

Assembly Bill 633

Published
December 9, 1965.

CHAPTER 425

AN ACT to repeal 100.201 (2) (c) and (4); to renumber 100.201 (1) (d) and (e), (2) (d), (e), (f), (g), (h) and (j), (7), (8), (9), (10) and (11); to renumber and amend 100.201 (5), (6) and (12); to amend 100.201 (2) (e) 1, 3 and 4 and (h) 4, (6) (a) and (9) (a), as renumbered; to repeal and recreate 100.201 (2) (i); and to create 100.201 (1) (d) 2, (6) (am) and (9) (g) of the statutes, relating to unfair trade practices in the dairy industry and temporary increase in fees.

The people of the state of Wisconsin, represented in senate and assembly, do enact as follows:

SECTION 1. 100.201 (1) (d) of the statutes is renumbered 100.201 (1) (d) 1.

SECTION 2. 100.201 (1) (d) 2 of the statutes is created to read:

100.201 (1) (d) 2. For the purpose of this section any subsidiary or affiliate corporation or co-operative, and any officer, director or partner, of a corporation, co-operative, or partnership which is a retailer of selected dairy products, and any individual, corporation, co-operative, partnership, association or any other business unit which owns, controls or franchises

any retailer or which has any retailer as an affiliate, member or subsidiary, is deemed to be a retailer of selected dairy products and the prohibitions of sub. (2) shall also apply to any such person or business unit which sells any selected dairy product at wholesale.

SECTION 3. 100.201 (1) (e) of the statutes is renumbered 100.201 (1) (e) 1.

SECTION 4. 100.201 (2) (c) of the statutes is repealed.

SECTION 5. 100.201 (2) (d) of the statutes is renumbered 100.201 (2) (c).

SECTION 6. 100.201 (2) (e) of the statutes is renumbered 100.201 (2) (d).

SECTION 7. 100.201 (2) (f) of the statutes is renumbered 100.201 (2) (e) and 100.201 (2) (e) 1, 3 and 4, as renumbered, are amended to read:

100.201 (2) (e) 1. The wholesaler, under a bill of sale or security agreement describing the property sold and specifying the price and terms of sale duly filed by him as provided in ss. 409.401 and 409.402 within 10 days after delivery of the equipment described therein, may sell equipment for the storage, transportation and display of selected dairy products to the retailer but the selling price shall be not less than the cost to the wholesaler, less 10 per cent per year depreciation, plus transportation and installation costs, plus at least 6 per cent, but in no event shall it be less than \$100 per unit. In filing bills of sale under this section, the filing officer shall follow the procedure provided in s. 409.403 insofar as applicable. If the wholesaler makes said sale under a security agreement, the terms of sale shall be no more favorable to the retailer than those provided in ~~par. (e)~~ *sub. (2) (d)*.

3. The wholesaler may furnish equipment to retailers for the storage, transportation or display of selected dairy products for one period of not longer than 10 consecutive days a year to any one retailer for use at a fair, exhibition, exposition or other ~~promotional~~ event for agricultural, industrial, charitable, educational, religious or recreational purposes.

4. A wholesaler who furnishes, lends or rents the use of equipment for the storage or display of selected dairy products to any person exempt under sub (1) (d) *1* shall not sell selected dairy products which will be stored or displayed in such equipment to any retailer using the equipment on the premises of such exempt person unless such retailer purchases said equipment in accordance with this paragraph or ~~par. (e)~~ *(d)*. Nothing in this paragraph shall limit sales of selected dairy products to retailers in conjunction with equipment furnished under subd. 3.

SECTION 8. 100.201 (2) (g) of the statutes is renumbered 100.201 (2) (f).

SECTION 9. 100.201 (2) (h) of the statutes is renumbered 100.201 (2) (g).

SECTION 10. 100.201 (2) (i) of the statutes is repealed and recreated to read:

100.201 (2) (i) 1. Give, offer to give, furnish, finance or otherwise make available, directly or indirectly, to any retailer or to any other person doing business with such retailer anything of value which is connected with, or which aids or assists in, or which may induce or encourage, the purchase, handling, sale, offering for sale or promotion of the sale of the wholesaler's selected dairy products by such retailer or any other person

doing business with such retailer. The term "anything of value" as used herein includes, but is not limited to:

a. Any payment, discount, rebate, allowance, gift, goods, merchandise, privilege, contest, service or facility, whether or not given, offered, furnished, financed or otherwise made available in combination with or contingent on a purchase.

b. Any transaction involving the use of a coupon, token, slip, punch-card, trading stamp or other device similar in nature, including any part of a container or package intended to be used as such device, and which transaction involves any participation by or purchase from a retailer.

2. Nothing in subd. 1 shall prevent, as to transactions with retailers, any of the following:

a. Differences in wholesale price, including any discount, rebate or allowance, not in violation of par. (b).

b. The furnishing of hostesses or demonstrators at any retailer's premises to promote the wholesaler's own brands of products.

c. The giving away of merchandise to be consumed on the premises.

d. The furnishing or installation of point of sale advertising material to any retailer that remains inside such retailer's premises made of paper, cardboard or other material not permanent in nature or indoor advertising signs, all of which have no use other than the promotion of the wholesaler's own brands of products and do not identify the retailer.

e. The furnishing or installation of indoor clocks bearing only the wholesaler's advertising and having a value of not more than \$30.

f. Advertising allowances which do no more than reimburse a retailer for his costs in advertising the wholesaler's own brands of products.

g. The furnishing or installation of outdoor signs advertising the wholesaler's own brands of products but not more than one-third of the space or cost of such signs may be used to identify the retailer.

h. The advertising by a wholesaler of his own brands of products through any media which does not identify any retailer or involve any transaction or conduct otherwise prohibited by this section.

i. Offers of premiums for which the consumer pays a separate fee which covers in full the wholesaler's costs of making such premiums available.

j. Transactions otherwise permitted by pars. (d), (e), (f), (g) and (h) and sub. (3).

SECTION 11. 100.201 (2) (j) of the statutes is renumbered 100.201 (2) (h) and 100.201 (2) (h) 4, as renumbered, is amended to read:

100.201 (2) (h) 4. Proof made at any proceeding under this paragraph of a sale or offer to sell, directly or indirectly, any selected dairy product at less than cost as determined by department rule, if adopted, shall be prima facie evidence that it was made with the purpose or intent of injuring, destroying or eliminating competition or a competitor or creating a monopoly and that the effect may be any of the same. The burden of rebutting such prima facie evidence shall be upon the person charged with a violation of this paragraph. Nothing in this paragraph shall prevent any person charged with a violation of this paragraph from rebutting such prima facie evidence by showing that his sale or offer to sell was made in good faith to meet ~~an equally low price of a competitor~~ *competition*.

SECTION 12. 100.201 (4) of the statutes is repealed.

SECTION 13. 100.201 (5) of the statutes is renumbered 100.201 (1) (e) 2 and amended to read:

100.201 (1) (e) 2. For the purpose of this section any subsidiary or affiliate corporation, or co-operative, and any officer, director or partner, of a corporation, co-operative, or partnership which is a wholesaler of

selected dairy products is deemed to be a wholesaler of selected dairy products.

SECTION 14. 100.201 (6) of the statutes is renumbered 100.201 (4) and amended to read:

100.201 (4) It is unlawful for any retailer or any officer, director, employe or agent thereof to solicit or receive, directly or indirectly, from or through a wholesaler, or broker, ~~any discount rebate, allowance, service, price discrimination, advertising material, loan, equipment, payment or other thing~~ or another retailer, anything which is prohibited by sub. (2), where such retailer, or any officer or agent thereof, he knows or, in the exercise of reasonable prudence, should know that the same is prohibited.

SECTION 15. 100.201 (7), (9) and (10) of the statutes are renumbered 100.201 (5), (7) and (8), respectively.

SECTION 16. 100.201 (8) of the statutes is renumbered 100.201 (6) and 100.201 (6) (a), as renumbered, is amended to read:

100.201 (6) (a) For the purpose of administering and enforcing this section the first person who processes or manufactures any selected dairy product for sale at wholesale or sale at retail (except sales at retail by counter freezer operators licensed under s. 97.05) within this state, or the wholesaler who first receives any such product already processed from outside the state for sale within the state, shall pay to the department on or before the 25th day of each month following the month in which such wholesaler receives, processes or sells such selected dairy products, a fee as determined by the department, but not to exceed 3 mills per hundredweight of 3.5 per cent butterfat raw milk equivalent on all ~~milk, cream (whether fresh, sour or storage), aerated or whipping cream, half and half, buttermilk, flavored milk or milk drink, vitamin fortified milk and skim milk~~ selected dairy products defined in sub. (1) (a) 1 sold within the state in final consumer package or container to retailers or consumers or sold in such packages or containers to other wholesalers of selected dairy products for further sale within the state to retailers or consumers, and not to exceed 2 mills per gallon on all ice cream mix and ice milk mix made for freezing into ice cream and ice milk and ultimately sold within the state, whether in the form of mix or finished ice cream and ice milk. Products upon which fees have been paid shall be exempt from further fees in successive transactions. Any person claiming that products sold by him are not subject to assessment under ~~any provision~~ of this subsection by reason of the fact that they were not sold or resold within the state shall have the burden of so proving, and shall be obligated to pay assessment on such products unless and until he produces records satisfying the department that such products are not subject to assessment.

SECTION 17. 100.201 (6) (am) of the statutes is created to read:

100.201 (6) (am) In addition to the fees authorized by par. (a) and required to be paid by persons designated therein, such persons shall pay additional fees not to exceed 1 mill per hundredweight of 3.5 percent butterfat raw milk equivalent on all selected dairy products defined in sub. (1) (a) 1 and not to exceed 1 mill per gallon on all ice cream mix and ice milk mix for a period not longer than 12 months beginning the month following the effective date of this paragraph (1965).

SECTION 18. 100.201 (9) (g) of the statutes is created to read:

100.201 (9) (g) A final judgment, decree or order hereafter rendered in any civil or criminal action or special proceeding, or in any special

order proceeding under par. (b), brought by or on behalf of the state under this section to the effect that a defendant or respondent has violated said law shall be prima facie evidence against such defendant or respondent in any action or special proceeding brought by any other party against such defendant or respondent under said law, as to all matters respecting which said judgment, decree or order would be an estoppel as between the parties thereto but this subsection shall not apply to judgments, decrees or special orders entered by consent.

SECTION 19. 100.201 (11) of the statutes is renumbered 100.201 (9) and 100.201 (9) (a), as renumbered, is amended to read:

100.201 (9) (a) *Violation of this section shall be a misdemeanor punishable as provided herein.* Any person violating any of the provisions of this section shall be fined not less than \$100 nor more than \$5,000 for each offense.

SECTION 20. 100.201 (12) of the statutes is renumbered 100.201 (10) and amended to read:

100.201 (10) Any equipment furnished by wholesalers to retailers prior to August 17, 1963, shall be removed from the retailers' premises or sold pursuant to sub. (2) ~~(e)~~ (d) or ~~(f)~~ (e) by January 1, 1964. The minimum selling price of such equipment, if fully depreciated in accordance with the provisions of sub. (2) ~~(f)~~ (e), shall not be less than \$10 per unit.

SECTION 21. This act shall take effect July 1, 1965.

Approved December 2, 1965.
