

1923 c. 449 s. 47; Stats. 1923 s. 99.12; 1935 c. 550 s. 12; Stats. 1935 s. 93.11; 1963 c. 224.

93.14 History: Stats. 1933 s. 94.34, 94.49, 96.47 part, 99.19; 1935 c. 550 s. 15; Stats. 1935 s. 93.14; 1943 c. 229.

93.15 History: 1921 c. 571 s. 2; Stats. 1921 s. 1495—20 subs. 1, 2, 5; 1923 c. 152 s. 237; 1923 c. 366 s. 3; 1923 c. 449 s. 47; Stats. 1923 s. 99.20 (1), (2), (5); 1935 c. 550 s. 16; Stats. 1935 s. 93.15; 1943 c. 229.

93.16 History: 1921 c. 571 s. 2; Stats. 1921 s. 1495—21; 1923 c. 152 s. 238; Stats. 1923 s. 99.21; 1935 c. 550 s. 17; Stats. 1935 s. 93.16.

93.17 History: 1921 c. 571 s. 2; Stats. 1921 s. 1495—22; 1923 c. 152 s. 239; Stats. 1923 s. 99.22; 1935 c. 550 s. 18; Stats. 1935 s. 93.17.

The immunity granted by 93.17, Stats. 1949, to a retail grocer, who was subpoenaed and examined in a proceeding before the state department of agriculture, does not prevent the state from examining him in other proceedings; such immunity statute prohibits prosecuting or subjecting him to any penalty or forfeiture, but does not grant immunity from an injunction sought by the state under 100.30 (5). *State v. Ross*, 259 W 379, 48 NW (2d) 460.

93.18 History: 1921 c. 571 s. 2; Stats. 1921 s. 1495—24; 1923 c. 152 s. 241; 1923 c. 366 s. 3; 1923 c. 449 s. 47; Stats. 1923 s. 99.24; 1935 c. 550 s. 19; Stats. 1935 s. 93.18; 1939 c. 213; 1943 c. 401; 1953 c. 44; 1955 c. 221 s. 33 to 35; 1969 c. 276 s. 583 (2).

For service by registered mail, the 10 days allowed to persons complained against is reckoned from the date of the return receipt. *Dairy Distributors v. Dept. of A. & M.* 228 W 418, 280 NW 400.

93.19 History: 1921 c. 571 s. 2; Stats. 1921 s. 1495—26; 1923 c. 152 s. 243; 1923 c. 366 s. 3; 1923 c. 499 s. 47; Stats. 1923 s. 99.26; 1935 c. 550 s. 20; Stats. 1935 s. 93.19; 1943 c. 401; 1955 c. 221 s. 36.

See note to 100.20, citing *State ex rel. Waldorf v. Hill*, 217 W 59, 258 NW 361.

93.21 History: Stats. 1933 s. 98.03 (2), 99.07 (6) part, 99.29, 352.44; 1935 c. 550 s. 22; Stats. 1935 s. 93.21; 1951 c. 223; 1953 c. 61, 223.

See note to 59.47, citing 35 Atty. Gen. 282.

93.22 History: Stats. 1933 s. 98.02 part, 99.30; 1935 c. 550 s. 23; Stats. 1935 s. 93.22; 1943 c. 229; 1945 c. 446; 1969 c. 33; 1969 c. 276 s. 583 (1).

The dairy and food commissioner is under no duty to enforce general criminal statutes not embodied in dairy and food laws, though in individual cases violations of such statutes may occur in connection with manufacture or sale of food. 12 Atty. Gen. 133.

CHAPTER 94.

Plant Industry.

94.01 History: 1879 c. 151; 1887 c. 8; Ann. Stats. 1889 s. 1459b; 1895 c. 148; 1897 c. 239; Stats. 1898 s. 1459; 1901 c. 320 s. 1; 1903 c. 259 s. 1; 1905 c. 412 s. 1; Supl. 1906 s. 1459; 1907 c.

408; 1913 c. 772 s. 66; 1923 c. 152 s. 11; Stats. 1923 s. 93.08; 1935 c. 550 s. 26; Stats. 1935 s. 94.01.

The state horticultural society cannot invest funds in bonds to provide income to carry along life members. 18 Atty. Gen. 363.

The state horticultural society may expend money to purchase liability insurance to cover its employees. 24 Atty. Gen. 329.

94.02 History: 1879 c. 151; 1887 c. 14; 1889 c. 526; Ann. Stats. 1889 s. 1459a subs. 1, 4 to 6; Stats. 1898 s. 1459a; 1913 c. 772 s. 66; 1923 c. 152 s. 12; Stats. 1923 s. 93.09; 1935 c. 535; 1935 c. 550 s. 27; Stats. 1935 s. 94.02; 1943 c. 229; 1969 c. 276 s. 583 (1).

94.03 History: 1856 c. 73 s. 1 to 4; 1858 c. 53 s. 1; R. S. 1858 c. 80 s. 8 to 11; 1871 c. 45 s. 1; 1877 c. 65 s. 1; R. S. 1878 s. 1460; Stats. 1898 s. 1460; 1923 c. 152 s. 14; Stats. 1923 s. 93.11; 1935 c. 550 s. 28; Stats. 1935 s. 94.03.

The mere recording of articles of a proposed agricultural society, with a certificate of the election of officers, is insufficient. Where articles and certificate were recorded in the proper office, but did not remain on file, and were returned, those who organized the society were liable as partners. *Bergeron v. Hobbs*, 96 W 641, 71 NW 1056.

The same reasons for the making of a public record of the original articles of the association apply to the recording of amendments increasing the capital stock or changing the time of the annual meeting, and although the statute is silent as to recording of such amendments they must be recorded in the office of the register of deeds. *Columbia County F. Asso. v. Shanks*, 192 W 242, 212 NW 667.

See note to 181.76, citing 44 Atty. Gen. 43.

94.04 History: 1858 c. 53 s. 1; R. S. 1858 p. 519; 1871 c. 45 s. 1; 1876 c. 155; R. S. 1878 s. 1461; Stats. 1898 s. 1461; 1923 c. 152 s. 15; Stats. 1923 s. 93.12; 1935 c. 550 s. 29; Stats. 1935 s. 94.04.

Agricultural associations have no power to issue nonassessable shares of stock. 6 Atty. Gen. 163.

94.05 History: 1887 c. 47; Ann. Stats. 1889 s. 1461a; Stats. 1898 s. 1461a; 1923 c. 152 s. 16; Stats. 1923 s. 93.13; 1935 c. 550 s. 30; Stats. 1935 s. 94.05.

In order that shares of stock shall be subject to the power of assessment there must have been a proper valuation of the property of the association, a dividing of such valuation into equal shares, and an issuing of stock based upon such valuation. An assessment should be proportionately upon each share of stock as the unit rather than upon the individual member of the association as the unit. *Columbia County Fair Asso. v. Shanks*, 192 W 242, 212 NW 667.

94.06 History: 1858 c. 53 s. 2; R. S. 1858 c. 80 s. 12; 1877 c. 65 s. 1; R. S. 1878 s. 1462; Stats. 1898 s. 1462; 1923 c. 152 s. 17; Stats. 1923 s. 93.14; 1935 c. 550 s. 31; Stats. 1935 s. 94.06; 1965 c. 252.

94.07 History: 1856 c. 74 s. 8, 9; 1858 c. 8 s. 2; R. S. 1858 c. 80 s. 15, 16; 1867 c. 164 s. 1, 2; R. S. 1878 s. 1467; Stats. 1898 s. 1467; 1923 c.

152 s. 20; Stats. 1923 s. 93.17; 1929 c. 64; 1935 c. 550 s. 32; Stats. 1935 s. 94.07.

94.14 History: 1911 c. 525; 1911 c. 664 s. 110; Stats. 1911 s. 1459d; 1913 c. 772 s. 84; 1923 c. 152 s. 13; Stats. 1923 s. 93.10; 1931 c. 45 s. 1; 1935 c. 550 s. 109, 123; Stats. 1935 s. 95.15; 1943 c. 229; 1957 c. 97; 1959 c. 135 s. 35; 1959 c. 659 s. 67; Stats. 1959 s. 94.14; 1969 c. 276 ss. 583 (1), 603 (2).

94.15 History: 1929 c. 506; Stats. 1929 s. 96.60; 1935 c. 550 s. 40; Stats. 1935 s. 94.15.

94.16 History: 1929 c. 506; Stats. 1929 s. 96.62; 1935 c. 550 s. 41; Stats. 1935 s. 94.16; 1943 c. 229; 1969 c. 276 s. 583 (1).

94.17 History: 1929 c. 506; Stats. 1929 s. 96.63; 1935 c. 550 s. 42; Stats. 1935 s. 94.17; 1943 c. 229; 1969 c. 276 s. 583 (1).

94.18 History: 1929 c. 506; Stats. 1929 s. 96.64; 1935 c. 550 s. 43; Stats. 1935 s. 94.18.

94.19 History: 1929 c. 506; Stats. 1929 s. 96.65; 1935 c. 550 s. 44; Stats. 1935 s. 94.19; 1943 c. 229; 1969 c. 276 s. 583 (1).

94.20 History: 1861 c. 206 s. 1, 2; 1862 c. 32; 1873 c. 110, 170; R. S. 1878 s. 1480; 1880 c. 143; 1883 c. 228; 1885 c. 233; 1887 c. 313; 1889 c. 432; Ann. Stats. 1889 s. 1480a, 1480b, 1480e; 1895 c. 154; 1897 c. 82; Stats. 1898 s. 1480; 1901 c. 234 s. 1; 1901 c. 424 s. 2; Supl. 1906 s. 1480; 1909 c. 146; 1919 c. 589 s. 1; 1923 c. 152 s. 91; Stats. 1921 s. 96.01; 1925 c. 72; 1929 c. 297, 442; 1931 c. 283; 1935 c. 550 s. 45; Stats. 1935 s. 94.20; 1939 c. 49, 384; 1941 c. 19, 155; 1945 c. 499; 1953 c. 381; 1957 c. 337, 560; 1965 c. 252.

When no agreement has been made between landlord and tenant in relation to the removal of wild mustard from the farm leased to the tenant, he cannot recover from the landlord the value of his labor devoted to such removal, because that duty rests on the occupant as well as the owner. *Tollefson v. Tollefson*, 171 W 149, 176 NW 879.

Noxious weeds must be destroyed with as little damage to the crop as is reasonably possible. 7 Atty. Gen. 413.

Railroad property can be charged with the expense of destroying noxious weeds along a right of way by proceeding in the manner prescribed in ch. 96, Stats. 1923. 13 Atty. Gen. 613.

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

94.21 History: 1887 c. 313 s. 4; 1889 c. 432 s. 3; Ann. Stats. 1889 s. 1480d; 1891 c. 217; 1897 c. 82; Stats. 1898 s. 1480a; 1901 c. 51 s. 1; Supl. 1906 s. 1480a; 1909 c. 100; 1917 c. 609; 1919 c. 362 s. 24; 1923 c. 152 s. 92; 1929 c. 442 s. 2; Stats. 1923 c. 96.02; 1935 c. 550 s. 46; Stats. 1935 s. 94.21; 1963 c. 112.

94.22 History: 1887 c. 313 s. 6; Ann. Stats. 1889 s. 1480f; 1893 c. 145 s. 2; Stats. 1898 s. 1480b; 1901 c. 424 s. 2; Supl. 1906 s. 1480b; 1917 c. 609; 1919 c. 589 s. 2, 3; 1919 c. 671 s. 23; 1923 c. 152 s. 93; Stats. 1923 s. 96.03; 1929 c. 442 s. 2; 1935 c. 258; 1935 c. 550 s. 47; Stats.

1935 s. 94.22; 1957 c. 39; 1959 c. 146; 1961 c. 484.

A certified copy of a claim of a town weed commissioner for destroying weeds on railroad lands is in due form; and it is the duty of the state treasurer to collect the same from the company as other taxes are collected. 7 Atty. Gen. 664.

The weed commissioner incurs no liability for cutting grain among noxious weeds if he destroys no more than is absolutely necessary in order to destroy the weeds. 10 Atty. Gen. 743.

Resisting the weed commissioner who is lawfully discharging his official duty is a violation of sec. 4489, Stats. 1921. 10 Atty. Gen. 326.

Where a highway is located along a line between 2 farms, but wholly on one side of such line, the owner of each farm must destroy noxious weeds to the center of the highway. Owners may be prosecuted for failure to destroy such weeds; but if the weed commissioner destroys such weeds under the provisions of 96.03, Stats. 1925, none of the costs thereof can be assessed upon the owner, whose land does not extend into the highway. 14 Atty. Gen. 377.

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

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

94.23 History: 1929 c. 442 s. 3; Stats. 1929 s. 96.045; 1935 c. 550 s. 48; Stats. 1935 s. 94.23; 1953 c. 381 s. 4.

94.24 History: 1907 c. 65; 1911 c. 663 s. 205; Stats. 1911 s. 1481m; 1923 c. 152 s. 97; Stats. 1923 s. 4470p; 1925 c. 4; Stats. 1925 s. 343.727; 1935 c. 550 s. 49; Stats. 1935 s. 94.24.

94.25 History: 1917 c. 609 s. 2; Stats. 1917 s. 1481n; 1923 c. 152 s. 98; Stats. 1923 s. 4470q; 1925 c. 4; Stats. 1925 s. 343.728; 1935 c. 550 s. 50; Stats. 1935 s. 94.25; 1953 c. 381 s. 3.

94.26 History: 1867 c. 40 s. 1, 2; 1870 c. 146; R. S. 1878 s. 1472; 1883 c. 32; Ann. Stats. 1889 s. 1472; Stats. 1898 s. 1472; 1923 c. 152 c. 99; Stats. 1923 s. 96.05; 1935 c. 550 s. 51; Stats. 1935 s. 94.26.

The rights granted to cranberry growers by secs. 1472-1478, Stats. 1917, are subordinate to rights involving public health or welfare. *Cranberry Creek D. Dist. v. Elm Lake C. Co.* 170 W 362, 174 NW 554.

Where a land owner constructs or maintains an artificial drainage ditch for the benefit of his own land and such ditch crosses an existing highway, the land owner is liable for construction and maintenance of a bridge over such ditch. Liability extends to the grantee of the person who constructed the ditch if the grantee continues the ditch. If the land owner fails to meet his obligations the authorities charged with maintenance of highways may, upon due notice, make necessary repairs and collect the cost from the land owner. 30 Atty. Gen. 44.

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.

An owner of cranberry lands may not divert water from a navigable lake under 94.26 without a permit under 30.18. 54 Atty. Gen. 24.

94.27 History: 1867 c. 40 s. 3, 4, 11; R. S. 1878 s. 1473; Stats. 1898 s. 1473; 1923 c. 152 s. 100; Stats. 1923 s. 96.06; 1935 c. 550 s. 52; Stats. 1935 s. 94.27.

One who floods land cannot refuse to join in the selection of arbitrators, and, when suit is brought, defend on the ground that the only remedy of the plaintiff is by arbitration. Ramsdale v. Foote, 55 W 557, 13 NW 557.

94.28 History: 1867 c. 40 s. 5, 6, 10; R. S. 1878 s. 1474; Stats. 1898 s. 1474; 1923 c. 152 s. 101; Stats. 1923 s. 96.07; 1935 c. 550 s. 53; Stats. 1935 s. 94.28.

94.29 History: 1867 c. 40 s. 7, 9, 10; R. S. 1878 s. 1475; Stats. 1898 s. 1475; 1923 c. 152 s. 102; Stats. 1923 s. 96.08; 1935 c. 550 s. 54; Stats. 1935 s. 94.29; 1955 c. 157.

94.30 History: 1867 c. 40 s. 8; R. S. 1878 s. 1476; Stats. 1898 s. 1476; 1923 c. 152 s. 103; Stats. 1923 s. 96.09; 1935 c. 550 s. 55; Stats. 1935 c. 94.30.

94.31 History: 1867 c. 40 s. 12; R. S. 1878 s. 1477; Stats. 1898 s. 1477; 1923 c. 152 s. 104; Stats. 1923 s. 96.10; 1935 c. 550 s. 56; Stats. 1935 s. 94.31.

94.32 History: 1867 c. 40 s. 10; R. S. 1878 s. 1478; Stats. 1898 s. 1478; 1923 c. 152 s. 105; Stats. 1923 s. 96.11; 1935 c. 550 s. 57; Stats. 1935 s. 94.32.

94.33 History: 1865 c. 41; R. S. 1878 s. 1479; Stats. 1898 s. 1479; 1923 c. 152 s. 106; Stats. 1923 s. 96.12; 1935 c. 550 s. 58; Stats. 1935 s. 94.33.

94.35 History: 1893 c. 263; Stats. 1898 s. 1479a; 1913 c. 772 s. 33; 1923 c. 152 s. 107; Stats. 1923 s. 96.13; 1935 c. 550 s. 60; Stats. 1935 s. 94.35; 1943 c. 132.

The expense of printing the annual report of the association may not be paid out of appropriations for public printing. 30 Atty. Gen. 171.

94.36 History: 1905 c. 194 s. 1 to 5; Supl. 1906 s. 1481a to 1481e; 1911 c. 663 s. 204; 1923 c. 152 s. 108 to 112; Stats. 1923 s. 96.14; 1935 c. 550 s. 61; Stats. 1935 s. 94.36.

94.37 History: 1921 c. 239; Stats. 1921 s. 4441a sub. 1; 1925 c. 4; Stats. 1925 s. 343.441 (1); 1935 c. 550 s. 62; Stats. 1935 s. 94.37.

94.38 History: 1965 c. 589; Stats. 1965 s. 94.38; 1969 c. 32.

94.39 History: 1965 c. 589; Stats. 1965 s. 94.39; 1969 c. 31.

94.40 History: 1965 c. 589; Stats. 1965 s. 94.40; 1969 c. 276 s. 583 (1).

94.41 History: 1965 c. 589; Stats. 1965 s. 94.41.

94.42 History: 1965 c. 589; Stats. 1965 s. 94.42.

94.43 History: 1965 c. 589; Stats. 1965 s. 94.43; 1967 c. 99.

94.44 History: 1965 c. 589; Stats. 1965 s. 94.44.

94.45 History: 1965 c. 589; Stats. 1965 s. 94.45.

94.46 History: 1965 c. 589; Stats. 1965 s. 94.46.

A criminal prosecution under the pure seed law (secs. 1494x—1 to 1494x—16, Stats. 1913) may be brought against all the members of a firm, although only one member is actively engaged in making sales of such seed. The district attorney should bring prosecutions for violations of such law without being assisted by the attorney general. 3 Atty. Gen. 201.

A nonwarranty clause in a contract for sale of seeds is no defense to a prosecution. 6 Atty. Gen. 443.

94.544 History: 1941 c. 25; Stats. 1941 s. 94.544; 1963 c. 172.

94.56 History: 1963 c. 172; Stats. 1963 s. 94.56.

94.57 History: 1915 c. 413 s. 4; 1915 c. 609; Stats. 1915 s. 1494—10b; 1923 c. 152 s. 143; Stats. 1923 s. 96.41; 1935 c. 550 s. 83; Stats. 1935 s. 94.57; 1963 c. 172.

94.60 History: 1915 c. 413 s. 4; Stats. 1915 s. 1494—10e; 1917 c. 159; 1923 c. 152 s. 146; Stats. 1923 s. 96.44; 1929 c. 518; 1933 c. 470 s. 11; 1935 c. 550 s. 86; Stats. 1935 s. 94.60; 1943 c. 229, 401; 1955 c. 168, 652; 1963 c. 172; 1965 c. 358, 381.

One of a chain of stores selling nursery stock is acting as a dealer within the meaning of ch. 96, Stats. 1927. 18 Atty. Gen. 95.

94.61 History: 1955 c. 168; Stats. 1955 s. 94.60 (2) (e); 1963 c. 172 s. 14; Stats. 1963 s. 94.61.

94.64 History: 1895 c. 87 s. 1, 2; Stats. 1898 s. 1494c; 1917 c. 593; 1917 c. 595 s. 1, 2; 1919 c. 333; 1921 c. 515 s. 1; 1923 c. 152 s. 129; Stats. 1923 s. 96.30; 1935 c. 550 s. 90; Stats. 1935 s. 94.64; 1943 c. 401; 1945 c. 516; 1951 c. 729; 1953 c. 61 s. 89; 1969 c. 460.

94.65 History: 1895 c. 87 s. 3 to 5; Stats. 1898 s. 1494d; 1913 c. 758 s. 6; 1917 c. 593; 1917 c. 595 s. 1, 3; 1917 c. 677 s. 14; 1921 c. 515 s. 2; 1923 c. 152 s. 130; Stats. 1923 s. 96.31; 1935 c. 590 s. 91; Stats. 1935 s. 94.65; 1945 c. 516; 1951 c. 729.

Sec. 1494c (3), Stats. 1921, created by ch. 515, Laws 1921, and requiring a permit before any person or firm is permitted to sell a mixed culture of micro-organisms, does not apply to the university; it does apply to others giving the same with every sale made. 10 Atty. Gen. 1086.

94.66 History: 1945 c. 516; Stats. 1945 s. 94.665; 1951 c. 223 s. 3; 1951 c. 729 s. 5; Stats. 1951 s. 94.66; 1969 c. 209.

94.67 History: 1911 c. 325; 1911 c. 664 s. 46; Stats. 1911 s. 1494—10o; 1923 c. 152 s. 152; 1923 c. 381 s. 2; Stats. 1923 s. 96.50; 1935 c. 550 s. 93; Stats. 1935 s. 94.67; 1951 c. 516 s. 4; 1965 c. 588 s. 10.

94.675 History: 1951 c. 516 s. 4; Stats. 1951 s. 94.675; 1965 c. 588 ss. 1, 2, 10.

94.676 History: 1951 c. 516 s. 4; Stats. 1951 s. 94.676; 1953 c. 61; 1965 c. 588 ss. 3, 4, 10.

It was misbranding and negligence where a label stated that, when dry, wood treated with preservative could be handled freely without danger of contamination to animals, if preservative-dipped mink nesting boxes, after they had dried, were harmful to mink housed therein. Such misbranding would not render the manufacturer or the supplier liable for damages unless there was some causal connection between the statutory violation and the injury. *Smith v. Atco Co.* 6 W (2d) 371, 94 NW (2d) 697.

An insecticide is misbranded if the label does not warn that it harms the plants if used when they are wet. A disclaimer of all liability on the label does not prevent recovery since this is a criminal statute. *Perry Creek C. Corp. v. Hopkins Ag. Chem. Co.* 29 W (2d) 429, 139 NW (2d) 96.

94.68 History: 1951 c. 516 s. 4; Stats. 1951 s. 94.68; 1965 c. 588.

94.69 History: 1951 c. 516 s. 4; Stats. 1951 s. 94.69; 1965 c. 588; 1969 c. 146.

94.70 History: 1951 c. 516 s. 4; Stats. 1951 s. 94.70; 1965 c. 588 ss. 7, 10.

94.71 History: 1951 c. 516 s. 4; Stats. 1951 s. 94.71; 1953 c. 61 s. 91; 1955 c. 10; 1965 c. 588 ss. 8, 9, 10.

94.72 History: 1901 c. 377 s. 1 to 6; 1905 c. 143 s. 1; Supl. 1906 s. 1494—11 to 1494—16; 1907 c. 104; 1907 c. 676 s. 4; 1909 c. 446; 1911 c. 663 s. 222; 1913 c. 758 s. 6; 1917 c. 593; 1917 c. 595; 1919 c. 184; 1921 c. 172; 1921 c. 535; 1923 c. 152 s. 160 to 166; Stats. 1923 s. 96.56; 1935 c. 550 s. 98 to 101; Stats. 1935 s. 94.72; 1937 c. 399; 1943 c. 229, 401; 1951 c. 223; 1951 c. 261 s. 10; 1969 c. 276 s. 583 (1); 1969 c. 415.

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 94.72 (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 pres-

ence 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 94.72 (14) (b). *Cohan v. Associated Fur Farms, Inc.* 261 W 584, 53 NW (2d) 788.

94.72 (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 feed itself, but is an injurious substance produced by a bacteria which is foreign to the feed, and the presence of such toxin in food constitutes an adulteration, so that when the feed so adulterated is sold 94.72 (14) (b) is violated, the wrongful act which is prohibited by the statute being the sale of the adulterated feed and not the act of mixing or adulterating the feed with an injurious substance. *Arndt Brothers Minkery v. Medford Fur Foods*, 274 W 627, 80 NW (2d) 776.

A buyer of animal feed can recover damages for the sale of contaminated feed despite a contract agreeing to hold the seller harmless from tort or contract liability. *Metz v. Medford Fur Foods*, 4 W (2d) 96, 90 NW (2d) 106.

Since plaintiff rancher would be potentially liable to a second rancher for negligence under 94.72 (14) (b) because of selling adulterated animal feed, the plaintiff could include in his claim for damages against defendant original seller the potential claim which the second rancher might make against him, although plaintiff's action against the original seller was one for breach of warranty with consequently no privity of contract between the original seller and the second mink rancher. (*Arndt Brothers Minkery v. Medford Fur Foods*, 274 W 627, distinguished.) *Tri City Fur Foods v. Ammerman*, 7 W (2d) 149, 96 NW (2d) 495.

A license to sell concentrated feed is not transferable. Payment of a license fee by one person will not protect another person succeeding to the same business. 3 Atty. Gen. 552.

"Tankage" is included and may not be sold except upon compliance with secs. 1494—11 to 1494—18, Stats. 1913. 4 Atty. Gen. 188.

Inorganic mixtures prepared for feed are within the purview of sec. 1494—11, Stats. 1921. 10 Atty. Gen. 705.

A salesman who takes orders in Wisconsin for concentrated commercial feed to be shipped from an adjoining state violates 96.56, Stats. 1925, unless the feed is labeled and license procured. 14 Atty. Gen. 199.

Feed as defined in 96.56 (1), Stats. 1929, includes concentrated commercial feed substances or materials which furnish vitamin potency. 18 Atty. Gen. 356.

94.755 History: 1955 c. 246; Stats. 1955 s. 94.755; 1965 c. 433 s. 121; 1967 c. 291 s. 14; 1969 c. 276 ss. 361, 583 (2).

94.76 History: 1897 c. 150; Stats. 1898 s. 1494f, 4605a; 1903 c. 188 s. 1; Supl. 1906 s. 1494f; 1913 c. 39; Stats. 1913 s. 1494f; 1915 c. 413; 1919 c. 330; 1923 c. 152 s. 151; 1923 c. 381 s. 1; Stats. 1923 s. 96.49; 1933 c. 470 s. 10; 1935 c. 550 s. 105; Stats. 1935 s. 94.76; 1943 c. 70; 1951 c. 61; 1969 c. 276 s. 583 (1).

94.761 History: 1955 c. 266; Stats. 1955 s. 94.761.

94.77 History: 1935 c. 550 s. 106; Stats. 1935 s. 94.77; 1937 c. 68, 399; 1939 c. 476; 1943 c. 229; 1951 c. 223 s. 5, 6; 1961 c. 622.

94.80 History: 1935 c. 535; 1935 c. 551 s. 2; Stats. 1935 s. 94.80; 1939 c. 535; 1943 c. 229; 1947 c. 9 s. 31; 1953 c. 251; 1959 c. 228 s. 66; 1961 c. 33 s. 45; 1961 c. 622; 1963 c. 343; 1965 c. 433 s. 121; 1967 c. 291 s. 14; 1969 c. 276 s. 583 (1).

CHAPTER 95.

Animal Health.

95.10 History: 1953 c. 146; Stats. 1953 s. 95.10; 1955 c. 10; 1963 c. 224, 470; 1965 c. 109, 322.

95.11 History: R. S. 1849 c. 38 s. 1, 2; R. S. 1858 c. 45 s. 1, 2; R. S. 1878 s. 1468; Stats. 1898 s. 1468; 1923 c. 152 s. 86; Stats. 1923 s. 95.11; 1969 c. 176.

95.12 History: 1887 c. 229; Ann. Stats. 1889 s. 4423a; Stats. 1898 s. 4438c; 1925 c. 4; Stats. 1925 s. 343.403; 1935 c. 550 s. 120; Stats. 1935 s. 95.12.

95.13 History: 1913 c. 112; Stats. 1913 s. 4470n; 1915 c. 49; 1925 c. 4; Stats. 1925 s. 343.726; 1935 c. 550 s. 121; Stats. 1935 s. 95.13.

95.14 History: 1923 c. 151; Stats. 1923 s. 95.12; 1935 c. 550 s. 122; Stats. 1935 s. 95.14; 1959 c. 660.

95.16 History: 1917 c. 592 s. 4; Stats. 1917 s. 1492ab sub. 5m; 1923 c. 152 s. 26; Stats. 1923 s. 94.04; 1935 c. 550 s. 124; Stats. 1935 s. 95.16; 1937 c. 356; 1951 c. 571; 1953 c. 15; 1963 c. 393.

95.17 History: 1915 c. 14; Stats. 1915 s. 1492ab—5; 1923 c. 152 s. 34; Stats. 1923 s. 94.11; 1935 c. 550 s. 109, 125; Stats. 1935 s. 95.17; 1947 c. 433; 1949 c. 262.

A veterinarian employed by the U. S. department of agriculture cannot be employed by the state unless he has qualified under the civil service law of the state. 17 Atty. Gen. 251.

95.18 History: 1885 c. 467; 1887 c. 76; Ann. Stats. 1889 s. 1492a subs. 6, 7; Stats. 1898 s. 1492c; 1901 c. 440 s. 4; Supl. 1906 s. 1492c; 1909 c. 542; 1911 c. 637; Stats. 1911 s. 1492c sub. 4; 1917 c. 592 s. 3; Stats. 1917 s. 1492ab sub. 5h; 1923 c. 152 s. 27; Stats. 1923 s. 94.05; 1935 c. 550 s. 126; Stats. 1935 s. 95.18.

95.19 History: 1917 c. 548 s. 2; Stats. 1917 s. 1492ab sub. 5r; 1921 c. 491; 1923 c. 152 s. 28; Stats. 1923 s. 94.06; 1935 c. 550 s. 127; Stats. 1935 s. 95.19; 1955 c. 24; 1959 c. 282.

Independently of statute a vendor of animals is not liable for damages sustained by the communication of a disease by those sold to other animals owned by the vendee because he had information that tuberculosis had shown itself in the herd of which those sold were part, at a former time, if he did not know or have reasonable ground for believing that they or some of them were infected with a contagious disease at the time of sale. The provisions of ch. 467, Laws 1885, do not apply to an administrator who sells cattle under the order of the county court. *Newell v. Clapp*, 97 W 104, 72 NW 366.

95.20 History: 1885 c. 467; 1887 c. 76; Ann. Stats. 1889 s. 1492a subs. 6, 7; Stats. 1898 s. 1492c; 1901 c. 440 s. 4; Supl. 1906 s. 1492c; 1909 c. 542; 1911 c. 637; Stats. 1911 s. 1492c sub. 1; 1917 c. 548 s. 2; 1917 c. 592 s. 2; Stats. 1917 s. 1492ab sub. 5g; 1923 c. 152 s. 25; 1923 c. 391 s. 1; Stats. 1923 s. 94.03; 1935 c. 550 s. 128; Stats. 1935 s. 95.20.

95.21 History: 1919 c. 117; Stats. 1919 s. 1492ab sub. 5a; 1923 c. 152 s. 24; Stats. 1923 s. 94.02; 1935 c. 550 s. 109, 129; Stats. 1935 s. 95.21; 1937 c. 244; 1953 c. 386.

Sec. 95.21, Stats. 1939, does not apply to the removal of dogs to or from a district quarantined for rabies. 30 Atty. Gen. 101.

95.22 History: 1885 c. 467; 1887 c. 76; Ann. Stats. 1889 s. 1492a subs. 6, 7; Stats. 1898 s. 1492c; 1901 c. 440 s. 4; Supl. 1906 s. 1492c; 1909 c. 542; 1911 c. 637; Stats. 1911 s. 1492c subs. 1, 2; 1917 c. 592 s. 2, 6; 1923 c. 152 s. 53; Stats. 1923 s. 94.29; 1935 c. 550 s. 130; Stats. 1935 s. 95.22; 1955 c. 24.

95.23 History: 1885 c. 467; 1887 c. 76; Ann. Stats. 1889 s. 1492a subs. 6, 7; Stats. 1898 s. 1492c; 1901 c. 440 s. 4; Supl. 1906 s. 1492c; 1909 c. 542; 1911 c. 637; Stats. 1911 s. 1492c sub. 3; 1917 c. 592 s. 7; 1919 c. 690 s. 5; 1923 c. 152 s. 54; Stats. 1923 s. 94.30; 1935 c. 550 s. 131; Stats. 1935 s. 95.23; 1943 c. 229; 1957 c. 212; 1959 c. 282.

Sec. 94.30, Stats. 1923, authorizes the commissioner of agriculture and other members of his department or delegated authorities to examine and test herds without previous application for an area test of the county or a herd test by the owner; if, upon such test, infected animals are found, general provisions of the statutes relating to disposition of such animals apply. 12 Atty. Gen. 484.