

CHAPTER 134

MISCELLANEOUS TRADE REGULATIONS

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134.01 Injury to business; restraint of will.

Any 2 or more persons who shall combine, associate, agree, mutually undertake or concert together for the purpose of wilfully or maliciously injuring another in his reputation, trade, business or profession by any means whatever, or for the purpose of maliciously compelling another to do or perform any act against his will, or preventing or hindering another from doing or performing any lawful act shall be punished by imprisonment in the county jail not more than one year or by fine not exceeding \$500.

Complaint alleging conspiracy for the purpose of injuring another by means of perjury and alleging resulting damage states a claim upon which relief can be granted. *Radue v. Dill*, 74 W (2d) 239, 246 NW (2d) 507.

See note to 133.03, citing *Hauer v. Bankers Trust New York Corp.* 425 F Supp. 796.

134.02 Blacklisting and coercion of employes.

(1) Any 2 or more persons, whether members of a partnership or company or stockholders in a corporation, who are employers of labor, who shall combine or agree to combine for the purpose of preventing any person seeking employment from obtaining the same, or for the purpose of procuring or causing the discharge of any employe by threats, promises, circulating

blacklists or causing the same to be circulated, or who shall, after having discharged any employe, prevent or attempt to prevent such employe from obtaining employment with any other person, partnership, company or corporation by the means aforesaid, or shall authorize, permit or allow any of his or their agents to blacklist any discharged employe or any employe who has voluntarily left the service of his employer, or circulate a blacklist of such employe to prevent his obtaining employment under any other employer, or who shall coerce or compel any person to enter into an agreement not to unite with or become a member of any labor organization as a condition of his securing employment or continuing therein, shall be punished by fine of not more than \$500 nor less than \$100, which fine shall be paid into the state treasury for the benefit of the school fund.

(2) Nothing in this section shall prohibit any employer of labor from giving any other such employer, to whom a discharged employe has applied for employment, or to any bondsman or surety, a truthful statement of the reasons for such discharge, when requested so to do by such employe, the person to whom he has applied for employment, or any bondsman or surety; but it

shall be a violation of this section to give such information with the intent to blacklist, hinder or prevent such employe from obtaining employment; neither shall anything herein contained prohibit any employer of labor from keeping for his own information and protection a record showing the habits, character and competency of his employes and the cause of the discharge or voluntary quitting of any of them.

134.03 Preventing pursuit of work. Any person who by threats, intimidation, force or coercion of any kind shall hinder or prevent any other person from engaging in or continuing in any lawful work or employment, either for himself or as a wage worker, or who shall attempt to so hinder or prevent shall be punished by fine not exceeding \$100 or by imprisonment in the county jail not more than 6 months, or by both fine and imprisonment in the discretion of the court. Nothing herein contained shall be construed to prohibit any person or persons off of the premises of such lawful work or employment from recommending, advising or persuading others by peaceful means to refrain from working at a place where a strike or lockout is in progress

Allegation of employment discrimination was not covered by this section. *McCluney v. Jos. Schlitz Brewing Co.* 489 F Supp. 24 (1980).

134.04 Sale of certain merchandise by employers to employes prohibited; penalty. (1) No person, firm or corporation engaged in any enterprise in this state shall by any method or procedure directly or indirectly by itself or through a subsidiary agency owned or controlled in whole or in part by such person, firm or corporation, sell or procure for sale or have in its possession or under its control for sale to its employes or any person any article, material, product or merchandise of whatsoever nature not of his or its own production or not handled in his or its regular course of trade, excepting meals, candy bars, cigarettes and tobacco for the exclusive use and consumption of such employes of the employer, and excepting tools used by employes in said enterprise and such specialized appliances and paraphernalia as may be required in said enterprise for the employes' safety or health and articles used by employes or other persons which insure better sanitary conditions and quality in the manufacture of food or food products. The provisions of this subsection shall not apply to lumber producers, loggers and dealers nor to any co-operative association organized under ch. 185. This section shall not be construed as authorizing the sale of any merchandise at less than cost as defined in s. 100.30.

(2) Any person, firm or corporation violating the provisions of this section shall be deemed guilty of a misdemeanor and upon conviction thereof shall be punished for the first offense by a fine of not less than \$100 nor more than \$500 and for second or subsequent offense by a fine of not less than \$500 nor more than \$1,000. Each act prohibited by this section shall constitute a separate violation and offense hereunder.

134.05 Bribery of agent, etc. Whoever corruptly gives, offers or promises to an agent, employe or servant, any gift or gratuity whatever, with intent to influence his action in relation to his principal's, employer's or master's business; or an agent, employe or servant who corruptly requests or accepts a gift or gratuity or a promise to make a gift or to do an act beneficial to himself, under an agreement or with an understanding that he shall act in any particular manner in relation to his principal's, employer's or master's business; or an agent, employe or servant, who, being authorized to procure materials, supplies or other articles either by purchase or contract for his principal, employer or master, or to employ service or labor for his principal, employer or master, receives directly or indirectly, for himself or for another, a commission, discount or bonus from the person who makes such sale or contract, or furnishes such materials, supplies or other articles, or from a person who renders such service or labor; and any person who gives or offers such an agent, employe or servant such commission, discount or bonus, shall be punished by a fine of not less than \$10 nor more than \$500, or by such fine and by imprisonment for not more than one year.

Cross Reference: See 885.15 for provision as to granting immunity for testifying as to offenses charged under this section.

134.06 Bonus to chauffeurs for purchases, forbidden. It shall be unlawful for any chauffeur, driver or other person having the care of a motor vehicle for the owner to receive or take directly or indirectly without the written consent of such owner any bonus, discount or other consideration for supplies, or parts furnished or purchased for such motor vehicle or upon any work or labor done thereon by others or on the purchase of any motor vehicle for his employer and no person furnishing such supplies or parts, work or labor or selling any motor vehicle shall give or offer any such chauffeur or other person having the care of a motor vehicle for the owner thereof, directly or indirectly without such owner's written consent, any bonus, discount or other consideration thereon. Any person violating this section shall be guilty

of a misdemeanor and punished by a fine not exceeding \$25.

134.10 Invading right to choose insurance agent or insurer by persons engaged in financing.

(1) Any person engaged in the business of financing the purchase of real or personal property or of lending money on the security of real or personal property, and any trustee, director, officer, agent or employe of any such person, who requires, or conspires with another to require, as a condition precedent to financing the purchase of such property or to loaning money upon the security of a mortgage thereon, or as a condition prerequisite for the renewal or extension of any such loan or mortgage or for the performance of any other act in connection therewith, that the person for whom such purchase is to be financed or to whom the money is to be loaned or for whom such extension, renewal or other act is to be granted or performed, negotiate any policy of insurance or renewal thereof covering such property through a particular insurance agent, shall be fined not less than \$50 nor more than \$200 or imprisoned not more than 6 months or both.

(2) It is the duty of every person engaged in such business and of every trustee, director, officer, agent or employe of any such person, when financing the purchase of such property or loaning money upon the security of a mortgage thereon, or renewing or extending any such loan or mortgage, or performing any other act in connection therewith, to advise the person for whom such purchase is to be financed or to or for whom the money is to be loaned or for whom such extension, renewal or other act is to be granted or performed, that he is free to choose the insurance agent or insurer through which the insurance covering such property is to be negotiated.

(3) This section shall not be construed to prevent the reasonable exercise of any person so engaged, his trustee, director, officer, agent or employe of his right to approve or disapprove the insurer selected to underwrite the insurance or to determine the adequacy of the insurance offered.

134.11 Invading of right to choose insurance agent or insurer by persons engaged in selling property.

(1) Any person engaged in the business of selling real or personal property, and any trustee, director, officer, agent or employe of any such person, who requires, as a condition precedent to the selling of such property, or to the performance of any other act in connection therewith, that the person to whom such property is being sold, negotiate any policy

of insurance or renewal thereof covering such property through a particular insurance agent, shall be fined not less than \$50 nor more than \$200 or imprisoned not more than 6 months or both.

(2) It is the duty of every person engaged in such business and of every trustee, director, officer, agent or employe of any such person so engaged, when negotiating the sale or selling any such property, to advise the person to whom the property is being sold that he is free to choose the insurance agent or insurer through which the insurance covering such property is to be negotiated.

(3) This section shall not be construed to prevent the reasonable exercise of any person so engaged, his trustee, director, officer, agent or employe of his right to approve or disapprove, on behalf of himself or his principal, the insurer selected to underwrite the insurance or to determine the adequacy of the insurance offered.

134.15 Issuing and using what is not money; contracts void.

(1) Any person who shall knowingly issue, pay out or pass, and any body corporate, or any officer, stockholder, director or agent thereof who shall issue, pay out or pass, or receive in this state, as money or as an equivalent for money, any promissory note, draft, order, bill of exchange, certificate of deposit or other paper of any form whatever in the similitude of bank paper, circulating as money or banking currency, that is not at the time of such issuing, paying out, passing or receiving expressly authorized by some positive law of the United States or of some state of the United States or of any other country, and redeemable in lawful money of the United States, or current gold or silver coin at the place where it purports to have been issued, such person shall be punished by imprisonment in the county jail not more than 6 months or by fine not exceeding \$100, and such body corporate shall forfeit all its rights, privileges and franchises and shall also forfeit to the state and pay for each offense the sum of \$500.

(2) All contracts of any kind whatever the consideration of which, in whole or in part, shall consist of any such paper as is prohibited in sub. (1) and all payments made in such unauthorized paper shall be null and void.

134.16 Fraudulently receiving deposits.

Any officer, director, stockholder, cashier, teller, manager, messenger, clerk or agent of any bank, banking, exchange, brokerage or deposit company, corporation or institution, or of any person, company or corporation engaged in whole or in part in banking, brokerage, ex-

change or deposit business in any way, or any person engaged in such business in whole or in part who shall accept or receive, on deposit, or for safekeeping, or to loan, from any person any money, or any bills, notes or other paper circulating as money, or any notes, drafts, bills of exchange, bank checks or other commercial paper for safekeeping or for collection, when he or she knows or has good reason to know that such bank, company or corporation or that such person is unsafe or insolvent shall be imprisoned in the Wisconsin state prisons not more than 10 years nor less than one year or fined not more than \$10,000.

History: 1977 c. 418.

134.17 Corporate name, filing, amendment, discontinuance, unlawful use. (1)

Any person or persons who shall engage in or advertise any mercantile or commission business under a name purporting or appearing to be a corporate name, with intent thereby to obtain credit, and which name does not disclose the real name or names of one or more of the persons engaged in said business, without first filing in the office of the register of deeds of the county wherein his or their principal place of business may be, a verified statement disclosing and showing the name or names of all persons using such name, shall be deemed guilty of a misdemeanor and on conviction thereof shall be punished by a fine of not to exceed \$1,000 or by imprisonment in the county jail not more than one year.

(2) Any use of corporate name may be amended by filing a verified statement clearly setting forth all changes and signed by all parties concerned with the register of deeds where the original declaration was filed.

(3) A discontinuance of use of corporate name signed by all interested parties and verified may be filed with the register of deeds where the original declaration was filed.

(4) For each such filing the register of deeds shall receive the fee specified under s. 59.57 (6a).

History: 1981 c. 245.

134.18 Use of, evidence of obtaining credit.

The adoption of and advertising of any business under any name in its form corporate and not disclosing the name of one or more persons connected with said business, shall be legal evidence that such name is or was adopted or used for the purpose of obtaining credit.

134.19 Fraud on exemption laws. Any person who shall, whether as principal, agent or attorney, with intent thereby to deprive any bona fide resident of this state of his rights under

the statutes thereof relating to the exemption of property or earnings from sale or garnishment, send or cause to be sent out of this state any claim for debt for the purpose of having the same collected by proceedings in attachment, garnishment or other mesne process, when the creditor and debtor and the person or corporation owing the debtor the money intended to be reached by any such proceedings are within the jurisdiction of the courts of this state; or who directly or indirectly assigns or transfers any claim for debt against such a resident for the purpose of having the same collected by such proceedings or any of them out of the wages or personal earnings of the debtor or of his minor children, whose earnings contribute to the support of his family, in courts without this state, when the creditor and debtor and person or corporation owing the money intended to be reached by such proceedings are each and all within the jurisdiction of the courts of this state, shall be fined not more than \$50 nor less than \$10 for each offense.

134.20 Fraudulent issuance or use of warehouse receipts or bills of lading. (1)

Whoever, with intent to defraud, does any of the following shall be fined not more than \$5,000 or imprisoned not more than 5 years, or both:

(a) Issues a warehouse receipt or bill of lading covering goods which, at the time of issuance of the receipt or bill, have not been received or shipped in accordance with the purported terms and meaning of such receipt or bill.

(b) Issues a warehouse receipt or bill of lading which he knows contains a false statement.

(c) Issues a duplicate or additional warehouse receipt or bill of lading, knowing that a former receipt or bill for the same goods or any part of them is outstanding and uncanceled.

(d) Issues a warehouse receipt covering goods owned by the warehouseman, either solely or jointly or in common with others, without disclosing such ownership in the receipt.

(e) Delivers goods out of the possession of such warehouseman or carrier to a person who he knows is not entitled thereto or with knowledge that the goods are covered by a negotiable warehouse receipt or bill of lading which is outstanding and uncanceled and without obtaining possession of such receipt or bill at or before the time of delivery and either canceling it or conspicuously noting thereon any partial deliveries made.

(f) In any manner removes beyond the immediate control of a warehouseman or carrier any goods covered by a warehouse receipt or bill of lading issued by such warehouseman or carrier, contrary to the terms and meaning of such

receipt or bill and without the consent of the holder thereof.

(g) Negotiates or transfers for value a warehouse receipt or bill of lading covering goods which he knows are subject to a lien or security interest (other than the warehouseman's or carrier's lien) or to which he does not have title or which he knows have not been received or shipped in accordance with the purported terms and meaning of such receipt or bill and fails to disclose such facts to the purchaser thereof.

(2) In this section:

(a) "Bill of lading" means a document evidencing the receipt of goods for shipment issued by a person engaged in the business of transporting or forwarding goods, and includes an airbill. "Airbill" means a document serving for air transportation as a bill of lading does for marine or rail transportation, and includes an air consignment note or air waybill.

(b) "Warehouse receipt" means a receipt issued by a person engaged in the business of storing goods for hire.

134.205 Warehousemen to keep register; liability for damages; penalty for fraud. (1)

Every warehouseman shall keep in the office in which the business of the warehouse is transacted a register in which shall be entered with reference to each receipt issued, the facts specified in s. 407.202 (2). When the warehouseman ceases to be responsible for the delivery of the property described in the receipt, the fact and date of the delivery of the property and such other facts as may terminate liability on such receipt shall be entered in such register in connection with the original entry.

(2) Such register shall be open to the inspection of the owner or holder of any such receipt, or of any person who presents the same at the office of the warehouseman.

(3) The warehouseman shall be responsible to any person relying on such entries in good faith for any loss or damage which he sustains through any failure to make the entries required by this section.

(4) Whoever, with intent to defraud, issues a warehouse receipt without entering the same in a register as required by this section shall be fined not more than \$5,000 or imprisoned not more than 5 years, or both.

134.21 Penalty for unauthorized presentation of dramatic plays, etc.

Any person who sells a copy or a substantial copy, or who causes to be publicly performed or represented for profit, any unpublished or undedicated dramatic play or musical composition, known as an opera, without the written consent of its owner or

proprietor, or, who, knowing that such dramatic play or musical composition is unpublished or undedicated, and, without the written consent of its owner or proprietor, permits, aids, or takes part in such a performance or representation, shall be guilty of a misdemeanor, and upon conviction thereof shall be fined not less than \$5 nor more than \$100, or by imprisonment not exceeding 60 days.

134.25 Misbranding of gold articles. (1)

Any person, firm, corporation or association, who or which makes for sale, or sells, or offers to sell or dispose of, or has in his, her or its possession with intent to sell or dispose of, any article of merchandise made in whole or in part of gold or any alloy of gold, and having stamped, branded, engraved or imprinted thereon, or upon any tag, card or label attached thereto, or upon any box, package, cover or wrapper in which said article is encased or enclosed any mark, indicating or designed or intended to indicate, that the gold or alloy of gold in such article is of a greater degree of fineness than the actual fineness or quality of such gold or alloy, unless the actual fineness of such gold or alloy, in the case of flat ware and watch cases, be not less by more than three one-thousandths parts, and in the case of all other articles be not less by more than one-half karat than the fineness indicated by the marks stamped, branded, engraved or imprinted upon any part of such article, or upon any tag, card or label attached thereto, or upon any box, package, cover or wrapper in which such article is encased or enclosed, according to the standards and subject to the qualifications hereinafter set forth, is guilty of misdemeanor.

(2) In any test for the ascertainment of the fineness of the gold or its alloy in any such article, according to the foregoing standards, the part of the gold or of its alloy taken for the test, analysis or assay shall be such part or portion as does not contain or have attached thereto any solder or alloy of inferior fineness used for brazing or uniting the parts of said article.

(3) In addition to the foregoing tests and standards, that the actual fineness of the entire quantity of gold and of its alloys contained in any article mentioned in this section (except watch cases and flat ware), including all solder or alloy of inferior metal used for brazing or uniting the parts of the article (all such gold, alloys and solder being assayed as one piece) shall not be less by more than one karat, than the fineness indicated by the mark stamped, branded, engraved or imprinted upon such article, or upon any tag, card or label attached thereto, or upon any box, package, cover or

wrapper in which said article is encased or enclosed.

134.26 Misbranding of sterling silver articles. (1) Any person, firm, corporation or association, who or which makes for sale, or sells, or offers to sell or dispose of, or has in his, her or its possession with intent to sell or dispose of, any article of merchandise made in whole or in part of silver or of any alloy of silver and having marked, stamped, branded, engraved or imprinted thereon, or upon any tag, card or label attached thereto or upon any box, package, cover or wrapper in which said article is encased or enclosed, the words "sterling silver" or "sterling," or any colorable imitation thereof, unless nine hundred twenty-five one-thousandths of the component parts of the metal appearing or purporting to be silver, of which such article is manufactured are pure silver, subject to the qualifications hereinafter set forth, is guilty of a misdemeanor.

(2) In the case of all such articles there shall be allowed a divergence in fineness of four one-thousandths parts from the foregoing standards.

134.27 Misbranding of coin silver articles. (1) Any person, firm, corporation or association, who or which makes for sale, or sells, or offers to sell or dispose of, or has in his, her or its possession with intent to sell or dispose of, any article of merchandise made in whole or in part of silver or of any alloy of silver and having marked, stamped, branded, engraved or imprinted thereon, or upon any tag, card or label attached thereto, or upon any box, package, cover or wrapper in which such article is encased or enclosed, the words "coin" or "coin silver," or any colorable imitation thereof, unless nine hundred one-thousandths of the component parts of the metal appearing or purporting to be silver, of which such article is manufactured are pure silver, subject to the qualifications hereinafter set forth, is guilty of a misdemeanor.

(2) In the case of all such articles there shall be allowed a divergence in fineness of four one-thousandths parts from the foregoing standards.

134.28 Misbranding of base silver articles. Any person, firm, corporation or association, who or which makes for sale, or sells, or offers to sell or dispose of, or has in his, her or its possession with intent to sell or dispose of, any article of merchandise made in whole or in part of silver or of any alloy of silver, and having stamped, branded, engraved or imprinted thereon, or upon any tag, card or label attached thereto, or upon any box, package, cover or wrapper in which said article is encased or

enclosed, any mark or word (other than the word "sterling" or the word "coin") indicating, or designed or intended to indicate, that the silver or alloy of silver in said article, is of a greater degree of fineness than the actual fineness or quality of such silver or alloy, unless the actual fineness of the silver or alloy of silver of which said article is composed be not less by more than four one-thousandths parts than the actual fineness indicated by the said mark or word (other than the word "sterling" or "coin") stamped, branded, engraved or imprinted upon any part of said article, or upon any tag, card or label attached thereto, or upon any box, package, cover or wrapper in which said article is encased or enclosed, subject to the qualifications hereinafter set forth, is guilty of a misdemeanor.

134.29 Testing of silver articles. (1) In any test for the ascertainment of the fineness of any such article mentioned in ss. 134.26 to 134.28, according to the standards therein, the part of the article taken for the test, analysis or assay, shall be such part or portion as does not contain or have attached thereto any solder or alloy of inferior metal used for brazing or uniting the parts of such article.

(2) In addition to the foregoing test and standards, the actual fineness of the entire quantity of metal purporting to be silver contained in any article mentioned in ss. 134.26 to 134.28, including all solder or alloy of inferior fineness used for brazing or uniting the parts of any such article (all such silver, alloy or solder being assayed as one piece) shall not be less by more than ten one-thousandths parts than the fineness indicated according to the foregoing standards, by the mark stamped, branded, engraved or imprinted upon such article, or upon any tag, card or label attached thereto, or upon any box, package, cover or wrapper in which said article is encased or enclosed.

134.30 Misbranding of gold plated articles. Any person, firm, corporation or association, who or which makes for sale, or sells or offers to sell or dispose of, or has in his, her or its possession with intent to sell or dispose of, any article of merchandise made in whole or in part of inferior metal having deposited or plated thereon or brazed or otherwise affixed thereto a plate, plating, covering or sheet of gold or of any alloy of gold, and which article is known in the market as "rolled gold plate," "gold plate," "gold filled" or "gold electroplate," or by any similar designation, and having stamped, branded, engraved or imprinted thereon, or upon any tag, card or label attached thereto, or upon any box, package, cover or wrapper in

which said article is encased or enclosed, any word or mark usually employed to indicate the fineness of gold, unless said word be accompanied by other words plainly indicating that such article or some part thereof is made of rolled gold plate, or gold plate, or gold electroplate, or is gold filled, as the case may be, is guilty of a misdemeanor.

134.31 Misbranding of silver plated articles.

Any person, firm, corporation or association, who or which makes for sale, or sells or offers to sell or dispose of, or has in his, her or its possession with intent to sell or dispose of, any article of merchandise made in whole or in part of inferior metal, having deposited or plated thereon or brazed or otherwise affixed thereto, a plate, plating, covering or sheet of silver or of any alloy of silver, and which article is known in the market as "silver plate" or "silver electroplate," or by any similar designation, and having stamped, branded, branded, engraved or imprinted thereon, or upon any tag, card or label attached thereto, or upon any box, package, cover or wrapper in which said article is encased or enclosed, the word "sterling" or the word "coin," either alone or in conjunction with any other words or marks is guilty of a misdemeanor.

134.32 Penalty for violations of sections 134.25 to 134.32.

Every person, firm, corporation or association guilty of a violation of any one of the provisions of ss. 134.25 to 134.32, and every officer, manager, director or managing agent of any such person, firm, corporation or association, directly participating in such violation or consenting thereto, shall be punished by a fine of not more than \$500 nor less than \$25, or imprisonment for not more than 3 months, or both, at the discretion of the court.

134.33 Platinum stamping. (1) DEFINITIONS. In this section unless the context otherwise requires:

(a) "Article" means any article of merchandise and includes any portion of such article, whether a distinct part thereof, or not, including every part thereof whether or not separable and also including material for manufacture.

(b) "Platinum," "iridium," "palladium," "ruthenium," "rhodium" or "osmium," include any alloy or alloys of any one or more of said metals.

(c) "Mark" means any mark, sign, device, imprint, stamp, brand applied to any article, or to any tag, card, paper, label, box, carton, container, holder, package cover or wrapping attached to, used in conjunction with or enclosing such article or any bill, bill of sale, invoice,

statement, letter, circular, advertisement, notice, memorandum or other writing or printing.

(d) "Apply" and "applied" include any method or means of application or attachment to, or of use on, or in connection with, or in relation to, an article, whether such application, attachment or use is to, on, by, in or with the article itself, or anything attached to the article, or anything to which the article is attached, or anything in or on which the article is, or anything so used or placed as to lead to a reasonable belief that the mark on that thing is meant to be taken as a mark on the article itself.

(e) "Quality mark" is any mark as herein defined indicating, describing, identifying or referring to or appearing or seeming or purporting to indicate, describe, identify or refer to the partial or total presence or existence of or the quality of or the percentage of or the purity of or the number of parts of platinum, iridium, palladium, ruthenium, rhodium or osmium in any article.

(2) APPLICATION OF QUALITY MARK. (a)

When an article is composed of mechanism, works or movements and of a case or cover containing the mechanism, works or movements, a quality mark applied to the article shall be deemed not to be, nor to be intended to be, applied to the mechanism, works, or movements.

(b) The quality mark applied to the article shall be deemed not to apply to springs, winding bars, sleeves, crown cores, mechanical joint pins, screws, rivets, dust-bands, detachable movement rims, hatpin stems, bracelet and necklace snap tongues. In addition, in the event that an article is marked under sub. (1) (e), the quality mark applied to the article shall be deemed not to apply to pin tongues, joints, catches, lapel button backs and the posts to which they are attached, scarf pin stems, hat pin sockets, shirt-stud backs, vest button backs and ear screw backs, provided such parts are made of the same quality of gold as is used in the balance of this article.

(3) TRADEMARK. If there is any quality mark printed, stamped or branded on the article itself, there must also be printed, stamped or branded on the said article itself the following mark, to wit: A trademark duly applied for or registered under the laws of the United States of the manufacturer of such article; except that if such manufacturer has sold or contracted to sell such article to a jobber, wholesaler or retail dealer regularly engaged in the business of buying and selling similar articles, this provision shall be deemed to be complied with if there is so marked on the said article the trademark duly registered under the laws of the United States of such jobber, wholesaler or retail dealer respectively; and in such event there may also be marked on

the said article itself numerals intended to identify the articles, design or pattern provided, however, that such numerals do not appear or purport to be a part of the quality mark and provided that they are not calculated to mislead or deceive anyone into believing that they are part of the quality mark.

(4) **QUALITY MARKS; DESCRIPTION.** (a) All quality marks applied to any article shall be equal in size and equally visible, legible, clear and distinct and no quality mark which is false, deceptive or misleading shall be applied to any article or to any descriptive device therefor. No more than one quality mark shall be applied to any article and such quality mark shall be applied to such article in only one place thereon except as elsewhere in this section specifically permitted.

(b) Wherever in this article provision is made for marking the number of parts or percentage of metals such number or percentage shall refer to weight and not to volume, thickness or any other basis.

(5) **QUALITY; CONTENTS.** There shall not be applied to any article any quality mark nor any colorable imitation thereof, nor any contraction thereof, nor any addition thereto, nor any words or letters, nor any mark purporting to be or resembling a quality mark except as follows:

(a) An article consisting of at least nine hundred eighty-five thousandths parts of platinum, iridium, palladium, ruthenium, rhodium or osmium, where solder is not used and at least nine hundred fifty thousandths parts of said metal or metals where solder is used, may be marked "platinum" provided that the total of the aforementioned metals other than pure platinum shall amount to no more than fifty thousandths parts of the contents of the entire article.

(b) An article consisting of at least nine hundred eighty-five thousandths parts of platinum, iridium, palladium, rhodium, ruthenium or osmium where solder is not used and at least nine hundred fifty thousandths parts of the said metal or metals where solder is used, and provided further that at least seven hundred fifty thousandths parts of said article are pure platinum, may be marked "platinum," provided immediately preceding the mark "platinum" there is marked the name or abbreviation as hereinafter provided, of either iridium, palladium, ruthenium, rhodium or osmium, whichever of said metals predominates and provided further that such predominating other metal must be more than fifty thousandths part of the entire article.

(c) An article consisting of at least nine hundred eighty-five thousandths parts of platinum, iridium, palladium, ruthenium, rhodium or osmium, where solder is not used and at least

nine hundred fifty thousandths parts of said metals where solder is used, provided more than five hundred thousandths parts of said article consist of pure platinum, may be marked with the word "platinum," provided that said word is immediately preceded by a decimal fraction in one-thousandths showing the platinum content in proportion to the content of the entire article, and further provided that said mark "platinum" be followed by the name or abbreviation as herein allowed, of such one or more of the following metals, to wit: iridium, palladium, ruthenium, rhodium or osmium, that may be present in the article in quantity of more than fifty-thousandths parts of the entire article. The name of such other metal or metals other than platinum, however, shall each be immediately preceded by a decimal fraction in one-thousandths showing the content of such other metal or metals in proportion to the entire article, as for example, 600 plat., 350 pall., or 500 plat., 200 pall., 150 ruth., 100 rhod.

(d) An article consisting of nine hundred fifty thousandths parts of the following metals: platinum, iridium, palladium, ruthenium, rhodium or osmium with less than five hundred thousandths parts of the entire article consisting of pure platinum, may be marked with the name iridium, palladium, ruthenium, rhodium or osmium, whichever predominates in the said article, but in no event with the mark "platinum," provided, however, that the quantity of such metal other than platinum so marked, must be marked in decimal thousandths, and provided further that the name of such metal other than platinum so used must be spelled out in full irrespective of any other provisions of this article to the contrary.

(e) An article composed of platinum and gold which resembles, appears or purports to be platinum, may be marked with a karat mark and the platinum mark, provided:

1. The platinum in such article shall be at least nine hundred eighty-five thousandths parts pure platinum; and

2. The fineness of the gold in such article shall be correctly described by the karat mark of said gold; and

3. The percentage of platinum in such article shall be no less than five per cent in weight of the total weight of the article; and

4. The mark shall be so applied that the karat mark shall immediately precede the platinum mark, as for example, "14 K & Plat.", "18 K & Plat.", as the case may be, it being expressly provided that in case the percentage of platinum exceeds the 5% provided herein, the quality mark may also include a declaration of the percentage of platinum, as for example, "18 K

& 1/10th Plat.", or "14 K & 1/8th Plat.", or as the case may be.

(f) An article composed of platinum and any other material or metal not resembling, appearing or purporting to be platinum, may be marked with the quality mark platinum provided all parts or portions of such article resembling or appearing or purporting to be platinum, or reasonably purporting to be described as platinum by said quality mark, shall be at least nine hundred eighty-five thousandths parts pure platinum.

(6) ABBREVIATIONS. (a) Whenever provided for in this article, except as specifically excepted, the word "platinum" may be applied by spelling it out in full or by the abbreviation "plat.", the word "iridium" may be applied by spelling it out in full or by the abbreviation "irid.", the word "palladium" may be applied by spelling it out in full or by the abbreviation "pall.", the word "ruthenium" may be applied by spelling it out in full or by the abbreviation "ruth.", the word "rhodium" may be applied by spelling it out in full or by the abbreviation "rhod.", and the word "osmium" may be applied by spelling it out in full or by the abbreviation "osmi."

(7) PRIMA FACIE PROOF. (a) In any action relating to the enforcement of any provision of this section, a certificate duly issued by an assay office of the treasury department of the United States, certifying the weight of any article, or any part thereof, or of the kind, weight, quality, fineness or quantity of any ingredient thereof, shall be receivable in evidence as constituting prima facie proof of the matter or matters so certified.

(b) In any action relating to the enforcement of this section, proof that an article has been marked in violation of this section shall be deemed to be prima facie proof that such article was manufactured after July 1, 1937.

(8) PENALTIES. Any person, firm, partnership, corporation or association or any officer, director, employe or agent thereof who makes, or sells, or offers to sell, or disposes of, or has in his or its possession, with intent to sell or dispose of, any article as herein defined to which is applied any quality mark which does not conform to all the provisions of this section, or from which is omitted any mark required by this section, shall be guilty of a misdemeanor and upon conviction thereof shall be punished by a fine of not more than \$1,000 or by imprisonment for not more than 6 months, or by both such fine and imprisonment in the discretion of the court, provided, however, that it shall be a defense to any prosecution under this section for the defendant to prove that the said article was

manufactured and marked with the intention of and for purposes of exportation from the United States, and that the said article was either actually exported from the United States to a foreign country within 6 months after date of manufacture thereof with the bona fide intention of being sold in the said country and of not being reimported, or that it was delivered within 6 months after date of manufacture thereof, to a person, firm or corporation whose exclusive customary business is the exportation of such articles from the United States.

(10) EFFECTIVE DATE. This section shall take effect July 1, 1937, and shall not apply to any article manufactured prior thereto.

History: 1979 c. 89; 1981 c. 390 s. 252.

134.35 Time of filing endorsed on telegrams delivered.

(1) Every person, firm or corporation operating a telegraph line or lines in this state shall, without extra charge therefor, cause to be written, stamped or printed in a conspicuous place upon the addressee's copy of each telegram originating at and destined to a point within this state, the hour and minute of the day in which the copy of such telegram was filed or left with such person, firm or corporation for transmission and the hour and minute of the day when such telegram was received in the office of such person, firm or corporation at its destination.

(2) Any person, firm or corporation violating any of the provisions of this section shall be deemed guilty of a misdemeanor.

134.36 Telegraph; divulging message; preference in sending, etc.

Any officer or other person connected with, or in the business or management of, any telegraph company doing business in this state who shall divulge or communicate any telegraph message or dispatch or the substance or any part thereof, except to the person entitled to receive the same, or who shall give unlawful preference in the sending, transmitting or receiving of telegraph messages or dispatches, or shall wilfully fail or neglect to give preference to dispatches or messages in the order of time in which applications are received shall be punished by imprisonment in the county jail not more than one year or by fine not exceeding \$500.

134.37 Divulging message or forging receipt.

Any person connected with a telegraph or messenger company, incorporated or unincorporated, operating a line of telegraph or engaged in the business of receiving and delivering messages in this state, in any capacity, who wilfully divulges the contents, or the nature of

the contents of a private communication entrusted to him for transmission or delivery, or who wilfully refuses or neglects to transmit or deliver the same, or who wilfully forges the name of the intended receiver to a receipt for any such message or communication or article of value entrusted to him by said company, shall be imprisoned in the county jail, not exceeding one year, or to be fined not to exceed \$500, in the discretion of the court.

134.38 Companies to post copies of s.

134.37. All telegraph or messenger companies whose employes are affected by s. 134.37 are hereby required to post, in their offices in this state, a copy of s. 134.37, under a penalty of \$10 and costs for each and every offense.

History: 1979 c. 89.

134.39 Fraudulent knowledge of dispatch; injury to wires; interference.

Any person who shall, by any device or means whatever, procure or attempt to procure from any officer or other person connected with or in the business or management of any telegraph company transacting business within this state, any knowledge of the contents or substance of any telegraph message or dispatch not addressed to himself or to which he is not entitled, or who shall, without lawful authority, tamper or interfere with, use or in any manner intentionally, carelessly or negligently disturb or interrupt any telegraph wires or lines of any such telegraph company, or who shall intentionally, carelessly or negligently fell any tree or timber so as to break, destroy or injure any such telegraph wires, without first giving 24 hours' notice of his intention to do so to some agent of the company at its nearest office or to some agent of a railroad company at its nearest office, in case such wires are constructed along any railroad, or who shall, without the consent of such company, send or attempt to send any message or dispatch over said wire or lines, in any manner whatever, or shall intercept, interrupt or disturb any dispatch passing upon any such wires or lines, or who shall wilfully or maliciously interfere with, obstruct, prevent or delay, by any means or contrivance whatsoever, the sending, transmission or receiving of any wireless telegraph message, communication or report by any wireless telegraph company doing business in this state, or who shall aid, agree with, employ or conspire with any person or persons to unlawfully interfere with, obstruct, prevent or delay the sending, transmission or receiving of any such wireless telegraph message, shall be punished by imprisonment in the county jail not more than one year or by fine not exceeding \$1,000.

134.40 Injury to wires by removal of building, etc. Any person having the right so to do who shall wilfully remove or change any building or other structure or any timber, standing or fallen, to which any telegraph, telephone, electric railway, electric light or electric power lines or wires are in any manner attached, or cause the same to be done, which shall destroy, disturb or injure the wires, poles or other property of any telegraph, telephone, electric railway, electric light or electric power company transacting business in this state, without first giving to such company, at its office nearest to such place of injury, at least 24 hours' previous notice thereof, shall be punished by imprisonment in the county jail not more than 30 days or by fine not exceeding \$50. And any person who shall unlawfully break down, interrupt or remove any telegraph, telephone, electric railway, electric light or electric power line or wire or destroy, disturb, interfere with or injure the wires, poles or other property of any telegraph, telephone, electric railway, electric light or electric power company in this state shall be punished by imprisonment in the county jail not more than 3 months or by fine not exceeding \$100.

134.41 Poles and wires on private property without owner's consent. (1)

No person nor any officer, agent, servant or employe of any firm or corporation shall erect any pole or poles outside of the limits of any highway, street or alley or attach any wire or cables to any tree, building or structure, or string or suspend any wire, wires or cables over any private property without first obtaining the consent of the owner or agent of the owner, to erect such pole or poles or to string such wire or wires, or the consent of the owner or agent of the owner of any building or structure to which such wire, wires or cables are attached; and any person who shall fail to remove such pole, poles, wire or wires or to detach such wire, wires or cables within 10 days after such person, firm or corporation has been served with a notice to remove, as hereinafter provided, shall be deemed guilty of a misdemeanor and upon conviction thereof shall be fined in any sum not exceeding \$25.

(2) Such notice to remove shall be in writing and shall be given by the owner or agent of the owner of the land or of the building or structure, and shall contain a description of the land upon which such pole or poles have been erected, or over which such wires have been strung or attached. Such notice to remove shall be served in the manner prescribed for the service of a summons upon such person, firm or corporation in courts of record.

134.43 Privacy and cable television. (1)

(a) Upon the request of the subscriber, each cable television connection capable of transmitting a message from the cable equipment shall be fitted with a device under the control of the subscriber that enables the subscriber to prevent reception and transmission of messages identified in par. (b) by the subscriber's cable equipment.

(b) The device in par. (a) shall control all messages received and transmitted by the subscriber's cable equipment except messages recurring at constant intervals, including those related to security, fire and utility service.

(c) Each cable television subscriber shall be notified in writing by the person providing the cable television service of the opportunity to request the device under par. (a).

(d) No cable television subscriber may be required to pay any extra fee for the installation and operation of a device requested under par. (a).

(2) No person may intrude on the privacy of another by doing any of the following without the written consent of the subscriber given within the preceding 2 years:

(a) Monitor the subscriber's cable equipment or the use of it, except to verify the system's integrity or to collect information for billing of pay services.

(b) Provide anyone with the name or address or other information that discloses or reasonably leads to the disclosure of any aspect of the behavior, including but not limited to individual habits, preferences or finances, of the subscriber or of a member of the subscriber's household.

(c) Conduct research that requires the response of the subscriber or of any member of the subscriber's household, except by mail or personal interview, unless the subscriber or household member has been notified in writing before the research begins and at least once each month while the research is being conducted.

(2m) (a) A person may supply the name, address or other information identifying a cable television subscriber or member of the subscriber's household to another person if the person receiving the information uses it only for billing of pay services or to send listings of cable television programs to the subscriber and if the subscriber is notified in writing of that supplying of information, given the opportunity to object to that supplying and does not object to that supplying.

(b) Any person receiving information under par. (a) may use it only for the purposes specified in par. (a) and is otherwise subject to sub. (2).

(3) Any person who is the victim of an intrusion of privacy under this section is entitled to relief under s. 895.50 (1) and (4) unless the act is permissible under ss. 968.27 to 968.33.

(4) Any person who violates this section is subject to a forfeiture of not to exceed \$50,000 for a first offense and not to exceed \$100,000 for a 2nd or subsequent offense.

(5) Damages under sub. (3) are not limited to damages for pecuniary loss but shall not be presumed in the absence of proof.

History: 1981 c. 271.

134.45 Contracts restricting days for exhibiting motion picture films; penalty. (1)

As used in this section the following words and terms shall be construed as follows:

(a) "Person" shall include any natural person, partnership, copartnership, firm, unincorporated association or corporation doing business within this state.

(b) "Public exhibition" shall mean any exhibition, performance or display which the public may see, view or attend for an admission price, fee or other valuable consideration.

(2) It shall be unlawful for any person to enter into a contract, directly or indirectly, to sell, rent, lease, license, lend, distribute or barter a motion picture film for public exhibition within this state upon the condition imposed by the seller, vendor, renter, lessor, licensor or distributor that such public exhibition thereof shall begin, occur or take place on a certain or specified day or days of the week.

(3) (a) Any person who violates any provision of this section shall, upon conviction thereof, be fined not less than \$25 nor more than \$300 for the first offense, and shall be fined not less than \$300 nor more than \$500 for each separate subsequent offense.

(b) A domestic, or foreign corporation or foreign association exercising any of the powers, franchises or functions of a corporation in this state, violating any provision of this section, shall not have the right of, and shall be prohibited from doing business in this state, and the secretary of state shall revoke its certificate to do business in this state.

(4) When, upon complaint or otherwise, the attorney general or district attorney has good reason to believe that any provision of this section has been violated, he shall commence and prosecute the necessary actions in the supreme court, or in the circuit court of the county in which the defendant resides, for enforcement of this section. Such actions may include quo warranto, injunction or any other proceedings.

134.46 Exhibition of explicit sexual material at outdoor theater. (1) DEFINITIONS. In this section:

(a) "Explicit sexual material" means any pictorial or other visual representation depicting sexual conduct or sadomasochistic abuse.

(b) "Harmful to minors" means that quality of any description or representation of sexual conduct or sadomasochistic abuse, when it:

1. Predominantly appeals to the prurient, shameful or morbid interest of minors;

2. Is patently offensive to an average person applying contemporary community standards in the adult community as a whole with respect to what is suitable material for minors; and

3. Taken as a whole, lacks serious literary, artistic, political or scientific value for minors.

(c) "Outdoor theater" means a place where any picture or other visual representation or image is displayed on a screen or other background not completely enclosed by walls and a roof and which screen or background can be seen by individuals not within the confines of the theater.

(d) "Sadomasochistic abuse" has the meaning set forth in s. 944.25 (1) (e).

(e) "Sexual conduct" means acts of masturbation, homosexuality, sexual intercourse or physical contact with a person's unclothed genitals or pubic area.

(2) EXHIBITION OF EXPLICIT SEXUAL MATERIAL PROHIBITED. No person may exhibit explicit sexual material harmful to minors at an outdoor theater with knowledge of the nature of the material, if the material is visible from a public street, sidewalk, thoroughfare or other public place or from private property where it may be observed by minors.

(3) PENALTY. Any person violating this section after receiving proper written notice shall be subject to a forfeiture not to exceed \$1,000. Each exhibition constitutes a separate violation of this section.

(4) INJUNCTIVE RELIEF AVAILABLE. Whenever the attorney general or a district attorney has reasonable cause to believe that any person is violating this section, the attorney general or the district attorney for the county in which the violation is alleged to occur may investigate the alleged violation and may, in addition to or in lieu of any other remedies provided by law, bring an action in the name of the state for an adjudication of the question of whether the material is harmful to minors and to enjoin such violation under s. 944.25 (2) to (9).

History: 1977 c. 281.

134.50 Poultry dealing regulations. (1) It is unlawful for any poultry dealer to purchase

any live or dead poultry without registering annually with the county clerk.

(2) Every poultry dealer shall keep a record of all purchases of poultry made by him showing in detail the place and date of purchase, the name and address of the person from whom the purchase was made, together with a general description of the kind of poultry purchased. Such record shall be kept in permanent form and be open to inspection at all reasonable times to any district attorney, assistant district attorney, sheriff, deputy sheriff or any police officer.

(3) Any poultry dealer, his servant or agent, violating any of the provisions of this section shall, upon the first conviction, be punished by a fine of from \$10 to \$100. Upon a second or subsequent conviction by a fine of from \$25 to \$500 or be imprisoned in the county jail for not more than 90 days, or by both such fine and imprisonment.

(4) Any person selling poultry to a poultry dealer who gives falsely his name or address to such dealer, his agent or servant, shall be imprisoned in the county jail for not less than 30 days nor more than one year.

134.52 Shipment of chickens. (1) It shall be unlawful for any person, his agent or servant, to ship, or for any common carrier or the agent or servant of such common carrier to allow, aid, or abet in the shipment of chickens confined in coops unless such coops are at least 13 inches in height on the inside and are covered at the top by wires or slats not more than one inch apart or by wire screening with meshes of not more than one inch.

(2) It shall be unlawful for any person, his agent or servant or for any common carrier or the agent or servant of such common carrier to so crowd or congest or to allow, aid or abet in the crowding or congesting of chickens within any coop in any shipment as to impair or endanger the well-being of such chickens during the course of transportation thereof; and any such crowding or congesting shall be deemed cruelty.

(3) Whenever any humane officer or any peace officer in this state ascertains or observes any shipment of chickens in a crowded or congested condition, such officer may take or cause to be taken such steps as to give immediate relief.

(4) Any person who shall violate the provisions of this section shall be deemed guilty of a misdemeanor and upon conviction thereof shall be punished by a fine of not less than \$10 nor more than \$50, or by imprisonment in the county jail not less than 10 days nor more than 30 days.

134.53 Transportation and sale of cattle.

(1) No person shall transport cattle on any highway unless accompanied by shipping documents setting forth the number of cattle being moved, a description of the cattle, including brand, registry or other identification numbers if any, name and address of the owner, and point of origin and destination. The shipping document may consist of a statement signed by the owner setting forth the above information.

(2) Cattle being transported on highways and all shipping documents and other records pertaining to such animals shall be subject to inspection by any police officer. Such officers may stop or intercept any vehicle used or suspected of being used for the transportation of cattle and may seize or detain any shipment of cattle not accompanied by shipping documents containing information as required under sub. (1), or accompanied by shipping documents which may be false, until such time as satisfactory evidence of ownership of the cattle is obtained.

(3) No person shall purchase or receive for sale or shipment any cattle not accompanied by shipping documents required under sub. (1). Copies of such documents shall be retained for a period of 6 months following date of purchase or receipt of the cattle and shall be available for inspection at all reasonable times by any police officer.

(4) Any person who transports cattle without shipping documents containing information required under sub. (1), or executes, furnishes or issues any false document pertaining to the ownership or shipment of cattle, or who violates this section in any other manner shall be fined not more than \$500, or be imprisoned not more than 3 months, or both.

(5) Subsection (1) does not apply to cattle being transported between farms owned, rented or leased by the owner of the cattle when ownership of cattle does not change.

(6) Subsection (1) does not apply to cattle being transported to market by the owner of the cattle.

History: 1973 c. 239.

134.57 Detectives, settlement with employees. Any employer and any person employed to detect dishonesty on the part of employees, or fiduciary agents, on a commission basis or under a contract for a percentage of the amount recovered through or by reason of the detective work done by such person, shall submit the facts of the case and the settlement made with such employe or fiduciary agent to the circuit judge of the county wherein the dishonest act was committed, for approval or further

proceedings, and the employe shall be notified of such hearing and shall have a right to be heard. Any such person or employer who shall not so submit the facts and settlement as made to such circuit judge for approval or further proceedings, shall be deemed guilty of a misdemeanor, and upon conviction shall be fined not less than \$100 nor more than \$500, or imprisoned in the county jail not less than 3 months nor more than one year.

134.58 Use of unauthorized persons as officers.

Any person who, individually, in concert with another or as agent or officer of any firm, joint-stock company or corporation, uses, employs, aids or assists in employing any body of armed persons to act as militia, police or peace officers for the protection of persons or property or for the suppression of strikes, not being authorized by the laws of this state to so act, shall be fined not more than \$1,000 or imprisoned not less than one year nor more than 3 years or both.

History: 1975 c. 94.

134.60 Cutting or transportation of evergreens.

No person may cut for sale in its natural condition and untrimmed, with or without roots, any evergreen or coniferous tree, branch, bough, bush, sapling or shrub, from the lands of another without the written consent of the owner, whether such land is publicly or privately owned. The written consent shall contain the legal description of the land where the tree, branch, bough, bush, sapling or shrub was cut, as well as the name of the legal owner. The written consent or a certified copy of the consent shall be carried by every person in charge of the cutting or removing of the trees, branches, boughs, bushes, saplings or shrubs, and shall be exhibited to any officer of the law, forest ranger, forest patrol officer, conservation warden, or other officer of the department of natural resources at the officer's request at any time. The officer may inspect the trees, branches, boughs, bushes, saplings or shrubs when being transported in any vehicle or other means of conveyance and may investigate to determine whether or not this section has been complied with. The officer may stop any vehicle or means of conveyance found carrying any trees, branches, boughs, bushes, saplings or shrubs upon any public highway of this state for the purpose of making such inspection and investigation, and may seize and hold, subject to the order of the court, any such trees, bushes, saplings or shrubs found being cut, removed or transported in violation of this section. No person may ship or transport any such trees, bushes, saplings or shrubs outside the county

where they were cut unless the person attaches to the outside of each package, box, bale, truckload or carload shipped a tag or label on which appears the person's name and address. No common carrier or truck hauler may receive for shipment or transportation any such trees, bushes, saplings or shrubs unless the tag or label is attached. Any person who violates this section shall be fined not less than \$10 nor more than \$100. Any person who signs any such written consent or certified copy under this section who is not authorized to do so, and any person who lends or transfers or offers to lend or transfer any such written consent or certified copy to another person who is not entitled to use it, and any person not entitled to use any such written consent or certified copy, or who borrows, receives or solicits from another any such written consent or certified copy thereof shall be fined not less than \$100 nor more than \$500.

History: 1975 c. 365, 366; 1975 c. 394 s. 27; 1975 c. 421; 1979 c. 342; 1981 c. 314.

Cross Reference: See 23.50 concerning enforcement procedure.

134.65 Cigarette retailer license. (1) No person shall in any manner, or upon any pretense, or by any device, directly or indirectly sell, expose for sale, possess with intent to sell, exchange, barter, dispose of or give away any cigarettes to any person not holding a license as herein provided or a permit under ss. 139.30 to 139.41 without first obtaining a license from the clerk of the city, village or town wherein such privilege is sought to be exercised.

(2) Upon filing of a proper written application such licenses shall be issued on July 1 of each year or when applied for and continue in force until the following June 30 unless sooner revoked. The fee for such license shall be \$5 which shall be paid to the city, village or town treasurer before the license is issued.

(3) Each such license shall name the licensee and specifically describe the premises where such business is to be conducted. Such licenses shall not be transferable from one person to another nor from one premises to another.

(4) Every licensed retailer shall keep complete and accurate records of all purchases and receipts of cigarettes. Such records shall be preserved on the licensed premises for 2 years in such a manner as to insure permanency and accessibility for inspection and shall be subject to inspection at all reasonable hours by authorized state and local law enforcement officials.

(5) Any person violating this section shall be fined not more than \$100 nor less than \$25 for the first offense and not more than \$200 nor less than \$25 for the 2nd or subsequent offense. If upon such 2nd or subsequent violation, the per-

son so violating this section was personally guilty of a failure to exercise due care to prevent violation thereof, he shall be fined not more than \$300 nor less than \$25 or imprisoned not exceeding 60 days or both. Conviction shall immediately terminate the license of the person convicted of being personally guilty of such failure to exercise due care and such person shall not be entitled to another license hereunder for a period of 5 years thereafter, nor shall he in that period act as the servant or agent of a person licensed hereunder for the performance of the acts authorized by such license.

134.67 Distribution and sale of DDT prohibited. No person shall distribute, sell, offer for sale or use the chemical compound DDT (dichlorodiphenyltrichloroethane) or any of its isomers except as provided in this section. In sub. (2) "DDT" includes compounds isomeric with DDT.

(2) (a) In the event of the outbreak of an epidemic disease of humans or animals spread by insects which it is known can be controlled by DDT but cannot be adequately controlled by any other known pesticide, the pesticide review board may authorize the use of DDT in controlling the epidemic upon a finding that:

1. A serious epidemic disease of humans or animals exists;

2. The disease is likely to spread rapidly unless insects which spread the disease are controlled; and

3. The only effective means of control is DDT.

(b) In the event of the outbreak of a plant disease of epidemic proportions which threatens a significant portion of the affected crop and which is caused or spread by an insect which it is known can be controlled by DDT but cannot be adequately controlled by any other known pesticide, the pesticide review board may authorize the use of DDT in controlling the epidemic upon a finding that:

1. An epidemic plant disease exists;

2. The disease threatens a significant portion of the affected crop; and

3. The only effective means of control is DDT.

(c) The pesticide review board also may authorize the use of DDT or its isomers or metabolites for specified research by educational institutions if it finds that no ecologically significant residues of DDT or its isomers or metabolites will be allowed to escape into the environment.

History: 1971 c. 40 s. 93; 1977 c. 203.

134.69 Peddling finger alphabet cards prohibited. No person in this state may engage in the business of peddling finger alphabet cards or printed matter stating that the person is deaf,

or use finger alphabet cards or such printed matter or masquerade as a deaf person in any way as a means of inducement in the sale of merchandise. No state or local license may be issued to any person for the purpose of peddling finger alphabet cards or printed matter stating that the person is deaf or masquerading as a deaf person. Any person who peddles or uses finger alphabet cards or such printed matter, or masquerades as a deaf person in any way as a means of inducement in the sale of merchandise in this state and any person who issues any state or local license for that purpose may be imprisoned not more than 90 days or fined not less than \$25 nor more than \$100 or both.

History: 1977 c. 29.

134.70 Fitness center contracts. (1) In this section:

(a) "Conspicuous" has the meaning designated under s. 421.301 (8).

(b) "Contract for fitness center services" or "contract" means a contract for membership in any fitness center or a contract for instruction, training, assistance or use of facilities primarily for physical exercise, in weight control, or in figure development.

(c) "Fitness center" means an establishment which, for profit, provides as its primary purpose services or facilities which are purported to assist patrons in physical exercise, in weight control, or in figure development, including but not limited to a fitness center, studio, salon or club. This definition does not include an organization solely offering training or facilities in an individual sport.

(d) "Operating day" means any calendar day on which the buyer may inspect and use the facilities and services of the fitness center during a period of at least 8 hours.

(2) The seller shall give the buyer a copy of the written contract at the time the buyer signs the contract.

(3) Every contract for fitness center services shall clearly and conspicuously disclose the identity and location of the fitness center facilities available to the buyer. The contract shall disclose the general nature of each major facility and service which will be available including any conditions or restrictions on their use. The disclosures under this subsection may be made on a separate sheet provided to the buyer at the time the buyer signs the contract. If a facility or service is replaced by an equal or superior facility or service, the fitness center is deemed in compliance with this subsection.

(4) Every contract for fitness center services shall provide that performance of all of the agreed upon facilities and services will be available for the buyer's use on a specified date no

later than 6 months after the date the contract is signed by the buyer.

(5) Every contract for fitness center services shall be for a specified length of time not exceeding 2 years and shall clearly disclose the full price of the buyer's contractual obligation including any interest or other charges.

(6) Every contract for fitness center service shall contain:

(a) A caption printed in boldface uppercase type of not less than 10-point size entitled "CANCELLATION AND REFUNDS".

(b) A provision under the caption stating: "*Right to Cancel*. You are permitted to cancel this contract until midnight of the 3rd operating day after the date on which you signed the contract. If the facilities or services that are described in the contract are not available at the time you sign the contract, you have until midnight of the 3rd operating day after the day on which you received notice of their availability, to cancel the contract. If within this time period you decide you want to cancel this contract, you may do so by notifying (the seller) by any writing mailed or delivered to (the seller) at the address shown on the contract, within the previously described time period. If you do so cancel, any payments made by you, less a user fee of no more than \$3 per day of actual use, will be refunded within 21 days after notice of cancellation is delivered, and any evidence of any indebtedness executed by you will be canceled by (the seller) and arrangements will be made to relieve you of any further obligation to pay the same."

(7) If, at the time of execution of the fitness center services contract, the facilities and services described in the contract are available for the buyer's use, the contract may include the written notice that the facilities and services are available as required by sub. (6).

(8) No contract may require the buyer to pay more than \$25 or 10% of the total contract price, whichever is less, prior to the date on which the customer receives written notice that the facilities and services described in the contract are available for full use by the buyer.

(9) No contract may require a buyer who exercises the contractual right to cancel to pay more than a \$3 user fee per day of actual use of facilities and services by the buyer during the cancellation period.

(10) Any right of action or defense arising out of a contract for fitness center services which the buyer has against the seller is preserved against any assignee of or successor to the contract.

(11) (a) Every contract for fitness center services shall provide that if any of the facilities

or services described in the contract become unavailable or are no longer fully operational, before full receipt of the services and use of facilities for which the buyer contracted, the buyer is liable for only that portion of the total consideration proportional to the elapsed time portion of the contract at the time of the unavailability. The buyer is entitled to a refund of any other funds already paid.

(b) A buyer has the option, in lieu of the proportional refund provided in par. (a), to choose to complete the unused portion of the contract including any renewal periods at the price disclosed in accordance with sub. (5) at another location which is owned, controlled, affiliated with or operated by the seller. Any such modification of the contract must be made in writing and may only modify the terms of the contract required under sub. (3) concerning the unavailable or no longer fully operational facilities or services.

(c) Nothing in this subsection shall restrict a fitness center's ability to:

1. Perform regular maintenance or make prompt equipment repairs.

2. Make improvements to the facilities or services.

3. Replace a facility or service with a superior facility or service.

(12) Every contract for fitness center services shall provide that if the buyer is unable to make use of or receive the fitness center services contracted for because of death or disability, the buyer is liable for only that portion of the total consideration proportional to the elapsed time portion of the contract at the time of the death or disability.

(14) Any contract for fitness center services is unenforceable against the buyer and is a violation of this section if:

(a) The buyer entered into the contract in reliance upon any false, fraudulent, deceptive or misleading information, representation, notice or advertisement.

(b) The contract does not comply with the requirements of this section.

(c) The seller fails to perform in accordance with the contractual provisions under this section.

(d) The contract contains a provision in which the buyer agrees to waive the requirements of this section.

(15) (a) The department of agriculture, trade and consumer protection and the department of justice shall cooperatively investigate violations of this section. The department of justice may on behalf of the state:

1. Bring an action for temporary or permanent injunctive or other relief in any court of

competent jurisdiction for any violation of this section. The court may in its discretion, upon entry of final judgment, award restitution to any person suffering loss because of violations of this section if proof of such loss is submitted to the satisfaction of the court.

2. Bring an action in any court of competent jurisdiction for the recovery of civil forfeitures against any person who violates this section in an amount not less than \$100 nor more than \$10,000 for each violation.

(b) In addition to the remedies otherwise provided by law, any person injured by a violation of this section may bring a civil action for damages under s. 100.20 (5). Any person injured by a breach of a contract for fitness center services may bring a civil action to recover damages together with costs and disbursements, including reasonable attorney fees, and such other equitable relief as may be determined by the court.

History: 1977 c. 276.

134.71 Secondhand goods; dealers; regulations. (1) Every dealer or manufacturer of articles composed, in whole or in part, of gold, silver, precious stones, copper, lead or brass, doing business in this state, who obtains, by purchase or exchange, any secondhand firearm, whether smooth bore, shotgun, rifle or hand gun or any secondhand article made in whole or in part, of gold, silver, precious stones, copper, lead or brass, shall, within 24 hours after receiving such article, report to the chief of police or the sheriff of the county the fact that the same has been received, with the name, address and description of the person from whom such article was received, together with a description of such article and no such dealer or manufacturer shall destroy or alter the form of any such secondhand article until the expiration of 24 hours from the time the same was received by him.

(2) He shall enter, in ink, in a book to be kept for that purpose a correct description, in the English language, of all secondhand articles composed, in whole or in part, of gold, silver, precious stones, copper, lead or brass so received by him and the name and residence and description of, the person from whom such articles were received, and no entry made in such book shall be erased, obliterated or defaced.

(3) Such book and entries as well as every such secondhand article received by such dealer or manufacturer, shall, at all reasonable times, be open to the inspection of the sheriff or the chief of police or any policeman designated by the chief for such purpose.

(4) Such sheriff or chief of police may cause any article referred to in sub. (1) which he has

reason to believe was sold or exchanged by some person other than the owner, to be held for the purpose of identification by its owner, for such reasonable length of time as he deems necessary.

(5) Any person violating this section may be fined not more than \$100 nor less than \$10, or imprisoned not to exceed 6 months, or both.

History: 1977 c. 29.

134.72 Prohibition on the use of prerecorded messages in telephone solicitation.

(1) **DEFINITION.** As used in this section "telephone solicitation" means the unsolicited initiation of a telephone conversation for the purpose of encouraging a person to purchase property, goods or services.

(2) **PROHIBITION.** No person may use an electronically prerecorded message in telephone solicitation without the consent of the person called.

(3) **TERRITORIAL APPLICATION.** (a) *Intrastate.* This section applies to any intrastate telephone solicitation.

(b) *Interstate.* This section applies to any interstate telephone solicitation received by a customer in this state.

(4) **PENALTY.** A person who violates this section may forfeit up to \$500.

History: 1977 c. 301.

134.80 Home heating fuel dealers. Any dealer selling fuel of any kind for the purpose of heating a private residence shall notify each private residential customer whose account is subject to disconnection of the existence of the fuel assistance programs provided by the department of health and social services.

History: 1977 c. 418; 1981 c. 20.

134.83 Mail-order sales regulated. (1) In this section:

(a) "Buyer" means an individual who:

1. Is a resident of this state; and

2. While located in this state, receives a solicitation and orders goods from a seller for personal, family or household purposes.

(b) "Delivery period" means the time period clearly disclosed to the buyer in the solicitation for a mail order within which the ordered goods are to be shipped or, if there is no such disclosure, 30 days after the date of payment for the ordered goods.

(c) "Extended delivery period" means the extended period authorized under sub. (3).

(d) "Mail order" means an order of goods by a buyer which the seller solicits and receives payment for without any face-to-face contact between the buyer and the seller.

(e) "Payment" means:

1. Receipt by the seller of full or partial payment in the form of cash, check, money order or the like for a mail order; or

2. In a credit sale, the receipt by the seller of the information and authorization necessary to process the credit sale.

(f) "Seller" means a person who engages in mail-order solicitations, and includes representatives, employes or agents of a seller, however designated by the seller.

(g) "Shipped" and "shipping" mean:

1. Delivery to the buyer or the buyer's designee;

2. Delivery to a 3rd party carrier for delivery to the buyer or the buyer's designee; or

3. Delivery to a place clearly disclosed in the solicitation along with notice to the buyer or the buyer's designee of the arrival of the goods.

(2) It is unlawful for a mail-order seller who receives payment from a buyer to permit the delivery period or extended delivery period, if any to elapse without complying with one of the following:

(a) Shipping the ordered goods.

(b) Mailing a full refund to the buyer and nullifying any financial obligation incurred by the buyer for any ordered goods not shipped during the delivery period or extended delivery period, if any. The refund and nullification shall be made within a reasonable time after the seller becomes aware that the goods cannot be shipped within the delivery period or extended delivery period, if any, but not later than the end of the delivery period or extended delivery period, if any.

(c) Mailing the buyer notice as provided by subs. (3) and (4) during the delivery period and shipping the goods or making a full refund to and nullifying any obligation of the buyer for goods not shipped within the extended delivery period. The seller shall promptly make a full refund to and nullify any financial obligation of the buyer for goods not shipped if the seller receives a written cancellation request from the buyer during the extended delivery period.

(3) If the seller mails a notice which complies with sub. (4) to the buyer during the delivery period the delivery period may be extended to:

(a) The date specified by the seller in the notice but not later than 30 days after the expiration of the delivery period; or

(b) A later date authorized by the buyer in a written statement received by the seller within 30 days after the expiration of the delivery period and prior to cancellation under sub. (2).

(4) The notice required by sub. (3) shall clearly and conspicuously inform the buyer:

(a) Of the specific date by which the goods will be shipped or that the shipping date is unknown.

(b) That if the seller, prior to shipping the goods, receives a written statement from the buyer requesting cancellation of the mail order the mail order will be canceled and the seller will promptly make a full refund to and nullify any financial obligation of the buyer for goods not shipped.

(c) That if the goods are not shipped by the date specified in the notice the mail order will be canceled and the seller will make a full refund to and nullify any financial obligation of the buyer for goods not shipped.

(d) That the delivery period may not be extended beyond 30 days unless, within 30 days after the expiration of the delivery period and prior to the cancellation of the mail order under sub. (2), the seller receives written authorization from the buyer extending the delivery period to a specific later date.

(5) The department of justice or any district attorney may on behalf of the state:

(a) Bring an action for temporary or permanent injunctive or other relief in any circuit court for any violation of this section. The court may, in its discretion, make any order or judgment necessary to restore to any person any pecuniary loss suffered because of a violation of this section, if proof of the loss is submitted to the satisfaction of the court.

(b) Bring an action in any circuit court for the recovery of a civil forfeiture against any person who violates this section in an amount of

not less than \$100 nor more than \$1,000 for each violation.

(6) The department of justice and the department of agriculture, trade and consumer protection shall cooperate in the investigation of violations of and the enforcement of this section.

(7) In addition to any other remedies provided by law, any person suffering a pecuniary loss because of a violation of this section may bring a civil action in any circuit court to recover twice the amount of the pecuniary loss, together with costs and disbursements, including reasonable attorney fees, and for equitable relief as determined by the court.

(8) Any waiver by a buyer of the rights provided by this section is void.

History: 1979 c. 62.

134.99 Parties to a violation. (1) Whoever is concerned in the commission of a violation of this chapter, except s. 134.83, for which a forfeiture is imposed is a principal and may be charged with and convicted of the violation although he or she did not directly commit it and although the person who directly committed it has not been convicted of the violation.

(2) A person is concerned in the commission of the violation if the person:

(a) Directly commits the violation;

(b) Aids and abets the commission of it; or

(c) Is a party to a conspiracy with another to commit it or advises, hires or counsels or otherwise procures another to commit it.

History: 1975 c. 365; 1979 c. 62.