

1993 Senate Bill 832

Date of enactment: **May 27, 1994**
Date of publication*: **June 10, 1994**

1993 WISCONSIN ACT 492

AN ACT relating to revising various provisions of the statutes for the purpose of deleting, replacing or otherwise modifying language that discriminates on the basis of sex (Revisor's Correction Bill).

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

PREFATORY NOTE: The revisor of statutes is permitted by s. 13.93 (1) (m), stats., to make corrections to the statutes to ensure that the statutory language does not discriminate on the basis of sex. Section 13.93 (1) (m), stats., provides that the corrections shall have no substantive effect.

This bill, prepared pursuant to s. 13.93 (1) (m), stats., deletes, replaces or otherwise modifies language that discriminates on the basis of sex to ensure that the language of the affected statutes does not discriminate on the basis of sex.

Revisions are also made to otherwise affected provisions for the purpose of correcting errors, supplying omissions, clarifying language and correcting and clarifying references; those revisions are explained in NOTES provided by the revisor of statutes in the body of the bill.

SECTION 1. 93.09 (8) of the statutes is amended to read:

93.09 (8) Whenever any standard or regulation under this section has become effective, no person marketing or having in his or her possession for commercial purposes any product or receptacle to which the standard is applicable shall represent such product or receptacle, unless in a manner authorized by the department, as being of any grade other than a grade contained in such standard, except as to products or receptacles included in subs. (2) and (3); and no person marketing or having in his or her possession for commercial purposes any product or receptacle to which the standard is applicable shall represent such product or receptacle as being of a grade contained in the standard, when as a matter of fact such product or receptacle is below the requirements of such grade and no person shall market or have in his or her possession

for commercial purposes any product or receptacle unless the marking or tagging thereon conforms to the regulation prescribed under this section; and no person shall market or have in his or her possession for commercial purposes any product or receptacle, to which any such marking or tagging regulation is applicable, if such marking or tagging thereon is false or misleading; provided, that representing a product or receptacle as being of a grade contained in the standard, when as a matter of fact such product or receptacle is below the requirements of such grade, shall not be a violation of this section, if the product or receptacle bears the official certificate of an inspector licensed under s. 93.11; provided, further, that possession, under this section, shall not include possession by a carrier or other bailee.

SECTION 2. 93.09 (9) of the statutes is amended to read:

93.09 (9) Whenever the department finds that any person marketing or having in his or her possession any product or receptacle to which the standard is applicable has intentionally violated sub. (8), the department, after opportunity for hearing has been given such person, may, by special order, revoke the right of such person to represent any product or receptacle to which the standard is applicable as being of any grade contained in the standard and may, in said order, require such person to mark or tag such product or receptacle as provided in sub. (4). The department may, without hearing, suspend such right for a period not exceeding ten days, pending investigation. The department may restore such right to any person from whom it has been revoked, where the person gives satisfactory evidence warranting such restoration.

1993 Senate Bill 832

SECTION 3. 93.10 (2) of the statutes is amended to read:

93.10 (2) Whenever the department has required any product or receptacle to bear the official certificate of an inspector licensed under s. 93.11, no person marketing or having in his or her possession for commercial purposes any such product or receptacle shall remove, mutilate or alter the official certificate thereon or represent such product or receptacle, unless in a manner authorized by the department, as being of any grade other than the grade designated by the official certificate thereon, except as to products or receptacles included in s. 93.09 (2) and (3); and no person shall market or have in his or her possession for commercial purposes any such product or receptacle unless such product or receptacle bears the official certificate of an inspector licensed under s. 93.11, except as to products or receptacles included in s. 93.09 (2), (3) and (4); provided, that such a product or receptacle may be marketed or had in possession without an official certificate issued at the point of shipment if such product or receptacle is destined for shipment to a point within the state, where the shipper has arranged for the issuance of an official certificate; provided, further, that possession under this section, shall not include possession by a carrier or other bailee.

SECTION 4. 93.11 (7) of the statutes is amended to read:

93.11 (7) No person shall certify or attempt to certify that the grade of any food product or farm product or of any receptacle therefor conforms or does not conform to the standard established under s. 93.09, unless such person holds an unrevoked and unsuspended license issued under this section. No person shall influence or attempt to influence any licensee to neglect or improperly perform his the licensee's duty. No licensee shall knowingly issue any false or improper certificate of grade or accept money or other consideration, directly or indirectly, as compensation for any neglect or improper performance of his the licensee's duty.

SECTION 5. 93.15 (3) of the statutes is amended to read:

93.15 (3) No person shall refuse or fail to render any report or answer required under this section at such time and in such manner as the department may prescribe. No person shall refuse, neglect or fail to submit, for the purpose of inspection or copying, any document demanded under this section. No person shall wilfully make any false entry or statement in any report or answer required or document demanded under this section. No person shall wilfully fail to make full and true entries and statements in any report or answer required or document demanded under this section. No person shall, for the purpose of embarrassing the department in the conduct of any investigation, hearing or proceeding, remove out of the state or mutilate or alter any document. No person shall, except through judicial process, resist or obstruct

any official or subordinate of the department in the exercise of his the official's or subordinate's lawful authority.

SECTION 6. 93.18 (6) of the statutes is amended to read:

93.18 (6) The testimony presented and the proceedings at hearings shall be taken by a stenographic reporter or otherwise recorded and when necessary shall be transcribed. The secretary shall make his or her findings and determination thereon. The department shall make rules of procedure and practice not inconsistent with any law governing such procedure or practice.

SECTION 7. 93.23 (6) (a) of the statutes is amended to read:

93.23 (6) (a) No person shall knowingly enter or cause to be entered, drive or ride in competition for any purse or prize offered by any agricultural, trotting, racing, industrial or other corporation or association, or by any person any horse under an assumed name or out of its proper class where such purse or prize is to be decided by a contest of speed nor shall any person knowingly misrepresent or fraudulently conceal the public performance, in any former contest or trial of speed, of any horse which he the person enters or proposes to enter for competition in any such contest.

SECTION 8. 94.26 of the statutes is amended to read:

94.26 Cranberry culture; maintenance of dams, etc. Any person owning lands adapted to the culture of cranberries may build and maintain on any land owned by him the person such dams upon any watercourse or ditch as shall be necessary for the purpose of flowing such lands, and construct and keep open upon, across and through any lands such drains and ditches as shall be necessary for the purpose of bringing and flooding or draining and carrying off the water from such cranberry growing lands, or for the purpose of irrigation, fertilization and drainage of any other lands owned by such the person; provided, that no such dams or ditches shall injure any other dams or ditches theretofore lawfully constructed and maintained for a like purpose by any other person.

NOTE: "Such" is replaced to make the language consistent throughout the provision after eliminating personal pronouns.

SECTION 9. 94.27 of the statutes is amended to read:

94.27 Liability for damages. The person so building or maintaining any such dam or constructing or keeping open any such ditch or drain shall be liable to the persons whose lands are overflowed or otherwise injured by such dam, ditch or drain for the full sum of damages so sustained, which shall be ascertained and recovered in the manner following and not otherwise. If the person claiming any such damages cannot agree with the person liable to pay the same he, the person claiming the damages shall select one disinterested arbitrator and give notice thereof to the person from whom such damages are claimed, who shall, within ten days after the receipt of such notice, select another disinterested arbitrator, not of kin to any of the parties interested in maintaining such dams, ditches

1993 Senate Bill 832

or drains, and give notice thereof to the claimant and to each of the persons so selected as arbitrators.

SECTION 10. 94.28 of the statutes is amended to read:

94.28 Arbitrators to fix damages. The persons ~~so~~ selected as arbitrators shall, within twenty days after such notice, appoint some disinterested third person to act as arbitrator with them and fix a time and place at which ~~they~~ the arbitrators shall meet to determine the damages which the claimant ought to have, and give notice thereof to the parties interested. At the time and place so fixed ~~they, the arbitrators~~ shall view the premises and hear the proofs and allegations of the parties, and within ten days thereafter ~~they~~ the arbitrators, or any two of them, shall make duplicate statements of the proceedings had by them and of the amount by them ordered to be paid to the claimant for ~~his~~ the claimant's damages and the amount to be paid by the respective parties for their fees and the costs of such proceedings, and deliver to each party a copy thereof. Within twenty days thereafter the amount so ordered shall be paid by the party of whom required unless an appeal be taken as hereinafter provided.

NOTE: Eliminates unnecessary "so" and replaces "they" for clarity.

SECTION 11. 94.30 of the statutes is amended to read:

94.30 Rights on payment. If neither party appeals from such award and the party required to pay the damages shall pay the full amount thereof within the time above prescribed or if, upon an appeal, a final judgment shall be rendered in favor of the claimant and the defendant shall pay such judgment and all costs awarded to the claimant within sixty days after such final judgment, then the person so erecting or maintaining such dam or dams or constructing or maintaining such ditches or drains shall have the perpetual right to maintain and keep the same in good condition and repair; and neither ~~he~~ the person nor ~~his~~ the person's assigns shall be liable to the payment of any further damages on account thereof; and upon failure to make such payment within the times above prescribed ~~he~~ the person shall forfeit all right to maintain such dams, ditches or drains under the foregoing provisions.

SECTION 12. 94.41 (2) (c) of the statutes is amended to read:

94.41 (2) (c) To hinder or obstruct in any way, any authorized person in the performance of ~~his~~ the person's duties under ss. 94.38 to 94.46.

SECTION 13. 94.64 (4) (e) of the statutes is amended to read:

94.64 (4) (e) Each licensee shall maintain, for a period of 2 years, a record of quantities and grades of fertilizer sold or distributed by ~~him~~ the licensee and shall make the records available for inspection and audit on request of the department.

SECTION 14. 94.66 (3) of the statutes is amended to read:

94.66 (3) Application for license shall be made upon blanks furnished upon request by the department and shall state the applicant's name and business address, the exact location of places of manufacture of ~~his~~ the applicant's products, a description of the products which are to be sold, and such other information as the department may require. An application may be amended upon written notice from the applicant.

SECTION 15. 94.71 (3) (b) of the statutes is amended to read:

94.71 (3) (b) Every registrant or other person whose name and address appears on the label of any pesticide as the manufacturer, packer, distributor or dealer, shall, to the extent that ~~he~~ the registrant or other person is able to furnish to the department, on request, when found by the department to be necessary to prevent or control an imminent hazard to the public, a listing of all sales locations or warehouse locations maintained by ~~him~~ the registrant or other person in this state for the sale or distribution of products registered by ~~him~~ the registrant or other person or bearing ~~his~~ the registrant's or other person's name and address as such manufacturer, packer, distributor or dealer; the name and address of all distributors or dealers selling or distributing such products in this state; and the name and address of all outside sales representatives employed by ~~him~~ the registrant or other person in this state for the sale or distribution of such products.

SECTION 16. 95.01 (2) of the statutes is amended to read:

95.01 (2) Persons in charge of a horse pulling contest may require as a condition of participation in the contest that the exhibitor submit ~~his~~ the exhibitor's horse for examination by a licensed veterinarian to determine the presence of drugs under sub. (1).

SECTION 17. 95.11 (3) (b) of the statutes is amended to read:

95.11 (3) (b) In 1984 and every 10th year thereafter, every owner of a brand shall ~~re-record~~ rerecord the brand according to department rules. At the expiration of each recording period the department shall notify every owner of a brand at ~~his~~ the owner's address of record that the brand has not been ~~re-recorded~~ rerecorded and that the brand must be ~~re-recorded~~ rerecorded within 90 days. Failure to ~~re-record~~ rerecord the brand is an abandonment of the brand, and it can be recorded by another applicant thereafter.

NOTE: Corrects spelling of "rerecord".

SECTION 18. 95.11 (4) of the statutes is amended to read:

95.11 (4) **SUIT BY OWNER.** An owner of a recorded brand may sue for injunctive relief and damages arising from an unauthorized use of ~~his~~ the owner's brand on livestock and a judgment in ~~his~~ the owner's favor may include costs and reasonable attorney's fees.

SECTION 19. 95.13 of the statutes is amended to read:

95.13 Misrepresenting breed of domestic animal.

No person shall sell or barter or cause to be sold or bartered any domestic animal and represent, or cause to be represented that such animal is a pure bred animal, when in fact such animal is not registered, or entitled to registry, in any pure breed registry maintained for such animals; nor shall any person knowingly utter, pass or deliver to any person as true, any false, or altered pedigree; nor shall any person refuse to deliver proper certificate of registry for any animal sold or transferred by ~~him~~ the person, having represented at the time of sale or transfer, and as an inducement thereto, that such animal was registered and that ~~he~~ the person possessed and would deliver a certificate of registry as evidence thereof, or that such animal was entitled to registry and that ~~he~~ the person would secure such certificate and deliver the same.

SECTION 20. 95.22 (1) of the statutes is amended to read:

95.22 (1) Each veterinarian shall immediately report to the department the existence among animals of any communicable disease coming to ~~his~~ the veterinarian's knowledge. The report shall be in writing and shall include a description of the diseased animal, the name and address of the owner or person in charge of the animal, if known, and the location of the animal. The definition of "communicable disease" in s. 990.01 (5g) does not apply to this subsection.

SECTION 21. 95.24 (1) of the statutes is amended to read:

95.24 (1) No person shall have in his or her possession or furnish to another any live virus hog cholera vaccine, including vaccines produced from a modified or attenuated strain of hog cholera virus, except that such vaccines may be in the possession of a biological laboratory inspected and licensed by the federal government, persons having written approval from the department for its experimental use, or veterinarians having a permit from the department for its use in vaccinating or treating swine as necessary for export or for such other uses as are authorized by the department for the control of serious outbreaks of the disease.

SECTION 22. 95.50 (1) of the statutes is amended to read:

95.50 (1) No person shall deposit or throw or allow to be deposited or thrown into any stream, lake or swale, or leave or deposit or cause to be left or deposited upon any public highway or other place the carcass of any animal; nor deposit or leave or permit to be deposited or left upon any premises under ~~his~~ that person's control any dead animal exposed in such manner as to be reached by dogs or wild animals for a longer period than 24 hours in the months of April to November, or 48 hours during the months of December to March. The owner of such a carcass or any other person may report to the proper county officials or the contracting private rendering plant pursuant to s. 59.07 (84) for removal and burial or other dis-

position of a carcass within the time specified in this subsection.

SECTION 23. 95.64 (2) (intro.) of the statutes is amended to read:

95.64 (2) (intro.) No person, by himself, ~~his~~ or herself or by a servant or agent, shall sell, offer or expose for sale or have in his or her possession with intent to sell any live-stock remedy which is not registered as provided in s. 95.65, or which:

SECTION 24. 97.03 (2) (d) of the statutes is amended to read:

97.03 (2) (d) Bakery products enclosed in transparent containers or enclosed in containers which provide a transparent opening to afford a clear view of the product are exempt from labeling requirements under this section when such products are sold at retail by the bakery operator or ~~his~~ the bakery operator's employe direct to the consumer at the baker's own retail bakery service counter operated by the baker who has produced these products, and when displayed to the purchaser with a counter card, sign or other appropriate device bearing conspicuously the label information required under this section.

SECTION 25. 97.17 (1) of the statutes is amended to read:

97.17 (1) In this section the terms "buttermaker" and "cheesemaker" mean a person employed or who may be employed in a butter or a cheese factory who has charge of and supervision over the actual process of manufacturing butter or cheese, and shall not include a person employed in a butter or cheese factory for the purpose of assisting in the manufacture of such product. This section shall not affect a person making up a product produced on ~~his own~~ the person's farm, nor shall it be unlawful for a licensed cheesemaker employed in a licensed cheese factory to make butter or whey cream butter for the use or consumption only of the patrons thereof.

SECTION 26. 97.176 (7) of the statutes is amended to read:

97.176 (7) No person, for himself or herself, or as an agent, shall advertise the sale of any butter at a stated price, unless the grade of the butter is set forth in such advertisement in not less than 10-point type.

SECTION 27. 97.32 (1) of the statutes is amended to read:

97.32 (1) Special dairy and food inspectors may be appointed by the department for any factory, plant, receiving station, or group thereof, which buys or receives milk or cream for the purpose of manufacturing, processing or any other purpose whatsoever, upon petition therefor signed by more than two-thirds of the regular patrons of such factory, plant, receiving station, or group thereof, or by the officers of such factory, plant, receiving station or group thereof, or of the officers of any association organized under ch. 185 representing patrons of such factory, plant, receiving station or group thereof, and upon receiving satisfactory proof that such

1993 Senate Bill 832

special dairy and food inspectors will be compensated in full for all services rendered and traveling expenses incurred upon and pursuant to such appointment as provided in this section. If the inspector is appointed pursuant to petition signed by the officers of an organization, such compensation and expenses shall be paid by such organization; and any factory, plant, receiving station or group thereof shall pay to the association the ~~check-off~~ checkoff as contracted for between the member and the association. If appointed pursuant to petition signed by patrons, each patron of the factory, plant, receiving station or group thereof shall pay such proportion of the total amount of such compensation and expenses as the amount of milk or cream delivered thereto by ~~him~~ the patron bears to the total amount delivered thereto by all patrons. The state shall not be liable for any such compensation or expenses.

NOTE: Corrects spelling of "checkoff".

SECTION 28. 97.32 (3) of the statutes is amended to read:

97.32 (3) Each such special dairy and food inspector shall have all powers conferred by law upon dairy and food inspectors ~~and~~, shall at all times be under the supervision of the department and ~~he~~ shall make such reports to the department as the department may require. ~~He~~ The special dairy and food inspector shall supervise and inspect the weighing and testing of and shall inspect all milk, cream, butter or cheese delivered to such factory, plant, receiving station or group thereof, except that if ~~he~~ the special dairy and food inspector be appointed upon petition by an association organized under ch. 185, ~~he~~ the special dairy and food inspector shall perform ~~his~~ duties only for its members, and for such purpose ~~he~~ the special dairy and food inspector may use any or all weighing or testing apparatus in such factory, plant, receiving station or group thereof. In addition to the duties herein specifically prescribed ~~he~~, the special dairy and food inspector shall perform such duties as the patrons or organization compensating ~~him~~ the special dairy and food inspector or the department may direct.

SECTION 29. 97.42 (1) (f) of the statutes is amended to read:

97.42 (1) (f) "Meat broker" means any person engaged in the business of buying or selling meat and poultry products, or meat and poultry food products on commission, or otherwise negotiating purchases or sales of such articles other than for ~~his~~ the person's own account or as an employe of another person.

SECTION 30. 97.42 (3) (d) of the statutes is amended to read:

97.42 (3) (d) *Custom service slaughtering.* This subsection shall not apply to animals and poultry slaughtered as a custom service for the owner exclusively for use by ~~him~~ the owner and members of ~~his~~ the owner's household and ~~his~~ the owner's nonpaying guests and employes, unless department inspection is specifically requested

and performed at establishments where examinations before and after slaughter are required. The rules of the department shall make provision for the furnishing of such inspection service, subject to availability of inspector personnel, and for the identification of all animals and poultry custom slaughtered for the owners thereof without department inspection.

SECTION 31. 97.42 (6) (a) of the statutes is renumbered 97.42 (6) (a) (intro.) and amended to read:

97.42 (6) (a) (intro.) No person shall slaughter any animals or poultry for the purpose of selling the meat products or poultry products thereof for human food, or sell, offer for sale or have in his or her possession with intent to sell, such meat products or poultry products for human food, unless such animals and poultry and the carcasses thereof have been first inspected and approved as provided by any of the following:

1. ~~this~~ This section and the rules issued thereunder; ~~or~~,
2. ~~the~~ The federal meat inspection act ~~or under the~~,
3. The federal poultry products inspection act, ~~or~~ ~~3-~~ ~~county.~~
4. County or municipal ordinances or regulations which are substantially equivalent to this section and which are enforced with equal effectiveness, if the inspection service is specifically approved by the department.

NOTE: Numbering is conformed to current drafting standards.

SECTION 32. 97.42 (8) of the statutes is amended to read:

97.42 (8) INTERFERENCE WITH INSPECTION. Any person who forcibly assaults, threatens, obstructs, impedes, intimidates or interferes with any person while engaged in the performance of his or her official duties under this section shall be fined not more than \$5,000 or imprisoned in the county jail not to exceed one year, or both.

SECTION 33. 97.53 of the statutes is amended to read:

97.53 Adulteration of meats. No person shall offer or expose for sale, take offers for, or sell, or have in his or her possession with intent to sell for consumption within the state any sausage or chopped meat compound containing any artificial coloring, or chemical preservative or antiseptic, except common salt, sodium or potassium nitrate, sodium or potassium nitrite, sodium ascorbate, ascorbic acid, spices or wood smoke. Ascorbic acid and sodium ascorbate shall be limited to use in cooked cured comminuted meat food products in the amount of three-fourths of an ounce of ascorbic acid or seven-eighths of an ounce of sodium ascorbate for each 100 pounds of fresh uncured comminuted meat or meat by-products and, when used, they shall be included in the statement of ingredients either as "ascorbic acid" or "sodium ascorbate" as the case may be.

SECTION 34. 97.56 (2) of the statutes is amended to read:

97.56 (2) No person shall, with intent to defraud, sell or expose for sale any meat or meat preparation, whether the same be raw or prepared for human consumption, and falsely represent the same to be kosher, and as having been prepared under and of a product or products sanctioned by the orthodox Hebrew religious requirements; nor shall any person falsely represent any food product or the contents of any package or container to be so constituted and prepared, by having or permitting to be inscribed thereon the word "kosher" in any language; nor shall any person sell or expose for sale in the same place of business both kosher and nonkosher meat or meat preparations, either raw or prepared for human consumption, unless ~~he indicates on his~~ all of that person's window signs and ~~all display advertising~~ indicate, in block letters at least four inches in height, "Kosher and Nonkosher Meat Sold Here;" nor shall any person expose for sale in any show window or place of business both kosher and nonkosher meat or meat preparations, either raw or prepared for human consumption, unless ~~he~~ the person displays over each kind of meat or meat preparation so exposed a sign in block letters at least four inches in height reading "Kosher Meat," or "Nonkosher Meat," as the case may be.

SECTION 35. 97.56 (3) of the statutes is amended to read:

97.56 (3) No person, with intent to defraud, shall sell or expose for sale in any restaurant or other place where food products are sold for consumption on the premises, any article of food or food preparations and falsely represent the same to be kosher and as having been prepared in accordance with the orthodox Hebrew religious requirements; nor shall any person sell or expose for sale in any such restaurant or other place both kosher and nonkosher food or food preparations for consumption on the premises when not prepared in accordance with the Jewish ritual and not sanctioned by the Hebrew orthodox religious requirements, unless ~~he displays on his~~ the person's window signs and display advertising state, in block letters at least 4 inches in height, "Kosher and Nonkosher Food Served Here".

SECTION 36. 98.05 (3) of the statutes is amended to read:

98.05 (3) Weights and measures and commodities that have been rejected may be confiscated and destroyed by a sealer or inspector if not corrected within 30 days or such longer period as ~~he~~ the sealer or inspector may authorize, or if used or disposed of without ~~his~~ the sealer's or inspector's written authorization.

SECTION 37. 98.14 (1) of the statutes is amended to read:

98.14 (1) All bottles and pipettes used in measuring milk or milk products for making determination of the ~~per cent~~ percent of fat in said milk or milk products shall have clearly blown or otherwise permanently marked in the side of the bottle or pipette the word "Sealed," and in

the side of the pipette or the side or bottom of the bottle the name, initials, or trademark of the manufacturer and ~~his~~ the manufacturer's designating number, which designating number shall be different for each manufacturer and may be used in identifying bottles. The designating number shall be furnished by the department upon application by the manufacturer and upon the filing by the manufacturer of a bond in the sum of one thousand dollars with sureties to be approved by the attorney general, conditioned upon conformance with the requirements of this section. A record of the bonds furnished, the designating number, and to whom furnished, shall be kept in the office of the department.

SECTION 38. 98.21 (3) of the statutes is amended to read:

98.21 (3) No person, by himself or herself or by a servant or agent, no firm or corporation, in its own behalf or by himself, his a servant or agent, ~~or~~ and no person, firm or corporation as the servant or agent of another person, firm or corporation, shall manufacture, procure, make or keep for sale, offer or expose for sale, or sell, bread in the form of loaves of weights other than provided for in sub. (1) and in excess of the tolerances provided for therein.

SECTION 39. 98.22 of the statutes is amended to read:

98.22 Bulk deliveries sold in terms of weight and delivered by vehicle. When a commodity in bulk is delivered by vehicle to an individual purchaser and the commodity is sold in terms of weight units, the delivery shall be accompanied by a duplicate delivery ticket with the following information clearly stated in ink or by means of other indelible marking equipment: 1) the name and address of the vendor; 2) the name and address of the purchaser; and 3) the net weight of the delivery expressed in pounds, but where milk is picked up at farms, only the identity of the vendor and the net weight need be stated. If the net weight is derived from determination of gross and tare weights, such gross and tare weights also shall be stated in terms of pounds on the ticket. One of these tickets shall be retained by the vendor, and the other shall be delivered to the purchaser at the time of delivery of the commodity, or shall be surrendered, on demand to the inspector or sealer, who, ~~if he desires to~~ may retain it as evidence, ~~shall~~ and issue a weight slip in lieu thereof for delivery to the purchaser. If the purchaser ~~himself~~ carries away ~~his~~ the purchase, the vendor shall be required only to give to the purchaser at the time of sale a delivery ticket stating the number of pounds of commodity delivered to ~~him~~ the purchaser. If the commodity is to be weighed by the purchaser, the purchaser shall furnish the vendor the duplicate delivery ticket provided for herein.

SECTION 40. 100.01 (1) (c) of the statutes is amended to read:

100.01 (1) (c) "Dealer" means a person who for resale buys, sells, offers or exposes for sale, or has in his or her possession with intent to sell, any produce except

1993 Senate Bill 832

that raised by him or her and that purchased by him or her exclusively for his or her own sale at retail.

SECTION 41. 100.01 (2) (e) of the statutes is amended to read:

100.01 (2) (e) For a commission merchant or broker to discard, dump or destroy without reasonable cause produce received by ~~him~~ the merchant or broker.

SECTION 42. 100.01 (3) of the statutes is amended to read:

100.01 (3) ACCEPTANCE IMPLIED. If any dealer fails to notify the seller of rejection within 24 hours after ~~he~~ the dealer receives notice of arrival of the produce, ~~he~~ the dealer will be deemed to have accepted it as being in accordance with the contract.

SECTION 43. 100.025 (2) of the statutes is amended to read:

100.025 (2) The owner of the herd of origin of any healthy dairy heifer calf may classify such calf as a "Wisconsin Blue Tag" dairy heifer calf by certifying that ~~he~~ or she is the owner of the herd of origin; that the sire of such calf is a registered purebred sire; and that the dam is of the same breed as the sire. Such certification shall be on forms prescribed by the department and shall include identification of the calf and its sire and dam, and such other information as the department requires. Dairy heifer calves so classified shall be identified by the owner of the herd of origin or ~~his~~ the owner's agent by inserting a blue ear tag in the right ear and shall be accompanied by the certificate.

SECTION 44. 100.05 of the statutes is amended to read:

100.05 Butter and cheese manufacturers; accounts accessible. No operator of a butter factory or cheese factory wherein the value of the milk or cream delivered is determined by the sale of the product manufactured shall use or allow any other person, unless ~~he~~ the other person is entitled to the benefit thereof, to use any milk or cream brought to ~~him~~ the operator, without the consent of the owner thereof, and such operator shall keep or cause to be kept a correct account (which shall be open to the inspection of any person furnishing milk to ~~him~~ the operator and to the department, its chemists, assistants, inspectors and agents) of the amount of milk or cream received daily, and of the number of pounds of butter, and the number and style of cheese made each day, and of the number of cheese cut or otherwise disposed of and the weight of each, and the number of pounds of whey cream sold, with the test.

NOTE: Commas added to improve readability.

SECTION 45. 100.12 (1) (intro.) of the statutes is amended to read:

100.12 (1) (intro.) Every person doing business as a commission merchant or broker shall furnish, upon demand, to any person for whom ~~he~~ or she has executed an order for the purchase or sale of a commodity, whether

for immediate or future delivery, a written statement containing the following information:

SECTION 46. 100.18 (5) of the statutes is amended to read:

100.18 (5) Any person, firm, corporation or association engaged in any business mentioned in sub. (3), or in any other kind of business, whether conducting such business in a store, business block, residence or other building, shall at all times keep a conspicuous sign posted on the outside of his or her establishment and another conspicuous sign in the salesroom, which sign shall clearly state the name of the association, corporation or individual who actually owns said merchandise, property or service which ~~are~~ is being offered to the public and not the name of any other person; provided, however, that the exterior sign shall not be required where the seller has no control over the exterior of the premises where such business is conducted.

SECTION 47. 100.18 (11) (c) 4. of the statutes is amended to read:

100.18 (11) (c) 4. If a person fails to file any statement or report, or fails to comply with any civil investigative demand, or fails to obey any subpoena issued by the department, such person may be coerced as provided in s. 885.12, except that no person shall be required to furnish any testimony or evidence under this subsection which might tend to incriminate ~~him~~ the person.

SECTION 48. 100.183 (3) of the statutes is amended to read:

100.183 (3) No person, for himself, or herself or as an agent, shall advertise at a stated price the sale of turkeys, which have been graded by the U.S. department of agriculture, unless the federal grade is set forth in such advertisement in not less than 10-point type.

SECTION 49. 100.184 of the statutes is amended to read:

100.184 Advertising foods for sale. No person shall, himself or herself, or by ~~his~~ a servant or agent, or as the servant or agent of any other person, advertise for sale any article of food in package form when the retail price is mentioned in such advertisement unless the actual weight or volume of the contents of such package as stated on the label shall be plainly and conspicuously set forth in such advertisement in not less than 5-point type.

SECTION 50. 100.201 (1) (b) 1. of the statutes is amended to read:

100.201 (1) (b) 1. "Retailer" means every person making any sale of selected dairy products at retail within this state unless otherwise excepted; provided, that in the case of a person making both sales at retail and sales at wholesale such term shall apply only to the retail portion of such sales. "Retailer" does not include the United States, the state, any municipality as defined in s. 345.05 (1) (c), or any religious, charitable or educational orga-

nization or institution, but does include any other person engaged in the business of making retail sales wholly or in part for ~~his~~ the person's own profit at an institution operated by such an exempt party.

SECTION 51. 100.201 (2) (a) 1. of the statutes is amended to read:

100.201 (2) (a) 1. Give or extend discounts or rebates, directly or indirectly, to retailers or other wholesalers on selected dairy products or give or extend to such purchasers any services connected with the delivery, handling or stocking of such products except in accordance with published price lists. A wholesaler may sell selected dairy products at a price different from or with services less than or additional to those in said published price list in order to meet a bona fide offer by a competitor to a particular retailer or wholesaler, but such discount, rebate or service shall not be given until the wholesaler first makes a written record of the date of such competitive offer, the terms thereof, the name of the retailer or wholesaler to whom made and the name of the competitor by whom made. Such record shall be available within this state for inspection and copying by any retailer or wholesaler upon ~~his~~ the retailer's or wholesaler's written request therefor. It is the duty of every wholesaler under this subsection to prepare and publish as hereinafter provided current price lists giving the prices of all selected dairy products sold by ~~him~~ the wholesaler at wholesale, directly or indirectly, to retailers or other wholesalers, including all discounts, rebates and services connected with the delivery, handling or stocking of such products, giving the effective dates of such prices, and giving the amount paid or anything of value given or granted by ~~him~~ the wholesaler for such sales made through a broker as commission, brokerage, allowance or other compensation. Such price lists shall be available within this state for inspection and copying by any retailer or wholesaler upon ~~his~~ the retailer's or wholesaler's written request therefor.

SECTION 52. 100.201 (2) (a) 2. of the statutes is amended to read:

100.201 (2) (a) 2. Every wholesaler shall file with the department the address of ~~his~~ the wholesaler's principal business office in this state, if any. If a wholesaler has such a principal business address in this state written request for any record or price list required to be made available under this subsection shall be sent to such business office and the information requested shall be made available there. A wholesaler having no principal business office within this state shall file with the department or a designated agent approved by the department such current records or price lists required to be made available under this subsection. Such current records or price lists shall be available for inspection and copying by any retailer or wholesaler upon ~~his~~ the retailer's or wholesaler's written request therefor. The failure or refusal of any wholesaler to make available for inspection and copying

any record or price list required to be made available under this subsection within 24 hours after a request has been received or to file with the department current records or price lists as required shall be prima facie evidence of a violation of this subsection.

SECTION 53. 100.201 (2) (b) (intro.) of the statutes is amended to read:

100.201 (2) (b) (intro.) Discriminate in price, directly or indirectly, between different purchasers of selected dairy products of like grade and quality where the effect of such discrimination may be substantially to lessen competition or tend to create a monopoly, or to injure, destroy or prevent competition with any person who either grants or knowingly receives the benefit of such discrimination, or with customers of either of them. Proof made at any proceeding under this paragraph that there has been discrimination in price shall be prima facie evidence of the truth of such charges. The burden of rebutting such prima facie evidence by a showing of justification shall be upon the person charged with the violation. Nothing in this paragraph shall prevent any person charged with a violation of this paragraph from rebutting such prima facie evidence by showing that ~~his~~ the person's lower price was made in good faith to meet an equally low price of a competitor. Nothing in this paragraph shall be construed to apply to the submission of bids to or sales to the United States, the state, any municipality as defined in s. 345.05 (1) (c), or any religious, charitable or educational organization or institution. Nothing in this paragraph shall prevent:

SECTION 54. 100.201 (2) (e) 1. of the statutes is amended to read:

100.201 (2) (e) 1. The wholesaler, under a bill of sale or security agreement describing the property sold and specifying the price and terms of sale duly filed by ~~him~~ the wholesaler under ss. 409.401 and 409.402 within 10 days after delivery of the equipment described therein, may sell equipment for the storage, transportation and display of selected dairy products to the retailer but the selling price shall be not less than the cost to the wholesaler, less 10% per year depreciation, plus transportation and installation costs, plus at least 6%, but in no event shall it be less than \$100 per unit. In filing bills of sale under this section, the filing officer shall follow the procedure under s. 409.403 insofar as applicable. If the wholesaler makes the sale under a security agreement, the terms of sale shall be no more favorable to the retailer than those under sub. (2) (d). Failure by any wholesaler to enforce ~~his~~ the wholesaler's security interest under this paragraph or sub. (2) (d) if a retailer is in default for more than 90 days shall constitute prima facie evidence of a violation of this section. No wholesaler shall renegotiate a security agreement which is in default.

SECTION 55. 100.201 (2) (h) 4. of the statutes is amended to read:

1993 Senate Bill 832

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

SECTION 56. 100.201 (3) of the statutes is amended to read:

100.201 (3) OPERATION OF RETAIL OUTLET BY WHOLESALE. Nothing in this section shall be interpreted to prohibit the operation of a retail outlet by a wholesaler for retail sales or to prohibit the use by ~~him~~ the wholesaler in such retail outlet of any equipment or advertising or miscellaneous matter owned by ~~him~~ the wholesaler provided that such retail outlet is under direct control and management of the wholesaler.

NOTE: Inserts "of" for improved readability.

SECTION 57. 100.201 (4) of the statutes is amended to read:

100.201 (4) UNLAWFUL ACTS OF RETAILERS. It is unlawful for any retailer or any officer, director, employe or agent thereof to solicit or receive, directly or indirectly, from or through a wholesaler, broker or another retailer, anything which is prohibited by sub. (2), where ~~he~~ the retailer, officer, director, employe or agent knows or, in the exercise of reasonable prudence, should know that the same is prohibited.

SECTION 58. 101.02 (15) (L) of the statutes is amended to read:

101.02 (15) (L) Any employer receiving from the department any blanks calling for information required by ~~it~~ the department to carry into effect ss. 101.01 to 101.25, with directions to fill the same, shall cause the same to be properly filled out so as to answer fully and correctly each question therein propounded, and in case ~~he~~ the employer is unable to answer any question, ~~he~~ the employer shall give a good and sufficient reason for such failure, and said answer shall be verified under oath by the employer, or by the president, secretary or other managing officer of the corporation, if the employer is a corporation, and returned to the department at its office within the period fixed by the department.

NOTE: Replaces "it" for clarity.

SECTION 59. 101.13 (5) (a) 2. of the statutes is amended to read:

101.13 (5) (a) 2. The toilet compartment specified under par. (a) so designed and constructed to allow sufficient space between the front entrance of the compart-

ment and adjacent furniture, fixtures or walls to permit the compartment door to open at least 95~ and to allow a person in a wheelchair ample room to readily maneuver himself or herself or the wheelchair into the compartment; and

SECTION 60. 102.03 (1) (c) 5. of the statutes is amended to read:

102.03 (1) (c) 5. To enhance the morale and efficiency of public employes in this state and attract qualified personnel to the public service, it is the policy of the state that the benefits of this chapter shall extend and be granted to employes in the service of the state or of any municipality therein on the same basis, in the same manner, under the same conditions, and with like right of recovery as in the case of employes of persons, firms or private corporations. Accordingly, the same considerations, standards, and rules of decision shall apply in all cases in determining whether any employe under this chapter, at the time of the injury, was performing service growing out of and incidental to ~~his~~ the employe's employment. For the purposes of this subsection no differentiation shall be made among any of the classes of employers enumerated in s. 102.04 or of employes enumerated in s. 102.07; and no statutes, ordinances, or administrative regulations otherwise applicable to any employes enumerated in s. 102.07 shall be controlling.

SECTION 61. 102.03 (1) (e) of the statutes is amended to read:

102.03 (1) (e) Where the accident or disease causing injury arises out of ~~his~~ the employe's employment.

SECTION 62. 102.03 (1) (f) of the statutes is amended to read:

102.03 (1) (f) Every employe whose employment requires ~~him~~ the employe to travel shall be deemed to be performing service growing out of and incidental to ~~his~~ the employe's employment at all times while on a trip, except when engaged in a deviation for a private or personal purpose. Acts reasonably necessary for living or incidental thereto shall not be regarded as such a deviation. Any accident or disease arising out of a hazard of such service shall be deemed to arise out of ~~his~~ the employe's employment.

SECTION 63. 102.05 (3) of the statutes is amended to read:

102.05 (3) Any person engaged in farming who has become subject to this chapter may withdraw by filing with the department a notice of withdrawal, ~~providing he~~ if the person has not employed 6 or more employes as defined by s. 102.07 (5) on 20. or more days during the current or previous calendar year. Such withdrawal shall be effective 30 days after the date of receipt by the department, or at such later date as is specified in the notice. Such person may again become subject to this chapter as provided by s. 102.04 (1) (c) and (e).

SECTION 64. 102.11 (1) (a) of the statutes is amended to read:

102.11 (1) (a) Daily earnings shall mean the daily earnings of the employe at the time of the injury in the employment in which ~~he~~ the employe was then engaged.

In determining daily earnings under this paragraph, overtime shall not be considered. If at the time of the injury the employe is working on part time for the day, ~~his~~ the employe's daily earnings shall be arrived at by dividing the amount received, or to be received by ~~him~~ the employe for such part-time service for the day, by the number of hours and fractional hours of such part-time service, and multiplying the result by the number of hours of the normal full-time working day for the employment involved. The words "part time for the day" shall apply to Saturday half days and all other days upon which the employe works less than normal full-time working hours. The average weekly earnings shall be arrived at by multiplying the daily earnings by the number of days and fractional days normally worked per week at the time of the injury in the business operation of the employer for the particular employment in which the employe was engaged at the time of ~~his~~ the employe's injury.

SECTION 65. 102.11 (1) (g) of the statutes is amended to read:

102.11 (1) (g) If an employe is under twenty-seven years of age, ~~his~~ the employe's average weekly earnings on which to compute the benefits accruing for permanent disability or death shall be determined on the basis of the earnings that such employe, if not disabled, probably would earn after attaining the age of twenty-seven years. Unless otherwise established, said earnings shall be taken as equivalent to the amount upon which maximum weekly indemnity is payable.

SECTION 66. 102.11 (2) of the statutes is amended to read:

102.11 (2) The average annual earnings when referred to in this chapter shall consist of fifty times the employe's average weekly earnings. Subject to the maximum limitation, average annual earnings shall in no case be taken at less than the actual earnings of the employe in the year immediately preceding ~~his~~ the employe's injury in the kind of employment in which ~~he~~ the employe worked at the time of injury.

SECTION 67. 102.11 (3) of the statutes is amended to read:

102.11 (3) The weekly wage loss referred to in this chapter, except under s. 102.60 (6), shall be such percentage of the average weekly earnings of the injured employe computed according to the provisions of this section, as shall fairly represent the proportionate extent of the impairment of ~~his~~ the employe's earning capacity in the employment in which ~~he~~ the employe was working at the time of the injury, and other suitable employments, the same to be fixed as of the time of the injury, but to be determined in view of the nature and extent of the injury.

SECTION 68. 102.17 (6) of the statutes is amended to read:

102.17 (6) If an employe or dependent shall, at the time of injury, or at the time ~~his~~ the employe's or dependent's right accrues, be under 18 years of age, the limitations of time within which ~~he~~ the employe or dependent may file application or proceed under this chapter, if they would otherwise sooner expire, shall be extended to one year after ~~he~~ the employe or dependent attains the age of 18 years. If, within any part of the last year of any such period of limitation, an employe, ~~his~~ the employe's personal representative, or surviving dependent be insane or on active duty in the armed forces of the United States such period of limitation shall be extended to 2 years after the date that the limitation would otherwise expire. The provision hereof with respect to persons on active duty in the armed forces of the United States shall apply only where no applicable federal statute is in effect.

SECTION 69. 102.195 of the statutes is amended to read:

102.195 Employes confined in institutions; payment of benefits. In case an employe is adjudged insane or incompetent, or convicted of a felony, and is confined in a public institution and has wholly dependent upon ~~him~~ the employe for support a person, whose dependency is determined as if the employe were deceased, compensation payable during the period of ~~his~~ the employe's confinement may be paid to the employe and ~~his~~ the employe's dependents, in such manner, for such time and in such amount as the department by order provides.

SECTION 70. 102.26 (4) of the statutes is amended to read:

102.26 (4) The charging or receiving of any fee in violation of this section shall be unlawful, and the attorney or other person guilty thereof shall forfeit double the amount retained by ~~him~~ the attorney or other person, the same to be collected by the state in an action in debt, upon complaint of the department. Out of the sum recovered the court shall direct payment to the injured party of the amount of the overcharge.

SECTION 71. 102.32 (5) of the statutes is amended to read:

102.32 (5) Any insured employer may, within the discretion of the department, compel the insurer to discharge, or to guarantee payment of its liabilities in any such case under this section and thereby release himself or herself from compensation liability therein, but if for any reason a bond furnished or deposit made under sub. (4) does not fully protect, the compensation insurer or uninsured employer, as the case may be, shall still be liable to the beneficiary thereof.

SECTION 72. 102.43 (2) of the statutes is amended to read:

102.43 (2) If the injury causes partial disability, during the partial disability, such proportion of the weekly indemnity rate for total disability as the actual wage loss of the injured employe bears to ~~his~~ the injured employe's average weekly wage at the time of ~~his~~ the injury.

1993 Senate Bill 832

SECTION 73. 102.45 of the statutes is amended to read:

102.45 Benefits payable to minors; how paid. Compensation and death benefit payable to an employe or dependent who was a minor when ~~his~~ the employe's or dependent's right began to accrue, may, in the discretion of the department, be ordered paid to a bank, trust company, trustee, parent or guardian, for the use of such employe or dependent as may be found best calculated to conserve ~~his~~ the employe's or dependent's interests. Such employe or dependent shall be entitled to receive payments, in the aggregate, at a rate not less than that applicable to payments of primary compensation for total disability or death benefit as accruing from ~~his~~ the employe's or dependent's 18th birthday.

SECTION 74. 102.48 (intro.) of the statutes is amended to read:

102.48 Death benefit, continued. (intro.) If ~~no person who survives~~ the deceased employe leaves ~~no one~~ is wholly dependent upon ~~him~~ the deceased employe for support, partial dependency and death benefits therefor shall be as follows:

SECTION 75. 102.48 (2) of the statutes is amended to read:

102.48 (2) In all other cases the death benefit shall be such sum as the department shall determine to represent fairly and justly the aid to support which the dependent might reasonably have anticipated from the deceased employe but for the injury. To establish anticipation of support and dependency, it shall not be essential that the deceased employe made any contribution to support. The aggregate benefits in such case shall not exceed twice the average annual earnings of the deceased; or 4 times the contributions of the deceased to the support of such dependents during the year immediately preceding ~~his~~ the deceased employe's death, whichever amount is the greater. In no event shall the aggregate benefits in such case exceed the amount which would accrue to a person solely and wholly dependent. Where there is more than one partial dependent the weekly benefit shall be apportioned according to their relative dependency. The term "support" as used in ss. 102.42 to 102.63 shall include contributions to the capital fund of the dependents, for their necessary comfort.

SECTION 76. 102.49 (2) of the statutes is amended to read:

102.49 (2) A child lawfully adopted by the deceased employe and the surviving spouse, prior to the time of the injury, and a child not ~~his~~ the deceased employe's own by birth or adoption but living with ~~him~~ the deceased employe as a member of ~~his~~ the deceased employe's family at the time of the injury shall for the purpose of this section be taken as a child by their marriage.

SECTION 77. 102.51 (2) (b) of the statutes is amended to read:

102.51 (2) (b) Where for eight years or more prior to the date of injury a deceased employe has been a resident of the United States, it shall be conclusively presumed that no person who has remained a nonresident alien during that period is either totally or partially dependent upon ~~him~~ the deceased employe for support.

SECTION 78. 102.51 (5) of the statutes is amended to read:

102.51 (5) **WHEN NOT INTERESTED.** No dependent of an injured employe shall be deemed a party in interest to any proceeding by the employe for the enforcement of the employe's claim for compensation, nor with respect to the compromise thereof by such employe. A compromise of all liability entered into by an employe is binding upon ~~his~~ the employe's dependents, except that any dependent of a deceased employe may submit the compromise for review under s. 102.16 (1).

SECTION 79. 103.17 of the statutes is amended to read:

103.17 Mutual forfeit. Any person or corporation engaged in manufacturing, which requires from ~~persons~~ in his or its employ its employes, under penalty of forfeiture of a part of the wages earned by them, a notice of intention to leave such employ, shall be liable to the payment of a like forfeiture if ~~he~~ the person or ~~it~~ corporation discharges, without similar notice, a person in such employ except for incapacity or misconduct, unless in case of a general suspension of labor in ~~his~~ the person's or ~~its~~ corporation's shop or factory or in the department thereof wherein such employe is engaged.

SECTION 80. 103.18 of the statutes is amended to read:

103.18 (title) Threat or promise to influence vote. No person shall, by threatening to discharge a person from ~~his~~ or her employment or threatening to reduce the wages of a person or by promising to give employment at higher wages to a person, attempt to influence a qualified voter to give or withhold ~~his~~ the voter's vote at an election.

SECTION 81. 103.21 (1) of the statutes is amended to read:

103.21 (1) Every minor selling or distributing newspapers or magazines on the streets or other public place, or from house to house, is in an "employment" and an "employe," and each independent news agency or (in the absence of all such agencies) each selling agency of a publisher or (in the absence of all such agencies) each publisher, whose newspapers or magazines ~~he~~ the minor sells or distributes, is an "employer" of the minor. Every minor engaged in any other street trade is in an "employment" and an "employe," and each person furnishing ~~him~~ the minor articles for sale or distribution or regularly furnishing ~~him~~ the minor material for blacking boots is ~~his~~ the minor's "employer".

SECTION 82. 103.25 (1) of the statutes is amended to read:

103.25 (1) A minor ~~under 18 years of age~~ shall not be employed or permitted to work at any street trade unless ~~his~~ the minor's employer first obtains from the department or a permit officer a street trade permit and the minor first obtains an identification card, both issued in accordance with this section.

NOTE: Reference to "under 18 years of age" is redundant. Section 990.01 (20) defines "minor" as a person who has not attained the age of 18 years.

SECTION 83. 103.26 (1) of the statutes is amended to read:

103.26 (1) The department or permit officer may refuse to grant a street trade permit and identification card to a minor who seems physically unable to perform the work or whose school record indicates that ~~he~~ the minor should not undertake such employment in addition to school, or whenever in the judgment of the department or permit officer the best interests of the minor would be served by such refusal.

SECTION 84. 103.26 (2) of the statutes is amended to read:

103.26 (2) The department may revoke a street trade permit and identification card if the minor for whom such permit was issued is found by the department to have worked when prohibited under s. 103.24, if it appears to the department that such permit was improperly or illegally issued or if in their judgment the best interests of the minor would be served by such revocation. The department shall by registered mail notify such minor and ~~his~~ the minor's employer of such revocation. On receipt of such notice the employer shall immediately return the revoked permit and discontinue the employment of such minor, and the minor shall immediately return the revoked identification card to the permit officer.

SECTION 85. 103.27 (1) of the statutes is amended to read:

103.27 (1) Every employer of minors in street trades shall keep a record for each minor of his or her name, address and date of birth.

SECTION 86. 103.43 (2) of the statutes is amended to read:

103.43 (2) Any person, who, by himself, ~~his~~ or herself, or by a servant or agent, or as the servant or agent of any other person, or as an officer, director, servant or agent of any firm, corporation, association or organization of any kind, violates sub. (1) shall upon conviction thereof be punished by a fine of not more than \$2,000 or by imprisonment in the county jail not more than one year or by both such fine and imprisonment.

SECTION 87. 103.457 of the statutes is amended to read:

103.457 Listing deductions from wages. An employer shall state clearly on the employe's pay check, pay envelope, or paper accompanying the wage payment

the amount of and reason for each deduction from the wages due or earned by the employe, except such miscellaneous deductions as may have been authorized by request of the individual employe for reasons personal to ~~himself~~ the employe. A reasonable coding system may be used by the employer.

SECTION 88. 103.46 (1) of the statutes is amended to read:

103.46 (1) A contract or agreement of hiring or employment between any employer and any employe or prospective employe, whereby ~~(a)~~ either party to such contract or agreement undertakes or promises not to join, become or remain, a member of any labor organization or of any organization of employers, or ~~(b)~~ either party to such contract or agreement undertakes or promises ~~that he will~~ to withdraw from the employment relation in the event that he or she joins, becomes or remains, a member of any labor organization or of any organization of employers; or

NOTE: Conforms provision to current numbering style.

SECTION 89. 103.50 (3) (b) of the statutes is amended to read:

103.50 (3) (b) The department shall inform itself of the nature of the equipment furnished by truck drivers who own and operate trucks on such contract work, with a view to ascertaining and determining minimum rates for the equipment. In order to protect the prevailing wage rates established by the department from evasion through unrealistic rates paid truck drivers for equipment owned and operated by them, the department shall establish minimum rates for the equipment owned and operated by them. It is the intent of this provision to prevent a truck driver who owns the equipment ~~he~~ that the truck driver operates from being required to accept less than the actual cost of operating ~~his~~ the equipment, thereby reducing the prevailing wage rates established by the department.

SECTION 90. 103.52 (intro.) and (1) of the statutes are consolidated, renumbered 103.52 (1) and amended to read:

103.52 (1) Every undertaking or promise made after July 1, 1931, whether written or oral, express or implied, between any employe or prospective employe and ~~his~~ that person's employer, prospective employer or any other individual, firm, company, association, or corporation, ~~whereby: (1) Either is declared to be against public policy if either party thereto undertakes or promises to~~ any of the following:

(a) To join or to remain a member of some specific labor organization or organizations or to join or remain a member of some specific employer organization or any employer organization or organizations; or

SECTION 91. 103.52 (2) and (3) of the statutes are renumbered 103.52 (1) (b) and (c) and amended to read:

103.52 (1) (b) ~~Either party thereto undertakes or promises not~~ Not to join or not to remain a member of

1993 Senate Bill 832

some specific labor organization or any labor organization ~~or organizations~~, or of some specific employer organization or any employer organization ~~or organizations~~; ~~or~~.

(c) ~~Either party thereto undertakes or promises that he will~~ To withdraw from an employment relation in the event that ~~he~~ the party joins or remains a member of some specific labor organization or any labor organization ~~or organizations~~, or of some specific employer organization or any employer organization ~~or organizations~~; ~~Is hereby declared to be contrary to public policy and shall not~~.

(2) ~~No undertaking or promise described in sub. (1)~~ shall afford any basis for the granting of legal or equitable relief by any court against a party to such undertaking or promise, or against any other persons who may advise, urge or induce, without fraud, violence, or threat thereof, either party thereto to act in disregard of such undertaking or promise.

(3) This section in its entirety is supplemental to and of s. 103.46 (1).

NOTE: Repositions text, deletes surplusage and amends internal numbering to conform with current drafting style.

SECTION 92. 103.535 of the statutes is amended to read:

103.535 Unlawful conduct in labor controversies.

It shall be unlawful for anyone to picket, or induce others to picket, the establishment, employes, supply or delivery vehicles, or customers of anyone engaged in business, or to interfere with ~~his~~ the person's business, or interfere with any person or persons desiring to transact or transacting business with ~~him~~ the person, when no labor dispute, as defined in s. 103.62 (3), exists between ~~such~~ the employer and his the employer's employes or their representatives.

SECTION 93. 103.56 (6) of the statutes is amended to read:

103.56 (6) The undertaking herein mentioned shall be understood to signify an agreement entered into by the complainant and the surety upon which a decree may be rendered in the same suit or proceeding against said complainant and surety, the said complainant and surety submitting themselves to the jurisdiction of the court for that purpose. But nothing herein contained shall deprive any party having a claim or cause of action under or upon such undertaking from electing to pursue ~~his~~ an ordinary remedy by suit at law or in equity.

SECTION 94. 103.61 of the statutes is amended to read:

103.61 Punishment for contempt. Punishment for a contempt, specified in s. 103.60, may be by fine, not exceeding \$25, or by imprisonment not exceeding ten days, in the jail of the county where the court is sitting, or both, in the discretion of the court. Where a person is committed to jail, for the nonpayment of such a fine, ~~he~~ the person must be discharged at the expiration of fifteen days; but where ~~he~~ the person is also committed for a def-

inite time, the fifteen days must be computed from the expiration of the definite time.

SECTION 95. 103.62 (2) of the statutes is amended to read:

103.62 (2) A person or association shall be held to be a person participating or interested in a labor dispute if relief is sought against ~~him or it~~ the person or association and if ~~he or it~~ the person or association is engaged in the industry, trade, craft, or occupation in which such dispute occurs, or is a member, officer, or agent of any association of employers or employes engaged in such industry, trade, craft, or occupation.

SECTION 96. 103.62 (3) of the statutes is amended to read:

103.62 (3) The term "labor dispute" means any controversy between an employer and the majority of ~~his~~ the employer's employes in a collective bargaining unit concerning the right or process or details of collective bargaining or the designation of representatives. Any organization with which either the employer or such majority is affiliated may be considered a party to the labor dispute. The provisions of this subsection shall supersede any provision of the statutes in conflict therewith.

SECTION 97. 103.67 (1) of the statutes is amended to read:

103.67 (1) A minor 14 to 18 years of age shall not be employed or permitted to work in any gainful occupation during the hours ~~he~~ that the minor is required to attend school under s. 118.15 unless ~~he~~ the minor has completed high school, except that ~~minors under 18~~ any minor may be employed in public exhibitions as provided in s. 103.78.

NOTE: Reference to "under 18 years of age" is redundant. Section 990.01 (20) defines "minor" as a person who has not attained the age of 18 years.

SECTION 98. 103.67 (3) of the statutes is amended to read:

103.67 (3) Sections 103.64 to 103.82 do not apply to the employment of a minor engaged in domestic or farm work performed outside school hours in connection with the minor's own home and directly for ~~his~~ the minor's parent or guardian.

SECTION 99. 103.68 (1) of the statutes is amended to read:

103.68 (1) No minor ~~under 18~~ shall be employed or permitted to work at any gainful occupation other than domestic service or farm labor for more than 8 hours in any one day nor more than 40 hours nor more than 6 days in any one week, nor during such hours as ~~he~~ the minor is required under s. 118.15 (2) to attend school.

NOTE: Reference to "under 18 years of age" is redundant. Section 990.01 (20) defines "minor" as a person who has not attained the age of 18 years.

SECTION 100. 103.71 (1) (intro.) of the statutes is amended to read:

103.71 (1) (intro.) Except as provided in s. 103.78, a permit shall not be issued authorizing any minor 14 to 18 years of age to be employed during the hours ~~he~~ that the minor is required to attend school under s. 118.15, unless ~~he~~ the minor has completed high school. The department and its permit officers shall accept as evidence of the minor's completion of high school either:

SECTION 101. 103.73 (1) (b) of the statutes is amended to read:

103.73 (1) (b) A letter written on the regular letter-head or other business paper used by the person who desires to employ the minor, stating the intention of ~~such~~ the person to employ ~~such~~ the minor and signed by ~~such~~ the person or someone duly authorized by ~~him~~ the person.

NOTE: Replaces "such" for consistency.

SECTION 102. 103.74 (2) of the statutes is amended to read:

103.74 (2) Keep a record for each ~~minor~~ employed of ~~his~~ the minor's name, address, date of birth, the time of beginning and ending work and the time for meals each day and the total hours worked each day and each week.

SECTION 103. 103.78 (4) of the statutes is amended to read:

103.78 (4) Treble the amount of compensation otherwise recoverable as provided in s. 102.60 (4) and wage loss as provided in s. 102.60 (6) are payable to a minor ~~under 18 years of age~~ injured during the course of ~~his~~ the minor's employment or appearance in violation of this section.

NOTE: Reference to "under 18 years of age" is redundant. Section 990.01 (20) defines "minor" as a person who has not attained the age of 18 years.

SECTION 104. 103.805 (1) of the statutes is amended to read:

103.805 (1) The department shall fix and collect a reasonable fee based on the cost of issuance of permits under ss. 103.25 and 103.71 and certificates of age under s. 103.75. The department may authorize the retention of the fees by the person designated to issue permits and certificates of age as compensation for ~~his~~ the person's services if the person is not on the payroll of the division administering this chapter. The permit officer shall account for all fees collected as the department prescribes.

SECTION 105. 103.805 (2) of the statutes is amended to read:

103.805 (2) The fee for issuance of permits and certificates of age shall be paid by the employer, but when the minor advances the fee to the permit officer ~~he~~ the minor shall be reimbursed by ~~his~~ the minor's employer not later than at the end of ~~his~~ the minor's first pay period.

SECTION 106. 103.86 (1) of the statutes is amended to read:

103.86 (1) Any employer who promises in writing to make payments to an employe welfare fund, either by contract with an individual employe, by a collective bar-

gaining agreement or by agreement with such employe welfare fund, and who fails to make such payments within 6 weeks after they become due and payable, and after having been notified in writing of ~~his~~ the failure to make the required payments, shall be fined not more than \$200.

SECTION 107. 105.01 (1) (a) of the statutes is amended to read:

105.01 (1) (a) Any employer who procures help for himself ~~or herself~~ only or an employe of such an employer who procures help for ~~him~~ the employer and does not act in a similar capacity for any other employer.

SECTION 108. 105.01 (1) (b) 2. of the statutes is amended to read:

105.01 (1) (b) 2. ~~Whose~~ The employer's contracts with its employes do not contain any provision requiring the forfeiture or payment of any amount by the employe as liquidated damages upon the acceptance of permanent employment by an employe with a 3rd person who has received ~~his~~ the employe's part-time or temporary services.

NOTE: Replaces "whose" to correct sentence agreement.

SECTION 109. 105.02 of the statutes is amended to read:

105.02 False statements and representation. A person or ~~his~~ the person's employe or agent shall not make any false statement to any person furnishing or seeking employment in regard to any employment, work or situation, its nature, location, duration, wages, salary or placement fee attached thereto, or the circumstances surrounding the employment, work or situation. An employment agent shall not offer or hold himself ~~or herself~~ out as in a position to secure or furnish employment without having an order therefor from an employer; however, an applicant may be referred to an employer provided a bona fide appointment for the interview has been arranged by the employment agent. An employment agent shall not misrepresent any material matter in connection with any employment, work or situation ~~he~~ that the employment agent may offer or hold himself ~~or herself~~ out in a position to secure.

SECTION 110. 105.03 of the statutes is amended to read:

105.03 Inquiry into truth of statements. Every employment agent shall assure himself ~~or herself~~ that any representations whatsoever, whether spoken, written or advertised in printed form, which ~~he~~ the employment agent makes with regard to any employment, work or situation, and which leads or may lead persons to seek such employment, work or situation, are true to the best of ~~his~~ the employment agent's knowledge and cover all the material facts affecting the employment in question.

SECTION 111. 105.07 (2) of the statutes is amended to read:

105.07 (2) The minimum fee shall be paid before a license or renewal thereof is issued. Each employment

1993 Senate Bill 832

- 15 -

agent to whom a license has been issued under this chapter shall file with the department, within 10 days after the previous license has expired, a verified statement showing the actual fees, charges, commission or other compensation received by ~~him~~ the employment agent for services as such agent during the preceding year and with such statement shall pay the balance of such license fee due the state. Such fees shall be paid to the department and deposited in the general fund.

SECTION 112. 105.11 (3) of the statutes is amended to read:

105.11 (3) An employment agent shall not charge, demand, collect or receive a greater compensation for any service performed by ~~him~~ the employment agent than is specified in the schedules filed with the department, and no registration fee may be charged without permission from the department.

SECTION 113. 105.13 of the statutes is amended to read:

105.13 Refusal to issue; suspension or revocation of license. The department may issue licenses to employment agents, and refuse to issue a license whenever, after investigation, the department finds that the character of the applicant makes ~~him~~ the applicant unfit to be an employment agent, or when the premises for conducting the business of an employment agent is found upon investigation to be unfit for such use. Any license granted by the department may be suspended or revoked by it upon notice to the licensee and good cause. Failure to comply with this chapter and rules promulgated thereunder, or with any lawful orders of the department, is cause to suspend or revoke a license.

SECTION 114. 106.01 (1) of the statutes is amended to read:

106.01 (1) The term "apprentice" shall mean any person, 16 years of age or over, who shall enter into any contract of service, express or implied, whereby ~~he~~ the person is to receive from or through ~~his~~ the person's employer, in consideration for ~~his~~ the person's services in whole or in part, instruction in any trade, craft or business.

SECTION 115. 106.01 (3) of the statutes is amended to read:

106.01 (3) Any minor, 16 years of age or over, or any adult, may, by the execution of an indenture, bind himself or herself as hereinafter provided for a term of service not less than one year.

SECTION 116. 106.01 (5) (d) of the statutes is amended to read:

106.01 (5) (d) An agreement stating the number of hours to be spent in work, and the number of hours to be spent in instruction. During the first 2 years of ~~his~~ an apprenticeship, ~~his~~ the apprentice's period of instruction shall be not less than 4 hours per week or the equivalent. If the apprenticeship is for a longer period than 2 years, the total hours of instruction shall be not less than 400

hours. The total number of hours of instruction and service shall not exceed 55 per week; provided, that nothing in this paragraph shall be construed to forbid overtime work as provided in sub. (7) of this section.

SECTION 117. 106.01 (5) (g) of the statutes is amended to read:

106.01 (5) (g) An agreement that a certificate shall be given the apprentice at the conclusion of ~~his~~ the apprentice's indenture, stating the terms of indenture.

SECTION 118. 106.01 (5i) (a) of the statutes is amended to read:

106.01 (5i) (a) The proper persons described in sub. (4) (a) to (d) may enter into such an indenture with any organization of employes, association of employers or other similar responsible agency in this state. Such organization, association or other agency shall thereupon, with the written consent of the other parties to the indenture, and the written acceptance thereof by the proposed employer, assign the indenture to the proposed employer, and ~~he~~ the proposed employer and the apprentice named in the indenture shall be bound by the terms thereof. Such consent and acceptance shall be executed in triplicate and one copy of each shall be delivered, respectively to the department, to the employer and to the apprentice and in each case shall be attached to the proper indenture. The approval of the department shall first be had in each transaction. Such organization, association or other agency shall have the exclusive right to assign the indenture and the apprentice shall not be permitted to enter into any other indenture. The period transpiring before assignment to an employer shall not be credited toward the period of apprenticeship.

NOTE: Adds "proposed" for clarity.

SECTION 119. 106.01 (5i) (b) of the statutes is amended to read:

106.01 (5i) (b) Any employer may assign ~~his~~ the employer's indenture, with the approval of the department and the written consent of the other parties thereto, to any association of employers, organization of employes or any other similar responsible agency in this state. The period of time in which such association, organization or other agency shall be such assignee shall not be credited as time served by the apprentice. After such assignment the association, organization or other agency shall, with the approval of the department and the written consent of the apprentice, assign the indenture to an employer but the apprentice shall not be bound by the assignment unless the employer accepts, by ~~his~~ the employer's signed instruments, the terms of the indenture and that ~~he~~ the employer will complete the employer's unperformed obligations thereunder; each such consent and acceptance shall be executed in triplicate and one of each, respectively, shall be delivered to the department, to the assignee employer and to the apprentice and in each case shall be attached to the proper indenture.

Upon acceptance the employer shall for all purposes be deemed a party to the indenture.

SECTION 120. 106.01 (6) of the statutes is amended to read:

106.01 (6) The employer shall pay for the time the apprentice is receiving related instruction for no fewer hours than specified in sub. (5) (d) at the same rate per hour as for services. Nothing herein shall prohibit an agreement between the parties requiring the apprentice to take additional instruction on his the apprentice's own time in excess of the number of hours required by statute. Attendance at school shall be certified by the teacher in charge.

SECTION 121. 106.01 (8) of the statutes is amended to read:

106.01 (8) If either party to an indenture shall fail to perform any of the stipulations thereof, ~~he~~ the nonperforming party shall forfeit not less than one dollar nor more than \$100, such forfeiture to be collected on complaint of the department, and paid into the state treasury. Any indenture may be annulled by the department upon application of either party and good cause shown.

SECTION 122. 106.02 of the statutes is amended to read:

106.02 Carpenters' apprentices. After July 1, 1943, every person, regardless of age, commencing a carpentry apprenticeship, shall be indentured under and be subject to s. 106.01, except that if the apprentice is 18 years or more of age his the apprentice's signature only shall be necessary to bind ~~him~~ the apprentice. Such apprenticeship shall be for a period of 4 years, except that the department may upon the application of the apprentice or the employer, or both, extend such term for not to exceed one year.

SECTION 123. 107.01 (1) of the statutes is amended to read:

107.01 (1) No license or lease, verbal or written, made to a miner shall be revocable by the maker thereof after a valuable discovery or prospect has been struck unless the miner shall forfeit ~~his~~ the miner's right by negligence such as establishes a forfeiture according to mining usages.

SECTION 124. 107.01 (2) of the statutes is amended to read:

107.01 (2) The discovery of a crevice or range containing ores or minerals shall entitle the discoverer to the ores or minerals pertaining thereto, subject to the rent due his the discoverer's landlord, before as well as after the ores or minerals are separated from the freehold; but such miner shall not be entitled to recover any ores or minerals or the value thereof from the person digging on his the miner's range in good faith and known to be mining thereon until ~~he~~ the miner shall have given notice of his the miner's claim; and ~~he~~ the miner shall be entitled to the ores or minerals dug after such notice.

SECTION 125. 108.02 (6) of the statutes is amended to read:

108.02 (6) **BENEFITS.** "Benefits" means the money allowance payable to an employe as compensation for ~~his~~ the employe's wage losses due to unemployment as provided in this chapter.

SECTION 126. 108.02 (11) of the statutes is amended to read:

108.02 (11) **ELIGIBILITY.** An employe shall be deemed "eligible" for benefits for any given week of ~~his~~ the employe's unemployment unless ~~he~~ the employe is disqualified by a specific provision of this chapter from receiving benefits for such week of unemployment, and shall be deemed "ineligible" for any week to which such a disqualification applies.

SECTION 127. 108.02 (22) of the statutes is amended to read:

108.02 (22) **RESERVE PERCENTAGE.** "Reserve percentage" shall for contribution purposes refer to the status of an employer's account, as determined by the department as of the applicable "computation date". In calculating an employer's net reserve as of any computation date, ~~his~~ the employer's account shall be charged with benefits paid on or before said date, and shall be credited with contributions, on ~~his~~ the employer's payroll through said date, if paid by the close of the month which follows said date or if paid pursuant to s. 108.18 (7) and within the period therein specified. The employer's "reserve percentage" means ~~his account's~~ the net reserve of the employer's account as of the computation date, stated as a percentage of ~~his~~ the employer's "payroll" in the year ending on such date or in the year applicable under s. 108.18 (6).

SECTION 128. 108.02 (27) of the statutes is amended to read:

108.02 (27) **WEEK.** "Week" means calendar week, starting Sunday and ending Saturday; but, where an employe starts a working shift on a given Saturday, all ~~his~~ of the employe's hours and pay for that shift shall be counted in the calendar week which includes that Saturday.

SECTION 129. 108.03 (1) of the statutes is amended to read:

108.03 (1) Benefits shall be paid to each unemployed and eligible employe from his or her employer's account, under the conditions and in the amounts stated in (or approved by the department pursuant to) this chapter, and at such times, at such places, and in such manner as the department may from time to time approve or prescribe.

SECTION 130. 108.03 (2) of the statutes is amended to read:

108.03 (2) The benefit liability of each employer's account shall begin to accrue under s. 108.07 in the first week completed on or after the first day of that calendar

1993 Senate Bill 832

- 17 -

year within which ~~his~~ the employer's contributions first began to accrue under this chapter.

SECTION 131. 108.04 (1) (e) of the statutes is amended to read:

108.04 (1) (e) An individual who is self-employed shall not be eligible for benefits for any week in which ~~he~~ the individual has worked at ~~his~~ the self-employment, unless ~~he~~ the individual establishes to the satisfaction of the department that in view of labor market conditions ~~he~~ the individual has made an active and bona fide search for employment. The department shall, by rule, define self-employment for purposes of this paragraph.

SECTION 132. 108.04 (16) (a) 4. of the statutes is amended to read:

108.04 (16) (a) 4. The individual attended the training course full time during the given training week or had good cause for ~~his failure~~ failing to do so, and is making satisfactory progress in the course. The department may require the training institution to file a certification showing the individual's attendance and progress.

SECTION 133. 108.08 (2) of the statutes is amended to read:

108.08 (2) The department may require from any or each employer notification of the partial or total unemployment of ~~his~~ the employer's employes, within such time, in such form, and in accordance with such rules as the department may prescribe.

SECTION 134. 108.12 of the statutes is amended to read:

108.12 Waiver of benefit void. No agreement by an employe to waive ~~his~~ the employe's right to benefits or any other rights under this chapter shall be valid. No employe shall, in any proceeding involving benefits under this chapter, be prevented from asserting all facts relevant to ~~his~~ the employe's eligibility, regardless of any prior erroneous representation with respect to such facts.

SECTION 135. 108.13 (3) of the statutes is amended to read:

108.13 (3) In case an employe dies after the close of a week of unemployment in which ~~he~~ the employe was eligible and for which benefits are payable under this chapter, the department may designate any person who might in its judgment properly receive such benefits, and a receipt or an indorsement from the person so designated shall fully discharge the fund from liability for such benefits.

SECTION 136. 108.14 (8m) (a) of the statutes is amended to read:

108.14 (8m) (a) The department may enter into reciprocal arrangements, with any agency administering another unemployment compensation law, whereby all the services performed by an individual for a single employing unit, which services are customarily performed in more than one state or jurisdiction, shall be deemed to be employment covered by the law of a specified state or jurisdiction ~~(a)~~ in which a part of such ser-

vices are performed, or ~~(b)~~ in which such individual has ~~his~~ residence, or ~~(c)~~ in which such employing unit maintains a place of business; provided there is in effect, as to such services, an election by such employing unit, approved by the agency administering the specified law, pursuant to which all the services performed by such individual for such employing unit are deemed to be employment covered by such law.

NOTE: Conforms provision to current numbering style.

SECTION 137. 108.14 (9m) of the statutes is amended to read:

108.14 (9m) The department may afford reasonable cooperation with any government agency charged with war-effort or post-war planning responsibilities or with the administration of any system of unemployment allowances or unemployment assistance or of any other program designed to prevent or relieve unemployment. All moneys payable to or received by this state for any program of allowances pursuant to an agreement with any government or nonprofit agency, whereby moneys are made available to the state solely for that purpose, shall be paid to the state and shall promptly be deposited by the department to the credit of a separate account therefor, with such custodians as the state may from time to time select, who shall hold, release and transfer the cash in any such account in a manner approved by the department of administration. Payments from any such account shall be made upon vouchers or drafts authorized by the department, in such manner as the department of administration may from time to time approve or prescribe. The treasurer of the unemployment reserve fund shall serve as treasurer of any account under this subsection. The bond of the treasurer, as required under ss. 19.01 (2) and 108.16 (4), shall likewise be conditioned upon the faithful performance of the duties under this subsection by the treasurer and ~~his~~ the treasurer's subordinates, in such additional amount as may be fixed by the department. The treasurer shall report annually to the department of administration regarding receipts and disbursements under this subsection.

SECTION 138. 108.141 (1) (a) of the statutes is amended to read:

108.141 (1) (a) "Eligibility period" of an individual means the period consisting of the weeks in ~~his~~ the individual's benefit year which begin in an extended benefit period and, if ~~his~~ the individual's benefit year ends within such extended benefit period, any weeks thereafter which begin in such period.

SECTION 139. 108.141 (1) (b) (intro.) of the statutes is amended to read:

108.141 (1) (b) (intro.) "Exhaustee" means an individual who, with respect to any week of unemployment in ~~his~~ the individual's eligibility period:

SECTION 140. 108.15 (6) (e) of the statutes is amended to read:

108.15 (6) (e) Any amount withheld by the state treasurer under par. (d) shall be paid by ~~him~~ the state treasurer to the fund's treasurer, who shall duly credit such payment toward satisfying the delinquency.

SECTION 141. 108.16 (4) of the statutes is amended to read:

108.16 (4) Consistently with sub. (5), all contributions payable to the unemployment reserve fund shall be paid to the department, and shall promptly be deposited by the department to the credit of the unemployment reserve fund, with such custodians as the department may from time to time select, who shall hold, release and transfer the fund's cash in a manner approved by the department. Payments from said fund shall be made upon vouchers or drafts authorized by the department, in such manner as the department may from time to time approve or prescribe. Any procedure thus approved or prescribed shall be deemed to satisfy (and shall be in lieu of) any and all statutory requirements (for specific appropriation or other formal release by state officers of state moneys prior to their expenditure) which might otherwise be applicable to withdrawals from the fund. The department shall designate a treasurer of the unemployment reserve fund, who shall be either a regular salaried employe of the department or the state treasurer and shall serve as treasurer of the fund until a successor designated by the department has assumed the duties of this office. ~~He~~ The treasurer of the fund shall give a separate bond conditioned upon ~~his~~ the faithful performance of these duties pursuant to s. 19.01 (2), which bond shall be deemed likewise conditioned upon the faithful performance by ~~his~~ or her subordinates of their duties, in such amount as may be fixed by the department. All premiums upon the bond required pursuant to this section when furnished by an authorized surety company or by a duly constituted governmental bonding fund shall (except as otherwise provided in this section) be paid from the interest earnings of the unemployment reserve fund, but shall not exceed one-fourth of one ~~per-cent~~ percent, per year, of the amount of said bond.

SECTION 142. 108.16 (6) (c) of the statutes is amended to read:

108.16 (6) (c) Any balance credited to an employer's account, if and when ~~he~~ the employer ceases to be subject to this chapter, except as provided in sub. (8);

SECTION 143. 108.161 (1m) of the statutes is amended to read:

108.161 (1m) ~~He~~ The treasurer of the fund shall also credit to said account all federal moneys credited to the fund pursuant to sub. (8).

SECTION 144. 108.17 (1) of the statutes is amended to read:

108.17 (1) Contributions shall accrue and become payable by each employer then subject to this chapter on the first day of July, 1934, and shall be paid thenceforth in accordance with this chapter. Thereafter contributions

shall accrue and become payable by any employer on and after the date on which ~~he~~ the employer becomes newly subject to this chapter.

SECTION 145. 108.17 (2m) of the statutes is amended to read:

108.17 (2m) When a written statement of account is issued to an employer by the department, showing as duly credited a specified amount received from ~~him~~ the employer under this chapter, no other form of state receipt therefor is required.

SECTION 146. 108.18 (1) (a) of the statutes is amended to read:

108.18 (1) (a) Each employer shall pay contributions to the fund for each calendar year at whatever rate on ~~his~~ the employer's payroll for that year duly applies to ~~him~~ the employer pursuant to this section.

SECTION 147. 108.18 (3) (c) of the statutes is amended to read:

108.18 (3) (c) Permitting ~~him~~ the employer to pay such lower rate is consistent with the relevant conditions then applicable to additional credit allowance for such year under section 3303 (a) of the federal unemployment tax act, any other provision to the contrary notwithstanding.

SECTION 148. 108.18 (4) of the statutes is amended to read:

108.18 (4) EXPERIENCE RATES. Except as otherwise specified in this section, an employer's contribution rate on ~~his~~ the employer's payroll for a given calendar year shall be based on the reserve percentage of ~~his~~ the employer's account as of the applicable computation date, as follows:

SECTION 149. 108.18 (6) of the statutes is amended to read:

108.18 (6) COMPUTATION IN SPECIAL CASES. If during the year ending on a computation date an employer has been liable for contributions but has had no payroll, ~~his~~ the employer's reserve percentage as of that computation date shall be computed on the basis of ~~his~~ the employer's most recent year (ending on a computation date which applied to ~~him~~ the employer) of some payroll; but ~~his~~ the employer's contribution rate for the calendar year following the computation date shall in no case be less than one ~~per-cent~~ percent.

SECTION 150. 111.01 (3) of the statutes is amended to read:

111.01 (3) Negotiations of terms and conditions of work should result from voluntary agreement between employer and employe. For the purpose of such negotiation an employe has the right, if ~~he~~ the employe desires, to associate with others in organizing and bargaining collectively through representatives of ~~his~~ the employe's own choosing, without intimidation or coercion from any source.

SECTION 151. 111.02 (1) of the statutes is amended to read:

1993 Senate Bill 832

111.02 (1) The term “all-union agreement” shall mean an agreement between an employer and the representative of ~~his~~ the employer’s employees in a collective bargaining unit whereby all or any of the employees in such unit are required to be members of a single labor organization.

SECTION 152. 111.02 (2) of the statutes is amended to read:

111.02 (2) “Collective bargaining” is the negotiating by an employer and a majority of ~~his~~ the employer’s employees in a collective bargaining unit (or their representatives) concerning representation or terms and conditions of employment of such employees in a mutually genuine effort to reach an agreement with reference to the subject under negotiation.

SECTION 153. 111.02 (6) of the statutes is renumbered 111.02 (6) (a) and amended to read:

111.02 (6) (a) ~~The term “employee”~~ “Employee” shall include any person, other than an independent contractor, working for another for hire in the state of Wisconsin in a nonexecutive or nonsupervisory capacity, and shall not be limited to the employees of a particular employer unless the context clearly indicates otherwise; ~~and,~~

(b) “Employee” shall include any individual whose work has ceased solely as a consequence of or in connection with any current labor dispute or because of any unfair labor practice on the part of an employer and a) who has not refused;

1. Refused or failed to return to work upon the final disposition of a labor dispute or a charge of an unfair labor practice by a tribunal having competent jurisdiction of the same or whose jurisdiction was accepted by the employe or ~~his~~ the employe’s representative; ~~b) who has not been;~~

2. Been found to have committed or to have been a party to any unfair labor practice hereunder; ~~c) who has not obtained;~~

3. Obtained regular and substantially equivalent employment elsewhere; ~~or d) who has not been~~

4. Been absent from his or her employment for a substantial period of time during which reasonable expectancy of settlement has ceased (except by an employer’s unlawful refusal to bargain) and whose place has been filled by another engaged in the regular manner for an indefinite or protracted period and not merely for the duration of a strike or lockout; ~~but,~~

(c) “Employee” shall not include any individual employed in the domestic service of a family or person at his the person’s home or any individual employed by his or her parent or spouse or any employe who is subject to the federal railway labor act.

NOTE: Amends internal numbering for consistency with current numbering style.

SECTION 154. 111.02 (7) of the statutes is amended to read:

111.02 (7) The term “employer” means a person who engages the services of an employe, and includes any person acting on behalf of an employer within the scope of his or her authority, express or implied, but shall not include the state or any political subdivision thereof, or any labor organization or anyone acting in behalf of such organization other than when it is acting as an employer in fact.

SECTION 155. 111.02 (9) of the statutes is amended to read:

111.02 (9) The term “labor dispute” means any controversy between an employer and the majority of ~~his~~ the employer’s employees in a collective bargaining unit concerning the right or process or details of collective bargaining or the designation of representatives. Any organization with which either the employer or such majority is affiliated may be considered a party to the labor dispute.

SECTION 156. 111.02 (11) of the statutes is amended to read:

111.02 (11) The term “representative” includes any person chosen by an employe to represent ~~him~~ the employe.

SECTION 157. 111.02 (12) of the statutes is renumbered 111.02 (12) (intro.) and amended to read:

111.02 (12) (intro.) The term “secondary boycott” shall include combining or conspiring to cause or threaten to cause injury to ~~one~~ a person with whom no labor dispute exists in order to bring that person, against that person’s will, into a concerted plan to coerce or inflict damage upon another, whether by a) ~~withholding;~~

(a) Withholding patronage, labor, or other beneficial business intercourse, b) picketing, c) ~~refusing;~~

(c) Refusing to handle, install, use or work on particular materials, equipment or supplies; ~~or d) by any; or~~

(d) Any other unlawful means, ~~in order to bring him against his will into a concerted plan to coerce or inflict damage upon another.~~

NOTE: Repositions text and amends internal numbering for conformity with current numbering style.

SECTION 158. 111.02 (12) (b) of the statutes is created to read:

111.02 (12) (b) Picketing;

NOTE: See NOTE to previous SECTION of this bill.

SECTION 159. 111.05 (3) of the statutes is amended to read:

111.05 (3) Whenever a question arises concerning the representation of employes in a collective bargaining unit the commission shall determine the representatives thereof by taking a secret ballot of employes and certifying in writing the results thereof to the interested parties and to their employer or employers. There shall be included on any ballot for the election of representatives the names of all persons submitted by an employe or group of employes participating in the election, except

that the commission may, in its discretion, exclude from the ballot ~~one~~ a person who, at the time of the election, stands deprived of ~~his~~ the person's rights under this subchapter by reason of a prior adjudication of ~~his~~ the person's having engaged in an unfair labor practice. The ballot shall be so prepared as to permit of a vote against representation by anyone named on the ballot. The commission's certification of the results of any election shall be conclusive as to the findings included therein unless reviewed in the same manner as provided by s. 111.07 (8) for review of orders of the commission.

SECTION 160. 111.05 (4) of the statutes is amended to read:

111.05 (4) Questions concerning the determination of collective bargaining units or representation of employes may be raised by petition of any employe or ~~his~~ the employe's employer (or the representative of either of them). Where it appears by the petition that any emergency exists requiring prompt action, the commission shall act upon said petition forthwith and hold the election requested within such time as will meet the requirements of the emergency presented. The fact that one election has been held shall not prevent the holding of another election among the same group of employes, provided that it appears to the commission that sufficient reason therefor exists.

SECTION 161. 111.06 (1) (a) of the statutes is amended to read:

111.06 (1) (a) To interfere with, restrain or coerce ~~his~~ the employer's employes in the exercise of the rights guaranteed in s. 111.04.

SECTION 162. 111.06 (1) (b) of the statutes is amended to read:

111.06 (1) (b) To initiate, create, dominate or interfere with the formation or administration of any labor organization or contribute financial support to it, provided that an employer shall not be prohibited from reimbursing employes at their prevailing wage rate for the time spent conferring with ~~him~~ the employer, nor from cooperating with representatives of at least a majority of ~~his~~ the employer's employes in a collective bargaining unit, at their request, by permitting employe organizational activities on company premises or the use of company property facilities where such activities or use create no additional expense to the company, provided, however, that it shall not be an unfair labor practice for an employer to become a member of the same labor organization of which ~~his~~ the employer's employes are members, when ~~he~~ the employer and ~~they~~ the employer's employes work at the same trade.

SECTION 163. 111.06 (1) (d) of the statutes is amended to read:

111.06 (1) (d) To refuse to bargain collectively with the representative of a majority of ~~his~~ the employer's employes in any collective bargaining unit; provided, however, that where an employer files with the commis-

sion a petition requesting a determination as to majority representation, ~~he~~ the employer shall not be deemed to have refused to bargain until an election has been held and the result thereof has been certified to ~~him~~ the employer by the commission.

SECTION 164. 111.06 (1) (e) of the statutes is amended to read:

111.06 (1) (e) To bargain collectively with the representatives of less than a majority of ~~his~~ the employer's employes in a collective bargaining unit, or to enter into an all-union agreement except in the manner provided in par. (c).

SECTION 165. 111.06 (1) (h) of the statutes is amended to read:

111.06 (1) (h) To discharge or otherwise discriminate against an employe because ~~he~~ the employe has filed charges or given information or testimony in good faith under the provisions of this subchapter.

SECTION 166. 111.06 (2) (a) of the statutes is amended to read:

111.06 (2) (a) To coerce or intimidate an employe in the enjoyment of ~~his~~ the employe's legal rights, including those guaranteed in s. 111.04, or to intimidate ~~his~~ the employe's family, picket ~~his~~ the employe's domicile, or injure the person or property of ~~such~~ the employe or ~~his~~ the employe's family.

NOTE: Replaces "such" for consistency in terminology.

SECTION 167. 111.06 (2) (b) of the statutes is amended to read:

111.06 (2) (b) To coerce, intimidate or induce any employer to interfere with any of ~~his~~ the employer's employes in the enjoyment of their legal rights, including those guaranteed in s. 111.04, or to engage in any practice with regard to ~~his~~ the employer's employes which would constitute an unfair labor practice if undertaken by ~~him~~ the employer on ~~his~~ the employer's own initiative.

SECTION 168. 111.06 (2) (m) of the statutes is amended to read:

111.06 (2) (m) To coerce or intimidate an employer working at the same trade of ~~his~~ the employer's employes to induce ~~him~~ the employer to become a member of the labor organization of which they are members, permissible pursuant to s. 111.06 (1) (b).

SECTION 169. 111.07 (2) (a) of the statutes is amended to read:

111.07 (2) (a) Upon the filing with the commission by any party in interest of a complaint in writing, on a form provided by the commission, charging any person with having engaged in any specific unfair labor practice, it shall mail a copy of such complaint to all other parties in interest. Any other person claiming interest in the dispute or controversy, as an employer, an employe, or their representative, shall be made a party upon application. The commission may bring in additional parties by service of a copy of the complaint. Only one such complaint

1993 Senate Bill 832

shall issue against a person with respect to a single controversy, but any such complaint may be amended in the discretion of the commission at any time prior to the issuance of a final order based thereon. The person or persons so complained of shall have the right to file an answer to the original or amended complaint and to appear in person or otherwise and give testimony at the place and time fixed in the notice of hearing. The commission shall fix a time for the hearing on such complaint, which will be not less than 10 nor more than 40 days after the filing of such complaint, and notice shall be given to each party interested by service on ~~him~~ the party personally or by mailing a copy thereof to ~~him~~ the party at his ~~the party's~~ last-known post-office address at least 10 days before such hearing. In case a party in interest is located without the state and has no known post-office address within this state, a copy of the complaint and copies of all notices shall be filed in the office of the secretary of state and shall also be sent by registered mail to the last-known post-office address of such party. Such filing and mailing shall constitute sufficient service with the same force and effect as if served upon the party located within this state. Such hearing may be adjourned from time to time in the discretion of the commission and hearings may be held at such places as the commission shall designate.

SECTION 170. 111.07 (4) of the statutes is amended to read:

111.07 (4) Within 60 days after hearing all testimony and arguments of the parties the commission shall make and file its findings of fact upon all of the issues involved in the controversy, and its order, which shall state its determination as to the rights of the parties. Pending the final determination by it of any controversy before it the commission may, after hearing, make interlocutory findings and orders which may be enforced in the same manner as final orders. Final orders may dismiss the charges or require the person complained of to cease and desist from the unfair labor practices found to have been committed, suspend ~~his~~ the person's rights, immunities, privileges or remedies granted or afforded by this subchapter for not more than one year, and require ~~him~~ the person to take such affirmative action, including reinstatement of employes with or without pay, as the commission deems proper. Any order may further require ~~such~~ the person to make reports from time to time showing the extent to which ~~he~~ the person has complied with the order.

SECTION 171. 111.07 (13) of the statutes is amended to read:

111.07 (13) A transcribed copy of the evidence and proceedings or any part thereof on any hearing taken by the stenographer appointed by the commission, being certified by such stenographer to be a true and correct transcript, carefully compared by ~~him~~ the stenographer with ~~his~~ the stenographer's original notes, and to be a correct statement of such evidence and proceedings, shall be

received in evidence with the same effect as if such reporter were present and testified to the fact so certified.

SECTION 172. 111.15 of the statutes is amended to read:

111.15 Construction of subchapter I. Except as specifically provided in this subchapter, nothing therein shall be construed so as to interfere with or impede or diminish in any way the right to strike or the right of individuals to work; nor shall anything in this subchapter be so construed as to invade unlawfully the right to freedom of speech. ~~And nothing~~ Nothing in this subchapter shall be so construed or applied as to deprive any employe of any unemployment benefit which ~~he~~ the employe might otherwise be entitled to receive under ch. 108.

NOTE: Eliminates surplusage.

SECTION 173. 111.53 of the statutes is amended to read:

111.53 Appointment of conciliators and arbitrators. Within 30 days after July 25, 1947, the commission shall appoint a panel of persons to serve as conciliators or arbitrators under this subchapter. No person shall serve as a conciliator and arbitrator in the same dispute. Each person appointed to said panels shall be a resident of this state, possessing, in the judgment of the commission, the requisite experience and judgment to qualify such person capably and fairly to deal with labor dispute problems. All such appointments shall be made without a consideration of the political affiliations of the appointee. Each appointee shall take an oath to perform honestly and to the best of ~~his~~ the appointee's ability the duties of conciliator or arbitrator, as the case may be. Any appointee may be removed by the commission at any time or may resign ~~his~~ or her position at any time by notice in writing to the commission. Any vacancy in the panels shall be filled by the commission within 30 days after such vacancy occurs. Such conciliators and arbitrators shall be paid reasonable compensation for services and for necessary expenses, in an amount to be fixed by the commission, such compensation and expenses to be paid out of the appropriation made to the commission by s. 20.425 upon such authorizations as the commission may prescribe.

SECTION 174. 111.55 of the statutes is amended to read:

111.55 Conciliator unable to effect settlement; appointment of arbitrators. If the conciliator so named is unable to effect a settlement of such dispute within a 15-day period after ~~his~~ the conciliator's appointment, ~~he~~ the conciliator shall report such fact to the commission; and the commission, if it believes that a continuation of the dispute will cause or is likely to cause the interruption of an essential service, shall submit to the parties the names of either 3 or 5 persons from the panel provided for in s. 111.53. Each party shall alternately strike one name from such list of persons. The person or persons left on

the list shall be appointed by the commission as the arbitrator (or arbitrators) to hear and determine such dispute.

SECTION 175. 111.58 of the statutes is amended to read:

111.58 Standards for arbitration. The arbitrator shall not make any award which would infringe upon the right of the employer to manage ~~his~~ the employer's business or which would interfere with the internal affairs of the union.

SECTION 176. 111.59 of the statutes is amended to read:

111.59 Filing order with clerk of circuit court; period effective; retroactivity. The arbitrator shall hand down his or her findings, decision and order (hereinafter referred to as the order) within 30 days after his or her appointment; except that the parties may agree to extend, or the commission may for good cause extend the period for not to exceed an additional 30 days. If the arbitrators do not agree, then the decision of the majority shall constitute the order in the case. The arbitrator shall furnish to each of the parties and to the public service commission a copy of the order. A certified copy thereof shall be filed in the office of the clerk of the circuit court of the county wherein the dispute arose or where the majority of the employees involved in the dispute resides. Unless such order is reversed upon a petition for review filed pursuant to s. 111.60, such order, together with such agreements as the parties may themselves have reached, shall become binding upon, and shall control the relationship between the parties from the date such order is filed with the clerk of the circuit court, as aforesaid, and shall continue effective for one year from that date, but such order may be changed by mutual consent or agreement of the parties. No order of the arbitrators relating to wages or rates of pay shall be retroactive to a date before the date of the termination of any contract which may have existed between the parties, or, if there was no such contract, to a date before the day on which the demands involved in the dispute were presented to the other party. The question whether or not new contract provisions or amendments to an existing contract are retroactive to the terminating date of a present contract, amendments or part thereof, shall be matter for collective bargaining or decision by the arbitrator.

SECTION 177. 111.60 of the statutes is renumbered 111.60 (1) (intro.) and amended to read:

111.60 (1) (intro.) Either party to the dispute may, within 15 days from the date such order is filed with the clerk of the court, petition the court for a review of such order on the ground ~~(1) that the;~~

~~(a) The parties were not given reasonable opportunity to be heard, or (2) that the;~~

~~(b) The arbitrator exceeded his the arbitrator's powers, or (3) that the;~~

~~(c) The order is not supported by the evidence, or (4) that the; or~~

~~(d) The order was procured by fraud, collusion, or other unlawful means.~~

~~(2) A summons to the other party to the dispute shall be issued as provided by law in other civil cases; and either party shall have the same rights to a change of venue from the county, or to a change of judge, as provided by law in other civil cases.~~

~~(3) The judge of the circuit court shall review the order solely upon the grounds for review hereinabove set forth and shall affirm, reverse, modify or remand such order to the arbitrator as to any issue or issues for such further action as the circumstances require.~~

NOTE: Amends internal numbering for consistency with current numbering style.

SECTION 178. 111.62 of the statutes is amended to read:

111.62 Strikes, work stoppages, slowdowns, lock-outs, unlawful; penalty. It shall be unlawful for any group of employes of a public utility employer acting in concert to call a strike or to go out on strike, or to cause any work stoppage or slowdown which would cause an interruption of an essential service; it also shall be unlawful for any public utility employer to lock out ~~his~~ the employer's employes when such action would cause an interruption of essential service; and it shall be unlawful for any person or persons to instigate, to induce, to conspire with, or to encourage any other person or persons to engage in any strike or lockout or slowdown or work stoppage which would cause an interruption of an essential service. Any violation of this section by any member of a group of employes acting in concert or by any employer or by any officer of an employer acting for such employer, or by any other individual, shall constitute a misdemeanor.

SECTION 179. 111.64 (1) of the statutes is amended to read:

111.64 (1) Nothing in this subchapter shall be construed to require any individual employe to render labor or service without ~~his~~ the employe's consent, or to make illegal the quitting of ~~his~~ the employe's labor or service or the withdrawal from ~~his~~ the employe's place of employment unless done in concert or agreement with others. No court shall have power to issue any process to compel an individual employe to render labor or service or to remain at ~~his~~ the employe's place of employment without ~~his~~ the employe's consent. It is the intent of this subchapter only to forbid employes of a public utility employer to engage in a strike or to engage in a work slowdown or stoppage in concert, and to forbid a public utility employer to lock out ~~his~~ the employer's employes, where such acts would cause an interruption of essential service.

SECTION 180. 111.70 (1) (j) of the statutes is amended to read:

111.70 (1) (j) "Municipal employer" means any city, county, village, town, metropolitan sewerage district,

1993 Senate Bill 832

school district, or any other political subdivision of the state which engages the services of an employe and includes any person acting on behalf of a municipal employer within the scope of ~~his~~ the person's authority, express or implied.

SECTION 181. 111.70 (1) (L) 2. b. of the statutes is amended to read:

111.70 (1) (L) 2. b. Is performing related work under the supervision of a professional person to qualify ~~himself~~ to become a professional employe as defined in subd. 1.

SECTION 182. 111.70 (3) (b) 1. of the statutes is amended to read:

111.70 (3) (b) 1. To coerce or intimidate a municipal employe in the enjoyment of ~~his~~ the employe's legal rights, including those guaranteed in sub. (2).

SECTION 183. 111.70 (3) (b) 2. of the statutes is amended to read:

111.70 (3) (b) 2. To coerce, intimidate or induce any officer or agent of a municipal employer to interfere with any of its employes in the enjoyment of their legal rights, including those guaranteed in sub. (2), or to engage in any practice with regard to its employes which would constitute a prohibited practice if undertaken by ~~him~~ the officer or agent on ~~his~~ the officer's or agent's own initiative.

SECTION 184. 111.70 (3) (b) 5. of the statutes is amended to read:

111.70 (3) (b) 5. To coerce or intimidate an independent contractor, supervisor, confidential, managerial or executive employe, officer or agent of the municipal employer, to induce ~~him~~ the person to become a member of the labor organization of which employes are members.

SECTION 185. 111.70 (4) (c) 3. b. of the statutes is amended to read:

111.70 (4) (c) 3. b. The fact finder may establish dates and place of hearings which shall be where feasible, and shall conduct the hearings pursuant to rules established by the commission. Upon request, the commission shall issue subpoenas for hearings conducted by the fact finder. The fact finder may administer oaths. Upon completion of the hearing, the fact finder shall make written findings of fact and recommendations for solution of the dispute and shall cause the same to be served on the parties and the commission. Cost of fact-finding proceedings shall be divided equally between the parties. At the time the fact finder submits a statement of his or her costs to the parties, ~~he~~ the fact finder shall submit a copy thereof to the commission at its Madison office.

SECTION 186. 111.70 (4) (c) 3. c. of the statutes is amended to read:

111.70 (4) (c) 3. c. Nothing herein shall be construed as prohibiting any fact finder from endeavoring to mediate the dispute, in which ~~he~~ the fact finder is involved, at any time prior to the issuance of ~~his~~ the fact finder's recommendations.

SECTION 187. 111.70 (4) (jm) 3 of the statutes, as affected by 1993 Wisconsin Act 16, is amended to read:

111.70 (4) (jm) 3. Within 14 days of ~~his~~ the arbitrator's appointment, the arbitrator shall conduct a hearing to determine the terms of the agreement relating to wages, hours and working conditions and other matters subject to arbitration under subd. 4. The arbitrator may subpoena witnesses at the request of either party or on ~~his~~ the arbitrator's own motion. All testimony shall be given under oath. The arbitrator shall take judicial notice of all economic and social data presented by the parties which is relevant to the wages, hours and working conditions of the police department members or other matters subject to arbitration under subd. 4. The other party shall have an opportunity to examine and respond to such data. The rules of evidence applicable to a contested case, as defined in s. 227.01 (3), shall apply to the hearing before the arbitrator.

SECTION 188. 111.70 (5) of the statutes is amended to read:

111.70 (5) PROCEDURES. Municipal employers, jointly or individually, may employ a qualified person to discharge the duties of labor negotiator and to represent such municipal employers, jointly or individually, in conferences and negotiations under this section. In cities of the 1st, 2nd or 3rd class any member ~~including the mayor~~ of the city council, including the mayor, who resigns therefrom may, during the term for which ~~he~~ the member is elected, be eligible to the position of labor negotiator under this subsection, which position during said term has been created by or the selection to which is vested in such city council, and s. 66.11 (2) shall be deemed inapplicable thereto.

NOTE: Moves clause for clarity.

SECTION 189. 111.80 (3) of the statutes is amended to read:

111.80 (3) Where permitted under this subchapter, negotiations of terms and conditions of state employment should result from voluntary agreement between the state and its agents as an employer, and its employes. For that purpose a state employe may, if ~~he~~ the employe desires, associate with others in organizing and in bargaining collectively through representatives of ~~his~~ the employe's own choosing without intimidations or coercion from any source.

SECTION 190. 111.81 (4) of the statutes is amended to read:

111.81 (4) "Craft employe" means a skilled journeyman craftsman, including ~~his~~ the skilled journeyman craftsman's apprentices and helpers, but shall not include employes not in direct line of progression in the craft.

SECTION 191. 111.81 (15) (b) 2. of the statutes is amended to read:

111.81 (15) (b) 2. Is performing related work under the supervision of a professional person to qualify ~~him-~~

self to become a professional employe as defined in par. (a).

SECTION 192. 111.81 (17) of the statutes is amended to read:

111.81 (17) “Representative” includes any person chosen by an employe to represent ~~him~~ the employe.

SECTION 193. 111.81 (19) of the statutes is amended to read:

111.81 (19) “Supervisor” means any individual whose principal work is different from that of ~~his~~ the individual’s subordinates and who has authority, in the interest of the employer, to hire, transfer, suspend, layoff, recall, promote, discharge, assign, reward or discipline employes, or to adjust their grievances, or to authoritatively recommend such action, if ~~his~~ the individual’s exercise of such authority is not of a merely routine or clerical nature, but requires the use of independent judgment.

SECTION 194. 111.84 (2) (a) of the statutes is amended to read:

111.84 (2) (a) To coerce or intimidate an employe in the enjoyment of ~~his~~ the employe’s legal rights, including those guaranteed under s. 111.82.

SECTION 195. 111.84 (2) (b) of the statutes is amended to read:

111.84 (2) (b) To coerce, intimidate or induce any officer or agent of the employer to interfere with any of ~~its~~ the employer’s employes in the enjoyment of their legal rights including those guaranteed under s. 111.82 or to engage in any practice with regard to its employes which would constitute an unfair labor practice if undertaken by ~~him~~ the officer or agent on ~~his~~ the officer’s or agent’s own initiative.

SECTION 196. 111.84 (2) (f) of the statutes is amended to read:

111.84 (2) (f) To coerce or intimidate a supervisory employe, officer or agent of the employer, working at the same trade or profession as ~~its~~ the employer’s employes, to induce ~~him~~ the person to become a member of or act in concert with the labor organization of which the employe is a member.

SECTION 197. 111.84 (4) of the statutes is amended to read:

111.84 (4) Any controversy concerning unfair labor practices may be submitted to the commission as provided in s. 111.07, except that the commission shall fix hearing on complaints involving alleged violations of sub. (2) (e) within 3 days after filing of such complaints, and notice shall be given to each party interested by service on ~~him~~ the party personally, or by telegram, advising ~~him~~ the party of the nature of the complaint and of the date, time and place of hearing thereon. The commission may in its discretion appoint a substitute tribunal to hear unfair labor practice charges by either appointing a 3–member panel or submitting a 7–member panel to the parties and allowing each to strike 2 names. Such panel

shall report its finding to the commission for appropriate action.

SECTION 198. 111.88 (4) of the statutes is amended to read:

111.88 (4) Nothing herein shall be construed as prohibiting any fact finder from endeavoring to mediate the dispute at any time prior to the issuance of ~~his~~ the fact finder’s recommendations.

SECTION 199. 111.88 (5) of the statutes is amended to read:

111.88 (5) Within 30 days of the receipt of the fact finder’s recommendations or within such time period mutually agreed upon by the parties, each party shall advise the other, in writing, as to ~~his~~ the party’s acceptance or rejection, in whole or in part, of the fact finder’s recommendations and, at the same time, send a copy of such notification to the commission at its Madison office. Failure to comply with this subsection, by the state employer or employe representative, constitutes a violation of s. 111.84 (1) (d) or (2) (c).

SECTION 200. 112.01 (5) of the statutes is amended to read:

112.01 (5) TRANSFER OF NEGOTIABLE INSTRUMENT BY FIDUCIARY. If any negotiable instrument payable or indorsed to a fiduciary as such is indorsed by the fiduciary, or if any negotiable instrument payable or indorsed to ~~his~~ a fiduciary’s principal is indorsed by a fiduciary empowered to indorse such instrument on behalf of ~~his~~ or her principal, the ~~indorsee~~ endorsee is not bound to inquire whether the fiduciary is committing a breach of ~~his~~ the fiduciary’s obligation as fiduciary in indorsing or delivering the instrument, and is not chargeable with notice that the fiduciary is committing a breach of ~~his~~ the fiduciary’s obligation as fiduciary, unless ~~he~~ the endorsee takes the instrument with actual knowledge of such breach or with knowledge of such facts that ~~his~~ the endorsee’s action in taking the instrument amounts to bad faith. If, however, such instrument is transferred by the fiduciary in payment of or as security for a personal debt of the fiduciary to the actual knowledge of the creditor, or is transferred in any transaction known by the transferee to be for the personal benefit of the fiduciary, the creditor or other transferee is liable to the principal if the fiduciary in fact commits a breach of ~~his~~ the fiduciary’s obligation as fiduciary in transferring the instrument.

SECTION 201. 112.01 (6) of the statutes is amended to read:

112.01 (6) CHECK DRAWN BY FIDUCIARY PAYABLE TO THIRD PERSON. If a check or other bill of exchange is drawn by a fiduciary as such, or in the name of ~~his~~ a fiduciary’s principal by a fiduciary empowered to draw such instrument in the name of ~~his~~ or her principal, the payee is not bound to inquire whether the fiduciary is committing a breach of ~~his~~ the fiduciary’s obligation as fiduciary in drawing or delivering the instrument, and is not chargeable with notice that the fiduciary is committing a

1993 Senate Bill 832

– 25 –

breach of ~~his~~ the fiduciary's obligation as fiduciary unless ~~he~~ the payee takes the instrument with actual knowledge of such breach, or with knowledge of such facts that ~~his~~ the payee's action in taking the instrument amounts to bad faith. If, however, such instrument is payable to a personal creditor of the fiduciary and delivered to the creditor in payment of or as security for a personal debt of the fiduciary to the actual knowledge of the creditor, or is drawn and delivered in any transaction known by the payee to be for the personal benefit of the fiduciary, the creditor or other payee is liable to the principal if the fiduciary in fact commits a breach of ~~his~~ the fiduciary's obligation as fiduciary in drawing or delivering the instrument.

SECTION 202. 112.01 (7) of the statutes is amended to read:

112.01 (7) CHECK DRAWN BY AND PAYABLE TO FIDUCIARY. If a check or other bill of exchange is drawn by a fiduciary as such, or in the name of ~~his~~ a fiduciary's principal by a fiduciary empowered to draw such instrument in the name of his or her principal, payable to the fiduciary personally, or payable to a ~~third~~ 3rd person, and ~~by him~~ transferred by the 3rd person to the fiduciary, and is thereafter transferred by the fiduciary, whether in payment of a personal debt of the fiduciary or otherwise, the transferee is not bound to inquire whether the fiduciary is committing a breach of ~~his~~ the fiduciary's obligation as fiduciary in transferring the instrument, and is not chargeable with notice that the fiduciary is committing a breach of ~~his~~ the fiduciary's obligation as fiduciary, unless ~~he~~ the transferee takes the instrument with actual knowledge of such breach, or with knowledge of such facts that ~~his~~ the transferee's action in taking the instrument amounts to bad faith.

SECTION 203. 112.01 (8) of the statutes is amended to read:

112.01 (8) DEPOSIT IN NAME OF FIDUCIARY AS SUCH. If a deposit is made in a bank to the credit of a fiduciary as such, the bank is authorized to pay the amount of the deposit or any part thereof upon the check of the fiduciary, signed with the name in which such deposit is entered, without being liable to the principal, unless the bank pays the check with actual knowledge that the fiduciary is committing a breach of ~~his~~ the fiduciary's obligation as fiduciary in drawing the check, or with knowledge of such facts that its action in paying the check amounts to bad faith. If, however, such a check is payable to the drawee bank, and is delivered to it in payment of or as security for a personal debt of the fiduciary to it, the bank is liable to the principal if the fiduciary in fact commits a breach of ~~his~~ the fiduciary's obligation as fiduciary in drawing or delivering the check.

SECTION 204. 112.01 (9) of the statutes is amended to read:

112.01 (9) DEPOSIT IN NAME OF PRINCIPAL. If a check is drawn upon the account of ~~his~~ a fiduciary's principal

in a bank by a fiduciary, who is empowered to draw checks upon his or her principal's account, the bank is authorized to pay such check without being liable to the principal, unless the bank pays the check with actual knowledge that the fiduciary is committing a breach of ~~his~~ the fiduciary's obligation as fiduciary in drawing such check, or with knowledge of such facts that its action in paying the check amounts to bad faith. If, however, such a check is payable to the drawee bank and is delivered to it in payment of or as security for a personal debt of the fiduciary to it, the bank is liable to the principal if the fiduciary in fact commits a breach of ~~his~~ the fiduciary's obligation as fiduciary in drawing or delivering the check.

SECTION 205. 112.02 (1) of the statutes is amended to read:

112.02 (1) Whenever an executor, administrator, guardian or testamentary trustee is engaged in war service as defined in this section, such fiduciary or any other person interested in the estate or fund may present a petition to the court having jurisdiction praying for a decree suspending the powers of such fiduciary while ~~he~~ the fiduciary is engaged in war service and until the further order of the court, and if the suspension of such fiduciary will leave no person acting as executor, administrator, guardian or testamentary trustee, or leave the sole beneficiary of a trust as the only acting trustee thereof, the petition must pray for the appointment of a successor unless a successor has been named in the will and such successor is not engaged in war service or is not for other reasons unable or unwilling to act as a fiduciary.

SECTION 206. 112.02 (2) (a) of the statutes is amended to read:

112.02 (2) (a) If ~~he~~ the fiduciary is a member of the military or naval forces of the United States or of any of its allies or if ~~he~~ the fiduciary has been accepted for such service and is awaiting induction into such service.

SECTION 207. 112.02 (2) (b) of the statutes is amended to read:

112.02 (2) (b) If ~~he~~ the fiduciary is engaged in any work abroad in connection with a governmental agency of the United States or in connection with the American Red Cross society or any other body with similar objects.

SECTION 208. 112.02 (2) (c) of the statutes is amended to read:

112.02 (2) (c) If ~~he~~ the fiduciary is interned in an enemy country or is in a foreign country or a possession or dependency of the United States and is unable to return to this state.

SECTION 209. 112.02 (4) of the statutes is amended to read:

112.02 (4) Upon the filing of the petition and the proof of service of the notice prescribed, the court may, notwithstanding any other provision of law, suspend the fiduciary engaged in war service from the exercise of all ~~his~~ of the fiduciary's powers and duties while such fidu-

ciary remains engaged in war service and until the further order of the court. The decree may further provide that the remaining executor, administrator, guardian or testamentary trustee or if there be none, the successor named in the will or appointed by the court is possessed of and may exercise all of the powers and duties incidental to ~~his~~ the person's office as fiduciary.

SECTION 210. 112.02 (5) of the statutes is amended to read:

112.02 (5) When the suspended fiduciary ceases to be engaged in war service ~~he~~ the suspended fiduciary may be reinstated as executor, administrator, guardian or testamentary trustee if any of the duties of such office remain unexecuted, upon application to the court and upon such notice as the presiding judge thereof may direct. If the suspended fiduciary is reinstated the court shall thereupon remove ~~his~~ the suspended fiduciary's successor and revoke ~~his~~ the successor fiduciary's letters and make such other order or decree as justice requires, but such removal and revocation of letters shall not bar the successor from subsequently qualifying as a fiduciary in accordance with the provisions of the will or if for any reason it thereafter becomes necessary that a fiduciary be appointed.

SECTION 211. 112.06 (1) (b) of the statutes is amended to read:

112.06 (1) (b) "Claim of beneficial interest" includes a claim of any interest by a decedent's legatee, distributee, heir or creditor, a beneficiary under a trust, a ward, a beneficial owner of a security registered in the name of a nominee, or a minor owner of a security registered in the name of a custodian, or a claim of any similar interest, whether the claim is asserted by the claimant or by a fiduciary or by any other authorized person on ~~his~~ the claimant's behalf, and includes a claim that the transfer would be in breach of fiduciary duties.

SECTION 212. 112.06 (3) (a) of the statutes is amended to read:

112.06 (3) (a) May assume without inquiry that the assignment, even though to the fiduciary himself ~~or herself~~ or to ~~his~~ the fiduciary's nominee, is within ~~his~~ the fiduciary's authority and capacity and is not in breach of his ~~or her~~ fiduciary duties;

SECTION 213. 112.06 (5) (b) of the statutes is amended to read:

112.06 (5) (b) As soon as practicable after the presentation of a security for transfer pursuant to an assignment by a fiduciary, a corporation or transfer agent which has received notice of a claim of beneficial interest adverse to the transfer may send notice of the presentation by registered or certified mail to the claimant at the address given by ~~him~~ the claimant. If the corporation or transfer agent so mails such a notice it shall withhold the transfer for 30 days after the mailing and shall then make the transfer unless restrained by a court order.

SECTION 214. 112.06 (7) (a) of the statutes is amended to read:

112.06 (7) (a) No person who participates in the acquisition, disposition, assignment or transfer of a security by or to a fiduciary including a person who guarantees the signature of the fiduciary is liable for participation in any breach of fiduciary duty by reason of failure to inquire whether the transaction involves such a breach unless it is shown that ~~he~~ the person acted with actual knowledge that the proceeds of the transaction were being or were to be used wrongfully for the individual benefit of the fiduciary or that the transaction was otherwise in breach of duty.

SECTION 215. 113.04 of the statutes is amended to read:

113.04 Release of some, effect. Subject to s. 113.03, the obligee's release or discharge of one or more of several obligors, or of one or more of joint, or of joint and several obligors shall not discharge co-obligors, against whom the obligee in writing and as part of the same transaction as the release or discharge, expressly reserves ~~his~~ the obligee's rights; and in the absence of such reservation of such rights shall discharge co-obligors only to the extent provided in s. 113.05.

SECTION 216. 113.05 (1) of the statutes is amended to read:

113.05 (1) If an obligee releasing or discharging an obligor without express reservation of rights against a co-obligor, then knows or has reason to know that the obligor released or discharged did not pay so much of the claim as ~~he~~ the obligor was bound by ~~his~~ contract or relation with that co-obligor to pay, the obligee's claim against that co-obligor shall be satisfied to the amount which the obligee knew or had reason to know that the released or discharged obligor was bound to such co-obligor to pay.

SECTION 217. 113.05 (2) of the statutes is amended to read:

113.05 (2) If an obligee so releasing or discharging an obligor has not then such knowledge or reason to know, the obligee's claim against the co-obligor shall be satisfied to the extent of the lesser of ~~two amounts, namely 1) the amount of the fractional share of the obligor released or discharged, or 2) the amount that such obligor was bound by~~ his contract or relation with the co-obligor to pay.

NOTE: Conforms text to current style.

SECTION 218. 113.06 of the statutes is amended to read:

113.06 Death of obligor, estate liable. On the death of a joint obligor in contract, ~~his~~ the joint obligor's executor or administrator (or estate) shall be bound as such jointly and severally with the surviving obligor or obligors.

1993 Senate Bill 832

SECTION 219. 114.002 (2) of the statutes is amended to read:

114.002 (2) “Aeronautics instructor” means any individual who for hire or reward engages in giving instruction or offering to give instruction in flying or ground subjects pertaining to aeronautics; but excludes any instructor in a public school, university or institution of higher learning duly accredited and approved for carrying on collegiate work, who instructs in flying or ground subjects pertaining to aeronautics, only in the performance of his or her duties at such school, university or institution.

SECTION 220. 114.002 (5) of the statutes is amended to read:

114.002 (5) “Airman” means any individual who engages, as the person in command, or as pilot, mechanic or member of the crew, in the navigation of aircraft while under way, and any individual who is directly in charge of the inspection, maintenance, overhauling or repair of aircraft engines, propellers or appliances, and any individual who serves in the capacity of aircraft dispatcher, or air-traffic control-tower operator; but does not include any individual employed outside the United States, or any individual employed by a manufacturer of aircraft, aircraft engines, propellers or appliances to perform duties as inspector or mechanic in connection therewith, or any individual performing inspection or mechanical duties in connection with aircraft owned or operated by ~~him~~ the individual.

SECTION 221. 114.04 of the statutes is amended to read:

114.04 Flying and landing, limitations. Flight in aircraft over the lands and waters of this state is lawful, unless at such a low altitude as to interfere with the then existing use to which the land or water, or the space over the land or water, is put by the owner, or unless so conducted as to be imminently dangerous or damaging to persons or property lawfully on the land or water beneath. The landing of an aircraft on the lands or waters of another, without his the person’s consent, is unlawful, except in the case of a forced landing. For damages caused by a forced landing, however, the owner or lessee of the aircraft or the aeronaut shall be liable, as provided in s. 114.05.

SECTION 222. 114.05 of the statutes is amended to read:

114.05 Damages by aircraft. The liability of the owner, lessee and pilot of every aircraft operating over the lands or waters of this state for injuries or damage to persons or property on the land or water beneath, caused by the ascent, descent or flight of such aircraft, or the dropping or falling of the aircraft or of any object or material therefrom, shall be determined by the law applicable to torts on land, except that there shall be a presumption of liability on the part of the owner, lessee or pilot, as the case may be, where injury or damage is caused by the

dropping or falling of the aircraft or of any object or material therefrom, which presumption may be rebutted by proof that the injury or damage was not caused by negligence on the part of the owner, lessee or pilot and the burden of proof in such case shall be upon such owner, lessee or pilot to show absence of negligence on his or her part.

SECTION 223. 114.134 (3) of the statutes is amended to read:

114.134 (3) **AIRPORT SITE APPROVAL.** No person shall construct or otherwise establish a new airport or activate an airport within this state unless the secretary of transportation issues a certificate of approval for the location of the proposed airport. No charge shall be made for application or approval. The secretary may issue a certificate of approval if ~~he~~ the secretary determines that the location of the proposed airport is compatible with existing and planned transportation facilities in the area.

SECTION 224. 114.14 (3) of the statutes is amended to read:

114.14 (3) In carrying out its duties the airport commission may employ a manager who may be a member of the commission and fix his the manager’s compensation (but no member of the commission shall vote on the question of his or her selection as manager nor on any question as to his or her compensation), and employ and fix the compensation of such other employes as may be deemed necessary; may make such contracts or other arrangements as may be deemed necessary for the construction, improvement, equipment, maintenance or operation of the airport; may contract with the United States or any agency thereof; may contract with private parties for a term not to exceed 10 years for the operation of the airport, including all necessary arrangements for the improvement and equipment and successful operation thereof. Provided, that in no case shall the public be deprived of equal and uniform use of the airport; and further, that no act, contract, lease or any activity of the airport commission shall be or become a binding contract on any government unit unless expressly authorized, and then only to the extent so expressly authorized.

SECTION 225. 114.17 of the statutes is amended to read:

114.17 Mechanic’s license, issue, presentation. Any person repairing, adjusting, inspecting or overhauling aircraft or aircraft engines within this state shall be in possession of a mechanic’s license issued to ~~him~~ the person by the federal government, which must be presented for inspection upon demand of any passenger, peace officer of this state, or any official, manager or person in charge of any airport or landing field in this state.

SECTION 226. 114.19 of the statutes is amended to read:

114.19 Display of licenses. The certificate of the license or permit respectively required of a pilot or a student shall be kept in the personal possession of the licensee or permittee when ~~he~~ the licensee or permittee is

operating an aircraft within this state. The certificate of the license required for an aircraft shall be carried in the aircraft at all times and shall be conspicuously posted therein in clear view of passengers. Such certificate of pilot's license, student's permit or aircraft license shall be presented for inspection upon the demand of any passenger, any peace officer of this state, any authorized official, or any official, manager or person in charge of any airport in this state upon which it shall land, or upon the reasonable request of any other person. In any criminal prosecution under any of the provisions of this chapter, a defendant who relies upon a license or permit of any kind shall have the burden of proving that he or she is properly licensed or is the possessor of a proper license or permit. The fact of nonissuance of such license or permit may be evidenced by a certificate signed by the official having power of issuance, or ~~his~~ the official's deputy, under seal of office, stating that ~~he~~ the official or deputy has made diligent search in the records of ~~his~~ the official's office and that from the records it appears that no such license or permit was issued.

SECTION 227. 114.31 (1) of the statutes is amended to read:

114.31 (1) GENERAL. The secretary shall have general supervision of aeronautics in the state and promote and foster a sound development of aviation in this state, promote aviation education and training programs, assist in the development of aviation and aviation facilities, safeguard the interests of those engaged in all phases of aviation, formulate and recommend and promote reasonable regulations in the interests of safety, and coordinate state aviation activities with those of other states and the federal government. ~~He~~ The secretary shall have all powers that are necessary to carry out the policies of the department of transportation, including the right to require that statements made to ~~him~~ the secretary be under oath. The secretary is especially charged with the duty of informing himself or herself regarding all federal laws that affect aeronautics in this state, all regulations pursuant to such laws, and all pending legislation providing for a national airport system, in order that ~~he~~ the secretary may recommend to the governor and the legislature such measures as will best enable this state to derive the maximum benefits from such legislation if and when it shall become effective. It shall be the duty of all other state boards, commissions, departments and institutions, especially the appropriate educational institutions to cooperate with the secretary.

SECTION 228. 114.31 (2) of the statutes is amended to read:

114.31 (2) STUDIES, INVESTIGATIONS, AIRPORT DEVELOPMENT PLAN. ~~He~~ The secretary shall conduct studies and investigations with reference to the most effective development and operation of airports and all other aeronautical facilities, and issue reports of ~~his~~ the findings of these studies and investigations. The secretary shall prepare

and may modify in recognition of changing conditions an airport development plan.

SECTION 229. 114.31 (3) of the statutes is amended to read:

114.31 (3) AVIATION EDUCATION AND TRAINING. In cooperation with the appropriate educational institutions of the state, and jointly with them ~~he,~~ the secretary shall formulate programs of aviation education and training, and disseminate information regarding such programs.

SECTION 230. 114.31 (5) of the statutes is amended to read:

114.31 (5) AIR MARKING SYSTEM. ~~He~~ The secretary shall cooperate with the federal government in any air marking system and weather information.

SECTION 231. 114.31 (8) (a) of the statutes is amended to read:

114.31 (8) (a) On July 1 of each even-numbered year the governing body of each county, city, village or town that contemplates an airport development project in the next 6 years for which it proposes to request state or federal aid shall notify the secretary of such intention and submit such information as ~~he~~ the secretary requires.

SECTION 232. 114.31 (8) (c) of the statutes is amended to read:

114.31 (8) (c) As part of ~~his~~ the secretary's budget report, the secretary shall submit a tentative priority list of projects ~~he~~ that the secretary recommends for state aid in the following biennium.

SECTION 233. 114.32 (1) of the statutes is amended to read:

114.32 (1) SECRETARY MAY ACCEPT. The secretary ~~of transportation~~ may cooperate with the government of the United States, and any agency or department thereof in the acquisition, construction, improvement, maintenance and operation of airports and other air navigation facilities in this state, and comply with the laws of the United States and any regulations made thereunder for the expenditure of federal moneys upon such airports and other air navigation facilities, and may enter into any contracts necessary to accomplish such purpose. ~~He~~ The secretary may accept, receive and receipt for federal moneys and other moneys, either public or private, for and in behalf of this state or any municipality thereof, for training and education programs, for the acquisition, construction, improvement, maintenance and operation of airports and other aeronautical facilities, whether such work is to be done by the state or by such municipalities, or jointly, aided by grants of aid from the United States, upon such terms and conditions as are or may be prescribed by laws of the United States and any rules or regulations made thereunder, and ~~he~~ the secretary may act as agent of any municipality of this state or the owner of any public-use airport upon the request of such municipality or the owner of the public-use airport, in accepting, receiving and receipting for such moneys in its behalf for airports, and in contracting for the acquisition, improve-

1993 Senate Bill 832

ment, maintenance or operation of airports financed either in whole or in part by federal moneys, and the governing body of any such municipality or the owner of the public-use airport may designate the secretary of ~~transportation~~ as its agent for such purposes and enter into an agreement with ~~him~~ the secretary prescribing the terms and conditions of such agency in accordance with federal laws, rules and regulations and with this chapter. Such moneys as are paid over by the U.S. government shall be retained by the state or paid over to said municipalities or to the owners of the public-use airports under such terms and conditions as may be imposed by the U.S. government in making such grants.

NOTE: Eliminates redundancy. "Secretary" is defined as the secretary of transportation in s. 114.001 (3).

SECTION 234. 115.28 (5) of the statutes is amended to read:

115.28 (5) APPEALS. Examine and determine all appeals which by law are made to ~~him~~ the state superintendent and prescribe rules of practice in respect thereto, not inconsistent with law.

SECTION 235. 115.29 (1) of the statutes is amended to read:

115.29 (1) DESIGNATE REPRESENTATIVE. Designate the deputy state superintendent or another employe of the department as ~~his~~ the state superintendent's representative on any body on which the state superintendent is required to serve, except the board of regents of the university of Wisconsin system.

SECTION 236. 115.29 (2) of the statutes is amended to read:

115.29 (2) EDUCATIONAL MEETINGS. Attend such educational meetings and make such investigations as ~~he~~ the state superintendent deems important and as will acquaint ~~him~~ the state superintendent with the different systems of public schools in the United States.

SECTION 237. 115.30 (4) (a) of the statutes is amended to read:

115.30 (4) (a) The condition of all schools under ~~his~~ the state superintendent's supervision.

SECTION 238. 115.30 (4) (b) of the statutes is amended to read:

115.30 (4) (b) An abstract of the public school reports made to ~~him~~ the state superintendent.

SECTION 239. 115.30 (4) (c) of the statutes is amended to read:

115.30 (4) (c) ~~His~~ The state superintendent's visits to educational institutions.

SECTION 240. 115.30 (4) (f) of the statutes is amended to read:

115.30 (4) (f) A summary of the receipts and disbursements of all schools under ~~his~~ the state superintendent's jurisdiction.

SECTION 241. 115.30 (4) (g) of the statutes is amended to read:

115.30 (4) (g) Such other matters as ~~he~~ the state superintendent deems appropriate.

SECTION 242. 115.35 (5) (c) of the statutes is amended to read:

115.35 (5) (c) As to ~~his~~ the state superintendent's recommendations to improve such programs and cooperation.

SECTION 243. 115.46 (2) (b) of the statutes is amended to read:

115.46 (2) (b) "Designated state official" means the education official of a state selected by that state to negotiate and enter into, on behalf of ~~his~~ that state, contracts pursuant to this agreement.

SECTION 244. 115.46 (3) (a) of the statutes is amended to read:

115.46 (3) (a) The designated state official of a party state may make one or more contracts on behalf of ~~his~~ the official's state with one or more party states providing for the acceptance of educational personnel. Any such contract for the period of its duration shall be applicable to and binding on the states whose designated state officials enter into it, and the subdivisions of those states, with the same force and effect as if incorporated in this agreement. A designated state official may enter into a contract pursuant to this subsection only with states in which ~~he~~ the official finds that there are programs of education, certification standards or other acceptable qualifications that assure preparation or qualification of educational personnel on a basis sufficiently comparable, even though not identical to that prevailing in ~~his~~ the official's own state.

SECTION 245. 115.52 (2) of the statutes is amended to read:

115.52 (2) The state superintendent shall maintain and govern the school for the visually handicapped and the school for the deaf. ~~He~~ The state superintendent may fix the period of the school year at the schools at not less than 38 weeks, prescribe the school terms and confer diplomas upon meritorious pupils who have completed the prescribed curricula.

SECTION 246. 115.52 (6) of the statutes is amended to read:

115.52 (6) The state superintendent may make charges for meals, living quarters, laundry and other services furnished to employes of the schools and their families. ~~He~~ The state superintendent also may make charges for services furnished to visitors at the schools and participants in training programs and institutes.

SECTION 247. 115.53 (5) of the statutes is amended to read:

115.53 (5) Arrange for visits by members of the staff of either school to other public schools or to families of blind or deaf children, whenever it appears to ~~him~~ the state superintendent that such visits will be of advantage to blind or deaf children.

SECTION 248. 116.02 (2) (b) of the statutes is amended to read:

116.02 (2) (b) Upon the naming of a successor to ~~his~~ the incumbent's position on the board of control under sub. (1).

SECTION 249. 116.02 (2) (c) of the statutes is amended to read:

116.02 (2) (c) Upon ~~his~~ the incumbent's resignation in accordance with s. 17.01 (13) submitted in writing to the ~~chairman~~ chairperson or secretary of the board of control.

SECTION 250. 118.06 (2) of the statutes is amended to read:

118.06 (2) Every public and private school shall offer the pledge of allegiance in grades one to 8 at the beginning of school at least one day per week. ~~No student shall pupil may~~ be compelled, against ~~his~~ the pupil's objections or those of ~~his~~ the pupil's parents or guardian, to recite the pledge.

SECTION 251. 118.09 (3) of the statutes is amended to read:

118.09 (3) All loading and unloading of pupils at the school, whether transported by a public or private vehicle, shall take place in the safety zone. The operator of a vehicle under contract to transport pupils to the school shall have necessary police powers so that pupils will be properly safeguarded in loading and unloading at the zone and while ~~his~~ the operator's vehicle is approaching and leaving the zone. ~~He~~ The operator shall first alight before loading or unloading pupils at the zone, and while at stops on ~~his~~ the operator's highway route to load and unload pupils, ~~he~~ the operator shall exhibit the vehicle's stop sign.

SECTION 252. 118.195 (1) of the statutes is amended to read:

118.195 (1) No person otherwise qualified may be denied a certificate or license from the state superintendent under s. 118.19 (1) because ~~he~~ the person is totally or partially blind, deaf or physically handicapped nor may any school district refuse to employ a teacher on such grounds, if such handicapped teacher is able to carry out the duties of the position which ~~he~~ the person seeks.

SECTION 253. 118.20 (3) of the statutes is amended to read:

118.20 (3) If the state superintendent finds probable cause to believe that any discrimination prohibited by this section has been or is being practiced, ~~he~~ the state superintendent shall immediately endeavor to eliminate the practice by conference, conciliation or persuasion. In case of failure to eliminate the discrimination, the state superintendent shall issue and serve a written notice of hearing, specifying the nature of the discrimination which appears to have been committed, and requiring the public school official, employe, teacher agency or placement bureau named, hereinafter called the "respondent" to answer the complaint at a hearing before the state

superintendent. The notice shall specify a time of hearing not less than 10 days after service of the complaint, and a place of hearing within the county in which the discrimination is alleged to have occurred.

SECTION 254. 118.20 (4) of the statutes is amended to read:

118.20 (4) After hearing, if the state superintendent finds that the respondent has engaged in discrimination prohibited by this section the state superintendent shall make written findings and recommend such action by the respondent as shall satisfy the purposes of this section and shall serve a certified copy of the findings and recommendations on the respondent together with an order requiring the respondent to comply with the recommendations. Any person aggrieved by noncompliance with the order shall be entitled to have the order enforced specifically by suit in equity. If the state superintendent finds that the respondent has not engaged in the alleged discrimination, ~~he~~ the state superintendent shall serve a certified copy of ~~his~~ the state superintendent's findings on the complainant together with an order dismissing the complaint.

SECTION 255. 118.21 (4) of the statutes is amended to read:

118.21 (4) School boards may give to any teacher, without deduction from ~~his~~ the teacher's wages, the whole or part of any time spent by ~~him~~ the teacher in attending a teachers' educational convention, upon the teacher's filing with the school district clerk a certificate of attendance at the convention, signed by the person or secretary of the association conducting the convention.

SECTION 256. 118.22 (2) of the statutes is amended to read:

118.22 (2) On or before March 15 of the school year during which a teacher holds a contract, the board by which the teacher is employed or an employe at the direction of the board shall give the teacher written notice of renewal or refusal to renew ~~his~~ the teacher's contract for the ensuing school year. If no such notice is given on or before March 15, the contract then in force shall continue for the ensuing school year. A teacher who receives a notice of renewal of contract for the ensuing school year, or a teacher who does not receive a notice of renewal or refusal to renew ~~his~~ the teacher's contract for the ensuing school year on or before March 15, shall accept or reject in writing such contract not later than the following April 15. No teacher may be employed or dismissed except by a majority vote of the full membership of the board. Nothing in this section prevents the modification or termination of a contract by mutual agreement of the teacher and the board. No such board may enter into a contract of employment with a teacher for any period of time as to which the teacher is then under a contract of employment with another board.

SECTION 257. 118.22 (3) of the statutes is amended to read:

1993 Senate Bill 832

- 31 -

118.22 (3) At least 15 days prior to giving written notice of refusal to renew a teacher's contract for the ensuing school year, the employing board shall inform the teacher by preliminary notice in writing that the board is considering nonrenewal of the teacher's contract and that, if the teacher files a request therefor with the board within 5 days after receiving the preliminary notice, the teacher has the right to a private conference with the board prior to being given written notice of refusal to renew ~~his~~ the teacher's contract.

SECTION 258. 118.23 (2) of the statutes is amended to read:

118.23 (2) All teachers shall be employed on probation, but after continuous and successful probation for 3 years and the gaining of the 4th contract in the same school system or school, their employment shall be permanent except as provided in sub. (3). All principals shall be employed on probation, but after continuous and successful probation for 3 years and the gaining of a 4th contract in the same school system or school, their employment shall be permanent except as provided in sub. (3). Upon accepting employment in another school system or school to which this section applies, a teacher who has acquired permanent employment under this section shall be on probation therein for 2 years. After continuous and successful probation for 2 years and gaining the 3rd contract in such school system or school, employment therein shall be permanent except as provided in sub. (3). A person who acquired tenure as a teacher under this section shall not be deprived of tenure as a teacher by reason of ~~his~~ the person's employment as a principal.

SECTION 259. 118.23 (4) of the statutes is amended to read:

118.23 (4) If necessary to decrease the number of permanently employed teachers by reason of a substantial decrease of pupil population within the school district, the governing body of the school system or school may lay off the necessary number of teachers, but only in the inverse order of the appointment of such teachers. No permanently employed teacher may be prevented from securing other employment during the period ~~he~~ that the teacher is laid off under this subsection. Such teachers shall be reinstated in inverse order of their being laid off, if qualified to fill the vacancies. Such reinstatement shall not result in a loss of credit for previous years of service. No new permanent or substitute appointments may be made while there are laid off permanent teachers available who are qualified to fill the vacancies.

SECTION 260. 118.25 (2) (b) of the statutes is amended to read:

118.25 (2) (b) Such physical examinations, chest X-rays or tuberculin tests shall not be required of any school employe who files with the school board an affidavit setting forth that ~~he~~ the employe depends exclusively upon prayer or spiritual means for healing in accordance with the teachings of a bona fide religious sect, denomi-

nation or organization and that ~~he~~ the employe is to the best of ~~his~~ the employe's knowledge and belief in good health and that ~~he~~ the employe claims exemption from health examination on these grounds. Notwithstanding the filing of such affidavit, if there is reasonable cause to believe that such employe is suffering from an illness detrimental to the health of the pupils, the school board may require a health examination of such school employe sufficient to indicate whether or not such school employe is suffering from such an illness. No school employe may be discriminated against by reason of ~~his~~ the employe filing such affidavit.

SECTION 261. 118.25 (2) (c) of the statutes is amended to read:

118.25 (2) (c) The physician making a physical examination shall prepare a report of ~~his~~ the examination upon a standard form prepared by the department of health and social services and the department. Such report shall be retained in the physician's files and ~~he~~ the physician shall make confidential recommendations therefrom to the school board and to the school employe on a form prepared by the department of health and social services and the department. The recommendation form shall contain space for a certificate that the person is free from tuberculosis in a communicable form. The cost of such examinations, including X-rays and tuberculin tests, shall be paid out of school district funds.

SECTION 262. 118.255 (2) (a) of the statutes is amended to read:

118.255 (2) (a) If a school board, cooperative educational service agency or county handicapped children's education board provides physical or mental health treatment services to its pupils, it may also provide such services within the private school facilities to those private school pupils who are referred to the public school board, cooperative educational service agency or county handicapped children's education board by the administrator of a private school for evaluation for possible servicing. There shall be no charge for health treatment services provided to any pupils unless public school students or their parents are charged for similar services. For purposes of state aid, as it is provided under s. 115.88 to the public school district, for the health treatment service program, private school pupils receiving such health treatment services shall be counted among the pupils of the public school district receiving such services, although each child may receive health treatment services within ~~his~~ the child's own school facilities, whether public or private.

SECTION 263. 119.06 (7) of the statutes is amended to read:

119.06 (7) This chapter does not affect the term of office or employment of any person serving in any capacity by virtue of an appointment or contract of employment made by the school board in a city prior to the date on which a city becomes a city of the 1st class, but such

person shall continue to serve in the same capacity under the board for the term for which ~~he~~ the person was so appointed or employed, unless removed from such office or employment for the causes and in the manner provided in this chapter.

SECTION 264. 119.10 (5) of the statutes is amended to read:

119.10 (5) If a board member is absent for 4 successive board meetings without presenting satisfactory reason therefor in writing to the board, the board shall declare ~~his~~ the member's seat vacant and shall fill the vacancy under s. 119.08 (4). If any person appointed or elected by the board is absent or is unable to perform the duties of ~~his~~ the person's office, the board may appoint or elect a suitable person to act in ~~his~~ the person's place during ~~his~~ the person's absence or inability.

SECTION 265. 119.16 (6) of the statutes is amended to read:

119.16 (6) CUSTODIANS OF SCHOOL PREMISES. The board shall fix the duties and responsibilities of principals, as custodians of the school premises, and of the school engineers. Each principal shall have general supervision of and shall be custodian of all school premises over which ~~he~~ the principal presides.

SECTION 266. 119.18 (9) of the statutes is amended to read:

119.18 (9) ENROLLMENT UNDER LEGAL NAME. The board may require that any pupil attending public school shall be enrolled under ~~his~~ the pupil's legal name.

SECTION 267. 119.18 (11) of the statutes is amended to read:

119.18 (11) BONDED OFFICERS AND EMPLOYEES. The board may require any officer or employe of the board to give security for the faithful performance of ~~his~~ the officer's or employe's duties in such form and amount as the board determines, and may require at any time additional bonds and sureties of any officer or employe.

SECTION 268. 119.18 (13) (b) of the statutes is amended to read:

119.18 (13) (b) That any teacher regularly employed by the board under this chapter shall receive credit for the year of exchange teaching service in the computation of any benefits to which ~~he~~ the teacher is entitled under ch. 40 and the manner in which the monthly reservations shall be paid under that subchapter.

SECTION 269. 119.32 (4) of the statutes is amended to read:

119.32 (4) The superintendent of schools shall be an advisory member of every committee of the board, except when an inquiry into ~~his~~ or her acts or an investigation of ~~his~~ or her official conduct is under consideration by such committee.

SECTION 270. 120.16 (3) of the statutes is amended to read:

120.16 (3) Enter in ~~his~~ the treasurer's account books all money received and disbursed by ~~him~~ the treasurer,

specifying the source from which it was received, the person to whom it was paid and the object for which it was paid.

SECTION 271. 120.16 (4) of the statutes is amended to read:

120.16 (4) Present to the annual meeting a written statement of all money received and disbursed by ~~him~~ the treasurer during the preceding year.

SECTION 272. 120.17 (4) of the statutes is amended to read:

120.17 (4) Enter in the record book copies of all ~~his~~ the school district clerk's reports to the municipal clerks and the certificate of the proceedings of a meeting returned by a temporary school district clerk.

NOTE: Second "school district" clerk added for clarity.

SECTION 273. 120.17 (7) of the statutes is amended to read:

120.17 (7) Furnish each teacher with a copy of the contract between ~~him~~ the teacher and the school board.

SECTION 274. 121.52 (3) (c) of the statutes is amended to read:

121.52 (3) (c) Such physical examinations, chest X-rays or tuberculin tests shall not be required of a bus driver who files with the school board an affidavit setting forth that ~~he~~ the bus driver depends exclusively upon prayer or spiritual means for healing in accordance with the teachings of a bona fide religious sect, denomination or organization and that ~~he~~ the bus driver is to the best of ~~his~~ the bus driver's knowledge and belief in good health and that ~~he~~ the bus driver claims exemption from health examination on these grounds. Notwithstanding the filing of such affidavit, if there is reasonable cause to believe that the bus driver is suffering from an illness detrimental to the health of the pupils, the school board may require a health examination of the bus driver sufficient to indicate whether or not ~~he~~ the bus driver is suffering from such an illness. No bus driver may be discriminated against by reason of ~~his~~ filing such affidavit.

SECTION 275. 121.53 (5) (a) of the statutes is amended to read:

121.53 (5) (a) A motor vehicle owned or operated by a parent or guardian transporting only ~~his~~ the parent's or guardian's own children, whether or not any contract is made with or compensation paid to the parent or guardian for such transportation by a school board.

SECTION 276. 121.53 (6) of the statutes is amended to read:

121.53 (6) Within 10 days after its occurrence, every accident involving a motor vehicle while providing transportation under this subchapter shall be reported to the appropriate school board and promptly by ~~it~~ the school board to the state superintendent on forms provided by ~~him~~ the state superintendent.

NOTE: Adds "school board" for clarity.

SECTION 277. 121.54 (2) (b) 1. of the statutes is amended to read:

1993 Senate Bill 832

121.54 (2) (b) 1. Except as provided in sub. (1) or otherwise provided in this subsection, the school board of each district operating high school grades shall provide transportation to and from the school ~~he~~ a pupil attends for each pupil residing in the school district who attends any elementary grade, including kindergarten, or high school grade at a private school located 2 miles or more from ~~his~~ the pupil's residence, if such private school is a school within whose attendance area the pupil resides and is situated within the school district or not more than 5 miles beyond the boundaries of the school district measured along the usually traveled route.

SECTION 278. 121.54 (6) of the statutes is amended to read:

121.54 (6) TRANSPORTATION IN SPECIAL CASES. The school board of a district operating high school grades which, under s. 121.78 (2) (a), must permit a pupil to attend high school outside the school district shall provide transportation for such pupil if ~~he~~ the pupil resides 2 or more miles from the high school ~~he~~ that the pupil attends.

SECTION 279. 121.56 of the statutes is amended to read:

121.56 School bus routes. The school board of each district shall make and be responsible for all necessary provisions for the transportation of pupils, including establishment, administration and scheduling of school bus routes. Upon the request of any school board, the state superintendent shall provide advice and counsel on problems of school transportation. Any private school shall, upon the request of the public school officials, supply all necessary information and reports. The transportation of public and private school pupils shall be effectively coordinated to insure the safety and welfare of the pupils. Upon receipt of a signed order from the state superintendent, the school board shall discontinue any route specified by ~~him~~ the state superintendent.

SECTION 280. 121.57 (1) (a) of the statutes is amended to read:

121.57 (1) (a) If a school board determines it is to the advantage of the school district and if the parent or guardian determines it is to the advantage of the pupil that board and lodging in lieu of transportation be provided for all or part of the time for a pupil of the school district required to be transported or for whom it has been authorized under s. 121.54 (2), the school board shall enter into a written contract under which the pupil shall be properly boarded and lodged and the school board shall pay for such board and lodging. The pupil's parent or guardian may select the home in which ~~his child~~ the pupil is boarded and lodged. If a school board determines it is in the interest of the school district, it may pay the tuition of a pupil in a school in another school district in lieu of providing transportation to a school in the school district of residence or board and lodging. If the distance from the pupil's home to the school in another school district is 2

miles or more, the school board of the district of residence shall provide transportation.

SECTION 281. 121.58 (5) of the statutes is amended to read:

121.58 (5) STATE SUPERINTENDENT APPROVAL. If the state superintendent is satisfied that transportation or board and lodging was provided in compliance with law, ~~he~~ the state superintendent shall certify to the department of administration the sum due the school district. In case of differences concerning the character and sufficiency of the transportation or board and lodging, the state superintendent may determine such matter and his or her decision thereon is final.

SECTION 282. 121.81 (2) (a) of the statutes is amended to read:

121.81 (2) (a) A pupil whose parent or legal custodian is a resident of this state but not a resident of the school district may file with the school board of the district a written application for enrollment in the schools of the school district. The application shall be accompanied by a written declaration of the parent or legal custodian that ~~he~~ the parent or legal custodian will establish residence in the school district by a specified time. If facilities are adequate, the school board may permit the pupil to enroll in the schools of the school district, and may require prepayment of a tuition fee for 9 school weeks or may waive the tuition requirement for that pupil. If the parent or legal custodian establishes residence in the school district within such 9 school weeks, the school board shall refund the tuition fee. If such residence is not established there shall be no refund of the tuition fee but another written application for enrollment may be filed for the next succeeding 9 school weeks and, upon prepayment of a tuition fee for such 9 school weeks, the school board may permit the pupil to reenroll. If the parent or legal custodian establishes residence in the school district within the second 9 school weeks, the school board shall refund the tuition fee for the second 9 school weeks.

SECTION 283. 128.02 (1) of the statutes is amended to read:

128.02 (1) Voluntary assignments for the benefit of creditors may be made to an assignee who is a resident of this state, who shall, before taking possession of the property assigned and before taking upon himself or herself any trust conferred by the assignment, file the assignment and deliver to the clerk of the circuit court of the county in which such assignor resides or has his or her principal place of business at the time of the assignment, a bond as required by s. 128.09.

SECTION 284. 128.02 (2) of the statutes is amended to read:

128.02 (2) No assignment shall be void because of any defect, informality or mistake therein or in the bond, inventory or list of creditors accompanying the same; and the court may direct the amendment of the assignment or of any other paper to effect the intention of the assignor

or assignee, or to obtain a distribution of the assignor's assets as provided in this chapter, and any such amendment shall relate back to the time of the execution of the paper. No mistake in filing a copy instead of an original or any like mistake or inadvertent failure to comply with the provisions of this chapter shall void the assignment. No creditor shall, in case a debtor has attempted to make an assignment for the benefit of creditors, or in case of the insolvency of any debtor, by attachment, garnishment or otherwise, obtain priority over other creditors upon such assignment being adjudged void, or in consequence of any sale, lien or security being adjudged void; but in all such cases the property of such debtor shall be administered for the ratable benefit of all his of the debtor's creditors under the direction of the court by the assignee or by a receiver.

SECTION 285. 128.03 of the statutes is amended to read:

128.03 Liens by legal proceedings; assignment.

When a lien has been obtained by legal proceedings against the property of a debtor ~~he~~ the debtor may, within thirty days thereafter, make an assignment of all his of the debtor's nonexempt property for the benefit of all his of the debtor's creditors, whereupon such lien shall be dissolved and the property shall be turned over to the assignee.

SECTION 286. 128.04 of the statutes is amended to read:

128.04 Definition of insolvency; time. A person shall be deemed insolvent within the provisions of this chapter whenever the aggregate of his the person's property, exclusive of any property which ~~he~~ the person may have conveyed, transferred, concealed or removed, or permitted to be concealed or removed, with intent to defraud, hinder or delay his the person's creditors, shall not, at a fair valuation be sufficient in amount to pay his the person's debts, or if an execution be returned unsatisfied or if ~~he~~ the person shall make an assignment for the benefit of creditors.

SECTION 287. 128.05 (1) of the statutes is amended to read:

128.05 (1) The assignee shall indorse in writing his the assignee's acceptance of the assignment, and shall file such assignment with the clerk of the court in the county where the debtor has his or her residence or principal place of business. The court shall, upon the filing of such assignment, order such assignee to administer the debtor's estate pursuant to this chapter, and ~~he~~ the assignee shall be vested with the powers of a receiver.

SECTION 288. 128.07 (1) of the statutes is amended to read:

128.07 (1) A person shall be deemed to have given a preference if, being insolvent, ~~he~~ the person has made a transfer of any of his or her property, or has procured or suffered a judgment to be entered against him or her in favor of any other person, ~~or made a transfer of any of his~~

~~property,~~ and the effect of the transfer or the enforcement of ~~such the~~ judgment ~~or transfer~~ will be to enable any one of his or her creditors to obtain a greater percentage of his or her debt than any other of such creditors of the same class.

NOTE: Reorders text for clarity.

SECTION 289. 128.07 (2) of the statutes is amended to read:

128.07 (2) If the debtor shall have given a preference within four months before the filing of a petition, or an assignment, or after the filing of the petition and before the appointment of a receiver, or after the filing of an assignment and before the qualification of the assignee, and the person receiving it, or to be benefited thereby, or his or her agent acting therein, shall have had reasonable cause to believe that the enforcement of such judgment or transfer would effect a preference, it shall be voidable by the receiver or assignee, and ~~he~~ the receiver or assignee may recover the property or its value from such person.

SECTION 290. 128.09 of the statutes is amended to read:

128.09 Bond. In order to qualify, the receiver or assignee shall give to and file with the clerk of the court a bond sufficient to cover all property likely to come into his the receiver's or assignee's hands, conditioned in the usual manner with surety to be approved by the judge having supervision of the proceedings.

SECTION 291. 128.10 (2) of the statutes is amended to read:

128.10 (2) The court may, upon notice and hearing, remove any receiver or assignee who is shown to be incompetent or to have become disqualified, or to have wasted or misapplied any of the trust estate; and shall remove any assignee or receiver upon the application of a majority of the creditors who shall represent a majority in number and amount of claims against said estate, and order a settlement of his the receiver's or assignee's account and the surrender of all the estate to a successor, and shall appoint the person named in such petition or some suitable person as his the receiver's or assignee's successor, who shall qualify in the manner provided by this chapter; and in place of any receiver or assignee who shall die or be removed, may appoint another who shall give bond and administer said estate pursuant to the provisions of this chapter.

SECTION 292. 128.11 of the statutes is amended to read:

128.11 Provisional remedies. In all actions authorized by this chapter appropriate provisional remedies may be had and final relief administered to the equal distribution of all assets recovered among the creditors of the debtor, and the court may make such orders for the payment of costs and expenses as may be just. An action or proceeding authorized herein for the benefit of all

1993 Senate Bill 832

creditors may be taken by a creditor although ~~his~~ the creditor's demand is not due at the commencement thereof.

SECTION 293. 128.12 (1) of the statutes is amended to read:

128.12 (1) After the designation of a receiver or custodian by the court, proceedings under this chapter shall not be dismissed for want of prosecution or by consent of parties until after notice to creditors, and the court shall, before entertaining an application for dismissal, require the debtor to file a list, under oath, of all ~~his~~ of the debtor's creditors, with their addresses, and shall cause notice to be sent to all such creditors of the pendency of the application and shall fix a date for such hearing so as to allow parties in interest an opportunity to be heard.

SECTION 294. 128.13 of the statutes is amended to read:

128.13 Inventory of assets. With the filing of an assignment or within ten days after the appointment of a receiver, the debtor shall file with the clerk of the court a correct inventory of ~~his~~ the debtor's assets and a list of ~~his~~ the debtor's creditors, stating the place of residence of each and the amount due to each, which inventory and list shall be verified by ~~his~~ the debtor's oath, but no mistake therein shall affect the rights of any creditor.

SECTION 295. 128.14 (1) of the statutes is amended to read:

128.14 (1) The court shall require creditors to file their verified claims within 3 months from the date of the filing of an assignment or the appointment of a receiver and may enjoin proceedings by any other creditor against the insolvent. The receiver or assignee shall be required to give notice promptly to the department of revenue and to all creditors of the pendency of the proceeding, the injunction against other actions and the time within which creditors are required to file claims. The notice shall be mailed to the department of revenue and to each creditor at ~~his~~ the creditor's last-known address and shall be published in the county as a class 3 notice under ch. 985.

SECTION 296. 128.17 (2) of the statutes is amended to read:

128.17 (2) Debts to become due as well as debts due may be proved, but a lessor's claim shall be limited to past due rent, and to any actual damage caused ~~him~~ the lessor by a rejection of the lease on the part of the debtor or by its termination by force of its provisions. The lessor shall be entitled to payment in full, at the rate specified in the lease, for the period of any actual occupancy by the receiver or assignee.

SECTION 297. 128.17 (4) of the statutes is amended to read:

128.17 (4) The receiver or assignee shall, as soon as practicable, report to the court the amount due the employes of the debtor and the court shall order ~~him~~ the receiver or assignee to pay out promptly pay, if practicable, such wage claims as have priority under this chapter.

NOTE: Eliminates surplus language.

SECTION 298. 128.18 (2) of the statutes is amended to read:

128.18 (2) Whenever a creditor is prevented from enforcing his or her rights as against a lien created or attempted to be created by his or her debtor, the receiver or assignee shall be subrogated to and may enforce such rights of such creditors for the benefit of the estate.

SECTION 299. 128.18 (5) of the statutes is amended to read:

128.18 (5) ~~That all~~ All conveyances, transfers, assignments or incumbrances of ~~his~~ a debtor's property, or any part thereof, made or given by a ~~the~~ debtor within ~~four~~ 4 months prior to the filing of a petition or assignment hereunder with the intent and purpose on ~~his~~ the debtor's part to hinder, delay or defraud ~~his~~ the debtor's creditors, or any of them, shall be null and void as against the creditors of such debtor except as to purchasers in good faith and for a present fair consideration; ~~and all~~.

~~(5g) All property of the debtor conveyed, transferred, assigned or incumbered as aforesaid which is the subject of a conveyance, transfer, assignment or encumbrance rendered null and void under sub. (5) shall, if the same be property is not exempt from execution, be and remain a part of the assets and estate of the debtor and shall pass to his~~ the debtor's receiver or assignee, whose duty it shall be to recover and retain the same for the benefit of the creditors; ~~and all~~.

~~(5m) All~~ All conveyances, transfers or incumbrances of ~~his~~ a debtor's property made by a ~~the~~ debtor at any time within ~~four~~ 4 months prior to the filing of a petition or assignment hereunder, and while insolvent, which are null and void as against creditors by the laws of this state, shall pass to the receiver or assignee and be by him or her recovered for the benefit of the creditors.

NOTE: Clarifies language and adds numbered subsections for greater readability.

SECTION 300. 128.18 (6) of the statutes is amended to read:

128.18 (6) ~~That all~~ All levies, judgments, attachments or other liens obtained through legal proceedings against a person who is insolvent at any time within ~~four~~ 4 months prior to the filing of a petition or assignment hereunder, shall be deemed null and void in case a receiver is appointed or an assignee qualifies hereunder, and the property affected by the levy, judgment, attachment or other lien shall be deemed wholly discharged and released from the same, and shall pass to the receiver or assignee as a part of the estate of the debtor unless the court shall, on due notice, order that the right under such levy, judgment, attachment or other lien shall be preserved for the benefit of the estate; and thereupon the same may pass to and shall be preserved by the receiver or assignee for the benefit of the estate.

SECTION 301. 128.19 (1) of the statutes is amended to read:

128.19 (1) The receiver or assignee upon ~~his qualification~~ qualifying shall be vested by operation of law with the title of the debtor as of the date of the filing of the petition or assignment hereunder, except so far as it is property which is exempt, including:

(a) Property transferred by ~~him~~ the debtor in fraud of ~~his~~ the debtor's creditors.

(b) Property which prior to the filing of the petition or assignment ~~he~~ the debtor could by any means have transferred or which might have been levied upon and sold under judicial process against ~~him~~ debtor.

(c) Rights of action arising upon contracts or from the unlawful taking or detention of or injury to ~~his~~ the debtor's property.

SECTION 302. 128.19 (2) of the statutes is amended to read:

128.19 (2) The receiver or assignee may avoid any transfer by the debtor of ~~his~~ the debtor's property which any creditor might have avoided and may recover the property so transferred or its value from the person to whom it was transferred unless ~~he~~ the transferee was a bona fide holder for value prior to the filing of the petition or assignment hereunder.

SECTION 303. 128.20 (1) of the statutes is amended to read:

128.20 (1) Every receiver or assignee shall, within ~~six~~ 6 months after the time limited for filing claims or within such further time as the court shall allow, file with the clerk of the court, a full and itemized statement verified by ~~his~~ the receiver's or assignee's oath of the property ~~by him~~ received by the receiver or assignee, the manner of ~~his~~ the receiver or assignee's dealing therewith, the amount of money realized by ~~him~~ the receiver or assignee, the condition of the property and funds in ~~his~~ the receiver's or assignee's possession, the names and residences of the debtor's creditors, the dividends paid them, ~~his~~ the receiver's or assignee's receipts and disbursements with ~~his~~ the receiver's or assignee's claim for compensation and administration expenses. If any receiver or assignee shall neglect to apply promptly for a settlement of ~~his~~ the receiver's or assignee's account, the court may, upon application of any creditor, compel the making and filing of such account or settlement thereof and in such case the receiver or assignee may be denied compensation.

SECTION 304. 128.21 (2) of the statutes is amended to read:

128.21 (2) After the filing of a petition under this section and until the dismissal of the proceedings, no execution, attachment or garnishment may be levied or enforced by any creditor seeking the collection of any claim which arose prior to the proceedings, unless such claim is not included by the debtor in the claims to be amortized pursuant to sub. (3) ~~(3r)~~. With respect to the claims to be amortized the time between the filing of the

petition and the dismissal of the proceedings shall not be counted as a part of the period of any statute of limitation.

SECTION 305. 128.21 (3) of the statutes is amended to read:

128.21 (3) On the filing of the petition the court shall appoint a disinterested trustee. The trustee shall forthwith meet with the debtor; make ~~up~~ a list of ~~his~~ the debtor's creditors, with their addresses and the amounts owing to each, which the debtor shall sign and verify; and send notices to each of the amount claimed to be due ~~him~~ that creditor, and of a meeting to be held in the trustee's office not less than 5 nor more than 10 days thereafter, for the purpose of considering an amortization plan and of determining the claims to be covered by the plan. Upon conclusion of the meeting the trustee shall do either of the following:

(a) ~~report~~ Report to the court that no equitable plan of amortization is feasible or needed in which case the court may forthwith dismiss the proceedings, ~~or~~.

(b) ~~recommend~~ Recommend to the court a plan of amortization calculated by weekly or monthly payments, to discharge in full the claims of the creditors listed in the plan within a period of not exceeding 3 years.

~~(3g)~~ The trustee shall attach to ~~said~~ a plan recommended under sub. (3) (b) the written consents and objections, if any, of the creditors present or represented at the meeting, and an analysis, with ~~his~~ the trustee's recommendations regarding the disposition, of any claim whose amount is in dispute or appears to be uncertain.

~~(3r)~~ The court shall forthwith enter an order approving the plan recommended under sub. (3) (b) and determining, for the purposes of the plan, the amounts of the claims, unless in any such written objection included under sub. (3g) a creditor asks for a hearing respecting the plan or the amount of ~~his~~ the creditor's claim, or the person to be trustee, in which case the court shall set a date for a hearing as soon as may be, on notice of the debtor, the trustee and creditors. At ~~such~~ the hearing the court shall enter an order either approving the plan, if satisfied that it is feasible and equitable, and determining, for the purposes of the plan, the amounts of the claims, or dismissing the proceedings, or making modifying and approving ~~such modification~~ of the plan as the court ~~deems~~ considers just; and the court may appoint a different trustee if the one appointed is objected to.

NOTE: Conforms provision to current drafting style.

SECTION 306. 128.21 (4) of the statutes is amended to read:

128.21 (4) If the plan recommended under sub. (3) (b) or a modification thereof is approved under sub. (3r), the debtor shall make the periodic payments therein provided for to the trustee, and may make additional payments from time to time to the trustee, and the trustee

1993 Senate Bill 832

shall distribute the payments proportionally among the creditors listed in the plan, less all of the following:

(a) a Δ deduction for ~~his~~ the trustee's compensation to be fixed by the court at the time of approving the plan in an amount not exceeding ~~seven per centum~~ 7% of each distribution, if the payments are made through an assignment to the trustee of a portion of the debtor's wages or salary, and not exceeding ~~ten per centum~~ 10% if no such assignment is made, ~~and~~.

(b) ~~a further~~ Δ deduction equal to the amount of the postage necessary for the mailing of payments and of the notices of the meeting provided for in sub. (3), and of any correspondence with creditors.

(4m) If any payment under sub. (4) is so small as to make its immediate distribution impractical or needlessly expensive, the trustee shall deposit it in a special trustee account, and may make additional deposits until the amount is large enough for distribution, but no payments shall remain undistributed for longer than ~~ninety~~ 90 days.

NOTE: Conforms provision to current drafting style.

SECTION 307. 128.21 (5) of the statutes is amended to read:

128.21 (5) If the debtor defaults in any payment provided for under the plan for a period of more than thirty days the trustee shall, and before the end of any such period may, report the matter to the court with ~~his~~ the trustee's recommendations, and the court shall thereupon either dismiss the proceedings or, if satisfied from the trustee's report that the debtor is in good faith and should be able to make good the default, extend the period of grace for not to exceed thirty days, at the end of which period the trustee shall again report to the court and if all defaults have not then been cured the court shall forthwith dismiss the proceedings. If the debtor makes preferential payments to creditors during the pendency of the proceedings, or appears for any reason to be abusing the privileges of this section, the trustee shall promptly report the matter to the court and the court may dismiss the proceedings. If the claims of all creditors as listed in the plan are satisfied in full, the trustee shall, upon completion of the final distribution, report to the court and the court shall thereupon dismiss the proceedings.

SECTION 308. 128.21 (7) of the statutes is amended to read:

128.21 (7) Neither the determination of the amount of any claim for the purposes of the plan, nor the accep-

tance of payments thereunder, shall affect the right of any creditor to litigate ~~his~~ the creditor's claim and obtain judgment thereon, or the right of the debtor to dispute it, and the amount of any judgment shall be substituted by the trustee for the amount fixed in the plan.

SECTION 309. 128.21 (8) of the statutes is amended to read:

128.21 (8) Any secured creditor who wishes to realize on his or her security shall give the trustee at least five days' notice in writing of the time, place and manner of the proposed realization, and shall notify the trustee of the amount realized, by which amount ~~his~~ the creditor's claim as listed under the plan shall be reduced.

SECTION 310. 128.25 (1) (a) of the statutes is amended to read:

128.25 (1) (a) "Creditor's sale" includes any sale effected by the secured creditor by judicial process or otherwise under the terms of his or her contract or the applicable law for the purpose of realizing upon his or her security.

SECTION 311. 128.25 (1) (e) of the statutes is amended to read:

128.25 (1) (e) "Secured creditor" means a creditor who has either legal or equitable security for his or her debt upon any property of the insolvent debtor of a nature to be liquidated and distributed in a liquidation proceeding, or a creditor to whom is owed a debt for which such security is possessed by some indorser, surety, or other person secondarily liable.

SECTION 312. 128.25 (3) of the statutes is amended to read:

128.25 (3) EFFECT OF CONCEALMENT. Any secured creditor who with intent to evade the provisions of this section fails to disclose the existence of the security shall not be entitled to receive or retain dividends out of the general assets, unless ~~he~~ the creditor thereafter releases or surrenders to the liquidator the security which ~~he~~ the creditor has failed to disclose, or unless ~~he~~ the creditor procures such release or surrender if the security is in the possession of an indorser, surety, or other person secondarily liable for the insolvent debtor.

SECTION 313. 128.25 (5) (a) of the statutes is amended to read:

128.25 (5) (a) *By collection.* When the asset constituting the security is an obligation for the payment of money, the secured creditor may determine its value by collection or by exhausting his or her remedies thereon and then surrendering the obligation to the liquidator.