

CHAPTER 133.

TRUSTS AND MONOPOLIES.

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133.01 Unlawful contracts; conspiracies. (1) Every contract or combination in the nature of a trust or conspiracy in restraint of trade or commerce is hereby declared illegal. Every combination, conspiracy, trust, pool, agreement or contract intended to restrain or prevent competition in the supply or price of any article or commodity in general use in this state, to be produced or sold therein or constituting a subject of trade or commerce therein, or which combination, conspiracy, trust, pool, agreement or contract shall in any manner control the price of any such article or commodity, fix the price thereof, limit or fix the amount or quantity thereof to be manufactured, mined, produced or sold in this state, or fix any standard or figure in which its price to the public shall be in any manner controlled or established, is hereby declared an illegal restraint of trade. Every person, corporation, copartnership, trustee or association who shall either as principal or agent become a party to any contract, combination, conspiracy, trust, pool or agreement herein declared unlawful or declared to be in restraint of trade, or who shall combine or conspire with any other person, corporation, copartnership, association or trustee to monopolize or attempt to monopolize any part of the trade or commerce in this state shall forfeit for each such offense not less than one hundred dollars nor more than five thousand dollars. Any such person, corporation, copartnership, trustee or association shall also be liable to any person transacting or doing business in this state for all damages he may sustain by reason of the doing of anything forbidden by this section.

(2) It shall be the duty of the attorney-general to enforce the provisions of this act and to bring an action for the recovery of the forfeiture herein provided for, whenever complaint shall be made to him and evidence produced which shall satisfy him that there has been any violation thereof. The several district attorneys shall, upon the advice of the attorney-general, who may appear as counsel in any such case, institute such actions or proceedings as he shall deem necessary to recover any forfeiture incurred on account of the violation of any of the provisions of this act.

Note: Agreement between state brewers association and brewers, being voluntary contract, providing for posting prices with association but not attempting to fix prices, brewers being free to change their prices at any time, is valid trade agreement. 24 Atty. Gen. 654.

Conservation commission has no author-

ity to enter into agreement with fishermen of any county whereby said fishermen will be permitted to fish for carp during closed season if they enter into agreement to hold all carp for given price and to refrain from selling except at such price or higher. Such agreement violates chapter 133. 28 Atty. Gen. 165.

133.02 Injunction; pleading; practice. The several circuit courts may prevent or restrain, by injunction or otherwise, the formation of any such contract or combination or the execution of the purposes thereof. The several district attorneys shall, upon the advice of the attorney-general, who may appear as counsel in any such case, institute such actions or proceedings as he shall deem necessary to prevent or restrain a violation of the provisions of the preceding section, which shall be begun by way of information or complaint as in ordinary actions, setting forth the cause and grounds for the intervention of the court and praying that such violation, whether intended or continuing, shall be enjoined or otherwise prohibited. When the parties informed against or complained of shall have been served with a copy of the information or complaint and cited to answer the same the court shall proceed, as soon as may be in accordance with its rules, to the hearing and determination of the case; and pending the filing of the answer to such information or complaint may, at any time, upon proper notice, make such temporary restraining order or prohibition as shall be just. Whenever it shall appear to the court that the ends of justice require that other persons should be made parties

to the action or proceeding the court may cause them to be brought in in such manner as it shall direct.

133.03 Examination of adverse party; records; contempt. (1) The examination of any party, or if a corporation be a party, of the president, secretary, other principal officer or the general managing agent thereof, or of the person who was such president, secretary, officer or agent at the time or the occurrence of the facts made the subject of the examination, or of any person acting for another or for a corporation or partnership, other than as a witness on a trial, may be taken by deposition at the instance of the attorney-general in any such action or proceeding at any time intermediate the commencement thereof and final judgment. Such deposition shall be taken within the state before a judge at chambers or a court commissioner on a previous notice to such party and any other adverse party or the attorney thereof of at least five days, and may be taken without the state in the manner provided in these statutes for taking other depositions.

(2) The attendance of the party to be examined may be compelled by subpoena, without prepayment of witness' fees, and the examination shall be subject to the same rules as govern that of other witnesses; but he shall not be compelled to disclose anything not relevant to the controversy. If the examination shall be taken before issue joined, the notice of taking it shall be accompanied by the affidavit of the attorney-general, district attorney or some party stating the general nature and object of the action, that discovery is sought to enable the party to plead and the points upon which such discovery is desired; such examination shall be confined to the discovery of the facts relevant to the points so stated, unless the court or the presiding judge thereof, on motion and one day's notice, shall, before the examination is begun, by order further limit the scope thereof. Such examination shall not preclude the right to another examination after issue is joined upon all the questions in the cause, and the party examining shall in all cases be allowed to examine upon oral interrogatories.

(3) The examination shall not be compelled in any other county in this state than that of the party's residence except in the county of Dane; provided, that whenever the defendant is a nonresident of the state his deposition may be taken as in other cases. In any such examination the judge or commissioner before whom the same is had shall have authority to compel the party examined to answer all questions relevant to the issues and shall, on application by the attorney-general or district attorney, compel the production by such party of all books, papers and records relevant and pertinent to the issues. If any defendant or his agent who is lawfully required to appear and testify on such examination or to produce such books, papers or records shall, either within or without the state, neglect or refuse to do so he may be punished as for contempt, and the pleading of any such defendant may, in the discretion of the court, be stricken out and judgment rendered against him according to the prayer of the complaint.

133.04 What organizations included. The word "person" wherever used in the three next preceding sections shall be deemed to include, besides individuals, corporations, partnerships and associations existing under or authorized by the laws of the United States, any of the territories of this or any other state or of any foreign country; provided, that nothing therein shall be construed to affect labor unions or any other association of laborers organized for the purpose of promoting the welfare of its members, nor associations or organizations intended to legitimately promote the interests of trade, commerce or manufacturing in this state. Provided further that nothing therein shall be construed to affect associations, corporate or otherwise, of farmers, gardeners or dairymen, including live stock farmers and fruit growers engaged in making collective sales or marketing for its members or shareholders of farm, orchard or dairy products produced by its members or shareholders.

133.05 Certain organizations not forbidden. Nothing contained in the antitrust laws shall be construed to forbid the existence and operation of labor, agricultural, or horticultural organizations, instituted for the purpose of mutual help, and not having capital stock or conducted for profit or to forbid or restrain individual members of such organizations from lawfully carrying out the legitimate objects thereof; nor shall such organizations, or the members thereof, be held or construed to be illegal combinations or conspiracies in restraint of trade, under the antitrust laws. The labor of a human being is not a commodity or article of commerce.

133.06 Inquisitorial proceeding. (1) Whenever the attorney-general shall file with any circuit court commissioner of this state a written statement or declaration that he has reason to believe and does believe that a contract, agreement, combination, trust or conspiracy in restraint of trade as defined by section 133.01 or 133.21, exists or that a violation of said or either of said sections has occurred in this state, or in any locality thereof, it shall be the duty of said circuit court commissioner to issue his subpoena for such persons as may be requested by the attorney-general, requiring them to appear before him at

a time and place to be fixed in said subpoena. Said subpoena may also require the production of all papers, books, files, or records in the possession of the person so subpoenaed. It shall not be necessary to pay the person so subpoenaed any mileage or witness fees in advance but claims for such mileage and fees duly verified and approved by the attorney-general shall be audited and paid out of the state treasury and charged to the appropriation provided by subsection (2) of section 20.08, and shall be at the same rates as provided for witnesses for the circuit court.

(2) It shall be the duty of any person so subpoenaed to appear as commanded by such subpoena, and upon his failure so to do or to produce any papers, books, files or records in his possession, the commissioner so subpoenaing may punish such person as for contempt. It shall be the duty of any person so subpoenaed to answer under oath all inquiries that may be put to him by the attorney-general, his deputy, any of his assistants or any district attorney or special counsel for the state acting under his direction, touching or relating to the existence of any contract, agreement, combination, trust or conspiracy in restraint of trade, as defined by section 133.01 or 133.21, and upon his failure to make full and complete answers and disclosures to all such questions as may be put to him, the court commissioner before whom such proceedings are pending is empowered to punish such witness as for contempt.

(3) Such testimony shall be taken by a stenographic reporter, transcribed into long-hand, read over to or by the deponent and (unless such signing be waived by the state) be signed by him before the officer before whom the same was taken, and shall be kept and preserved by the attorney-general as a part of the records of his office.

(4) The court commissioner shall be entitled to the usual fees for issuance of subpoenas and administering of oaths, and ten dollars per day for the time consumed in holding the inquiry. The stenographic reporter shall be entitled to ten cents per folio for taking and transcribing the testimony. All such fees and all other costs and expense incident to such inquiry shall be paid out of the appropriation provided by subsection (2) of section 20.08.

133.07 Working people may organize; injunction not to restrain certain acts.

(1) Working people may organize themselves into or carry on labor unions and other associations or organizations for the purpose of aiding their members to become more skilful and efficient workers, the promotion of their general intelligence, the elevation of their character; the regulation of their wages and their hours and conditions of labor, the protection of their individual rights in the prosecution of their trade or trades, the raising of funds for the benefit of sick, disabled, or unemployed members, or the families of deceased members, or for such other object or objects for which working people may lawfully combine, having in view their mutual protection or benefit.

(2) No restraining order or injunction shall be granted by any court of this state, in any case between an employer and employes, or between employers and employes, or between employes, or between persons employed and persons seeking employment, involving or growing out of any dispute whatsoever concerning employment, unless necessary to prevent irreparable injury to property or to a property right of the party making the application, for which injury there is no adequate remedy at law, and such property or property right must be described with particularity in the application, which must be in writing and sworn to by the applicant, or by his agent or attorney. No such restraining order or injunction shall be granted except by the circuit court or by a court of concurrent jurisdiction in equity, and then only upon such reasonable notice of application therefor as a presiding judge of such court may direct by order to show cause, but in no case less than forty-eight hours, which shall be served upon such party or parties sought to be restrained or enjoined as shall be specified in such order to show cause.

(3) No such restraining order or injunction shall prohibit any person or persons, whether singly or in concert, from terminating any relation of employment, or from ceasing to perform any work or labor, or from recommending, advising, or persuading others by peaceful means so to do; or from attending at any place where any such person or persons may lawfully be, for the purpose of peacefully obtaining or communicating information, or from peacefully persuading any person to work or to abstain from working; or from ceasing to patronize or to employ any party to such dispute, or from recommending, advising, or persuading others by peaceful and lawful means so to do; or from paying or giving to, or withholding from, any person engaged in such dispute, any strike benefits or other moneys or things of value; or from peaceably assembling in a lawful manner, and for lawful purposes; or from doing any act or thing which might lawfully be done in the absence of such dispute by any party thereto; nor shall any of the acts specified in this paragraph be considered or held to be violations of any laws of this state.

(4) Whenever in any matter relating to the violation of any such restraining order or injunction an issue of fact shall arise, such issue, whether presented in a civil or a criminal proceeding, shall be tried by a jury, in the same manner as provided for the trial of other

cases. All contempt proceedings, whether civil or criminal, brought for the alleged violation of any such restraining order or injunction, are, and hereby are declared to be independent, original, special proceedings, and shall require a unanimous finding of the jury. The requirement for trial by jury shall not apply to direct contempts committed in the immediate presence of the court. [1931 c. 56]

Note: A complaint by a labor union to restrain an employer from interfering with the rights of its employes freely to associate, self-organize and designate representatives of their own choosing for the purpose of collective bargaining, states a cause of action. Trustees of Wis. S. F. of Labor v. Simplex S. M. Co., 215 W 623, 256 NW 56.

133.08 Collective bargaining. Sections 133.01, 133.04, 133.21 and 226.07 shall be so construed as to permit collective bargaining by associations of producers of agricultural products and by associations of employes when such bargaining is actually and expressly done for the individual benefit of the separate members of each such association making such collective bargain.

133.09 [Renumbered section 100.22 by 1935 c. 550 s. 358]

133.10 [Renumbered section 100.26 (3) by 1935 c. 550 s. 366]

133.11 [Renumbered section 100.23 by 1935 c. 550 s. 359]

133.12 [Renumbered section 59.47 (9) by 1935 c. 550 s. 360]

133.13 [Renumbered section 14.29 (12) by 1935 c. 550 s. 361]

133.14 [Renumbered section 100.24 by 1935 c. 550 s. 362]

133.15 [Renumbered section 100.24 by 1935 c. 550 s. 362]

133.16 [Renumbered section 100.25 by 1935 c. 550 s. 363]

133.17 Unfair discrimination in trade; unlawful selling. (1) Any person, firm or corporation, foreign or domestic, doing business in this state and engaged in the production, manufacture or distribution of any commodity in general use, that shall intentionally, for the purpose of injuring or destroying the competition of any regular, established dealer in such commodity or to prevent competition of any person who, in good faith, intends or attempts to become such dealer, discriminate between different sections, communities, or cities of this state, or between persons, firms, associations or corporations in any locality of this state, by selling such commodity at a lower rate or price in one section, community, or city, or any portion thereof, or to any person, firm, association or corporation in any locality of this state, than the rate or price at which such person, firm or corporation, foreign or domestic, sells such commodity in another section, community, or city, or to another person, firm, association or corporation in any locality of this state, shall be guilty of unfair discrimination, which is hereby prohibited and declared unlawful.

(2) Any person, firm, company, association or corporation, and any officer, agent or receiver of any firm, company, association or corporation, or any member of the same, or any individual violating any of 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 two hundred dollars, nor more than five thousand dollars for each offense, or by imprisonment in the county jail not to exceed one year, or by both such fine and imprisonment.

Note: Price discrimination merely for purpose of meeting local competition does not constitute offense under this section. 22 Atty. Gen. 348.

133.18 Same; unlawful buying. (1) Any person, firm, company, association or corporation, foreign or domestic, doing business in this state and engaged in the business of collecting or buying any product, commodity or property of any kind, that shall intentionally, for the purpose of injuring or destroying the business or trade of a competitor in any locality of this state, or to prevent competition by any person who in good faith intends or attempts to engage in such business, discriminate between the different sections, communities, or cities of this state, or between persons, firms, associations or corporations in any locality of this state, by buying any product, commodity or property of any kind, and paying therefor a higher rate or price in one section, community, or city or to any person, firm, association or corporation in any locality of this state, than is paid for the same kind of product, commodity or property by said person, firm, company, association or corporation, foreign or domestic, in another section, community or city, or to another person, firm, association or corporation in any locality of this state, shall be guilty of unfair discrimination, which is hereby prohibited and declared unlawful.

(2) Any person, firm, company, association or corporation, and any officer, agent, or receiver of any firm, company, association or corporation, or any member of the same, or any individual violating any of 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 two hundred dollars nor more than five thousand dollars for each offense, or by imprisonment in the county jail not to exceed one year, or by both such fine and imprisonment.

133.185 Secret rebates; unfair trade practice; prohibited; penalty. (1) The secret payment or allowance of rebates, refunds, commissions or unearned discounts, whether in the form of money or otherwise, or the secret extension to certain purchasers of special

services or privileges not extended to all purchasers purchasing upon like terms and conditions, such payment, allowance or extension injuring or tending to injure a competitor or destroying or tending to destroy competition, is an unfair trade practice and is prohibited.

(2) Any person, firm or corporation violating any of the provisions of subsection (1) shall be deemed guilty of a misdemeanor and upon conviction thereof shall be punished by a fine of not more than five hundred dollars or by imprisonment in the county jail for not to exceed six months, or by both such fine and imprisonment. [1935 c. 52]

133.19 Prosecutions. The attorney-general shall institute, manage, control, and direct, by himself, his deputy or any of his assistants, in the proper county, all prosecutions for violations of sections 133.17 to 133.185 and for such purpose shall have and exercise all powers conferred upon district attorneys in such cases. It shall be the duty of the district attorney in the county in which any such prosecution may be instituted or pending to co-operate with and assist the attorney-general in such prosecution. [1935 c. 52, 486]

133.20 Revoke charter. If complaint shall be made to the attorney-general that any corporation is guilty of unfair discrimination, as defined by the provisions of sections 133.17 to 133.185, he shall investigate such complaint and for that purpose he may subpoena witnesses, administer oaths, take testimony and require the production of books or other documents, and, if in his opinion sufficient grounds exist therefor, he may prosecute an action in the name of the state in the proper court to annul the charter or revoke the permit of such corporation, as the case may be, and to permanently enjoin such corporation from doing business in this state, and if in such action the court shall find that such corporation is guilty of unfair discrimination, as defined by the provisions of said sections 133.17 to 133.185, such court shall annul the charter or revoke the permit of such corporation, and may permanently enjoin it from transacting business in this state. [1935 c. 52, 486]

133.21 Domestic corporations; cancellation of charters for restraining trade; affidavit. Any corporation organized under the laws of this state which shall enter into any combination, conspiracy, trust, pool, agreement or contract intended to restrain or prevent competition in the supply or price of any article or commodity in general use in this state, or constituting a subject of trade or commerce therein, or which shall in any manner control the price of any such article or commodity, fix the price thereof, limit or fix the amount or quantity thereof to be manufactured, mined, produced or sold in this state, or fix any standard or figure by which its price to the public shall be in any manner controlled or established, shall, upon proof thereof, in any court of competent jurisdiction, have its charter or authority to do business in this state canceled and annulled. Every corporation shall, in its annual report filed with the secretary of state, show the facts in regard to the matters specified in this section. [1939 c. 134]

133.22 Duty of attorney-general. Whenever the attorney-general shall be notified or have reason to believe that any such corporation has violated any provision of section 133.21 it shall be his duty forthwith to address to any such corporation or to any director or officer thereof such inquiries as he may deem necessary for the purpose of determining whether or not such corporation has violated any provision of said section, and it shall be the duty of such corporation, director or officer so addressed to promptly and fully answer in writing, under oath, such inquiries; and in case such corporation, director or officer thereof shall fail or neglect to do so within sixty days from the receipt of such inquiries, unless such time is extended in writing by the attorney-general, it shall be his duty to proceed against such corporation as provided in the next section.

133.23 Ouster. Upon complaint being made to the attorney-general and evidence produced to him which shall satisfy him that any such corporation has violated any of the conditions specified in sections 133.21 and 133.22, he shall forthwith bring an action in the name of the state in any circuit court of this state to have the charter of such corporation forfeited, canceled and annulled, and upon due proof being made thereof to the satisfaction of the court, judgment shall be entered therefor. All contracts or agreements made by any person, firm, corporation or association while a member of any combination, conspiracy, trust or pool prohibited by sections 133.01, 133.21 and 226.07 of the statutes, or any of them, and which contract or agreement is founded upon, or is the result of, or grows out of, or is connected with, any violation of said sections, or any of them, either directly or indirectly, shall be void and no recovery thereon or benefit therefrom shall be had by or for any such person, firm, corporation or association. Any payments made upon, under or pursuant to such contract or agreement to or for the benefit of such person, firm, corporation or association, may be recovered in an action by the party making any such payment, his heirs, personal representatives or assigns; provided, however, that suit for such recovery shall be brought within six years after the making of said contract or agreement.

133.24 No privilege from self-accusation. No person shall be excused from answering any of the inquiries herein provided for, nor from attending and testifying, nor from producing any books, papers, contracts, agreements or documents in obedience to a subpoena issued by any lawful authority in any case or proceeding based upon or growing out of any alleged violation of any of the provisions of section 133.21, or of any law of this state in regard to trusts, monopolies or illegal combinations on the ground of or for the reason that the answer, testimony, evidence, documentary or otherwise, required of him may tend to criminate him or subject him to a penalty or forfeiture; but no person shall be prosecuted or subjected to any penalty or forfeiture for or on account of any transaction, matter or thing concerning which he may answer, testify or produce evidence, documentary or otherwise, in obedience to any request under these provisions or any subpoena, or either of them, in any case or proceeding, except that the charter of any corporation may be vacated and its corporate existence annulled as hereinbefore provided, and except further, that no person testifying in any case or proceeding aforesaid shall be exempt from punishment for perjury committed in so testifying.

133.25 Certain contracts not in restraint of trade; exceptions. (1) This section may be cited as the "Fair Trade Act."

(2) As used in this section, "producer" means grower, baker, maker, manufacturer, and "commodity" means any subject of commerce.

(3) Except as provided in subsections (4) and (6), no contract relating to the sale or resale of a commodity which bears, or the label or content of which bears, the trademark, brand or name of the producer or owner of such commodity and which is in fair and open competition with commodities of the same general class produced by others, shall be deemed a contract or combination in the nature of a trust or conspiracy in restraint of trade or commerce by reason of any of the following provisions contained in such contract:

(a) That the buyer will not resell such commodity except at the price stipulated by the vendor.

(b) That the vendee or producer shall require that any person to whom delivery of a commodity is made for the purpose of resale shall agree that the latter will not, in turn, resell except at the price stipulated by the vendor or vendee.

(4) Every contract containing the provisions referred to in subsection (3) shall include the provision that such commodity may be resold without reference to such contract in the following cases:

(a) In closing out in good faith the owner's stock or any part thereof for the purpose of discontinuing delivering any such commodity.

(b) When the goods are damaged or deteriorated in quality, and notice is given to the public thereof.

(5) Wilfully and knowingly advertising, offering for sale or selling any commodity at less than the price stipulated in any contract referred to in subsection (3), whether or not the person so advertising, offering for sale or selling is a party to such contract, is unfair competition and is actionable at the suit of any person damaged thereby.

(6) This section does not apply to any contract between producers or between wholesalers or between retailers as to sale or resale prices.

(7) (a) Upon complaint of any person than any contract containing the provisions referred to in subsection (3) is unfair and unreasonable as to the minimum resale price therein stipulated, the state department of agriculture may in its discretion serve by registered mail upon the parties to said contract notice of the time and place for a hearing on said complaint, at which hearing said parties shall show cause why the said contract should not be set aside. If upon such hearing the department shall find that such contract is unfair and unreasonable as to its minimum resale price provisions, said department may by special order declare such contract to be in restraint of trade.

(b) The state department of agriculture shall assess the costs of such proceeding against such contracting parties in case it finds such contract unfair and unreasonable and against the complainant if it finds such contract fair and reasonable, provided, however, that the costs against any one complainant in any one complaint shall not exceed five dollars.

(c) Decisions in such cases shall be subject to judicial review as provided in section 93.20. [1935 c. 52; 1935 c. 477; 43.08 (2); 1943 c. 229; 1943 c. 275 s. 42]

Note: The Fair Trade Act (133.25, Stats. 1937) is valid. These provisions are discussed at length but the discussion is confined to its constitutionality. Subsection (8) which exempts co-operative societies not organized for profit from application of the act is void, that being arbitrarily discriminatory. But the invalidity of that subsection does

not render the remaining provision invalid or ineffective. The remaining provisions constitute a complete law for accomplishing the legislative intent and purpose and are held valid. *Weeco Products Co. v. Reed Drug Co.*, 225 W 474, 274 NW 426.

One making contract which is unfair and unreasonable is liable irrespective of fact

that department has not ruled same to be unfair and unreasonable. 25 Atty. Gen. 307.

Contracts between manufacturer and his jobber whereby jobber agrees that manufacturer's products will not be sold below certain specified maximum discounts are countenanced, authorized and encouraged by this section, and there is no exception in favor of state when purchasing from said jobber. 28 Atty. Gen. 179.

133.26 Certain contracts declared illegal. Any contract, express or implied, entered into in violation of any of the provisions of sections 133.17, 133.18 or 133.185, is an illegal contract and no recovery shall be had thereon. [1935 c. 52, 486]

133.27 Legislative intent declared. The intent of sections 133.17 to 133.185 and section 133.25 is to safeguard the public against the creation or perpetuation of monopolies and to foster and encourage competition by prohibiting unfair and discriminatory practices under which fair and honest competition is destroyed or prevented. Said sections shall be liberally construed so that their beneficent purposes may be subserved. [1935 c. 52, 486]

134.01 [Renumbered sections 100.15, 100.26 (3) by 1935 c. 550 s. 350, 366, 391]

134.01 to 134.06 [Cr. Spl. S. 1937 c. 8; repealed by 1939 c. 12]