entitling the holder of the most tickets at the end of a certain period to an automobile, is a violation of 134.01, Stats. 1923. 13 Atty. Gen. 139.

Coupons redeemable only in cash are not unlawful trading stamps by reason of the fact that in advertisements of them is announced the sale of dishpans at bargain prices with the view to inducing people to spend their coupon redemption money on such pans. 13 Atty. Gen. 148.

A device for playing nickels which indicates to a player whether mints or premium coupons will be obtained, the latter not producing mints when played into the machine, is in con-

flict with the trading stamp law. 13 Atty. Gen. 178.

A scheme by which the highest totals of receipts given for purchases at certain stores entitle holders of receipts to certain articles is in conflict with the trading stamp law. 13 Atty. Gen. 216.

A contest conducted by a newspaper in which the signing of a coupon entitles the holder to become a contestant for a prize offered is a violation of the trading stamp law; if the contest is open to anyone whether or not he signs a coupon, such law is not violated. 13 Atty. Gen. 264.

Issuance of coupons by a merchant with a sale of goods, entitling the holder to exchange coupons for chinaware, constitutes a violation of the trading stamp law. 13 Atty. Gen. 331.

A merchant who distributes slips of paper in the form of an order by himself upon himself, agreeing to accept the same in part payment of any purchase of goods to the amount of \$10 or more, which are not given out in connection with sale of goods, wares or merchandise, is not violating any law of the state. 13 Atty. Gen. 355.

A plan whereby goods advertised may be obtained at the price advertised, by noncoupon holders as well as by coupon holders, is not in conflict with the trading stamp law. 13 Atty. Gen. 367.

Issuance, in connection with a sale of ice cream, of a coupon entitling the holder to merchandise value in exchange therefor violates the trading stamp law. 13 Atty. Gen. 435.

A card issued with a purchase of goods providing for merchandise privilege not redeemable only in cash, is in conflict with the trading stamp law. 13 Atty. Gen. 475.

Giving a slip with the retail purchase of flour which entitles the purchaser upon presentation thereof with a certain sum of money, to purchase a griddle, which privilege is not available to others, violates the trading stamp law. 13 Atty. Gen. 621.

Giving a card with a sale of a coupon book by an oil company which entitles the purchaser to receive a \$1,000 travel accident insurance policy is a violation of the trading stamp law. 14 Atty. Gen. 370.

Giving cards to members of the University Co-operative does not violate the trading stamp law. A card given to a member showing the amount of dividends or rebate that the member is entitled to for purchases of the previous year for which he may have credit in the purchase of merchandise does not violate the trading stamp law. 15 Atty. Gen. 405.

A trading stamp used in connection with the sale of merchandise which states on its face that the purchaser will receive 5 cents in cash, and also a cash prize provided he solves a puzzle conflicts with the trading stamp law. 16 Atty. Gen. 209.

A card containing amounts which when fully punched, showing purchases to have been made, may be turned in, and which authorizes the holder thereof to buy premiums at cost, is in conflict with 134.01, Stats. 1927. 16 Atty. Gen. 494.

This section creates a misdemeanor and does not admit of accessories before the fact. 16 Atty. Gen. 514.

134.01, Stats. 1927, does not apply where agents of an Illinois corporation take orders for hosiery from consumers in Wisconsin, manufactured in Indiana and shipped upon receipt of an order from Indiana direct to a consumer in Wisconsin. 16 Atty. Gen. 536.

Giving a ticket with a case of soda water which entitles the person receiving the ticket to a rebate is a violation of the trading stamp law. 19 Atty. Gen. 358.

Giving an insurance policy on the life of the purchaser or any member of his family in exchange for 500 trading stamps issued in connection with the sale of merchandise to the purchaser is in violation of the trading stamp law. 19 Atty. Gen. 547.

Giving a coupon with a sale of goods entitling the holder to a certain number of votes on an Austin car or a cash prize is a violation of the trading stamp law, and also a violation of 348.15, Stats. 1933. 19 Atty. Gen. 558.

Giving coupons with the sale of thrift books, which books are sold by a theater corporation and which coupons entitle the owner to an oil painting, is in violation of the trading stamp law. 19 Atty. Gen. 602.

Delivery of cards with the sale of merchandise by a merchant in numbers as high as 50 which may be exchanged for a camera and ordering (as trial only) of one carton of 6 rolls of films at regular price of 25 cents per roll, is in violation of the trading stamp law. 19 Atty. Gen. 607.

A scheme by which any person who receives votes based upon the number of wrappers, labels or sales slips which he collects, attached to merchandise when sold, is given a prize and receives in addition a certain per cent in cash for said labels is in conflict with 134.01 (1) unless the person or company conducting the campaign is a manufacturer or acting as an agent of the manufacturer. 20 Atty. Gen. 670.

A merchant who gives with each \$1 purchase a ticket upon which a vote may be cast for a "queen", who is to receive the \$100 prize, violates the trading stamp law. 20 Atty. Gen. 886.

Placing a theater ticket in every tenth loaf of bread sold by a bakery is advertising in violation of the trading stamp law; it is also a violation of the antilottery law. 20 Atty. Gen. 950.

Giving away without charge, and regardless of the purchase of anything, of cards bearing numbers and entitling holders to prizes in accordance as a number on a particular card coincides with figures of bank balances published each week is not a lottery, gambling device, or a violation of the trading stamp law. 21 Atty. Gen. 917.

Where coupons attached to the original package are redeemable by the manufacturer and the retail merchant acts merely as his agent in receiving the coupons for forwarding to the manufacturer there is no violation of 134.01. 22 Atty. Gen. 389.

Giving trade receipts in connection with the sale of merchandise, which are collected by children, the child depositing the largest sum of money represented by trade receipts being entitled to a prize, is a violation of the trading stamp law. 23 Atty. Gen. 781.

When slips are issued in connection with

the sale of merchandise which, in addition to having cash redemption value, entitle the purchaser to a chance at a prize if enough are accumulated, 134.01, Stats. 1933, is violated. 24 Atty. Gen. 192.

An advertising scheme by which every cash purchaser of merchandise receives a cash slip bearing the date and the amount of purchase, holders of which are entitled on a particular day selected by the merchant to receive free from the merchant merchandise equal to the amount of cash slip bearing particular date the merchant selects, is in conflict with 100.15, Stats. 1937. It is also in violation of 348.01 and 100.16. 27 Atty. Gen. 325.

A "multiple-dividend" plan is condemned as a lottery but not deemed in conflict with the trading stamp law, since cards are not given in connection with sales. 27 Atty. Gen. 764.

See note to 100.18, citing 31 Atty. Gen. 53. 100.15, Stats. 1947, prohibits a theatre from giving a certificate with each ticket purchased, where such certificate is redeemable in merchandise at an auction held by the theatre. 36 Atty. Gen. 604.

Giving trading stamps, which bear no stated cash value on their face and which are redeemable only in amounts aggregating \$1.50 or \$3, with each purchase of merchandise at the rate of one for every 10-cent purchase, violates 100.15. 37 Atty. Gen. 530.

Giving trading stamps with a sale of trademark merchandise having a fixed minimum resale price under 133.25, Stats. 1947, where the sale price of the article less the cash value of the stamps is less than the minimum resale price so fixed, violates 100.15 (2). 37 Atty. Gen. 530.

Issuance of a card redeemable for 50 cents in cash after purchase of a certain quantity of milk is not in violation of 100.15. 38 Atty. Gen. 172.

Whether or not ch. 238, Laws 1931, exempting the original manufacturer of merchandise from the provisions of 134.01 (1), relating to trading stamps, is constitutional, a vendor of cigarettes who is not the original manufacturer is subject to the prohibition of 134.01 (1). 38 Atty. Gen. 596.

A scheme whereby merchandise is sold accompanied by labels redeemable otherwise than in cash and not attached by original manufacturer is in conflict with the trading stamp law. 38 Atty. Gen. 660.

Trading stamps redeemable in merchandise may be issued to hotel guests in proportion to their payment of room rent, since renting of a hotel room is not a "sale of goods, wares or merchandise" in the meaning of 100.15 (1), but such trading stamps may not lawfully be issued in connection with payment for meals served. 44 Atty. Gen. 17.

See note to 215.16, citing 51 Atty. Gen. 151. See note to sec. 1, art. IV, on legislative power generally, citing 52 Atty. Gen. 78.

A promotional scheme requiring a certificate and proof of purchase for refund would violate 100.15 (1). 55 Atty. Gen. 136.

**100.16 History:** 1875 c. 199; R. S. 1878 s. 4537; Stats. 1898 s. 4537; 1925 c. 4; Stats. 1925 s. 348.15; 1935 c. 550 s. 351; Stats. 1935 s. 100.16.

Giving of a coupon with a sale of goods entitling the holder of a certain number of votes on an Austin car or a cash prize is a violation of the trading stamp law and also of 348.15, Stats. 1929. 19 Atty. Gen. 558.

A sale of safety matches, under which the purchaser is entitled to a prize which may be anywhere from one cent to \$1, if he correctly answers questions contained in the package, violates this section and is a gambling device. 27 Atty. Gen. 104.

A bakery which packs in each loaf of bread a letter of the alphabet which entitles a purchaser, after accumulating enough letters to spell the words "golden cream bread," to a premium does not violate 100.15, but does violate 100.16 and 348.01, Stats. 1937. 27 Atty. Gen. 357.

A device in the nature of a punch board whereby the purchaser of a chance in each case receives a box containing merchandise, the number of which corresponds to the number on the back of the tab pulled off the front of the larger box, without knowing the contents of smaller boxes, said contents being diverse in kind and character, is a lottery; it also is in conflict with this section. 28 Atty. Gen. 312.

**100.17 History:** 1911 c. 607; 1911 c. 664 s. 140; Stats. 1911 s. 4537m; 1925 c. 4; Stats. 1925 s. 348.151; 1935 c. 550 s. 352; Stats. 1935 s. 100.17.

**100.18 History:** 1913 c. 510; Stats. 1913 s. 1747k; 1915 c. 84; 1925 c. 4, 264; Stats. 1925 s. 343.413; 1927 c. 67; 1929 c. 185; 1933 c. 312 s. 2; Stats. 1933 s. 78.11 (6); 1935 c. 550 s. 353; Stats. 1935 s. 78.11 (6), 100.18; 1939 c. 332; 1939 c. 513 s. 28; 1941 c. 251; 1943 c. 229, 337; 1945 c. 399; 1949 c. 51; 1951 c. 462; 1953 c. 510 s. 2; Stats. 1953 s. 100.18; 1955 c. 460; 1957 c. 241; 1959 c. 531; 1961 c. 44, 376, 469; 1963 c. 6; 1969 c. 276 s. 583 (1); 1969 c. 425.

Where plaintiff, a professional musician and band director, agreed to print on all advertising matter for the band that defendant manufacturer's instruments were used exclusively by the band, and agreed that defendant should have exclusive use of names of plaintiff and the band in connection with the sale and advertisement of musical instruments, but at the time of signing the writing, plaintiff used only 7 of defendant's instruments out of 24 used in the band, and on subsequent tours never used more than 10 of defendant's instruments, the agreement was invalid and plaintiff could not recover compensation thereunder. *Kryl v. Frank Holton & Co.* 217 W 628, 259 NW 828.

A partnership whose name is corporate in form is not guilty of fraudulent advertising when it advertises that "this company" has facilities for acting as "executors, administrators, etc." 11 Atty. Gen. 96.

A circular advertising an issue of municipal water plant certificates does not violate sec. 1747k, Stats. 1921, in failing to state that such certificates are not a general liability of the municipality. There is no statute to prevent a sale of invalid securities issued by cities of other states so long as no misstatements of fact are made in connection with the sale. 11 Atty. Gen. 405.

Fraudulent advertising may be a crime; un-

true, deceptive or misleading advertising may be enjoined as unfair competition by administrative order. 13 Atty. Gen. 543.

Advertising by a partnership or corporation of real estate, giving only the business and home telephone numbers of a member, is deceptive advertising in violation of 343.413, Stats. 1933. 24 Atty. Gen. 56.

78.11 (6), Stats. 1941, is not violated where a gasoline dealer posts and sells at a price which is set up to show and include net selling price per gallon, tax per gallon, and cash redemption value per gallon of trading stamps given in connection with a sale. The same holds true where the cash redemption value of stamps per gallon is not stated but is merely expressed in the form of discount percentage. Posting of the net selling price with tax added so as to reach the total followed by subtraction of the cash value of stamps in the final posted figure results in violation. None of the above situations are in violation of 100.15 (1) or ch. 189. 31 Atty. Gen. 53.

Advertising by which an advertiser falsely offers to reline, tighten or adjust dentures violates 100.18, Stats. 1949. 38 Atty. Gen. 330.

It is not a violation of 100.18 (8), Stats. 1955, for gasoline dealers to sell to the motor vehicle department patrol cars at a discount from the regular price without posting such discount price. Also a gasoline dealer can sell to other fleet car or truck accounts at a price which is less than the regular price. Such dealer should post both the regular price and the fleet or truck price. This latter price may be posted in terms of so many cents per gallon, in terms of so many cents discount from the regular price, or in terms of a percentage discount from the regular price. 45 Atty. Gen. 301.

**100.183 History:** 1927 c. 80; Stats. 1927 s. 352.085 (1), (2); 1935 c. 550 s. 269; Stats. 1935 s. 97.64; 1961 c. 207; 1969 c. 286 s. 41; Stats. 1969 s. 100.183.

343.413 and 352.085, Stats. 1931, forbid fraudulent advertising of articles by an advertiser desiring to dispose of them in some manner to the public and do not apply to fraudulent advertising to induce the public to sell to the advertiser. 20 Atty. Gen. 617.

**100.184 History:** 1933 c. 193; Stats. 1933 s. 352.087; 1935 c. 550 s. 270; Stats. 1935 s. 97.65; 1957 c. 625; 1969 c. 286 s. 41; Stats. 1969 s. 100.184.

**100.186 History:** 1909 c. 532; 1911 c. 663 s. 299; Stats. 1911 s. 1636L subs. 1 to 6; 1913 c. 772 s. 34; 1923 c. 152 s. 214; Stats. 1923 s. 98.31 (1) to (6); 1935 c. 550 ss. 275, 276; Stats. 1935 s. 97.67; 1955 c. 10; 1969 c. 286 s. 43; Stats. 1969 s. 100.186.

**100.19 History:** 1921 c. 571 s. 2; Stats. 1921 s. 1495—16; 1923 c. 152 s. 233; Stats. 1923 s. 99.16; 1935 c. 550 s. 354; Stats. 1935 s. 100.19.

**100.20 History:** 1921 c. 571 s. 2; Stats. 1921 s. 1495—14, 1495—15; 1923 c. 152 s. 231, 232; Stats. 1923 s. 99.14, 99.15; 1935 c. 550 s. 355, 356; Stats. 1935 s. 100.20, 100.21; 1947 c. 323; 1951 c. 622; 1957 c. 610; Stats. 1957 s. 100.20; 1969 c. 276; 1969 c. 425.

A determination of the department of agri-

culture under 99.14, Stats. 1933, is reviewable solely under 99.27, and not by certiorari, since, where a new right is created by statute and a remedy is prescribed, the prescribed remedy is exclusive. *State ex rel. Waldorf v. Hill*, 217 W 59, 258 NW 361.

See note to sec. 1, art. IV, on delegation of power, citing *Ritholz v. Ammon*, 240 W 578, 4 NW (2d) 173.

An Illinois optical concern's business of fitting and furnishing eye glasses to the individual needs of a patient or purchaser, carried out through local retail stores in this state with the assistance of local physicians, and requiring the services of a local manager, cannot be made into an "interstate" transaction and put beyond the police power of this state by arbitrarily designating the transaction a sale and ingeniously managing that the sale shall take place outside the state; and the concern's business activities are subject to regulation by the state as to unfair methods of competition and unfair trade practices, so far as the concern's methods of soliciting and conducting business within the state are concerned. In an action to enjoin the state department of agriculture from proceeding administratively against the plaintiff under 100.20, Stats. 1941, relating to unfair methods of competition and unfair trade practices an ex parte restraining order should not have been granted. *Ritholz v. Ammon*, 240 W 578, 4 NW (2d) 173.

A written contract to furnish shingles and cover the outside of the defendants' residence with them, which required the defendants to sign a judgment note for the contract price at the time of and as part of the contract, violated an order of the state department of agriculture issued under 100.20, Stats. 1941, so that the contract was void as a matter of law. *Perma-Stone Corp. v. Merkel*, 255 W 565, 39 NW (2d) 730.

See note to 133.01, citing *State v. Allied Chemical & Dye Corp.* 9 W (2d) 290, 101 NW (2d) 133.

A contract for the installation of siding and for considerable other work would not be void even if in violation of the rules of the department of agriculture referring to roofing and siding contracts, and even if void, the plaintiff could still recover on quantum meruit. *Zbichorski v. Thomas*, 10 W (2d) 625, 103 NW (2d) 536.

Where a builder, who installed defective siding on a house, violated a rule under this section forbidding certain trade practices, he was liable to the owner for twice the amount of the owner's pecuniary loss, if any, including reasonable attorney's fees and costs. A finance company, to which the builder endorsed a note given by the purchaser for the siding, was not guilty of an illegal transaction and not liable in damages to the purchaser. *United States v. Schumacher*, 154 F Supp. 425.

Representations of the Farmers' Call Board of Plymouth that it conducts a market where the seller has the same opportunity to bargain as has the buyer, being untrue, and the fact being that the seller has no practical choice but to sell at whatever price the buyer chooses to pay, and the board prices being base prices for bulk cheese of the state, is an unfair trade practice. 21 Atty. Gen. 30.

Since a price war, with stabilized purchase and labor costs, threatens speedy elimination of much of distributor competition, and hence virtual monopoly of milk distribution, the department is authorized to determine that such price cutting, in the present economic emergency, is unfair, and may issue orders against it. These orders may fix a minimum schedule of prices to go below which would have mischievous results. 21 Atty. Gen. 1075.

The department of agriculture and markets has no jurisdiction to conduct a hearing and make a determination regarding alleged violations by the regents of the university of Wisconsin of provisions of 99.14, Stats. 1933. 22 Atty. Gen. 1036.

Under 100.20 (2), Stats. 1967, the department of agriculture has authority to prohibit, as unfair methods of competition, such "referral sales transactions" as constitute lotteries under 945.01 (2). 57 Atty. Gen. 68.

Administrative regulation of commercial activities in Wisconsin. Kellogg, 1965 WLR 133.

**100.201 History:** 1955 c. 597, 660; Stats. 1955 s. 100.201; 1957 c. 352; 1961 c. 242; 1963 c. 158, 243, 517; 1965 c. 425; 1969 c. 166, 167, 179, 180, 297; 1969 c. 392 s. 84; 1969 c. 413.

**Editor's Note:** Section 7 of ch. 242, Laws 1961, which amended this section provides:

"SECTION 7. It is the intention of this act to adapt the principles of price discrimination set forth in the Robinson-Patman act to the sale of selected dairy products in Wisconsin."

**100.202 History:** 1955 c. 597; Stats. 1955 s. 100.202.

**100.22 History:** 1909 c. 395; Stats. 1911 s. 1791n-1; 1917 c. 141; 1919 c. 41; 1923 c. 291 s. 3; 1923 c. 406 s. 3; 1923 c. 449 s. 50; Stats. 1923 s. 133.09; 1935 c. 550 s. 358; Stats. 1935 s. 100.22; 1961 c. 386.

See note to sec. 1, art. IV, on legislative power generally, citing *White House Milk Co. v. Reynolds*, 12 W (2d) 143, 106 NW (2d) 441.

133.09, Stats. 1923, does not forbid rendering of free transportation service when offered to all patrons alike. 13 Atty. Gen. 335.

Payment of a bona fide profit or handling charge to a party operating a cream receiving station is not a discrimination in price for dairy products under 133.09, Stats. 1925. 15 Atty. Gen. 327.

There is no unfair discrimination in the purchase of dairy products so long as the difference in price is caused by transportation charges only. 16 Atty. Gen. 68.

**100.23 History:** 1909 c. 395; 1911 c. 663 s. 334; Stats. 1911 s. 1791n-3; 1923 c. 291 s. 3; Stats. 1923 s. 133.11; 1935 c. 550 s. 359; Stats. 1935 s. 100.23.

**100.24 History:** 1909 c. 395; 1911 c. 663 s. 334; Stats. 1911 s. 1791n-6, 1791n-7; 1921 c. 571 s. 2; Stats. 1921 s. 1495-28, 1791n-6, 1791n-7; 1923 c. 152 s. 245; 1923 c. 291 s. 3; Stats. 1923 s. 99.28, 133.14, 133.15; 1935 c. 550 s. 362; Stats. 1935 s. 100.24; 1961 c. 335, 386; 1963 c. 15.

**Legislative Council Notice, 1963:** Section 100.24 was amended by chapters 335 and 386, Laws of 1961. This bill is intended to recon-

cile the 2 acts and simplify s. 100.24, without changing the substance of the statute. [Bill 13-A]

The state is not precluded, by reason of an alleged conflict with congressional policy as expressed in a federal statute, from bringing an action to enforce an order of the state department of agriculture, issued pursuant to 100.20, which order forbids rebates by wholesalers of gasoline to retailers thereof, and forbids wholesalers of gasoline to enter into any agreement whereby discrimination is made in the price at which the wholesaler sells gasoline to retailers thereof. *State v. Texaco*, 14 W (2d) 625, 111 NW (2d) 918.

**100.25 History:** 1909 c. 395; 1911 c. 663 s. 334; Stats. 1911 s. 1791n-8; 1923 c. 291 s. 3; Stats. 1923 s. 133.16; 1935 c. 550 s. 363; Stats. 1935 s. 100.25.

**100.26 History:** 1935 c. 550 s. 364 to 368; Stats. 1935 s. 100.26; 1937 c. 39, 369; 1939 c. 217, 471; 1943 c. 179, 229; 1945 c. 226; 1947 c. 510; 1951 c. 223 s. 17, 18; 1953 c. 214; 1957 c. 241; 1965 c. 647; 1969 c. 425.

**100.30 History:** 1939 c. 56; Stats. 1939 s. 100.30; 1941 c. 75; 1947 c. 323; 1949 c. 155; 1951 c. 261 s. 10; 1955 c. 460; 1957 c. 186, 371; 1959 c. 531; 1961 c. 44; 1965 c. 629.

Where a defendant pleads not guilty and comes forward with evidence indicating an honest effort to anticipate and meet competition and to conserve his capital investment, which even if disbelieved would do no more than create an absence of testimony, or where a defendant merely pleads not guilty, the defendant cannot be found guilty of a violation of 100.30, Stats. 1939, if the only fact proved by the state is that the defendant advertised or sold merchandise below cost, since no case warranting a conviction thereunder is made out until there is proof beyond a reasonable doubt that the act of the defendant was in contravention of the stated policy of the statute. *State v. Twentieth Century Market*, 236 W 215, 294 NW 873.

100.30, Stats. 1945, does not prohibit offering goods as gifts in connection with a sale, but each item involved must be deemed offered for sale, each item must be considered separately in relation to the cost and price provisions of the section, and the total sale at a combined price or the sale with a gift added must measure up to the aggregate cost of the goods, and if on this basis the transaction falls below the standards bearing on the relation between cost and price, there is a violation, but if not, there is none. *State ex rel. Heath v. Tankar Gas, Inc.* 250 W 218, 26 NW (2d) 647.

See note to sec. 1, art. I, on exercises of police power, citing *State v. Ross*, 259 W 379, 48 NW (2d) 460.

As applied in an injunction action, the provision in 100.30 (4), Stats. 1949, that evidence of the sale of merchandise at less than defined cost shall be prima facie evidence of intent to induce the purchase of other merchandise or to unfairly divert trade from a competitor or to otherwise injure a competitor, is not an unreasonable presumption in favor of the plaintiff, and does not amount to a conclusion of

guilt, but merely places on the defendant the burden of going forward with evidence bringing him within any of the 8 exceptions available to him under 100.30 (6) regardless of intent, or evidence negating the prima facie showing of wrongful intent. *State v. Ross*, 259 W 379, 48 NW (2d) 460.

A competing seller who attempts to enjoin competitors from violating 100.30 must prove damage or loss more than the loss of one sale and the fact that sales were being made below cost. A seller may not claim to be meeting competition when he fixes prices below the legal or illegal prices of his competitors. *Heiden v. Ray's, Inc.* 34 W (2d) 632, 150 NW (2d) 467.

See note to sec. 1, art. I, on exercises of police power, citing *State v. Eau Claire Oil Co.* 35 W (2d) 724, 151 NW (2d) 634.

100.30 (2) (j) prohibits the pricing of one combination item below cost even though there is sufficient profit on both items to meet the required markup. *State v. Eau Claire Oil Co.* 35 W (2d) 724, 151 NW (2d) 634.

A merchant may offer commodities for sale or sell at a price not lower than invoice or "replacement cost" as defined, whichever is lower. 28 Atty. Gen. 700.

Under 100.30 (2) (j), an offer to give 2 gallons of gasoline free upon payment of only the tax, with every 7 gallons purchased, constitutes an offer of 2 separate items and each item must be sold at not less than cost plus 6 per cent mark-up, as provided in 100.30 (2) (a). The district attorney may apply for injunctive remedy under 100.30 (5) even though the violation of the unfair sales act has been discontinued at the time the proceeding in equity is instituted. 34 Atty. Gen. 424.

A gift of an item of merchandise by a wholesaler or retailer as defined, when such gift is made contingent upon the purchase of any other item of merchandise, is prohibited. 36 Atty. Gen. 459.

A wholesaler may sell below cost "distress merchandise" to another wholesaler. In such a sale, the reduced price to the purchasing wholesaler is his "invoice cost" and it controls his resale price for the next 30 days. The determination of a bona fide clearance sale under 100.30 (6) (a) must rest upon the intent of the seller inferred from the facts of each transaction and viewed in the light of the statutory purpose to outlaw loss leaders and to prevent unfair competition. A merchant may sell below statutory cost goods on hand which his supplier has notified him will be reduced in price. Tomato catsup which is subject to loss of color and flavor by long-time storage is "perishable merchandise" within 100.30 (6) (b). 37 Atty. Gen. 420. See also 43 Atty. Gen. 27.

The discount allowed should be considered in determining whether or not a violation of 100.30 exists. 38 Atty. Gen. 172.

Under 100.30 (2) (a) it is permissible to deduct from invoice cost a quantity discount which can be accurately computed for the purpose of determining cost to a retailer within 30 days prior to the date of sale. 43 Atty. Gen. 104.

The advertising and giving of gifts not contingent upon or tied to sales does not consti-

tute a sale below cost in violation of 100.30, 44 Atty. Gen. 352.

For discussion of 100.30 (2) and (6), Stats. 1963, relative to dealers doing business below cost see 53 Atty. Gen. 1.

**100.31 History:** 1947 c. 580, 614; Stats. 1947 s. 100.31; 1951 c. 261 s. 10; 1965 c. 252; 1969 c. 276.

**100.35 History:** 1949 c. 404; Stats. 1949 s. 100.35; 1951 c. 223 s. 19.

**100.36 History:** 1923 c. 147; Stats. 1923 s. 4607d-4; 1925 c. 4; Stats. 1925 s. 352.41; 1931 c. 113; Stats. 1931 s. 352.41 (1); 1935 c. 159 s. 34; 1935 c. 550 s. 245; Stats. 1935 s. 97.46 (1); 1963 c. 119; 1967 c. 100; 1969 c. 286 s. 33; 1969 c. 392 s. 44; Stats. 1969 s. 100.36.

**Editor's Note:** In an opinion published in 27 Atty. Gen. 303, the attorney general ruled that a product known as "honee butur," designed to be used, among other things, as a substitute for butter, was subject to the provisions of 97.46 (1) and 97.44, Stats. 1937.

**100.37 History:** 1965 c. 320; Stats. 1965 s. 97.71; 1969 c. 266; 1969 c. 286 s. 45; Stats. 1969 s. 100.37.

**100.38 History:** 1949 c. 17 s. 23; 1949 c. 302; Stats. 1949 s. 97.73; 1955 c. 10; 1969 c. 276 s. 590 (1); 1969 c. 286 s. 48; 1969 c. 459; Stats. 1969 s. 100.38.

## CHAPTER 101.

### Industrial Commission.

**101.01 History:** 1911 c. 485; 1911 c. 664 s. 105; Stats. 1911 s. 2394-41; 1913 c. 588; 1917 c. 133; 1923 c. 291 s. 3; Stats. 1923 s. 101.01; 1931 c. 161; 1941 c. 273; 1955 c. 425; 1957 c. 342; 1961 c. 387; 1969 c. 276.

**Editor's Note:** This section, containing definitions of terms used in secs. 101.01-101.29, is cited in various notes under 101.06. The definition of the term "farming" is based on amendatory legislation of 1955 (ch. 425, Laws 1955), which incorporated by reference the provisions of sec. 102.04 (3). Cases involving application of the superseded statutory definition are *Vandre v. Trachte*, 244 W 233, 12 NW (2d) 48, and *Maus v. Bloss*, 265 W 627, 62 NW (2d) 708.

**101.02 History:** 1911 c. 485; Stats. 1911 s. 2394-41 (6) to (9); 1917 c. 133; 1923 c. 291 s. 3; Stats. 1923 s. 101.01 (6) to (9); 1969 c. 276 ss. 372, 374; Stats. 1969 s. 101.02.

**101.06 History:** 1911 c. 485; 1911 c. 664 s. 105; Stats. 1911 s. 2394-48; 1913 c. 588; 1923 c. 291 s. 3; Stats. 1923 s. 101.06; 1957 c. 120.

1. General.
2. Employer; employe; owner; tenant; frequenter; trespasser.
3. Place of employment; public building; structure.
4. Safe places of employment.
5. Safe employment.
6. Safe public buildings.
7. Liability of owner of leased premises.

8. Liability of owner to contractor's employes.
9. Notice of defects.

#### 1. General.

On exercises of police power see notes to sec. 1, art. I; and on safeguards for persons and property see notes to various sections of ch. 167.

The safe-place statute is not to be extended so as to impose any duty beyond that imposed by the common law unless the statute clearly and beyond any reasonable doubt expresses such purpose by language that is clear, unambiguous, and peremptory. *Delaney v. Supreme Inv. Co.* 251 W 374, 29 NW (2d) 754.

The problem of indemnity under the safe-place statute. *Boden*, 40 MLR 349.

"Public building" and "place of employment" as defined under Wisconsin safe-place statute. *Choinski*, 42 MLR 84.

A survey of the safe-place doctrine. *McKinnon*, 46 MLR 130.

Non-third-party safe-place cases. *Goldberg*, 46 MLR 154.

A descriptive word index of safe-place statute law. *Boyle*, 31 WBB, No. 4, and 34 WBB, No. 2.

Wisconsin safe-place statute. *Wilcox*, 32 WBB, No. 5.

Safe-place statute-indemnity. *Young*, 36 WBB, No. 5.

Slip, trip and fall cases under the Wisconsin safe-place statute. *Boyle*, 36 WBB, No. 5.

Thirty years of the safe-place statute. *Reuss*, 1940 WLR 335.

Safe-place statute up to date. *Laun*, 1953 WLR 311.

#### 2. Employer; Employe; Owner; Tenant; Frequenter; Trespasser.

Contractors who were erecting an addition to a manufacturing plant deposited on the margin of an alley (adjacent to the plant) some heavy timbers, the top one of which fell into the alley and injured an employe of the owner of the plant. The injured employe, although not an employe of the contractors, was a "frequenter" of the place and might maintain an action under sec. 2394-48, Stats. 1915. *Peschel v. Klug*, 170 W 519, 175 NW 805.

An employe of a contractor doing work on an outside wall of a boiler room of a mill, who during the noon hour, for pleasure, wandered through the mill and was injured in using an elevator having no safety device, was a trespasser, and not a licensee for whom sec. 2394-48, Stats. 1919, requires an employer to make the place of employment safe. *Klemens v. Morrow M. Co.* 171 W 614, 171 NW 903.

A child attending a public school and participating in a manual training program is not an "employe" or a "frequenter" within the meaning of secs. 2394-48 and 2394-49, Stats. 1921. *Sullivan v. School District*, 179 W 502, 191 NW 1020.

To charge one as "owner" with liability for the defective condition of a public building, there must exist in such person the right to present possession, control or dominion over such building; so that he may lawfully enter and perform the duties fixed by the statute. A vendor who has no present right of supervision, control or possession of a building