

CHAPTER 100

MARKETING; TRADE PRACTICES

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Cross-reference: See definitions in s. 93.01.

100.01 Produce wholesalers, unfair conduct, liability for damages. (1) DEFINITIONS.

When used in this section:

- (a) “Broker” means a person engaged in negotiating sales or purchases of produce for or on behalf of the seller or the buyer.
- (b) “Commission merchant” means a person engaged in receiving produce for sale for or on behalf of another.
- (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 that raised by him or her and that purchased by him or her exclusively for his or her own sale at retail.
- (d) “Produce” means any kinds of fresh fruit or fresh vegetable, including potatoes and onions intended for planting.

(e) “Produce wholesaler” means a commission merchant, dealer or broker.

(2) UNFAIR CONDUCT. It shall be unlawful:

(a) For a dealer to reject or fail to deliver in accordance with the contract, without reasonable cause, produce bought or sold or contracted to be bought or sold by such dealer.

(b) For a commission merchant, without reasonable cause, to fail to deliver produce in accordance with the contract.

(c) For a commission merchant to fail to render a true itemized statement of the sale or other disposition of a consignment of produce with full payment promptly in accordance with the terms of the agreement between the parties, or, if no agreement, within 15 days after receipt of the produce. Such statement of sale shall clearly express the gross amount for which the produce was sold and the proper, usual or agreed selling charge, and other expenses necessarily and actually incurred or agreed to in the handling thereof.

(d) For a commission merchant or broker to make a fraudulent charge in respect to produce.

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

(f) For a produce wholesaler to make for a fraudulent purpose or for the purpose of depressing the market a false or misleading statement concerning the grade, condition, markings, quality, quantity, market quotations or disposition of any produce or of the condition of the market therefor.

(g) For a produce wholesaler to receive produce from another state or country for sale or resale within this state and give the buyer the impression that the commodity is of Wisconsin origin.

(h) For a produce wholesaler, for a fraudulent purpose, to remove, alter or tamper with any card, stencil, stamp, tag, certificate or other notice placed upon any container or railroad car containing produce by the original packer or by or under authority of any federal or state inspector and bearing a certificate as to the grower, grade or quality of such produce.

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

(4) DOUBLE DAMAGES. A produce wholesaler who violates any provision of sub. (2) shall be liable to any person injured thereby for twice the amount of damages sustained in consequence of such violation and such liability may be enforced by suit in any court of competent jurisdiction.

History: 1983 a. 189; 1993 a. 492.

100.02 Commission merchants, duties, must account.

(1) No person receiving any fruits, vegetables, melons, dairy, or poultry products or any perishable farm products of any kind or character, other than cattle, sheep, hogs or horses, referred to in this section as produce, for or on behalf of another, may without good and sufficient cause therefor, destroy, or abandon, discard as

refuse or dump any produce directly or indirectly, or through collusion with any person, nor may any person knowingly and with intent to defraud make any false report or statement to the person from whom any produce was received, concerning the handling, condition, quality, quantity, sale or disposition thereof, nor may any person knowingly and with intent to defraud fail truly and correctly to account and pay over to the consignor therefor.

(2) The department shall by rule provide for the making of prompt investigations and the issuing of certificates as to the quality and condition of produce received, upon application of any person shipping, receiving or financially interested in, the produce. The rules shall designate the classes of persons qualified and authorized to make the investigations and issue the certificates, except that any investigation shall be made and any certificate shall be issued by at least 2 disinterested persons in any case where the investigation is not made by an officer or employe of the department.

(3) A certificate made in compliance with the rules shall be prima facie evidence in all courts of the truth of the statements contained in the certificate as to the quality and condition of the produce; but if any such certificate is put in evidence by any party, in any civil or criminal proceeding, the opposite party shall be permitted to cross-examine any person signing the certificate, called as a witness at the instance of either party, as to his or her qualifications and authority and as to the truth of the statements contained in the certificate.

History: 1977 c. 29; 1993 a. 213.

100.025 Classification of dairy heifer calves. (1) As used in this section, “dairy heifer calf” means a female bovine animal, of a recognized dairy breed, at least 2 weeks and less than 4 months of age.

(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 the owner’s agent by inserting a blue ear tag in the right ear and shall be accompanied by the certificate.

(4) Blue ear tags for dairy heifer calves shall be purchased from the department. Each tag shall bear a distinctive serial number. No person shall possess or use, for identification pursuant to this section, ear tags which have not been issued by the department. Ear tag applicators and other supplies may be purchased from the department.

(5) No person shall falsely execute any herd owner’s certificate or falsely represent the identity or classification of any calves provided for in this section.

History: 1991 a. 201; 1993 a. 492.

100.03 Vegetable procurement; financial security; grading and tare. (1) **DEFINITIONS.** In this section:

(a) “Affiliate” means any of the following persons or business entities that procures vegetables for use by an operator:

1. An officer, director, partner, member, major stockholder, employe or agent of the operator.

2. A corporation or business entity which is owned, controlled or operated by any of the persons specified under subd. 1.

(b) “Asset” means anything of value owned.

(bm) “Audited financial statement” means a financial statement that, in the accompanying opinion of an independent certified public accountant or a public accountant holding a certificate of authority under ch. 442, fairly and in all material respects represents the financial position of the contractor, the results of the con-

tractor’s operations and the contractor’s cash flows in conformity with generally accepted accounting principles.

(c) “Balance sheet” means a statement of assets, liabilities and equity on a specific date.

(d) “Cash payment” means payment in the form of currency, certified check, money order, barter or advance money transfer arrangement with a bank that is evidenced in writing.

(f) “Contractor” means a person who buys vegetables grown in this state from a producer, or who contracts with a producer to grow vegetables in this state, regardless of whether the contractor is located in this state or is engaged in food processing. “Contractor” does not include any of the following:

1. A person who procures vegetables primarily for unprocessed fresh market use and is licensed under the federal perishable agricultural commodities act, 7 USC 499.

2. A restaurant or retail food establishment that procures vegetables solely for retail sale at the restaurant or retail food establishment.

(g) “Cooperative pooling” means a cooperative marketing method under which a producer-owned cooperative or organization pays its producer owners a prorated share of sales proceeds for the marketing year after a final accounting and the deduction of marketing expenses.

(h) “Current assets” means cash and assets, including trade or investment items, that may be readily converted into cash in the ordinary course of business within one year.

(i) “Current liabilities” means those liabilities that are due and payable within one year.

(j) “Equity” means the excess of total assets over total liabilities.

(k) “Equity statement” means a report of the change in equity from the beginning to the end of the accounting period applicable to the report.

(o) “Financial statement” means a financial statement that meets the requirements of sub. (5).

(p) “Food processing” has the meaning specified under s. 97.29 (1) (g).

(q) “Food processing plant” has the meaning specified under s. 97.29 (1) (h).

(r) “Income statement” means a report of the financial results of business operations for a specific period.

(s) “Interim statement” means a financial statement prepared as of a date other than the end of a fiscal year.

(t) “Liability” means an obligation to pay money or other assets or to render a service to another person immediately or in the future.

(u) “Maximum liability to producers” means the largest aggregate amount of obligations to producers owed by a contractor at any time during a registration year.

(um) “Operator” means a person licensed or required to be licensed under s. 97.29 to operate a food processing plant.

(v) “Payment on delivery” means cash payment of the full agreed price for a vegetable when the vegetable is tendered or delivered to a contractor, or cash payment of the full agreed price within 72 hours after delivery if the vegetable is graded.

(vm) “Procurement contract” means an oral or written agreement between a contractor and a producer, under which the contractor buys a vegetable grown in this state from the producer or contracts with the producer to grow a vegetable in this state.

(w) “Producer” means a person who produces and sells a vegetable, or who grows a vegetable under contract.

(wm) “Producer claim” means a claim held by a producer for his or her vegetables.

(x) “Registration certificate” means a registration certificate issued under sub. (2).

(y) “Registration year” means the period to which a registration certificate applies.

(ym) “Reviewed financial statement” means a financial statement, other than an audited financial statement, that is all of the following:

1. Sworn and notarized by the contractor.
2. Reviewed according to generally accepted accounting principles by an independent certified public accountant or a public accountant holding a certificate of authority under ch. 442.

(z) “Statement of cash flows” means a report of cash receipts and cash payments from operating, investing and financing activities, including an explanation of changes in cash and cash equivalents for the period applicable to the report.

(zm) “Subsidiary” means a corporation or business entity that is owned, controlled or operated by an operator, and that procures a vegetable for use by the operator.

(zs) “Vegetable” means any vegetable that is grown or sold for use in food processing, whether or not that vegetable is actually processed as food. “Vegetable” includes sweet corn, but does not include grain.

(2) REGISTRATION CERTIFICATE. (a) *Requirement.* No contractor may enter into a procurement contract with a producer unless the contractor holds a registration certificate from the department. A registration certificate expires on January 31 annually and is not transferable.

(b) *Application.* Application for a registration certificate shall be made on a form provided by the department. The application shall be accompanied by all of the following:

1. All applicable fees required under sub. (3).
2. The sworn and notarized statement required under sub. (4).
3. A financial statement if required under sub. (5).

(3) FEES. (a) *Registration fees.* A contractor who applies for a registration certificate under sub. (2) shall pay all of the following:

1. A basic fee of \$50.
2. Unless the department by rule establishes a different fee, a fee of one cent for each \$100 in the total contractual obligations reported under sub. (4) (a). The fee under this subdivision is not required if all vegetable grading is performed or supervised by the department under contract with the contractor.
3. Unless otherwise established by department rule, a fee of 3 cents for each \$100 in the total contractual obligation reported under sub. (4) (a).

(b) *Surcharge for operating without a registration certificate.* A contractor who applies for a registration certificate under sub. (2) shall pay a surcharge of \$500 if the department determines that, within 365 days before submitting the application, the contractor procured a vegetable from a producer without a registration certificate in violation of sub. (2). Payment of the surcharge does not relieve the contractor of any other civil or criminal liability that results from the procurement of the vegetable, but it does not constitute evidence of any law violation.

(4) STATEMENT TO ACCOMPANY APPLICATION. An application for a registration certificate under sub. (2) shall be accompanied by a sworn and notarized statement, signed by the contractor or an officer of the contractor, which states all of the following:

(a) The contractor’s total paid and unpaid contractual obligations to producers, for vegetables tendered or delivered, that have accrued during the registration year immediately preceding the registration year for which application is made.

(b) The contractor’s maximum liability to producers during the year immediately preceding the registration year for which application is made, if applicable.

(c) The contractor’s anticipated maximum liability to producers during the registration year for which application is made. The application shall state if the contractor anticipates a maximum liability of zero. If so, the application also shall state whether the contractor anticipates a maximum liability of zero because the

contractor plans to make cash payment on delivery under every procurement contract, or because the contractor plans to procure all vegetables from another contractor. A contractor shall immediately notify the department in writing if, at any time during the registration year, the contractor has reason to believe that the contractor’s maximum liability will exceed the maximum liability previously anticipated and reported to the department.

(d) Whether, on the date of application, the contractor has failed to pay a liability to a producer which is due and payable before that date.

(e) Whether the contractor and the contractor’s affiliates and subsidiaries will collectively grow more than 10% of the acreage of any vegetable species grown or procured by the contractor during the registration year for which application is made, as provided under s. 100.235 (3).

(f) Whether the contractor is a producer–owned cooperative or organization doing business on a cooperative pooling basis with its producer owners, and whether the producer–owned cooperative or organization procures any vegetables from producers who are not its producer owners.

(4m) RESIDUAL PAYMENT LIABILITY. As part of or in addition to the statement required by sub. (4), the contractor or officer of the contractor shall submit a sworn and notarized statement indicating whether the contractor has failed to pay any liability to a producer that became due and payable during the registration year ending January 31. The statement shall be submitted before February 5. The statement may not be submitted before February 1, except that the statement may be submitted at such earlier time as the contractor has paid all liabilities to producers that are due and payable on or before January 31.

(5) FINANCIAL STATEMENTS. (a) *General requirement.* 1. Except as provided under par. (c), a contractor who applies for an initial registration certificate under sub. (2) shall file a financial statement with the application.

2. Except as provided under par. (c), a contractor shall file an annual financial statement with the department as a condition to the renewal or continuation of the contractor’s registration certificate under sub. (2). An annual financial statement shall be filed by the 15th day of the 4th month commencing after the close of the contractor’s fiscal year, except that the department may, for cause, extend the deadline for filing the annual financial statement for up to 30 days.

(am) *Interim statement.* Except as provided in par. (c), a contractor shall file an interim statement as of the quarter that ends closest to November 30 with each application for renewal.

(b) *Additional financial statement.* Notwithstanding par. (c), the department may require a contractor to file an annual financial statement or interim statement at any time. The department may require that a financial statement required under this paragraph be an audited financial statement or a reviewed financial statement.

(c) *Exemptions.* Paragraphs (a) and (am) do not apply to any of the following:

1. A contractor who either plans to make payment on delivery for all vegetables tendered or delivered by producers, or to procure all vegetables from another contractor, and who submits a sworn and notarized statement to that effect under sub. (4) (c).

2. A contractor who files security with the department under sub. (8), except for a contractor who files security under sub. (8) (cm).

3. A producer–owned cooperative or organization that procures vegetables solely on a cooperative pooling basis from its producer owners, and that submits under sub. (4) a sworn and notarized statement to that effect.

(d) *Financial statement contents.* A financial statement under this subsection shall consist of a balance sheet, income statement, equity statement, statement of cash flows, and any other information required by the department. A financial statement shall be prepared in conformity with generally accepted accounting principles.

(e) *Audited or reviewed financial statement.* A financial statement under par. (a) shall be an audited financial statement or a reviewed financial statement, except that if during the year to which that financial statement pertains a contractor incurred total contractual obligations to producers, as reported under sub. (4) (a), of more than \$250,000, the financial statement under par. (a) shall be an audited financial statement.

(f) *Closed to public inspection.* A financial statement under this subsection is not available for public inspection under s. 19.35. The department may use a financial statement in an enforcement action, administrative proceeding or court proceeding, and in that action or proceeding may release the financial statement to the parties, the hearing officer or the court under such conditions as the department or court considers appropriate. Except by agreement of the parties, a financial statement may not be made a part of the public record in an administrative or court proceeding, except as ordered by a court.

(6) **PAYMENT TO PRODUCERS.** (a) *Full payment required.* Except as provided under par. (c) or (d), the department may not issue or renew a registration certificate under sub. (2) unless the contractor has submitted a statement under sub. (4m) that shows that the contractor has paid all liabilities to producers that are due and payable before January 31. Notwithstanding par. (b), a contractor shall make payment on delivery unless the contractor meets the minimum financial standards under sub. (7) or files security with the department under sub. (8).

(b) *Payments; when due.* 1. If a procurement contract does not specify a payment date in writing, the contractor shall pay a liability to a producer by the 15th day of the month immediately following the month in which the producer tendered or delivered the vegetables under the contract, or by an earlier date agreed upon between the parties.

2. If a procurement contract specifies a payment date in writing, payment shall be made by the specified date. No contract may specify a payment date in violation of subd. 3. or 4.

3. By January 31 of each registration year, a contractor shall pay for all vegetables that were delivered by producers on or before December 31 of that registration year. This requirement does not apply if a written contract specifying a later payment date was approved by a vote of producers who delivered vegetables to the contractor during the preceding registration year. To obtain the approval of producers, a contractor shall give advance written notice to every eligible producer. The notice shall include a copy of the proposed contract and shall announce a meeting at which producers will be asked to vote on the proposed contract. The notice shall also include a mail ballot by which a producer may cast his or her vote without attending the meeting. Voting shall be by secret ballot. The proposed contract shall be approved by a majority of the producers who vote on the proposed contract. The contractor shall file a sworn statement with the department, on a form provided by the department, certifying the results of the balloting.

4. If a producer tenders or delivers vegetables to a contractor after December 31 of any registration year, the contractor shall pay the producer for the vegetables by the 15th day of the month following the month in which the vegetables were tendered or delivered, or by the 30th day after tender or delivery, whichever is later.

(c) *Disputed producer obligations.* If a contractor is unable to satisfy the requirement under par. (a) solely because the amount of a liability to a producer is disputed, the department may issue or renew the contractor's registration certificate if the contractor deposits the disputed amount in escrow with the department, pending resolution of the dispute.

(d) *Producer-owned cooperatives exempt.* This subsection does not apply to a producer-owned cooperative or organization doing business solely on a cooperative pooling basis with its producer owners.

(7) **MINIMUM FINANCIAL STANDARDS.** (a) *Requirement.* Except as provided under par. (c), a contractor shall meet all of the following financial standards:

1. A minimum ratio of current assets to current liabilities of 1.2 to 1.0 on its annual financial statement.

2. A minimum ratio of current assets to current liabilities of 1.0 to 1.0 at all times of the year other than the end of the contractor's fiscal year.

3. Equity equal to at least 20% of total assets on its annual financial statement and at least 10% at all other times.

(b) *Notification of changes.* A contractor shall immediately notify the department if the contractor knows or has reason to know that the financial standards under par. (a) are no longer being met.

(c) *Exemptions.* Paragraph (a) does not apply to a contractor if any of the following applies:

1. The contractor makes payment on delivery for all vegetables obtained from producers.

2. The contractor files security with the department under sub. (8).

3. The contractor is a producer-owned cooperative organization doing business solely on a cooperative pooling basis with its producer owners.

(8) **SECURITY.** (a) *Requirement.* A contractor shall file security with the department under this subsection unless one or more of the following apply:

1. The contractor makes payment on delivery for all farm products obtained from producers.

2. The contractor meets the minimum financial standards under sub. (7).

3. The contractor is a producer-owned cooperative or organization doing business solely on a cooperative pooling basis with its producer owners.

(b) *Form of security.* Security filed with the department under this subsection shall be in one or more of the following forms:

1. A continuous surety bond payable to the department on a form approved by the department and endorsed by a surety company licensed to do business in this state.

2. Cash or negotiable securities.

3. Stocks, bonds or other marketable securities at current market value.

4. Irrevocable bank letters of credit issued for a term of at least 6 months beyond the date on which final payment is due the producers.

5. Personal surety bonds or other 3rd-party guarantees that are supported by security under subd. 2. or 3.

(bg) *Department custody of security.* The department or the department's agent shall hold under custody any of the forms of security filed under par. (b) 1. to 5.

(c) *Amount of security.* Security under this subsection shall be in an amount equal to at least 75% of the contractor's anticipated maximum liability during the registration year for which application is made.

(cm) *Transitional security amounts.* Notwithstanding par. (c), a contractor who does not meet the financial standards under sub. (7) but who does have a ratio of current assets to current liabilities of at least 1.2 to 1.0 on its annual financial statement and whose total assets exceed total liabilities shall file security in at least the following amounts for the license years indicated:

1. For the first license year beginning after July 11, 1996, 25% of the contractor's anticipated maximum liability to growers of vegetables.

2. For the 2nd license year beginning after July 11, 1996, 50% of the contractor's anticipated maximum liability to growers of vegetables.

(d) *Release of security.* Security filed under this subsection may be released only if one of the following occurs:

1. The contractor achieves and maintains for 2 consecutive registration years the minimum financial standards under sub. (7).
2. The contractor demonstrates to the department's satisfaction that the contractor is able to pay liabilities to producers when due because of a substantial reduction in maximum liability or other reasons.

(e) *Prohibition.* No contractor may assess a separate line item deduction from the payment to the grower to recover the cost of security filed under this section.

(9) PRODUCER CLAIMS; DEFAULT PROCEEDINGS. (a) *Filing claims.* If a producer claims that a contractor has failed to pay a liability to that producer when due, the producer may file a written claim with the department. Upon receipt of a producer claim, or other evidence of default on the part of a contractor, the department may initiate a default proceeding under this subsection. Before initiating a default proceeding, the department may inspect the contractor's records under sub. (16), and conduct any investigation that it considers appropriate.

(b) *Initiating default proceeding; order to producer claimants.* To initiate a default proceeding, the department shall issue an order requiring all interested producers to file verified proofs of claim with the department before a specified date or be barred from participating in any recovery obtained by the department. Notice of the order shall be published as follows:

1. By posting a copy of the order in a prominent location at each place of business in this state operated by the contractor.
2. By mailing a copy of the order to the contractor, and to the trustee or surety, if any.
3. By publishing the contents of the order as a class 3 notice under ch. 985. The date of the last insertion of the class 3 notice under ch. 985 shall be not less than 30 days before the deadline date for filing claims.
4. If based on the contractor's records or other information the department obtains the names and addresses of other producers who appear to have an unpaid claim against the contractor, by mailing a copy of the order or equivalent notice to each of those producers. In its notice, the department may indicate the amount of the producer's apparent claim, and ask the producer to verify or correct that claim on or before the claim filing deadline.

5. By any additional method which the department considers necessary and appropriate.

(c) *Audit; proposed order.* If a default proceeding is initiated, the department shall audit producer claims filed with the department and shall issue a proposed order allowing or disallowing claims. The proposed order shall be based on proposed findings of fact and conclusions of law which shall accompany the proposed order. A copy of the proposed order shall be mailed to the contractor, to the trustee or surety, if any, and to every producer who filed a claim in the proceeding.

(d) *Untimely claims disallowed.* Claims filed after the deadline date specified under par. (b) shall be disallowed unless the department waives the deadline date for good cause shown. A claim shall be disallowed if payment was due more than 60 days before the date on which the first written notice of default was received by the department.

(e) *Notice and hearing.* The department shall hold a public hearing on its proposed order under par. (c). A notice of hearing shall be issued to each person who is required to receive a copy of that order. The notice of hearing shall comply with s. 227.44. The notice of hearing may require affected parties to file objections to the proposed order, if any, in writing before the date of hearing. The hearing examiner may hold a prehearing conference before the hearing, and may reschedule or continue the hearing as necessary. The hearing and related proceedings shall be conducted under ch. 227.

(f) *Final order after hearing.* Before issuing its final decision and order, the department shall follow the procedure prescribed under s. 227.46, except that if after the hearing under par. (e) there are no objections to the proposed order under par. (c) the department may adopt the proposed order as the final decision and order of the department, without further notice or hearing.

(g) *Interest on claims.* If the department's proposed or final order allows a producer claim, the order shall also require the contractor to pay interest on the claim, at a rate determined by the department by rule, computed from the date on which payment was first due.

(10) PAYMENT OF SECURED CLAIMS. If the department issues a final order allowing producer claims under sub. (9), the department may convert any security held by the department under sub. (8) and may apply the proceeds to pay the allowed claims. The department shall distribute available funds to the producer claimants according to the final order allowing claims, on a proportionate basis according to the amount of each producer's allowed claim. If funds exceed allowed claims, the excess shall be returned to the person who filed the security with the department.

(11) DEPARTMENT MAY COLLECT PRODUCER CLAIMS. The department may demand and receive payment of claims allowed under sub. (9) on behalf of producers and may commence an action in court to recover allowed claims on behalf of producers. Any amounts recovered by the department shall be distributed to represented producer claimants on a proportionate basis, according to the amount of each producer's allowed claim. The department may settle any producer claim with the consent of the producer and may decline to represent a producer who does not agree to a settlement recommended by the department. This subsection does not prohibit any producer from proceeding independently, under sub. (12) or (20), to recover an unpaid claim.

(12) DEMAND FOR PAYMENT; JUDGMENT LIEN. If the department issues a final order allowing producer claims under sub. (9), the department or any producer may demand payment of an allowed claim from the contractor, and from any other person who is obligated under the department's order. If the contractor does not pay the claim within 30 days after the demand is served on the contractor, the department or producer may file the department's final order with the clerk of circuit court in any county of this state. The clerk of circuit court shall enter the order in the judgment and lien docket. Upon being entered, the order becomes a judgment lien against the real property, in that county, of the contractor or person obligated under the order.

(13) PRIORITY OF PRODUCER CLAIMS. In any insolvency or creditor's proceeding in court against a contractor, the unpaid claim of a producer under this section has the same priority as a claim for wages under s. 109.09 (2). Producer claims have priority over the unsecured claims of any owner, officer, agent, partner, member, manager, stockholder or family member of the contractor. Producer claims shall be given the same priority as a claim for wages under s. 109.09 (2) in federal bankruptcy proceedings, to the extent permitted by federal law. This subsection does not impair any other lien, security or priority for a producer claim.

(14) OPERATOR LIABILITY FOR CLAIMS NOT PAID BY SUBSIDIARY OR AFFILIATE. If a contractor is a subsidiary or affiliate of an operator, the operator is liable to a producer for the amount of any unpaid claim under this section if the contractor fails to pay the producer according to the terms of the procurement contract and this section.

(15) VEGETABLE GRADING AND TARE. (a) *Grading procedures and grade standards.* If under a procurement contract the amount received by the producer depends on the grade of the vegetables, the vegetables shall be graded in compliance with all of the following:

1. Standard procedures established by the department by rule.
2. Uniform grade standards established by the department by rule, unless alternative grade standards are clearly specified in

writing in the procurement contract. Grade standards adopted by the department shall conform to grade standards adopted by the federal department of agriculture under 7 USC 1621 et seq.

(b) *Tare deductions.* If under any procurement contract there is a payment deduction for tare, tare shall be determined according to procedures established by the department by rule.

(c) *Price-fixing not permitted.* This subsection does not fix or regulate the price paid for any vegetable.

(16) RECORDS; INSPECTION BY DEPARTMENT. A contractor shall keep copies of all written procurement contracts, and a current record of all liabilities to producers and payments to producers. Records and contracts under this subsection shall be kept for a period of 3 years, and shall be made available for inspection and copying by the department upon request.

(17) RULES. The department may promulgate rules to implement and administer this section.

(18) SUMMARY ORDER REQUIRING PAYMENT ON DELIVERY. If the department has reasonable grounds to believe that a contractor does not meet the minimum financial standards under sub. (7), and does not have adequate security on file under sub. (8), the department may issue a summary special order requiring the contractor to make payment on delivery for all vegetables. A summary special order shall set forth the specific basis for the order. The order shall remain in effect until the contractor meets the financial standards under sub. (7) or files adequate security under sub. (8). A person adversely affected by a special order under this section shall be given a prompt hearing before the department upon request, under ch. 227.

(19) SUMMARY LICENSE SUSPENSION. (a) *Grounds.* The department may summarily suspend the contractor's registration certificate when necessary to prevent clear and imminent harm to producers if the department has reasonable grounds to believe that a contractor has failed to make payment on delivery for vegetables, procured from producers, contrary to any of the following:

1. The contractor's statement under sub. (4) (c) or (f).
2. A department order under sub. (18).

(b) *Procedure for suspension.* A summary suspension order under this subsection shall set forth the specific basis for the order. A person adversely affected by a summary suspension order under this subsection may request a hearing before the department. The request must be made within 10 days after the suspension's date of service. The department shall conduct a hearing within 10 days after receipt of a request. A request for a hearing does not stay the effect of a summary suspension order, unless the department orders a stay.

(20) PRIVATE REMEDY. In addition to any other remedy, if a producer sustains a monetary loss as a result of a violation of this section by a contractor, including a failure by the contractor to pay a liability to a producer when due, the producer may bring an action and may recover the amount of the producer's proven damages, together with costs, including all reasonable attorney fees, notwithstanding s. 814.04 (1).

(21) RESTRAINT OF TRADE NOT PERMITTED. This section does not authorize any restraint of trade which is prohibited under state or federal law.

(22) PENALTIES. (a) *Forfeiture.* Any person who violates this section or any rule promulgated or order issued under this section may be required to forfeit not less than \$100 nor more than \$10,000. Notwithstanding s. 165.25 (1), the department may commence an action to recover a forfeiture under this paragraph.

(b) *Fine or imprisonment.* Any person who intentionally violates this section or any rule promulgated or order issued under this section shall be fined not less than \$100 nor more than \$10,000 or imprisoned for not more than one year in the county jail or both for each violation.

History: 1985 a. 226; 1987 a. 399; 1989 a. 31, 359; 1991 a. 39, 269; 1993 a. 112; 1995 a. 27, 224., 460.

100.04 Livestock production contracts. (1) DEFINITION. In this section, "livestock" means swine, cattle, poultry, sheep, goats or farm-raised deer, as defined in s. 95.001 (1) (a).

(2) REQUIRED CONTRACT TERMS. Every written contract under which livestock owned by one party is possessed by another party for breeding, feeding or the production of animal products shall set forth, in clear language, the manner in which any payments received because of the destruction of the livestock due to disease, fire or other unanticipated cause shall be divided between the party owning the livestock and the party possessing the livestock.

(3) RESPONSIBLE PARTY. The party who drafts or otherwise provides the text of a written contract described in sub. (2) is responsible for including language that fulfills the requirement of sub. (2).

(4) RESOLUTION OF DISPUTES. If a written contract described in sub. (2) does not include language that fulfills the requirement of sub. (2) and one of the parties to the contract begins an action claiming an interest in payments received because of the destruction of livestock, the court shall divide the payments among the parties in an equitable manner.

History: 1995 a. 210.

100.05 Butter and cheese manufacturers; accounts accessible. (1) 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 the other person is entitled to the benefit thereof, to use any milk or cream brought to the operator, without the consent of the owner thereof.

(2) The operator of a butter or cheese factory wherein the value of the milk or cream delivered is determined by the sale of the product manufactured shall keep or cause to be kept a correct account 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.

(3) The account kept under sub. (2) shall be open to the inspection of any person furnishing milk to the operator and to the department, its chemists, assistants, inspectors and agents.

History: 1993 a. 492; 1995 a. 225.

100.057 Wisconsin cheese logotype. The department shall design an official logotype appropriate for affixation to and display in connection with natural cheese meeting quality standards established by the department and manufactured in this state entirely from milk which is produced under standards which are equal to or greater than standards established under s. 97.24 and rules adopted under s. 97.24 or under minimum sanitary and quality standards prescribed under s. 97.52 and rules adopted under s. 97.52. The design shall consist of an outline of the boundaries of the state and the words "100% Wisconsin Cheese" and such other specifications as the department deems appropriate. Nothing in this section shall prohibit the use of other appropriate labels or logotypes.

History: 1975 c. 323; 1977 c. 157.

100.06 Dairy licenses; financial condition. (1) In this section:

(a) "Asset" means anything of value owned.

(b) "Balance sheet" means a statement of assets, liabilities and equity on a fixed date.

(c) "Cash flow to debt service ratio" means the result obtained by dividing the total of net income plus noncash expenses plus interest expense by the total of interest expense plus current maturities of long-term debt.

(d) "Current assets" means cash and assets, including trade or investment items, which may be readily converted into cash in the

ordinary course of business within one year from the date of the balance sheet.

(e) "Current liabilities" means liabilities which are due and payable within one year from the date of the balance sheet.

(f) "Dairy plant" has the meaning given in s. 97.20 (1) (a).

(g) "Dairy product" has the meaning given in s. 97.20 (1) (b).

(h) "Equity" means the excess of total assets over total liabilities.

(i) "Liability" means an obligation to pay money or other assets or to render a service to another person either now or in the future.

(j) "Milk" has the meaning given in s. 97.22 (1) (e).

(k) "Milk producer" means any person who owns or operates a dairy farm, and sells or distributes milk produced on that farm, directly or through a marketing agent under a written agency contract or such a marketing agent.

(1g) (a) No person may operate a dairy plant and no license therefor shall be issued unless he or she shall have first complied with the requirements of this section and satisfied the department that his or her financial condition is such as to reasonably assure prompt payment to milk producers for the milk to be purchased by him or her as and when the same becomes due and payable. The requirements of this section also apply to any dairy plant out of state that receives milk from milk producers in this state, to the same extent as if it were a dairy plant located in this state, except that such an out-of-state dairy plant need not be licensed in this state.

(c) The department shall require the applicant to file a financial statement of his or her business operations and financial condition that meets the requirements of par. (d). The licensee, during the term of his or her license, may be required to file such statements periodically. All such statements shall be confidential and shall not be open for public inspection. The department may require such statements to be certified by a public accountant. Such statements and audits, when made by the department, shall be paid for at cost.

(d) A dairy plant shall submit to the department a financial statement at the end of each quarter of its fiscal year.

(1m) An applicant or licensee who does not meet all of the following minimum financial standards shall file with the department a bond or other security acceptable to the department:

(a) His or her ratio of current assets to current liabilities shall be at least 1.25 to 1.0.

(b) He or she shall have equity equal to at least 35% of total assets.

(c) He or she shall have a cash flow to debt service ratio of at least 1.5 to 1.0.

(2) In all cases where it appears that the financial condition of the applicant or of the licensee is not adequate to reasonably assure payment when due for the milk, to be purchased by him or her, the department may require any of the following:

(a) The filing of a bond or other security acceptable to the department that is payable to the department for the benefit of milk producers who would otherwise suffer because of the default of the licensee in the payment for milk.

(b) The filing of an agreement providing for the complete control over all manufactured or processed milk and dairy products by a trustee to be selected at least annually by the milk producers. Such trustee shall make and file a trustee's bond and contracts signed by the operator and the purchaser of the dairy products requiring that payment for all such products sold be made to him or her as trustee. Such trustee shall maintain a separate bank account for that purpose and shall at least annually render a true and correct account of his or her dealings to the department and to the milk producers.

(c) That the licensee shall receive no milk on credit after the 5th day of any month unless at least 90% of the value of the milk

delivered during the first 15 days of the preceding month shall have been paid, nor after the 20th day of any month unless the value of all of the milk delivered during the previous month shall have been paid in full; provided that when payment is based on the value of Swiss cheese manufactured from the milk so delivered, an extension of 2 months during which the product is held for curing shall be allowed if the manufactured product is the property of the milk producers or if the proceeds from the sale thereof are made payable to and distributed by a banking institution.

(2m) (a) *First monthly payment.* A dairy plant operator's payment to a milk producer for milk received from that milk producer during the first 15 days of the month shall:

1. Be made before the 4th day of the following month.

2. Be an estimated price that is at least 80% of the class III price published by the regional federal milk market administrator for the month before the month in which the milk is received, or 80% of the price originally contracted for by the dairy plant operator and the milk producer, whichever is greater.

(b) *Second monthly payment.* A dairy plant operator shall pay a milk producer the balance due on the actual price for all milk received from that milk producer during the month before the 19th day of the following month.

(3) (a) All dairy plant operators shall inform milk producers delivering milk of the financial basis on which the license was issued including the type and amount of security filed under this section by statement in writing to each milk producer patron at least once every 6 months.

(b) No person may receive milk which will increase the amount owed from him or her beyond the amount represented as a basis for the issuance of a license without first notifying the department.

(4) (a) Any milk producer injured by the breach of any obligation under this section may file with the department a verified proof of claim. Upon receipt of such claim or any other evidence of default, the department, by order, may require all interested creditors to file their verified proofs of claim before a certain date or be barred from participating in any recovery made by the department. Notice of the entry of such order shall be given by posting a copy thereof on the premises described in the license and by publication of a class 3 notice, under ch. 985, in the affected area. The date of last insertion shall not be less than 30 days prior to the last date for the filing of such claims. The department shall make the necessary audit and by order allow or disallow all claims presented.

(b) The licensee or trustee, or surety or sureties of either of them, shall pay the interest on any claim that the department allows unless the claimant has waived the payment of that interest in writing. The interest shall accrue from the first day of the breach of the obligation under this section for which the verified claim is filed until full payment of the allowed claim is made. The department, by rule, shall establish the interest rate that applies to any claimant except that if the claimant has contracted the interest rate in writing with the licensee or has specified the interest rate in a written confirmation of purchase delivered to the licensee within a reasonable time of purchase to which interest rate the licensee did not object in writing within 10 days of receipt of that confirmation, the interest rate in the contract or confirmation shall apply to the claimant under this subsection.

(c) Notice of allowance or disallowance and interest and request for the payment within 30 days of the claims allowed shall be sent to the principal and surety by registered mail. The department may demand, collect and receive from the licensee or the trustee, or from the surety or sureties of either of them, the amount determined to be necessary to satisfy such claims, plus interest.

(d) The department may commence an action for the purpose of collecting claims, plus interest, in the circuit court of the county in which the licensed plant is located. Upon receipt of the money to be applied to the satisfaction of such claims plus interest as pro-

vided in this section, the department shall make distribution to the claimants in accordance with the order allowing claims plus interest, in full or proportionally, as the case may be.

(e) No claims for the purchase price of any milk the value of which was due and payable more than 30 days prior to the date the first written notice of default is received by the department, nor claims covering transactions wherein the seller has granted to the licensee any voluntary extension of credit, shall be allowed or paid under this section.

(5) When any dairy plant shall employ or retain a sales agent or commission dealer to market and distribute its dairy products, and such sales agent or commission dealer shall sell such dairy products to a dairy products dealer, such dairy products dealer shall directly remit or transmit all moneys due thereunder to such dairy plant operator or to the trustee thereof, as the case may be. The dairy plant shall be responsible for the payment of any commission or salary that may be due to such sales agent or commission dealer. Such payment by the dairy products dealer shall be considered as in full release, payment and discharge of any obligation thereunder.

(6) Compliance with this section shall be an additional requirement for the license and noncompliance shall be ground for denial, suspension or revocation of license, under s. 97.20. This subsection does not apply to any dairy plant, as defined in s. 97.20 (1) (a), operated by this state.

(7) The whole claim of any milk producer against any licensee under s. 97.20 on account of milk sold or delivered to such licensee and any judgment therefor shall be entitled to the same preference in any insolvency or other creditor's proceedings as is given by any law of this state to claims for labor. One claim may be filed for any number of milk producers and when so filed the preference shall be allowed on the amount due each milk producer. Such preference shall also be given in bankruptcy proceedings to the extent permitted by the federal law. This section shall not affect or impair any other lien, security or priority for said claim or judgment.

(8) The protection to milk producers afforded by this section shall be available to the milk producers of any state selling milk to any dairy plant licensed in this state.

(9) Milk producer security fee requirement. A dairy plant operator shall pay a fee that, unless otherwise established by the department by rule, is 0.1 cent for each 100 pounds of milk that are received by the dairy plant operator. The dairy plant operator shall pay the fee to the department to fund the milk producer security program established under this section. The dairy plant operator shall pay to the department the fee on each month's milk deliveries on or before the 18th day of the following month. No dairy plant operator may charge to or collect from a milk producer from whom the dairy plant operator receives milk the fee that the dairy plant operator pays under this paragraph. This subsection applies to an operator of a dairy plant that is located outside this state if the operator purchases milk that is produced on a dairy farm located in this state.

History: 1979 c. 110 s. 60 (12); 1987 a. 273, 399; 1989 a. 336; 1991 a. 32, 39, 231.

The department could find an implied contract that a dairy plant would pay producers of milk a competitive price and that when less was paid the difference was to be made up from the security funds of the producer. *Columbus Milk Producers v. Dept. of Agriculture*, 48 W (2d) 451, 180 NW (2d) 617.

100.07 Milk payments; audits. (1) Whenever petitions signed by more than 60 per cent of the producers of milk delivered to any dairy plant or petitions signed by more than 60 per cent of the producers comprising any municipal milk shed shall be presented to the department asking for the audit of payments to producers, the department by investigation and public hearing shall determine the facts in support of and against such petition and render its decision thereon. The department by order shall define the plants and areas affected. All persons receiving from producers in any such plant or area milk any part of which is used for fluid distribution shall keep adequate records of all purchases and all

usage or disposition of milk and shall make reports thereof as prescribed by the department. The department shall have free access to such records and shall after entry of such order audit the receipts and usage or disposition of milk and cream at intervals sufficiently frequent to keep the producers informed for bargaining purposes.

(2) Each such person shall deduct from the price to producers an amount sufficient to administer this section, to be the same for all, and not to exceed one-half cent per 100 pounds of milk received or its equivalent. Amounts so deducted are trust funds and shall be paid to the department.

(3) Whenever petitions signed by more than 51 per cent of the producers of milk delivered to any such plant or in any such municipal milk shed shall be presented to the department asking for discontinuance of such auditing service, it shall promptly hold a public hearing to determine the sufficiency of such petitions, and if it shall appear that the required number of persons have so petitioned, the auditing service shall be ordered discontinued. Plants and areas now being audited by the department shall continue to receive such service until an order of discontinuance is made as herein provided.

(4) Authorized officials of any organization whose members are producers delivering milk to any such plant or in any such municipal milk shed may sign petitions for such auditing service or for the discontinuance thereof for and on behalf of the producer members of such organization.

(5) Any person who violates this section by failing to pay to the department the deductions required by this section, or by failing to make or to keep the required records or reports, or by willfully making any false entry in such records or reports, or by willfully failing to make full and true entries in such records or reports, or by obstructing, refusing or resisting other than through judicial process any department audit of such records, shall be fined not to exceed \$200 or imprisoned in the county jail not more than 6 months or by both.

(6) Action to enjoin violation of this section may be commenced and prosecuted by the department in the name of the state in any court having equity jurisdiction.

100.12 Refusal of commission merchant to furnish written statement of transaction prima facie evidence of gambling. (1) 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:

(a) The name of the party from whom the commodity was bought or to whom it was sold, whichever the case may be; and

(b) The time when, the place where, and the price at which such commodity was bought or sold.

(2) Refusal upon demand to furnish the written statement specified in sub. (1) is prima facie evidence that the purchase or sale of the commodity was not a bona fide business transaction.

(3) Transactions by or between members of a lawfully constituted chamber of commerce or board of trade which has been organized pursuant to the laws of this state are prima facie valid if they are conducted in accordance with the charter of such chamber of commerce or board of trade and the rules, bylaws and regulations adopted thereunder.

History: 1993 a. 492.

100.14 Uniform labels and trademarks. (1) The department may adopt uniform labels and trademarks for brands of Wisconsin products and shall, upon request, permit the use of such labels and trademarks by any person engaged in the production or distribution of products who complies with regulations issued by the department for the use of such labels or trademarks.

(2) The secretary of state shall, upon application of the department, record any such label or trademark under ss. 132.01 to 132.11. The department shall be entitled to protect such label or

trademark under said sections and in any other manner authorized by law.

100.15 Regulation of trading stamps. (1) No person may use, issue or furnish within this state, in connection with the sale of any goods, any trading stamp or similar device, which entitles the purchaser to procure anything of value in exchange for the trading stamp or similar device.

(3) This section does not apply to:

(a) Stamps, tokens, tickets, or similar devices, without any stated cash value, if such stamps, tokens, tickets, or similar devices are redeemable only in payment for parking privileges for automobiles or fares on urban passenger transit facilities.

(b) A person who issues a trading stamp or other similar device, with the sale of any goods, which bears upon its face a stated cash value and is redeemable in cash upon presentation in amounts aggregating 25 cents or over of redemption value, or in merchandise at the option of the holder.

(c) The publication by or distribution through newspapers, or other publications, of coupons in advertisements other than their own.

(d) A coupon, certificate or similar device, which is within, attached to, or a part of any package or container as packed by the original manufacturer and is directly redeemed by such manufacturer.

(e) A coupon, certificate or similar device, which is within, attached to, or a part of any package or container as packed by the original manufacturer or retailer and which is to be redeemed by a retailer or another manufacturer if:

1. The coupon, certificate or similar device clearly states the names and addresses of both the issuing manufacturer or retailer and any redeeming manufacturer; and

2. The issuing manufacturer or retailer is responsible to redeem the coupon, certificate or similar device if the redeeming retailer or manufacturer fails to do so.

(f) A coupon, ticket, certificate, card or similar device issued, distributed or furnished by a retailer and redeemed by that retailer for any product or service the retailer sells or provides in the usual course of business. Redemption under this paragraph shall be made by the issuing retail outlet on request of the customer, and may be made by any other retail outlet operating under the same business name.

(g) An entry blank or game piece redeemed for merchandise in a chance promotion exempt under s. 100.16 (2).

History: 1977 c. 268; 1981 c. 351; 1983 a. 406; 1993 a. 213.

100.16 Selling with pretense of prize; in-pack chance promotion exception. (1) No person shall sell or offer to sell anything whatever, by the representation or pretense that a sum of money or something of value, which is uncertain or concealed, is inclosed within or may be found with or named upon the thing sold, or that will be given to the purchaser in addition to the thing sold, or by any representation, pretense or device, by which the purchaser is informed or induced to believe that money or something else of value may be won or drawn by chance by reason of such sale.

(2) This section does not apply to an in-pack chance promotion if all of the following are met:

(a) Participation is available, free and without purchase of the package, from the retailer or by mail or toll-free telephone request to the sponsor for entry or for a game piece.

(b) The label of the promotional package and any related advertising clearly states any method of participation and the scheduled termination date of the promotion.

(c) The sponsor on request provides a retailer with a supply of entry forms or game pieces adequate to permit free participation in the promotion by the retailer's customers.

(d) The sponsor does not misrepresent a participant's chances of winning any prize.

(e) The sponsor randomly distributes all game pieces and maintains records of random distribution for at least one year after the termination date of the promotion.

(f) All prizes are randomly awarded if game pieces are not used in the promotion.

(g) The sponsor provides on request of a state agency a record of the names and addresses of all winners of prizes valued at \$100 or more, if the request is made within one year after the termination date of the promotion.

History: 1981 c. 351.

Plan whereby soft drink company would include coupon for Wisconsin lottery ticket with specified purchases and customer could redeem coupon for lottery ticket at retail lottery outlet would violate this section. 77 Atty. Gen. 303.

100.17 Guessing contests. No person or persons or corporations in their own name or under any assumed trade name, with intent to defraud, shall advertise or represent in printing or writing of any nature, any enigma, guessing or puzzle contest, offering to the participants therein any premium, prize or certificate entitling the recipient to a credit upon the purchase of merchandise in any form whatsoever; nor shall any person or corporation in the printing or writing, advertising or setting forth any such contests, fail to state definitely the nature of the prizes so offered; nor shall any person or corporation fail to state clearly upon all evidences of value issued as a result of such contest in the form of credit certificates, credit bonds, coupons, or other evidences of credit in any form whatsoever, whether the same are redeemable in money or are of value only as a credit upon the purchase of merchandise; nor shall any person or corporation issue to any person as a result of any such contest, any instrument in the form of a bank check or bank draft or promissory note or any colorable imitation of any of the foregoing; nor shall any person or corporation refuse or fail to award and grant the specific prizes offered to the persons determined to be entitled thereto under the terms of such contest, or fail to redeem any credit certificate, credit bonds, coupons or other evidences of credit issued as a result of any such contest, according to the terms thereof.

100.18 Fraudulent representations. (1) No person, firm, corporation or association, or agent or employe thereof, with intent to sell, distribute, increase the consumption of or in any wise dispose of any real estate, merchandise, securities, employment, service, or anything offered by such person, firm, corporation or association, or agent or employe thereof, directly or indirectly, to the public for sale, hire, use or other distribution, or with intent to induce the public in any manner to enter into any contract or obligation relating to the purchase, sale, hire, use or lease of any real estate, merchandise, securities, employment or service, shall make, publish, disseminate, circulate, or place before the public, or cause, directly or indirectly, to be made, published, disseminated, circulated, or placed before the public, in this state, in a newspaper, magazine or other publication, or in the form of a book, notice, handbill, poster, bill, circular, pamphlet, letter, sign, placard, card, label, or over any radio or television station, or in any other way similar or dissimilar to the foregoing, an advertisement, announcement, statement or representation of any kind to the public relating to such purchase, sale, hire, use or lease of such real estate, merchandise, securities, service or employment or to the terms or conditions thereof, which advertisement, announcement, statement or representation contains any assertion, representation or statement of fact which is untrue, deceptive or misleading.

(2) (a) In advertising or otherwise representing the sale or furnishing of any property or services combined with or conditioned on the purchase of any other property or services described in such advertisement or other representation, it is deceptive for a retailer to:

1. Fail to state the price or amount which must be paid for the property or services included in such sale, along with any other condition to the receipt of such property or services, if the advertisement or representation does not refer to the price of the property or services as the “regular price”. The price or amount which must be paid shall be set forth clearly, conspicuously and in such manner that the total price or amount to be paid may be readily ascertained.

2. Sell the property or services at more than the regular price or fail to state any other condition to the receipt of the property or services included in the sale, if the advertisement or representation refers to the price of the property or services as the “regular price”.

3. Mark up the regular price of the property or services which must be purchased.

4. Substitute property or services of inferior value or quality for the property or services which must be purchased.

(b) This subsection does not apply to advertisements or representations concerning custom-made property.

(c) In this subsection, “regular price” means the lowest price for the same quantity and quality of product or the same services, at which the seller or advertiser of the product or services openly and actively sold the product or services in the geographic trade area of the advertisement or representation during the seller’s or advertiser’s most recent and regular 30-day course of business.

(3) It shall be deemed deceptive advertising, within the meaning of this section, for any person, firm or corporation, engaged in the business of buying or selling new or secondhand furs, wearing apparel, jewelry, furniture, pianos, phonographs, or other musical instruments, motor vehicles, stocks, or generally any form of property, real, personal or mixed, or in the business of furnishing any kind of service or investment, to advertise such articles, property or service for sale or purchase, in any manner indicating that the sale or purchase is being made by a private party or householder not engaged in such business. And every such firm, corporation or association, engaged in any such business, in advertising goods, property or service for sale or purchase, shall affirmatively and unmistakably indicate and state that the seller or purchaser is a business concern and not a private party.

(3m) It is deceptive advertising to represent the retailing of merchandise to be a selling-out or closing-out sale if the merchandise is not of a bankrupt, insolvent, assignee, liquidator, adjuster, administrator, trustee, executor, receiver, wholesaler, jobber, manufacturer, or of any business that is in liquidation, that is closing out, closing or disposing of its stock, that has lost its lease or has been or is being forced out of business or that is disposing of stock on hand because of damage by fire, water or smoke. This subsection does not apply to any “closing-out sale” of reasonable merchandise or any merchandise having a designated model year if the person conducting the sale is continuing in business.

(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 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.

(6) All advertising which shows or in any manner relates to the price at which motor fuel is offered for sale at retail, except multiple gallon computers attached to or forming a part of any dispensing equipment shall show only (a) the single gallon unit price including all applicable taxes in one amount or (b) the single gallon product price, the taxes applicable thereto, and the total single

gallon unit price including all applicable taxes. In any such advertising, all numerals which represent either price or taxes shall be of the same type and size except that fractions of a cent shall be shown in figures one-half the height, width and prominence of the whole numbers.

(8) Every wholesaler and every other person selling or distributing motor fuel in this state shall keep posted in a conspicuous place, most accessible to the public at his or her place of business, and on every pump from which delivery is made directly into the fuel tank attached to a motor vehicle, a placard showing the net selling price per gallon of all grades of motor fuel and the amount of all taxes per gallon thereon. On pumps or other dispensing equipment from which motor fuel is sold and delivered directly into fuel supply tanks attached to motor vehicles, such posting shall be in figures not less than one inch high, except that no such placard shall be required on a computer pump whereon the total net selling price per gallon including all taxes is legibly shown on its face. Except for sales to drivers of motor vehicles used by physically disabled persons under s. 134.85 (5), all sales shall be made at the posted price. Delivery slips shall also show the net selling price per gallon of all grades of motor fuel and the amount of all taxes per gallon thereon. If the wholesaler or person has more than one place of business in this state, the wholesaler or person shall post that placard at all of his or her places of business. All prices posted shall remain in effect for at least 24 hours after they are posted. It shall be considered deceptive advertising to advertise or represent in any manner the price of motor fuel offered for sale at retail to be less than the price so posted on each pump.

(9) (a) It is deemed deceptive advertising, within the meaning of this section, for any person or any agent or employe thereof to make, publish, disseminate, circulate or place before the public in this state in a newspaper or other publication or in the form of book, notice, handbill, poster, bill, circular, pamphlet, letter, sign, placard, card, label or over any radio or television station or in any other way similar or dissimilar to the foregoing, an advertisement, announcement, statement or representation of any kind to the public relating to the purchase, sale, hire, use or lease of real estate, merchandise, securities, service or employment or to the terms or conditions thereof which advertisement, announcement, statement or representation is part of a plan or scheme the purpose or effect of which is not to sell, purchase, hire, use or lease the real estate, merchandise, securities, service or employment as advertised.

(b) This section does not apply to the owner, publisher, printer, agent or employe of a newspaper or other publication, periodical or circular, or of a radio or television station, who in good faith and without knowledge of the falsity or deceptive character thereof, publishes, causes to be published or takes part in the publication of such advertisement.

(9m) It is deemed deceptive advertising to misrepresent the nature of a local energy resource system under s. 101.175.

(10) (a) It is deceptive to misrepresent the nature of any business by use of the words manufacturer, factory, mill, importer, wholesaler or words of similar meaning, in a corporate or trade name or otherwise.

(b) It is deceptive to represent the price of any merchandise as a manufacturer’s or wholesaler’s price, or a price equal thereto, unless the price is not more than the price which retailers regularly pay for the merchandise. The effective date of this subsection shall be January 1, 1962.

(10m) It is deceptive or misleading advertising for a person who sells new motor vehicles to compare new motor vehicle selling prices, including the offered prices or the actual sale prices, to the manufacturer’s suggested retail price for that vehicle unless it is clearly and conspicuously disclosed that the latter price is a manufacturer’s suggested retail price and may not represent actual sale prices.

(11) (a) The department of agriculture, trade and consumer protection shall enforce this section. Actions to enjoin violation of this section or any regulations thereunder may be commenced and prosecuted by the department in the name of the state in any court having equity jurisdiction. This remedy is not exclusive.

(b) 2. Any person suffering pecuniary loss because of a violation of this section by any other person may sue in any court of competent jurisdiction and shall recover such pecuniary loss, together with costs, including reasonable attorney fees, except that no attorney fees may be recovered from a person licensed under ch. 452 while that person is engaged in real estate practice, as defined in s. 452.01 (6). Any person suffering pecuniary loss because of a violation by any other person of any injunction issued under this section may sue for damages therefor in any court of competent jurisdiction and shall recover twice the amount of such pecuniary loss, together with costs, including reasonable attorney fees, except that no attorney fees may be recovered from a person licensed under ch. 452 while that person is engaged in real estate practice, as defined in s. 452.01 (6).

3. No action may be commenced under this section more than 3 years after the occurrence of the unlawful act or practice which is the subject of the action. No injunction may be issued under this section which would conflict with general or special orders of the department or any statute, rule or regulation of the United States or of this state.

(c) 1. Whenever the department has reason to believe that a person is in possession, custody or control of any information or documentary material relevant to the enforcement of this section it may require that person to submit a statement or report, under oath or otherwise, as to the facts and circumstances concerning any activity in the course of trade or commerce; examine under oath that person with respect to any activity in the course of trade or commerce; and execute in writing and cause to be served upon such person a civil investigative demand requiring the person to produce any relevant documentary material for inspection and copying.

2. The department, in exercising powers under this subsection, may issue subpoenas, administer oaths and conduct hearings to aid in any investigation.

3. Service of any notice by the department requiring a person to file a statement or report, or service of a subpoena upon a person, or service of a civil investigative demand shall be made in compliance with the rules of civil procedure of this state.

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 the person.

(d) The department or the department of justice, after consulting with the department, or any district attorney, upon informing the department, may commence an action in circuit court in the name of the state to restrain by temporary or permanent injunction any violation of this section. The court may in its discretion, prior to entry of final judgment, make such orders or judgments as may be necessary to restore to any person any pecuniary loss suffered because of the acts or practices involved in the action, provided proof thereof is submitted to the satisfaction of the court. The department and the department of justice may subpoena persons and require the production of books and other documents, and the department of justice may request the department to exercise its authority under par. (c) to aid in the investigation of alleged violations of this section.

(e) In lieu of instituting or continuing an action pursuant to this section, the department or the department of justice may accept a written assurance of discontinuance of any act or practice alleged to be a violation of this section from the person who has engaged in such act or practice. The acceptance of such assurance by either the department or the department of justice shall be deemed

acceptance by the other state officials enumerated in par. (d) if the terms of the assurance so provide. An assurance entered into pursuant to this section shall not be considered evidence of a violation of this section, provided that violation of such an assurance shall be treated as a violation of this section, and shall be subjected to all the penalties and remedies provided therefor.

(12) (a) This section does not apply to the insurance business.

(b) This section does not apply to a person licensed as a broker or salesperson under s. 452.09 while that person is engaged in real estate practice, as defined in s. 452.01 (6), unless that person has directly made, published, disseminated, circulated or placed before the public an assertion, representation or statement of fact with the knowledge that the assertion, representation or statement of fact is untrue, deceptive or misleading.

History: 1977 c. 29 s. 1650m (4); 1979 c. 89, 327, 350; 1981 c. 351; 1983 a. 215; 1985 a. 284, 332; 1989 a. 31; 1991 a. 278; 1993 a. 158, 492; 1995 a. 27, 179.

Cross-reference: See s. 136.001 (2) concerning future service plans.

Sub. (1) applies to oral representations made in private conversations to prospective purchasers. *State v. Automatic Merchandisers*, 64 W (2d) 659, 221 NW (2d) 683.

The complaint, alleging deceptive advertising contrary to (1) states a cause of action not only against the corporate defendant but against its officer personally where the complaint's use of the word "continue" indicates reference to both past and future conduct and where use of the word "defendants" refers to both the corporation and its officer. *State v. Advance Marketing Consultants, Inc.* 66 W (2d) 706, 225 NW (2d) 887.

Sub. (2) is constitutional. *State v. Amoco Oil Co.* 97 W (2d) 226, 293 NW (2d) 487 (1980).

State may join as party defendant assignee of contracts allegedly obtained by deceptive practices even though assignee did not engage in deception. *State v. Excel Management Services*, 111 W (2d) 479, 331 NW (2d) 312 (1983).

Consumer is protected from untrue, deceptive or misleading representations made to promote sale of product; advertising need not be involved. *Bonn v. Haubrich*, 123 W (2d) 168, 366 NW (2d) 503 (Ct. App. 1985).

Subs. (1) and (9) (a) require that complaint do more than merely state incentive to sell more expensive product, it must state instances of prohibited conduct to withstand motion to dismiss. *State v. American TV*, 146 W (2d) 292, 430 NW (2d) 709 (1988).

Party prevailing on appeal is entitled to reasonable appellate attorney's fees. *Radford v. J.J.B. Enterprises, Ltd.* 163 W (2d) 534, 472 NW (2d) 790 (Ct. App. 1991).

The statute of limitations under sub. (1) (b) 3. commences at the time of the act or transaction, not at the date of discovery. *Skrupky v. Elbert*, 189 W (2d) 31, 526 NW (2d) 264 (Ct. App. 1994).

Where plaintiff's claim of negligent representation was fully tried, it was not necessary that a claim under this section should have been pleaded in order for the plaintiff to assert a post-verdict claim for attorney fees under sub. (1) (b) 2. *Gorton v. American Cyanamid Co.* 194 W (2d) 203, 533 NW (2d) 746 (1995).

This section is reasonably geared toward notice and workable precision and is not so imprecise as to be constitutionally vague. *Carpets By The Carload, Inc. v. Warren*, 368 F Supp. 1075.

One person can constitute "the public" under (1). *Jersild v. Aker*, 775 F Supp. 1198 (1991).

The protections under this section are not restricted to Wisconsin residents. A cause of action under this section requires actual pecuniary loss and not a mere showing of deception. *Demotropoulos v. Bank One Milwaukee*, 915 F Supp. 1379 (1996).

Actual interest payments incurred as result of misrepresentations may be recovered by defrauded party. *Jersild v. Aker*, 775 F Supp. 1198 (1991).

Protection for consumers against unfair and deceptive business. *Jeffries*, 57 MLR 559.

Private enforcement of consumer laws in Wisconsin. *Waxman*. WBB May 1983.

100.182 Fraudulent drug advertising. (1) In this section, "drug" has the meaning specified in s. 450.01 (10).

(2) No person may advertise the availability of any drug or publish or circulate such an advertisement with the intent of selling, increasing the consumption of or generating interest in the drug if the advertisement contains any untrue, deceptive or misleading representations material to the effects of the drug.

(3) No person may expressly or impliedly represent that a substance may be used to obtain physical or psychological effects associated with the use of a drug in order to promote the sale of the substance unless it is lawfully marketed for human consumption under the United States food, drug and cosmetic act under 21 USC 301 to 392. A representation that the substance is not intended for human consumption is not a defense to prosecution for violating this subsection.

(4) No person may advertise a drug that the person knows is intentionally manufactured substantially to resemble a controlled substance or that the person represents to be of a nature, appearance or effect that will allow the recipient to display, sell, deliver,

distribute or use the drug as a controlled substance, unless the drug is controlled under ch. 961.

(5) (a) Any district attorney, after informing the department, or the department may seek a temporary or permanent injunction in circuit court to restrain any violation of this section. Prior to entering a final judgment the court may award damages to any person suffering monetary loss because of a violation. The department may subpoena any person or require the production of any document to aid in investigating alleged violations of this section.

(b) In lieu of instituting or continuing an action under this subsection, the department may accept a written assurance from a violator of this section that the violation has ceased. If the terms of the assurance so provide, its acceptance by the department prevents all district attorneys from prosecuting the violation. An assurance is not evidence of a violation of this section but violation of an assurance is subject to the penalties and remedies of violating this section.

History: 1981 c. 90; 1985 a. 146 s. 8; 1995 a. 27, 448.

100.183 Fraud, advertising foods. (1) No person, firm, corporation or association shall, with intent to sell, or increase the consumption thereof, or create an interest therein, make, publish, disseminate, circulate, or place before the public in this state, or cause, directly or indirectly to be made, published, disseminated, or placed before the public in this state, in a newspaper or other publication, or in the form of a book notice, handbill, poster, bill, circular or pamphlet, or in any other manner, an advertisement of any sort regarding articles of food, which advertisement contains any assertion, representation or statement which is untrue, deceptive or misleading.

(2) It shall be unlawful to advertise any dairy or other food product which is of a grade or quality inferior to or less valuable than the usual and ordinary grade established by common understanding or law for such product, or from which a more valuable portion has been removed, without plainly and conspicuously stating that the article advertised is below and inferior to the usual and ordinary grade.

(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.

History: 1993 a. 492.

100.184 Advertising foods for sale. No person shall, himself or herself, or by 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.

History: 1993 a. 492.

100.186 Linseed oil, white lead, zinc oxide, turpentine; standards; sale. (1) No person shall sell as and for “raw flaxseed oil” or “raw linseed oil” any oil unless it is obtained from the seeds of the flax plant and unless it fulfills all the requirements for linseed oil laid down in the U.S. Pharmacopoeia; or as and for “boiled linseed oil” or “boiled flaxseed oil” any oil unless it has been prepared by heating pure raw linseed oil with or without the addition of not to exceed 4% of drier to a temperature not less than 225 degrees Fahrenheit. It is a violation of this section if said boiled linseed oil does not conform to the following requirements: First, its specific gravity at 60 degrees Fahrenheit must be not less than 935 thousandths and not greater than 945 thousandths; 2nd, its saponification value (koettstorfer figure) must not be less than 186; 3rd, its iodine number must not be less than 160; 4th, its acid value must not exceed 10; 5th, the volatile matter expelled at 212 degrees Fahrenheit must not exceed one–half of one per cent; 6th, no mineral or other foreign oil or free rosin shall be present, and

the amount of unsaponifiable matter as determined by standard methods shall not exceed 2.5%; 7th, the film left after flowing the oil over glass and allowing it to drain in a vertical position must dry free from tackiness in not to exceed 20 hours, at a temperature of about 70 degrees Fahrenheit.

(2) Nor shall any person sell any raw or boiled linseed oil except under its true name, and unless each tank car, tank, barrel, keg, can or vessel of such oil has distinctly and durably marked thereon in ordinary bold–faced capital letters, not smaller than 60–point type, the words “Pure Linseed Oil—Raw” or “Linseed Oil—Boiled,” and the name and address of the manufacturer.

(3) Linseed oil compounds designed to take the place of raw or boiled linseed oil, whether sold under invented proprietary names or titles, or otherwise, shall bear conspicuously upon the containing receptacle in which the same is sold, in ordinary bold–faced capital letters not smaller than 60–point type, the word “Compound,” followed immediately with the true distinctive names of the actual ingredients in the order of their greater preponderance, in the English language, in plain legible type of the same style, not smaller than 36–point type, in continuous list with no intervening matter of any kind and shall also bear the name and address of the manufacturer.

(4) No person shall sell:

(a) As and for dry white lead any substance other than basic carbonate of lead or basic sulfate of lead;

(b) As and for white lead in oil, any product other than basic carbonate of lead ground in pure linseed oil or basic sulfate of lead ground in pure linseed oil;

(c) Any basic carbonate of lead ground in linseed oil, unless each receptacle containing it has distinctly and durably marked thereon the words, “white lead, basic carbonate, in oil,” and the name and address of the manufacturer or jobber;

(d) Any basic sulfate of lead ground in linseed oil, unless each receptacle containing it has distinctly and durably marked thereon the words “white lead, basic sulfate, in oil,” and the name and address of the manufacturer or jobber;

(e) As and for dry oxide of zinc, or zinc oxide, or zinc white, any substance other than commercially pure oxide of zinc;

(f) As and for oxide of zinc in oil, or zinc oxide in oil, or zinc white in oil, any product other than commercially pure oxide of zinc ground in pure linseed oil;

(g) Any oxide of zinc ground in linseed oil, unless each receptacle containing the same has distinctly and durably marked thereon the words “oxide of zinc in oil” or “zinc oxide in oil” or “zinc white in oil” and the name and address of the manufacturer or jobber.

(5) No person shall sell:

(a) As and for turpentine, spirits of turpentine or oil of turpentine, any article except pure oil of turpentine distilled from the natural gum, dip or scrape of pine trees and unmixed with kerosene or other mineral oil or other foreign substance;

(b) As and for wood turpentine or wood spirits of turpentine any article except the distillates and spirits prepared directly from or by the distillation of the wood of pine trees, and unmixed with kerosene or other mineral oil or other foreign substance;

(c) Any oil of turpentine or wood spirits of turpentine except under its true name, and unless each tank car, tank, barrel, keg, can or vessel of such oil has distinctly and durably marked thereon in ordinary bold–faced capital letters, not smaller than 60–point type, the words “Oil of Turpentine” or “Wood Spirits of Turpentine” and the name and address of the manufacturer or jobber.

100.19 Distribution methods and practices. (1) The methods of distribution and practices in the distribution of food products and fuel shall be free from needless waste and needless duplication which tend to increase the cost of such products to the consuming public. Methods of distribution and practices in the distribution of food products and fuel, wherever such waste or

duplication tends to increase the costs of such products to the consuming public, are hereby prohibited.

(2) The department, after public hearing, may issue general orders forbidding methods of distribution or practices in distribution which are found by the department to cause waste or duplication as defined herein. The department, after public hearing, may issue general orders prescribing methods of distribution or practices in distribution which are found by the department to avoid waste or duplication as defined herein.

(3) The department, after public hearing, may issue a special order against any person, enjoining such person from employing any method of distribution or practice in distribution which is found by the department to cause waste or duplication as defined herein. The department, after public hearing, may issue a special order against any person, requiring such person to employ the method of distribution or practice in distribution which is found by the department to avoid waste or duplication as defined herein.

100.20 Methods of competition and trade practices.

(1) Methods of competition in business and trade practices in business shall be fair. Unfair methods of competition in business and unfair trade practices in business are hereby prohibited.

(1m) It is an unfair trade method of competition in business to represent the retailing of merchandise to be a selling-out or closing-out sale if the merchandise is not of a bankrupt, insolvent, assignee, liquidator, adjuster, administrator, trustee, executor, receiver, wholesaler, jobber, manufacturer, or of any business that is in liquidation, that is closing out, closing or disposing of its stock, that has lost its lease or has been or is being forced out of business or that is disposing of stock on hand because of damage by fire, water or smoke. This subsection does not apply to any "closing-out sale" of seasonable merchandise or any merchandise having a designated model year if the person conducting the sale is continuing in business.

(1r) It is an unfair method of competition in business or an unfair trade practice for a person who sells new motor vehicles to compare new motor vehicle selling prices, including the offered prices or the actual sale prices, to the manufacturer's suggested retail price for that vehicle unless it is clearly and conspicuously disclosed that the latter price is a manufacturer's suggested retail price and may not represent actual sale prices.

(1t) It is an unfair trade practice for a person to provide any service which the person has the ability to withhold that facilitates or promotes an unfair method of competition in business, an unfair trade practice in business, or any other activity which is a violation of this chapter.

(2) The department, after public hearing, may issue general orders forbidding methods of competition in business or trade practices in business which are determined by the department to be unfair. The department, after public hearing, may issue general orders prescribing methods of competition in business or trade practices in business which are determined by the department to be fair.

(3) The department, after public hearing, may issue a special order against any person, enjoining such person from employing any method of competition in business or trade practice in business which is determined by the department to be unfair or from providing service in violation of sub. (1t). The department, after public hearing, may issue a special order against any person, requiring such person to employ the method of competition in business or trade practice in business which is determined by the department to be fair.

(4) The department of justice may file a written complaint with the department alleging that the person named is employing unfair methods of competition in business or unfair trade practices in business or both. Whenever such a complaint is filed it shall be the duty of the department to proceed, after proper notice and in accordance with its rules, to the hearing and adjudication of the matters alleged, and a representative of the department of justice

designated by the attorney general may appear before the department in such proceedings. The department of justice shall be entitled to judicial review of the decisions and orders of the department under ch. 227.

(5) Any person suffering pecuniary loss because of a violation by any other person of any order issued under this section may sue for damages therefor in any court of competent jurisdiction and shall recover twice the amount of such pecuniary loss, together with costs, including a reasonable attorney's fee.

(6) The department may commence an action in circuit court in the name of the state to restrain by temporary or permanent injunction the violation of any order issued under this section. The court may in its discretion, prior to entry of final judgment make such orders or judgments as may be necessary to restore to any person any pecuniary loss suffered because of the acts or practices involved in the action, provided proof thereof is submitted to the satisfaction of the court. The department may use its authority in ss. 93.14 and 93.15 to investigate violations of any order issued under this section.

History: 1975 c. 308; 1985 a. 284; 1993 a. 158, 496.

Cross-reference: See s. 136.001 (2) concerning future service plans.

Rules of the department of agriculture prohibiting a chain distributor scheme are valid. Unfair practices which may be prohibited are not limited to those affecting competitors. *HM Distributors of Milwaukee v. Dept. of Agriculture*, 55 W (2d) 261, 198 NW (2d) 598.

The standard applied in the *International News Service* case is consistent with the public policy of the state as stated in (1). *Mercury Record v. Economic Consultants*, 64 W (2d) 163, 218 NW (2d) 705.

Trial court properly relied upon administrative rule promulgated under (2) in instructing jury. *State v. Clausen*, 105 W (2d) 231, 313 NW (2d) 819 (1982).

See note to 100.18, citing *State v. Excel Management Services*, 111 W (2d) 479, 331 NW (2d) 312 (1983).

Attorney fees for successful appellate work are recoverable under (5). Fees are recoverable even when person is represented at no charge by legal services organization. *Shands v. Castrovinci*, 115 W (2d) 352, 340 NW (2d) 506 (1983).

Sub. (6) does not require threat of future harm in order to obtain injunction. *State v. Fonk's Mobile Home Park & Sales, Inc.* 117 W (2d) 94, 343 NW (2d) 820 (Ct. App. 1983).

Plaintiff-tenant who prevails in action for violation of order under this section is entitled to attorney fees irrespective of amount of damages landlord may recover in counterclaim. *Paulik v. Coombs*, 120 W (2d) 431, 355 NW (2d) 357 (Ct. App. 1984).

In cases where a landlord complies with notification requirements and provides an accounting of amounts withheld from a security deposit, an award of double damages under sub. (5) is subject to offset for actual damages to the landlord. A damage award in the amount of double the security deposit, regardless of the landlord's damages, applies where the landlord fails to provide the accounting. *Pierce v. Norwich*, 202 W (2d) 588, 550 NW (2d) 451 (Ct. App. 1996).

Allegations that the department's regulation prohibiting chain distributor schemes as an unfair trade practice abridged 1st amendment protection of commercial speech were not so obviously without merit so as to be insubstantial for purposes of the statute requiring hearing and determination by 3-judge court. *Holiday Magic, Inc. v. Warren*, 497 F (2d) 687.

Order of department declaring chain distributor schemes to be unfair trade practice was not void for vagueness. *Holiday Magic, Inc. v. Warren*, 357 F Supp. 20.

Federal law did not preclude the enforcement of this section. *Time Warner Cable v. Doyle*, 847 F Supp 635 (1994).

Protection for consumers against unfair and deceptive business. *Jeffries*, 57 MLR 559.

100.201 Unfair trade practices in the dairy industry.

(1) **DEFINITIONS.** Unless context requires otherwise:

(a) "Broker" means any person engaged in negotiating sales or purchases of selected dairy products for or on behalf of a retailer or wholesaler or both.

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

2. For the purpose of this section any subsidiary or affiliate corporation, limited liability company or cooperative, and any officer, director, partner, member or manager of a corporation, cooperative, partnership or limited liability company which is a

retailer of selected dairy products, and any individual, corporation, cooperative, partnership, limited liability company, association or any other business unit which owns, controls or franchises any retailer or which has any retailer as an affiliate, member or subsidiary, is deemed to be a retailer of selected dairy products and the prohibitions of sub. (2) shall also apply to any such person or business unit which sells any selected dairy product at wholesale.

(c) 1. “Selected dairy products” means:

a. Milk, skim milk, fortified milk, flavored milk, flavored skim milk, buttermilk, cream, sour cream, half and half, whipping cream, whipped cream and cottage cheese; and

b. Ice cream, ice milk, sherbet, custard, water ices, quiescently frozen ices and frozen dessert novelties manufactured from any such products.

2. The department may by rule, after hearing, designate as selected dairy products such other products derived in whole or in part from milk as it finds necessary to effectuate the purposes of this section.

3. In no event shall there be designated as selected dairy products any of the following:

a. Powdered dry milk or powdered dry cream.

b. Condensed, concentrated or evaporated milk in hermetically sealed containers.

c. Butter or cheese, other than cottage cheese.

(d) “Sell at retail,” “sales at retail” and “retail sales” include any transfer for a valuable consideration made in the course of trade or conduct of the seller’s business, of title to tangible personal property to the purchaser for consumption or use other than resale or further processing or manufacturing, and include any transfer of such property where title is retained by the seller as security for the payment of the purchase price.

(e) “Sell at wholesale,” “sales at wholesale” and “wholesale sales” include any transfer for a valuable consideration made in the course of trade or conduct of the seller’s business, of title to tangible personal property to the purchaser for purposes of resale or further processing or manufacturing, and include any transfer of such property where title is retained by the seller as security for the payment of the purchase price.

(f) 1. “Wholesaler” means every person making sales of selected dairy products at wholesale 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 wholesale portion of such business.

2. For the purpose of this section any subsidiary or affiliate corporation, limited liability company or cooperative, and any officer, director, partner, member or manager of a corporation, cooperative, partnership or limited liability company which is a wholesaler of selected dairy products, is deemed to be a wholesaler of selected dairy products.

(1m) APPLICABILITY. This section is applicable to consignment sales and a consignor shall be deemed to be a wholesaler and a consignee to be a retailer for the purposes of this section.

(2) PROHIBITIONS. Each of the practices described in this subsection is declared to be an unfair trade practice. It is unlawful for any person to be engaged in such practices. No wholesaler shall:

(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 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 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 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 the retailer’s or wholesaler’s written request therefor.

2. Every wholesaler shall file with the department the address of 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 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.

3. In case of the failure or refusal of any wholesaler to make available or file any record or price list as required by this paragraph, any court of record of competent jurisdiction shall, upon a showing of such failure or refusal, and upon notice, order said wholesaler to give to the retailer or wholesaler so requesting, within a specified time, an inspection thereof, with permission to make a copy therefrom, or to file such information with the department.

(b) 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 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:

1. Price differentials which merely allow for differences in the cost of manufacture, sale or delivery resulting from the differing methods or quantities in which such selected dairy products are sold or delivered to such purchasers.

2. Persons engaged in selling selected dairy products from selecting their own customers in bona fide transactions and not in restraint of trade.

3. Price changes from time to time resulting from changing conditions affecting the market for or the marketability of the selected dairy products concerned, including but not limited to

actual or imminent deterioration, obsolescence, distress sales under court process, or sales in good faith in discontinuance of business in the selected dairy products concerned.

(c) Make payments of money, credit, gifts or loans to retailers as rental for the storage or display of selected dairy products on the premises where they are offered for sale by the retailer.

(d) Make or underwrite loans to a retailer or become bound in any manner for the financial obligation of any retailer except that a wholesaler may lend money to a retailer for the purchase of equipment for the storage, transportation and display of selected dairy products, provided the loan is for not more than 90% of the purchase price, bears at least a 5% annual interest rate, is payable in equal monthly instalments over a period of not more than 48 months, and is secured by a security interest created by a security agreement specifying all payments by the retailer and duly filed by the wholesaler within 10 days after the making or underwriting of said loan, as provided in ss. 409.401 and 409.402.

(e) Furnish, sell, give, lend or rent any equipment to a retailer except:

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 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 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.

2. The wholesaler may provide without restriction coin-vending machines from which the product vended is consumed on the premises.

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

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

(f) Maintain or make repairs of any equipment owned by a retailer except those used exclusively for selected dairy products. On such repairs the wholesaler shall make charges for the service and parts at the same prices as are charged by third persons rendering such service in the community where the retailer is located but in no event shall the charges be less than the cost thereof to the wholesaler plus a reasonable margin of profit.

(g) Extend or give credit to any retailer in excess of 30 days payable 15 days thereafter.

(h) 1. Sell or offer to sell, directly or indirectly, any selected dairy product at less than cost with the purpose or intent of injuring, destroying or eliminating competition or a competitor or creating a monopoly, or where the effect may be any of the same. This paragraph shall apply to all sales, including those made to

any instrumentality of state or local government and to all religious, charitable or educational organizations or institutions, but does not apply to sales made to the United States.

2. "Cost" of a selected dairy product to a wholesaler means that portion of all of the cost of raw product plus all costs of manufacturing, processing, packaging, handling, sale, delivery and overhead of such wholesaler which, under a system of accounting in accordance with sound accounting principles and reasonably adapted to the business of such wholesaler, is fairly allocable to such selected dairy product and the sale thereof to its customers or to a particular class thereof. Such cost shall include, but not be limited to, all expenses for labor, salaries, bonuses, fringe benefits, administration, rent, interest, depreciation, power, raw and processed ingredients, materials, packaging, supplies, maintenance of equipment, selling, advertising, transportation, delivery, credit losses, license and other fees, taxes, insurance, and other fixed and incidental operating expenses and costs of doing business.

3. The department may by rule after hearing adopt a uniform system of accounting to be used by the department in determining the cost of a selected dairy product and to require wholesalers to file reports of such cost based upon such adopted system of accounting.

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 the person's sale or offer to sell was made in good faith to meet competition.

5. This paragraph shall also apply to any retailer who owns, operates or otherwise contracts for, directly or indirectly, facilities for manufacturing or processing any selected dairy product, and to the cost of a selected dairy product, as defined in this paragraph, shall be added both the wholesale and retail markup as provided in s. 100.30.

(i) 1. Give, offer to give, furnish, finance or otherwise make available, directly or indirectly, to any retailer or to any other person doing business with a retailer anything of value which is connected with, or which aids or assists in, or which may induce or encourage, the purchase, handling, sale, offering for sale or promotion of the sale of the wholesaler's selected dairy products by a retailer or any other person doing business with a retailer, unless given, offered, furnished, financed or otherwise made available on proportionately equal terms to all other retailers or persons doing business with retailers. The term "anything of value" as used herein includes, but is not limited to:

a. Any payment, discount, rebate, allowance, gift, goods, merchandise, privilege, contest, service or facility, whether or not given, offered, furnished, financed or otherwise made available in combination with or contingent on a purchase, or as compensation for or in consideration of the furnishing of any service or facility by or through a retailer.

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

2. Nothing in subd. 1. prevents:

a. The good faith meeting of competition by offering or making available services and facilities offered or made available by a competitor.

b. Transactions with retailers otherwise permitted under pars. (d), (e), (f) and (g) and sub. (3).

3. Nothing in this paragraph authorizes the sale of selected dairy products, or the furnishing of services or facilities in violation of pars. (a) to (h).

(3) OPERATION OF RETAIL OUTLET BY WHOLESALER. 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 the wholesaler in such retail outlet of any equipment or advertising or miscellaneous matter owned by the wholesaler provided that such retail outlet is under direct control and management of the wholesaler.

(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 the retailer, officer, director, employe or agent knows or, in the exercise of reasonable prudence, should know that the same is prohibited.

(5) UNLAWFUL ACTS OF BROKERS. (a) It is unlawful for a broker, or any officer or agent thereof, to participate, directly or indirectly, in any unfair trade practice described in sub. (2).

(b) It is unlawful for a wholesaler to engage or offer to engage in any unfair trade practice described in sub. (2), directly or indirectly, through a broker.

(6) FEE ON DAIRY PRODUCTS. (a) 1. Except as provided in subd. 2., a manufacturer or processor of selected dairy products shall pay a fee under par. (c) on its sales of those selected dairy products to which all of the following apply:

- a. The sales are at wholesale or retail.
- b. The sales are made to persons in this state.
- c. The selected dairy products are packaged for sale to consumers.

2. Subdivision 1. does not apply to the operator of a retail food establishment licensed under s. 97.30 who manufactures or processes selected dairy products at that establishment solely for retail sale at that establishment.

(b) The first person in this state to receive selected dairy products that are manufactured or processed outside of this state and that are packaged for sale to consumers shall pay a fee under par. (c) on sales of those selected dairy products to persons in this state.

(c) The fee under this subsection is 5.49 cents per hundred pounds of ice cream products and 0.44 cent per hundred pounds of other dairy products or such other amount as specified by the department by rule. The fee shall be paid to the department by the 25th day of each month for sales made during the preceding month.

(d) The failure to pay fees under this subsection within the time provided under par. (c) is a violation of this section. The department may also commence an action to recover the amount of any overdue fees plus interest at the rate of 2% per month for each month that the fees are delinquent.

(e) The department shall keep confidential information obtained under this subsection concerning the amount of dairy products sold by specific manufacturers and processors.

(7) APPLICABILITY. The provisions of ss. 133.04 and 133.05 shall not apply to any conduct either permitted, required or prohibited under this section.

(8) ENFORCEMENT. It is the duty of the department to investigate, ascertain and determine whether this section or lawful orders issued hereunder are being violated and for such purposes the department shall have all the powers conferred by ch. 93.

(8m) JURISDICTION. This section shall apply to transactions, acts or omissions which take place in whole or in part outside this state. In any action or administrative proceeding the department has jurisdiction of the person served under s. 801.11 when any act or omission outside this state by the defendant or respondent results in local injury or may have the effect of injuring competi-

tion or a competitor in this state or unfairly diverts trade or business from a competitor, if at the time:

(a) Solicitation or service activities were carried on within this state by or on behalf of the defendant or respondent; or

(b) Selected dairy products processed, serviced, distributed or manufactured by the defendant or respondent were received for resale in this state at retail or wholesale without regard to where sale or delivery takes place.

(9) PENALTIES. (a) Any person violating this section shall forfeit not less than \$100 nor more than \$5,000 for each violation.

(b) The department, after public hearing held under s. 93.18, may issue a special order against any person requiring such person to cease and desist from acts, practices or omissions determined by the department to violate this section. Such orders shall be subject to judicial review under ch. 227. Any violation of a special order issued hereunder shall be punishable as a contempt under ch. 785 in the manner provided for disobedience of a lawful order of a court, upon the filing of an affidavit by the department of the commission of such violation in any court of record in the county where the violation occurred.

(c) The department, in addition to or in lieu of any other remedies herein provided, may apply to a circuit court for a temporary or permanent injunction to prevent, restrain or enjoin any person from violating this section or any special order of the department issued hereunder, without being compelled to allege or prove that an adequate remedy at law does not exist.

(d) The provisions of s. 93.06 (7) shall be applicable to violations of this section insofar as permits, certificates, registrations or licenses issued by the department for the manufacture, distribution, and sale of selected dairy products are concerned, provided that any suspension or revocation thereof pursuant to s. 93.06 (7) can be ordered only for failure to comply with any special order issued pursuant to par. (b) or with any permanent injunction issued pursuant to par. (c), should such failure continue after such order or such injunction becomes final on the completion of any review proceedings. In such proceedings the department shall follow the hearing procedure set forth in s. 93.18 for special orders. Judicial review shall be as provided in ch. 227.

(e) Any person suffering pecuniary loss because of any violation of this section may sue for damages therefor in any court of competent jurisdiction and shall recover treble the amount of such pecuniary loss, together with costs, including a reasonable attorney's fee.

(f) Any retailer or wholesaler may file a written verified complaint with the department alleging facts which, if proved, would support a charge that a person named therein is engaging in unfair trade practices as defined in this section. Whenever such a complaint is filed it is the duty of the department to proceed to hearing and adjudication as provided in par. (b).

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

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

(11) RULE MAKING. The department may promulgate rules which are necessary for the efficient administration of this section. The department may also promulgate rules which set standards for the nondiscriminatory sale and furnishing of services or facilities in connection with the sale or distribution of selected dairy products and for the good faith meeting of competition.

History: 1971 c. 238; Sup. Ct. Order, 67 W (2d) 585, 774 (1975); 1975 c. 39, 199, 401; 1979 c. 32 s. 92 (13); 1979 c. 209 s. 4; 1983 a. 62; 1983 a. 189 ss. 133 to 135, 329 (20), (31); 1987 a. 399; 1993 a. 112, 492; 1995 a. 27, 225.

100.202 Contracts in violation void. All contracts and agreements made in violation of s. 100.201 are void.

100.205 Motor vehicle rustproofing warranties. (1) In this section:

(a) “Advertisement” means any oral, written, printed or graphic statement, claim or representation concerning rustproofing which is made in connection with the solicitation or sale of rustproofing.

(b) “Retail customer” means the person for whom rustproofing is ultimately intended.

(c) “Rustproofing” means the application of materials and processes intended or represented to prevent or control rusting or corrosion of a motor vehicle as defined in s. 340.01 (35).

(d) “Seller” means any person who sells rustproofing to a retail customer, including a person who sells a motor vehicle which has rustproofing listed as an element of the total selling price, whether or not ordered by the retail customer.

(e) “Warranted party” means the retail customer or another person to whom warranty rights have been assigned or transferred under the warranty.

(f) “Warrantor” means any person who gives or offers to give a warranty.

(g) “Warranty” means any written representation, made to a retail customer, which asserts that the rustproofing will meet a specified level of performance or duration or establishes conditions under which the warrantor will compensate the retail customer or rectify any failure to meet the specified level of performance or duration.

(2) All rustproofing warranties shall be in writing and contain the following provisions:

(a) The duration of the warranty.

(b) Clear identification of all warrantors and their addresses, the name and address of the person to whom warranty claims are to be made and the place where inspection of the warranted motor vehicle is to be made.

(c) Each condition limiting the warranted party’s rights under the warranty.

(d) The name and address of the insurer of the warranty in the event of the warrantor’s insolvency or bankruptcy.

(3) No rustproofing warranty may contain:

(a) A limit on the number of claims which can be made under the warranty.

(b) A warrantor’s option of returning the purchase price in lieu of other remedies under the warranty.

(c) A limit on the liability of the warrantor for any reason relating to misapplication of the rustproofing product.

(d) An invalidation of the warranty on failure of the retail customer or the seller to register the warranty with the warrantor, if the retail customer or the seller has documentary proof that the rustproofing was paid for.

(e) An exclusion of warranty coverage for manufacturer defects unless the part of the motor vehicle excluded and the basis for exclusion is specified in the warranty.

(f) A limit on the transferability of a warranty during the specified term of the warranty.

(4) Nothing in this section prevents a warrantor from designating a representative to perform duties under the warranty or relieves a warrantor of his or her responsibilities to a warranted party. A representative designated to perform duties under a warranty is not a warrantor unless he or she gives or offers to give a warranty.

(5) (a) No person may make any warranty advertisement which is untrue, deceptive or misleading as provided in s. 100.18.

(b) The specified term of a warranty shall be limited to that period preceding an inspection by the warrantor which is required to maintain the validity or original coverage of the warranty.

(c) Use of “lifetime” or similar terms may not be used in an advertisement or warranty unless the term refers to the motor vehicle receiving the rustproofing and is not limited by the transfer of ownership of the motor vehicle.

(d) No warrantor may fail to have a motor vehicle inspected within 30 days after receiving a claim under the warranty, if the warranted party makes the motor vehicle available for inspection to the warrantor or the warrantor’s designee within that period. The inspection shall be within 30 miles of the place of business of the seller of the rustproofing, unless waived by the warranted party.

(e) No warrantor may fail to notify a warranted party in writing within 30 business days after inspecting the motor vehicle whether the warranty claim will be allowed or denied. If a claim is denied in whole or in part, the reason for that denial shall be stated in writing. Notification is effective on mailing the warrantor’s determination to the last address supplied to the warrantor by the warranted party or on personal delivery to the warranted party.

(f) No warrantor may fail to comply with the terms of its warranty.

(g) No warrantor or seller may impose a charge or require the purchase of any additional service by the warranted party in order to have an inspection completed if the continued validity of the warranty requires the inspection.

(6) Every warrantor shall purchase a policy of insurance covering the financial integrity of its warranties. The policy of insurance shall be on a form approved by the commissioner of insurance under s. 631.20 and shall have the following minimum provisions:

(a) The insurer shall be licensed to do business in this state or shall be an unauthorized foreign insurer, as defined in s. 600.03 (27), accepted by the office of the commissioner of insurance for surplus lines insurance in this state.

(b) Each warranty issued in this state shall be covered by a policy of insurance.

(c) In case of insolvency or bankruptcy of the warrantor, a warranted party may file a claim directly with the insurer.

(d) In case of insolvency or bankruptcy of the warrantor, the insurer, upon receipt of a claim, shall cause a warranted party’s vehicle to be inspected at the insurer’s expense.

(e) The termination provision shall state that the insurance provided shall continue with respect to all warranties issued before the date of termination.

(7) The department, or any district attorney on informing the department, may commence an action in circuit court in the name of the state to restrain by temporary or permanent injunction any violation of this section. The court may, before entry of final judgment and after satisfactory proof, make orders or judgments necessary to restore to any person any pecuniary loss suffered because of a violation of this section. The department may conduct hearings, administer oaths, issue subpoenas and take testimony to aid in its investigation of violations of this section.

(8) The department or any district attorney may commence an action in the name of the state to recover a forfeiture to the state of not more than \$10,000 for each violation of this section.

(9) (a) In addition to other remedies, any person injured by a violation of this section may bring a civil action for damages under s. 100.20 (5).

(b) Any person injured by a breach of a contract for rustproofing may bring an action against the warrantor or its insurer or both to recover damages, costs and disbursements, including reasonable attorney fees, and other relief determined by the court.

History: 1983 a. 428; 1985 a. 29; 1995 a. 27.

Wisconsin law authorizes but does not require commissioner of insurance to demand periodic reports from insurer relating to rustproofing warranties it insures. Commissioner has authority to require an insurer to increase amount of insurance backing a rustproofing's warranties in Wisconsin. This section was not intended to negate the application of general insurance law to rustproofing warranties. 78 *Atty. Gen.* 113.

Remedies for motor vehicle purchasers. Nicks, WBB March, 1985.

100.207 Telecommunications services. (1) DEFINITION. In this section, “telecommunications service” has the meaning given in s. 196.01 (9m).

(2) **ADVERTISING AND SALES REPRESENTATIONS.** A person may not make in any manner any statement or representation with regard to the provision of telecommunications service, including the rates, terms or conditions for telecommunications service, which is false, misleading or deceptive, or which omits to state material information with respect to the provision of telecommunications service that is necessary to make the statement not false, misleading or deceptive.

(3) **SALES PRACTICES.** (a) A person may not engage in negative option billing or negative enrollment of telecommunications services, including unbundled telecommunications services. A person may not bill a customer for any telecommunications service that the customer did not affirmatively order unless that service is required to be provided by law, the federal communications commission or the public service commission. A customer's failure to refuse a person's proposal to provide a telecommunications service is not an affirmative request for that telecommunications service.

(b) A person may not charge a customer for telecommunications service provided after the customer has canceled that telecommunications service.

(c) A person shall provide a customer who has ordered a telecommunications service through an oral solicitation with independent confirmation of the order within a reasonable time.

(4) **COLLECTION PRACTICES.** (a) A person may not misrepresent that local exchange service may be disconnected for nonpayment of other telecommunications service.

(b) A person may not unreasonably refuse to provide a detailed listing of charges for telecommunications service upon the request of a customer.

(5) **TERRITORIAL APPLICATION.** Subsections (2) to (4) apply to any practice directed to any person in this state.

(6) **REMEDIES AND PENALTIES.** (a) 1. If a person fails to comply with this section, any person or class of persons adversely affected by the failure to comply has a claim for appropriate relief, including damages, injunctive or declaratory relief, specific performance and rescission.

2. A person or class of persons entitled to relief under subd. 1. is also entitled to recover costs and disbursements.

(b) 1. The department of justice, after consulting with the department of agriculture, trade and consumer protection, or any district attorney upon informing the department of agriculture, trade and consumer protection, may commence an action in circuit court in the name of the state to restrain by temporary or permanent injunction any violation of this section. Injunctive relief may include an order directing telecommunications providers, as defined in s. 196.01 (8p), to discontinue telecommunications service provided to a person violating this section or ch. 196. Before entry of final judgment, the court may make such orders or judgments as may be necessary to restore to any person any pecuniary loss suffered because of the acts or practices involved in the action

if proof of these acts or practices is submitted to the satisfaction of the court.

2. The department may exercise its authority under ss. 93.14 to 93.16 and 100.18 (11) (c) to administer this section. The department and the department of justice may subpoena persons and require the production of books and other documents, and the department of justice may request the department of agriculture, trade and consumer protection to exercise its authority to aid in the investigation of alleged violations of this section.

(c) Any person who violates subs. (2) to (4) shall be required to forfeit not less than \$25 nor more than \$5,000 for each offense. Forfeitures under this paragraph shall be enforced by the department of justice, after consulting with the department of agriculture, trade and consumer protection, or, upon informing the department, by the district attorney of the county where the violation occurs.

(e) Subject to par. (em), the department shall promulgate rules under this section.

(em) 1. Before preparing any proposed rule under this section, the department shall form an advisory group to suggest recommendations regarding the content and scope of the proposed rule. The advisory group shall consist of one or more persons who may be affected by the proposed rule, a representative from the department of justice and a representative from the public service commission.

2. The department shall submit the recommendations under subd. 1., if any, to the legislature as part of the report required under s. 227.19 (2) and to the board of agriculture, trade and consumer protection.

(f) This section does not preempt the administration or enforcement of this chapter or ch. 133 or 196. Practices in violation of this section may also constitute unfair methods of competition or unfair trade practices under s. 100.20 (1) or (1t) or fraudulent representations under s. 100.18 (1) or violate ch. 133 or 196.

History: 1993 a. 496; 1995 a. 27.

100.208 Unfair trade practices in telecommunications.

(1) In this section, “telecommunications provider” has the meaning given in s. 196.01 (8p).

(2) The department shall notify the public service commission if any of the following conditions exists:

(a) A telecommunications provider has been found by a court to have violated any provision of this chapter or of a rule promulgated under s. 100.20 (2).

(b) The department has issued an order under s. 100.20 (3) prohibiting a telecommunications provider from engaging in an unfair trade practice or method of competition.

History: 1993 a. 496.

100.21 Substantiation of energy savings or safety claims. (1) DEFINITIONS. In this section:

(a) “Dwelling unit” means a dwelling, as defined under s. 101.61, a manufactured building, as defined under s. 101.71, a manufactured home or mobile home, as defined under s. 101.91, or a multifamily dwelling, as defined under s. 101.971 (2).

(b) “Energy savings or safety claim” means an advertisement or representation that:

1. A product is safe or meets any standard or measure of safety; or

2. A product or a consumer product, as defined in s. 100.42 (1) (c):

a. Increases fuel or electrical efficiency;

b. Reduces heat loss;

c. Reduces relative consumption of or expenditures for fuel or electricity; or

d. Meets any standard or measure of performance under subd. 2. a. to c.

(c) “Insulation” means any material primarily designed to resist heat flow in a dwelling unit. “Insulation” does not include pipe or duct insulation except for duct wrap.

(d) “Motor vehicle” has the meaning provided under s. 340.01 (35).

(e) “Person” means any manufacturer, distributor, installer or seller of any product.

(f) “Product” means:

1. Insulation.

2. Any system or device used in or around a dwelling unit for the heating of space or water or the generation of electricity, including any attachment or additive to the system or device. “Product” does not include any system, device, attachment or additive included in the original construction of a dwelling unit or in the sale or transfer of a dwelling unit.

3. Any fuel additive, including any motor vehicle fuel additive.

4. Any article used in a motor vehicle to promote fuel efficiency. “Product” does not include any original part or equipment in a motor vehicle as sold by the manufacturer or a licensed dealer or any substantially identical replacement part or equipment for the motor vehicle.

(g) “R’ value” means the measure of resistance to heat flow through a material, computed as the reciprocal of the heat flow through a material expressed in British thermal units per hour per square foot per degree Fahrenheit at 75 degrees Fahrenheit mean temperature.

(2) REASONABLE BASIS FOR CLAIMS. (a) No person may make an energy savings or safety claim without a reasonable and currently accepted scientific basis for the claim when the claim is made. Making an energy savings or safety claim without a reasonable and currently accepted scientific basis is an unfair method of competition and trade practice prohibited under s. 100.20.

(b) An energy savings or safety claim made by a person other than a manufacturer does not violate par. (a) if the person relies in good faith on written materials distributed by the manufacturer and if the claim is limited to the representations in the materials. Any energy savings or safety claim made by a person other than a manufacturer, after the person is notified that no reasonable and currently accepted scientific basis for the claim has been submitted, is a violation of par. (a).

(3) SUBSTANTIATING THE CLAIM. (a) Any person making an energy savings or safety claim shall, upon written request by the department, submit information upon which the person relied to substantiate the claim. Failure to submit information requested under this subsection is a violation of sub. (2) (a).

(b) The department shall make available to any person any information submitted under this subsection unless protected from disclosure by state or federal law.

(4) DEPARTMENT POWERS. (a) The department may, after public hearing, issue general or special orders under s. 100.20:

1. Prohibiting any energy savings or safety claim that violates sub. (2);

2. Regulating the manner in which the energy savings or safety claim is made, including requiring accompanying disclosures to prevent unfairness or deception;

3. Prescribing any test method or other reasonable criteria by which the adequacy of the basis for any energy savings or safety claim is determined; or

4. Requiring corrective advertising to correct a violation of sub. (2).

(c) The department shall cooperate with all other state agencies in the administration of this section, as provided in s. 20.901.

(6) RULE MAKING. The department shall adopt rules that set standards which determine if a reasonable and currently accepted scientific basis exists for an energy savings or safety claim under sub. (2). Adoption of rules is not a prerequisite to enforcement of

this section. To the extent feasible, the department shall incorporate nationally recognized standards into the rules.

History: 1979 c. 221; 1983 a. 27 s. 2200 (25); 1991 a. 269; 1995 a. 27.

100.22 Discrimination in purchase of milk prohibited.

(1) PROHIBITION. Except as provided in sub. (1m), no person engaged in the business of buying milk from producers for the purpose of manufacture, processing or resale may discriminate between producers in the price paid for milk or in services furnished in connection with the purchase of milk if the discrimination injures producers or injures, destroys or prevents competition between competing purchasers of milk.

(1m) MILK PRICING. A person engaged in the business of buying milk from producers for the purpose of manufacture, processing or resale may pay producers different prices for the purchase of milk based on differences in milk quality, if all of the following apply:

(a) Before making any payments to producers, the person engaged in the business of buying milk from producers establishes a payment method based on differences in milk quality determined by an actual measured difference in bacteria count, somatic cell count, enzyme level or drug residue findings in the milk.

(b) Before making any payments to producers, the person engaged in the business of buying milk from producers announces, and offers to make payments in accordance with, the payment method established under par. (a) to all producers from whom the person buys milk.

(c) The person engaged in the business of buying milk from producers makes payments to all milk producers from whom the person purchases milk in accordance with the payment method established under par. (a).

(d) The payment method established under par. (a) is not part of any other method used to discriminate between producers in the price paid for milk or in services furnished in connection with the purchase of milk.

(2) CONTRACTS VOID. A contract in violation of this section or a special order issued under this section is void.

(3) JUSTIFICATION DEFENSE. It is a defense to a prosecution for violation of this section or a special order issued under this section to prove that the discrimination in price or services was done in good faith to meet competition or was commensurate with an actual difference in the quantity of or transportation charges or marketing expenses for the milk purchased.

(4) ENFORCEMENT. (a) The department may, after hearing, issue a special order enjoining violations of this section.

(b) The department may, without alleging or proving that no other adequate remedy at law exists, bring an action to enjoin violations of this section or a special order issued under this section in the circuit court for the county where the alleged violation occurred.

(5) PENALTIES. (a) A person who violates this section shall forfeit not less than \$100 nor more than \$2,500.

(b) A person who violates a special order issued under this section shall forfeit not less than \$200 nor more than \$5,000.

History: 1981 c. 124; 1991 a. 269.

100.23 Contract to market agricultural products; interference prohibited. (1) DEFINITION.

In this section:

(a) “Agricultural product” includes, but is not limited to, any agricultural commodity, as defined in s. 94.67 (2).

(b) “Association” means an association of persons engaged in the production of agricultural products under 7 USC 291.

(c) “Contract” means an agreement between a producer and an association, which agreement provides that all or a specified part of the person’s production of one or more agricultural products by the person will be exclusively sold or marketed through or by the association or any facility furnished by it.

(d) “Producer” means a person who produces agricultural products.

(2) **TERMS.** No contract may have a term in excess of 5 years. A contract may be made self-renewing for periods not exceeding 5 years each, except that either party may terminate at the end of any term by giving written notice to the other party at least 30 days before the end of the term.

(3) **DAMAGES.** A contract may require liquidated damages to be paid by the producer in the event of a breach of contract with the association. Liquidated damages may be either a percentage of the value of the products which are the subject of the breach, or a specified sum, but may not be more than 30% of the value of those products. If a specified sum is provided as liquidated damages, but such sum exceeds 30% of the value of the products which are the subject of the breach, the contract shall be construed to provide liquidated damages equal to 30% of the value of the products which are the subject of the breach.

(4) **BREACH OF CONTRACT.** (a) No person may breach, repudiate, interfere with, induce or attempt to induce or aid the breach of a contract.

(b) If any person who has notice of the contract violates or threatens to violate par. (a), the association which is a party to the contract is entitled to all of the following remedies against that person, except as provided under sub. (5):

1. An injunction, including a temporary restraining order, to prevent or terminate any conduct which is prohibited under par. (a).

2. A decree of specific performance.

3. Damages.

(c) If an association files a verified complaint showing a violation or threatened violation of par. (a), and a sufficient bond, the association is entitled to a temporary restraining order against any person violating par. (a).

(d) The county in which an association has its registered agent or its principal office in this state is a proper venue for an action under this subsection by or against that association.

(5) **QUALIFICATIONS.** No association is entitled to the remedies under sub. (4) (b) unless the association:

(a) Is governed by the following procedures:

1. No person other than an association member may vote at any member meeting of the association.

2. At any member meeting of the association, each association member entitled to vote shall have one vote, except that the articles or bylaws may permit either or both:

a. A member association to cast additional votes not exceeding a number equal to its membership.

b. An association whose member-patrons include other associations to base voting in whole or in part on a patronage basis.

3. Voting by proxy shall not be allowed in any association.

4. The bylaws of the association may provide for representation of members at any member meeting by delegates apportioned territorially or by other districts or units.

5. An annual member meeting shall be held by the association at the time and place fixed in or pursuant to the bylaws of the association. In the absence of a bylaw provision, such meeting shall be held within 6 months after the close of the association's fiscal year at the call of the president or board.

6. Written notice, stating the place, day and hour of the association's annual member meeting shall be given not less than 7 days nor more than 60 days before the annual meeting at the direction of the person calling the meeting. Notice need be given only to members entitled to vote. Notice shall be given to members having limited voting rights if they have or may have the right to vote at the meeting.

7. At any annual member meeting at which members are to be represented by delegates, notice to such members may be given by notifying such delegates and their alternates. Notice may consist of a notice to all members or may be in the form of an

announcement at the meeting at which such delegates or alternates were elected.

8. The association shall keep correct and complete books and records of account, and shall also keep minutes of the proceedings of meetings of its members, board and executive committee. The association shall keep at its principal office records of the names and addresses of all members and stockholders with the amount of stock held by each, and of ownership of equity interests. At any reasonable time, any association member or stockholder, or his or her agent or attorney, upon written notice stating the purposes thereof, delivered or sent to the association at least one week in advance, may examine for a proper purpose any books or records pertinent to the purpose specified in the notice. The board may deny a request to examine books and records if the board determines that the purpose is not directly related to the business or affairs of the association and is contrary to the best interests of the association.

(b) Has a current annual report on file with the department of financial institutions which satisfies all of the following requirements:

1. Is signed by a principal officer or the general manager of the association.

2. Is on a form furnished to the association by the department of financial institutions using information given as of the date of the execution of the report.

3. Sets forth:

a. The association's name and complete address.

b. The names and addresses of the association's directors and principal officers.

c. A statement, by class and par value, of the amount of stock which the association has authority to issue, and the amount of stock issued.

d. A statement as to the general type of business in which the association was engaged during the 12 months preceding the date of the report.

4. Is filed with the department of financial institutions in each year following the year in which the association first filed the annual report required under this paragraph, during the calendar year quarter in which the anniversary of the filing occurs.

(6) **DEPARTMENT OF FINANCIAL INSTITUTIONS DUTIES.** The department of financial institutions shall:

(a) Provide forms for the report required under sub. (5) (b) to an association upon the request of that association.

(b) Send by 1st class mail a form for the report required under sub. (5) (b) to each association which filed that report in the previous year, no later than 60 days prior to the end of the calendar year quarter in which that association first filed its report.

(c) Upon receipt of a report required under sub. (5) (b), determine if the report satisfies the requirements of sub. (5) (b). If the department of financial institutions determines that the report does not satisfy all of those requirements, the department of financial institutions shall return the report to the association which filed it, along with a notice of any correction required. If the association files a corrected report within 30 days after the association receives that notice, the report shall be deemed timely filed for purposes of sub. (5) (b) 4.

History: 1987 a. 89; 1995 a. 27.

100.235 Unfair trade practices in procurement of vegetable crops. (1) **DEFINITIONS.** In this section:

(a) “Affiliate” means any of the following persons or business entities:

1. An officer, director, partner, member, manager, major stockholder, employe or agent of a contractor.

2. A corporation or business entity that is owned, controlled or operated by any of the persons under subd. 1.

(b) “Contractor” has the meaning given under s. 100.03 (1) (f).

(c) “Contractor’s cost to grow” means the average cost, per unit weight of vegetable, incurred by the contractor and the contractor’s subsidiaries and affiliates to grow a species of vegetable in a growing region, either during 3 of the preceding 5 years excluding the highest and lowest years, or, if the contractor has grown a vegetable species less than 5 consecutive years, during the most recent years available.

(d) “Growing region” means one or more geographic areas in which the department determines that the cost to grow a particular species of vegetable tends to be reasonably similar.

(e) “Producer” means any person who produces and sells vegetables, or who grows vegetables under contract.

(em) “Registration year” has the meaning given under s. 100.03 (1) (y).

(f) “Subsidiary” means a corporation or business entity that is owned, controlled or operated by a contractor.

(g) “Vegetable” means a vegetable grown or sold for use in food processing, whether or not it is actually processed as food. “Vegetable” includes sweet corn but does not include grain.

(h) “Vegetable procurement contract” means an agreement between a contractor and a producer, under which the contractor buys vegetables grown in this state from the producer or contracts with the producer to grow vegetables in this state.

(2) CONTRACTOR MAY NOT PAY PRODUCER LESS THAN CONTRACTOR’S COST TO GROW. If a contractor and the contractor’s affiliates and subsidiaries collectively grow more than 10% of the acreage of any vegetable species grown and procured by the contractor in any registration year, the contractor shall pay a producer, for vegetables of that species tendered or delivered under a vegetable procurement contract, a price not less than the contractor’s cost to grow that vegetable species in the same growing region. For vegetables contracted on a tonnage basis and for open-market tonnage purchased, acreage under this subsection shall be determined using the state average yield per acre during the preceding registration year.

(3) ACREAGE GROWN; ANNUAL CERTIFICATION BY CONTRACTOR. A contractor who applies under s. 100.03 (2) for an annual registration certificate, as defined under s. 100.03 (1) (x), shall submit with the application a sworn and notarized statement, signed by the contractor or an officer of the contractor, indicating whether the contractor and the contractor’s affiliates and subsidiaries intend to collectively grow more than 10% of the acreage of any vegetable species grown and procured by the contractor during the registration year for which application is made. A contractor shall immediately file an amended statement if, at any time during the registration year, the contractor has reason to believe that the contractor’s original statement is inaccurate.

(4) COST TO GROW; REPORT TO DEPARTMENT UPON REQUEST. If the department determines that a contractor and the contractor’s affiliates and subsidiaries will collectively grow more than 10% of the acreage of any vegetable species grown and procured by the contractor during a registration year, the department may require the contractor to file a statement of the contractor’s cost to grow that vegetable species. The contractor shall file the report with the department within 30 days after the department makes its request, unless the department grants an extension of time. The department may permit the contractor to report different costs to grow for different growing regions if the contractor can define the growing regions to the department’s satisfaction, and can show to the department’s satisfaction that the contractor’s costs to grow are substantially different between the growing regions.

(5) DEPARTMENT INVESTIGATIONS; RESPONSE TO PRODUCER COMPLAINTS. The department may, on its own initiative, investigate to determine whether any contractor has violated this section. If a producer or producer association files a written complaint with the department alleging a violation of sub. (2), the department shall investigate the complaint. The department is not required to investigate any complaint filed more than 180 days after the producer tendered or delivered the vegetables to the contractor.

(6) ADDITIONAL REPORTS; INSPECTION AND AUDIT. For purposes of an investigation under sub. (5), the department may require a contractor to submit reports of acreage, tonnages, costs to grow, and amounts paid to producers. The department may require that the reports be certified by a certified public accountant, or the department may inspect and audit the contractor’s records to verify that the reports are accurate.

(7) REPORTS ARE CONFIDENTIAL. Reports submitted to the department under subs. (4) and (6) are confidential and not open to public inspection.

(8) DEPARTMENT FINDINGS AND ORDER. If the department completes an investigation in response to a complaint under sub. (5), the department shall issue written findings to the contractor and complainant, indicating whether the department has found a violation of sub. (2) by the contractor. If the department finds that the contractor has violated sub. (2), the department shall specify what it finds to be the contractor’s cost to grow. Either the contractor or the complainant may demand a public hearing on the department’s finding, under ch. 227.

(9) UNIFORM SYSTEM OF COST ACCOUNTING; DEPARTMENT RULES. The department may promulgate rules prescribing a uniform system of cost accounting to be used by contractors in determining and reporting a contractor’s cost to grow. The accounting system shall take into account cost differences attributable to factors affecting prices for vegetable species under vegetable procurement contracts.

(10) PRIVATE REMEDY. A producer who sustains a monetary loss as a result of a violation of this section by a contractor may recover the amount of the loss, together with costs, including all reasonable attorney fees, notwithstanding s. 814.04 (1).

(11) PENALTIES. (a) *Forfeiture.* Any person who violates this section or any rule promulgated or order issued under this section may be required to forfeit not less than \$100 nor more than \$10,000. Notwithstanding s. 165.25 (1), the department may commence an action to recover a forfeiture under this paragraph.

(b) *Fine or imprisonment.* Any person who intentionally violates this section shall be fined not less than \$100 nor more than \$10,000 or imprisoned for not more than one year in the county jail or both for each violation.

History: 1975 c. 67, 199; 1989 a. 31, 359; 1993 a. 112.

100.24 Revocation of corporate authority. Any corporation, or limited liability company, foreign or domestic, which violates any order issued under s. 100.20 may be enjoined from doing business in this state and its certificate of authority, incorporation or organization may be canceled or revoked. The attorney general may bring an action for this purpose in the name of the state. In any such action judgment for injunction, cancellation or revocation may be rendered by the court, upon such terms as it deems just and in the public interest, but only upon proof of a substantial and wilful violation.

History: 1981 c. 124; 1993 a. 112.

100.25 Cumulative remedies. Nothing in ss. 100.22 to 100.24 shall be construed as repealing any other law of this state, but the remedies herein provided shall be cumulative to all other remedies provided by law in and for such cases.

100.26 Penalties. (1) Any person who violates any provision of this chapter, except s. 100.18 or 100.20, for which no specific penalty is prescribed shall be fined not to exceed \$200, or imprisoned in the county jail not more than 6 months or both.

(2) Any person violating s. 100.02 shall be guilty of a felony and upon conviction shall be punished by a fine of not less than fifty dollars nor more than three thousand dollars, or by imprisonment for not less than thirty days nor more than three years, or both.

(3) Any person who violates s. 100.15 or 100.19, or who intentionally refuses, neglects or fails to obey any regulation or order

made or issued under s. 100.19 or 100.20, shall, for each offense, be fined not less than \$25 nor more than \$5,000, or imprisoned in the county jail for not more than one year or both.

(4) Any person who violates s. 100.18 (1) to (8) or (10) or 100.182 is subject to a civil forfeiture of not less than \$50 nor more than \$200 for each violation.

(5) Any person violating s. 100.06 or any order or regulation of the department thereunder, or s. 100.18 (9), shall be fined not less than \$100 nor more than \$1,000 or imprisoned for not more than one year or both. Each day of violation constitutes a separate offense.

(6) The department, the department of justice, after consulting with the department, or any district attorney may commence an action in the name of the state to recover a civil forfeiture to the state of not less than \$100 nor more than \$10,000 for each violation of an injunction issued under s. 100.18, 100.182 or 100.20 (6). The department of agriculture, trade and consumer protection or any district attorney may commence an action in the name of the state to recover a civil forfeiture to the state of not less than \$100 nor more than \$10,000 for each violation of an order issued under s. 100.20.

(7) Any person violating s. 100.182 shall be fined not less than \$500 nor more than \$5,000 or imprisoned not more than one year or both for each offense. Each unlawful advertisement published, printed or mailed on separate days or in separate publications, hand bills or direct mailings is a separate violation of this section.

(8) Any person who violates s. 100.46 may be required to forfeit not more than \$100.

History: 1975 c. 39; 1979 c. 327; 1981 c. 90; 1981 c. 124 s. 9; 1983 a. 500; 1985 a. 288; 1989 a. 31; 1993 a. 414; 1995 a. 27.

It was constitutionally proper for the legislature in (3) to authorize the imposition of criminal penalties for the violation of department rules adopted pursuant to 100.20. *State v. Lambert*, 68 W (2d) 523, 229 NW (2d) 622.

“Intentionally” in (3) modifies only “refuses”, not “neglects or fails”. Multiplicity charge must be avoided. *State v. Stepniewski*, 105 W (2d) 261, 314 NW (2d) 98 (1982).

Conviction under (3) without proof of criminal intent did not violate due process clause. *Stepniewski v. Gagnon*, 732 F (2d) 567 (1984).

100.263 Recovery. In addition to other remedies available under this chapter, the court may award the department the [reasonable and necessary] costs of investigation and an amount reasonably necessary to remedy the harmful effects of the violation and the court may award the department of justice the [reasonable and necessary] expenses of prosecution, including attorney fees, from any person who violates this chapter. The department and the department of justice shall deposit in the state treasury for deposit in the general fund all moneys that the court awards to the department, the department of justice or the state under this section. Ten percent of the money deposited in the general fund that was awarded under this section for the costs of investigation and the expenses of prosecution, including attorney fees, shall be credited to the appropriation account under s. 20.455 (1) (gh). [All of the money deposited in the general fund that was awarded under this section to remedy the harmful effects of the violation shall be credited to the appropriation account under s. 20.455 (1) (gm).]

NOTE: This section is shown as amended by 1995 Wis. Act 27, s. 3608g, except that the bracketed “reasonable and necessary” was inadvertently deleted in two places by Act 27, s. 3608g and except that the bracketed final sentence was deleted from the creation of this provision by the governor’s partial veto of 1995 Wis. Act 27, s. 3608. Section 3608g shows the vetoed final sentence as if it had been enacted by section 3608.

History: 1995 a. 27.

100.264 Violations against elderly or disabled persons. (1) DEFINITIONS. In this section:

(a) “Disabled person” means a person who has an impairment of a physical, mental or emotional nature that substantially limits at least one major life activity.

(b) “Elderly person” means a person who is at least 62 years of age.

(c) “Major life activity” means self-care, walking, seeing, hearing, speaking, breathing, learning, performing manual tasks or being able to be gainfully employed.

(2) **SUPPLEMENTAL FORFEITURE.** If a fine or a forfeiture is imposed on a person for a violation under s. 100.16, 100.17, 100.18, 100.182, 100.183, 100.20, 100.205, 100.207, 100.21, 100.30 (3), 100.35, 100.44 or 100.46 or a rule promulgated under one of those sections, the person shall be subject to a supplemental forfeiture not to exceed \$10,000 for that violation if the conduct by the defendant, for which the violation was imposed, was perpetrated against an elderly person or disabled person and if the court finds that any of the following factors is present:

(a) The defendant knew or should have known that the defendant’s conduct was perpetrated against an elderly person or disabled person.

(b) The defendant’s conduct caused an elderly person or disabled person to suffer any of the following:

1. Loss or encumbrance of his or her primary residence.

2. Loss of principal employment or principal source of income.

3. Loss of more than 25% of the property that the elderly person or disabled person has set aside for retirement or for personal or family care or maintenance.

4. Loss of more than 25% of the total of payments to be received under a pension or retirement plan.

5. Loss of assets essential to the health or welfare of the elderly person or disabled person.

(c) The defendant’s conduct caused physical or emotional damage or economic loss, other than the losses specified in par. (b) 1. to 5., and elderly persons or disabled persons are more likely to suffer the loss than other persons due to their age, poor health, impaired understanding or restricted mobility.

(3) **PRIORITY FOR RESTITUTION.** If the court orders restitution under s. 100.18 (11) (d), 100.182 (5) (a), 100.20 (6), 100.205 (7), 100.207 (6) (b) 1. or 100.44 (5) for a pecuniary or monetary loss suffered by a person, the court shall require that the restitution be paid by the defendant before the defendant pays any forfeiture imposed under this section.

History: 1995 a. 382

100.265 List of gasohol and alternative fuel refueling facilities. No later than December 31 annually, and at such other times as the department determines to be necessary, the department shall publish and transmit to the department of administration a list of all refueling facilities in the state at which gasohol, as defined in s. 16.045 (1) (d), or any alternative fuel, as defined in s. 16.045 (1) (b), is available. The list shall be organized by location and shall indicate which facilities are open to the public, which types of fuel are available at the facilities and which facilities are limited to use by certain employees or types of vehicles, and shall identify the employees or types of vehicles to which such use is limited.

History: 1993 a. 351.

100.27 Dry cell batteries containing mercury. (1) DEFINITIONS. In this section:

(a) “Alkaline manganese battery” means a battery with a manganese dioxide electrode and an alkaline electrolyte.

(b) “Alkaline manganese button cell battery” means an alkaline manganese battery that resembles a button in size and shape.

(c) “Mercuric oxide battery” means a battery with a mercuric oxide electrode.

(d) “Mercuric oxide button cell battery” means a mercuric oxide battery that resembles a button in size and shape.

(e) “Zinc carbon battery” means a battery with a manganese dioxide electrode, a zinc electrode and an electrolyte that is not alkaline.

(2) ALKALINE MANGANESE BATTERIES. (a) No person may sell or offer for sale an alkaline manganese battery that is manufactured after January 1, 1996, except for an alkaline manganese button cell battery, unless the manufacturer has certified to the department that the alkaline manganese battery contains no mercury that was intentionally introduced.

(b) No person may sell or offer for sale an alkaline manganese button cell battery that is manufactured after January 1, 1996, unless the manufacturer has certified to the department that the alkaline manganese button cell battery contains no more than 25 milligrams of mercury.

(3) ZINC CARBON BATTERIES. No person may sell or offer for sale a zinc carbon battery that is manufactured after July 1, 1994, unless the manufacturer has certified to the department that the zinc carbon battery contains no mercury that was intentionally introduced.

(5) MERCURIC OXIDE BATTERIES. Beginning on July 1, 1994, no person may sell or offer for sale a mercuric oxide battery that is not a mercuric oxide button cell battery unless the manufacturer does all of the following:

(a) Identifies a collection site, that has all required governmental approvals, to which persons may send used mercuric oxide batteries for recycling or proper disposal.

(b) Informs each purchaser of one of its mercuric oxide batteries of the collection site identified under par. (a) and of the prohibition in s. 287.185 (2).

(c) Informs each purchaser of one of its mercuric oxide batteries of a telephone number that the purchaser may call to get information about returning mercuric oxide batteries for recycling or proper disposal.

(d) Informs the department and the department of natural resources of the collection site identified under par. (a) and the telephone number under par. (c).

(6) LIST OF CERTIFIED BATTERIES. The department shall compile and make available to the public a list of all batteries for which it has received certification under subs. (2) and (3).

(7) PENALTIES. (a) Any person who violates subs. (2) to (5) shall forfeit not less than \$50 nor more than \$200.

(b) Any manufacturer that submits a fraudulent certification under sub. (2) or (3) shall forfeit not less than \$1,000 nor more than \$10,000 for each violation.

History: 1993 a. 74; 1995 a. 227.

100.28 Sale of cleaning agents and water conditioners containing phosphorus restricted. (1) DEFINITIONS. In this section:

(a) "Chemical water conditioner" means a water softening chemical or other substance containing phosphorus intended to treat water for machine laundry use.

(b) "Cleaning agent" means any laundry detergent, laundry additive, dishwashing compound, cleanser, household cleaner, metal cleaner, degreasing compound, commercial cleaner, industrial cleaner, phosphate compound or other substance intended to be used for cleaning purposes.

(2) RESTRICTIONS; RETAIL SALES. Except as provided under sub. (3), no person may sell or offer to sell at retail:

(a) *General restriction; 0.5%.* Any cleaning agent which contains more than 0.5% phosphorus by weight, other than a cleaning agent for machine dishwashing or cleansing of medical and surgical equipment.

(b) *Restriction for machine dishwashing or cleansing of medical equipment; 8.7%.* Any cleaning agent for machine dishwashing or cleansing of medical and surgical equipment which contains more than 8.7% phosphorus by weight.

(c) *Restriction for water conditioner; 20%.* Any chemical water conditioner which contains more than 20% phosphorus by weight.

(2m) RESTRICTIONS; SALE TO RETAILER. Except as provided under sub. (3), no person may sell or offer to sell to a retailer:

(a) *General restriction; 0.5%.* Any cleaning agent which contains more than 0.5% phosphorus by weight, other than a cleaning agent for machine dishwashing or cleansing of medical and surgical equipment.

(b) *Restriction for machine dishwashing or cleansing of medical equipment; 8.7%.* Any cleaning agent for machine dishwashing or cleansing of medical and surgical equipment which contains more than 8.7% phosphorus by weight.

(c) *Restriction for water conditioner; 20%.* Any chemical water conditioner which contains more than 20% phosphorus by weight.

(3) EXEMPTION; INDUSTRIAL PROCESSES AND DAIRY EQUIPMENT. Cleaning agents used for industrial processes and cleaning or for cleaning dairy equipment are not subject to this section.

(4) PENALTY; ENFORCEMENT. (a) A person who violates this section shall forfeit not less than \$25 nor more than \$25,000 for each violation. Each day on which the person sells or offers to sell in violation of this section constitutes a separate violation. Each place at which the person sells or offers to sell in violation of this section constitutes a separate violation.

(am) If a court imposes a forfeiture under par. (a) on the manufacturer of a chemical water conditioner or cleaning agent for a violation of sub. (2m), the court may order the manufacturer to accept the return of the chemical water conditioner or cleaning agent that is the subject of the violation and to refund the purchase price to the retailer who purchased that chemical water conditioner or cleaning agent.

(b) In lieu of or in addition to forfeitures under par. (a), the department may seek an injunction restraining any person from violating this section.

(c) The department, or any district attorney upon the request of the department, may commence an action in the name of the state under par. (a) or (b).

(d) Any action on a violation of this section may be commenced in the circuit court for the county in which the violation occurred, or in the case of multiple violations by a single defendant, in the circuit court for the county in which any of the violations occurred.

History: 1983 a. 73; 1991 a. 115; 1995 a. 27.

100.285 Reduction of toxics in packaging. (1) DEFINITION. In this section, "packaging component" means any individual assembled part of a package, including any interior or exterior blocking, bracing, cushioning, weatherproofing, coating, closure, ink or label.

(2) RESTRICTION. Except as provided in sub. (3), a manufacturer or distributor may not sell a package, packaging material or packaging component with a total concentration of lead, cadmium, mercury plus hexavalent chromium that exceeds:

(a) Beginning on June 1, 1992, 600 parts per million.

(b) Beginning on June 1, 1993, 250 parts per million.

(c) Beginning on June 1, 1994, 100 parts per million.

(3) EXCEPTIONS. (a) Before June 1, 1996, sub. (2) does not apply with respect to a package, packaging material or packaging component made from recycled materials.

(b) Subsection (2) does not apply with respect to a package, packaging material or packaging component if a higher total concentration of lead, cadmium, mercury plus hexavalent chromium is necessary to meet federal health or safety requirements.

(c) Subsection (2) does not apply with respect to a package, packaging material or packaging component for which there is no feasible alternative that satisfies the limitations in sub. (2).

(d) Subsection (2) does not apply with respect to lead foil purchased and used on or before December 31, 1992, to wrap the opening of a bottle that contains intoxicating liquor, as defined in

s. 125.02 (8), or to any package that contains intoxicating liquor, as defined in s. 125.02 (8), if the package was filled and sealed on or before December 31, 1992.

(5) NO PENALTY. A person who violates sub. (2) is not subject to a penalty.

(6) REPORT. The department shall review the effectiveness of subs. (1) to (5) and shall report the results of the review, including a recommendation of whether enforcement provisions and penalties should be instituted, on or before June 1, 1993, to the governor and to the chief clerk of each house of the legislature for distribution under s. 13.172 (2).

History: 1989 a. 335; 1991 a. 36.

100.29 Sale of nonrecyclable materials. (1) DEFINITIONS. In this section “new packaging” means packaging, including a container, made from a material or a combination of materials not used in any packaging, exclusive of any closure or label, that is in commerce in this state on or before May 11, 1990.

(3) NEW PACKAGING. (a) If the department receives a complaint that there is not an adequate market to make recycling of a type of new packaging economically feasible, the department shall investigate the complaint. If the department determines that the product has been in commerce in this state for at least 3 years and that the complaint is well-founded, it shall inform the manufacturer or distributor of the new packaging and attempt to ensure an adequate market within a reasonable period through negotiations.

(b) The department shall identify by rule a type of new packaging for food or beverages to which all of the following apply:

1. After at least 3 years in commerce in this state, there is not an adequate market to make recycling of the type of new packaging economically feasible.

2. The department received a complaint under par. (a) about the type of new packaging material.

3. Negotiations under par. (a) did not result in an adequate market.

(c) The department shall promulgate rules for determining whether there is an adequate market to make recycling of new packaging economically feasible.

History: 1989 a. 335.

100.295 Labeling of recycled, recyclable or degradable products. (1) LABELING STANDARDS. The department shall establish standards that must be met by products in order for any person to represent that the products are recycled, recyclable or degradable. The department shall establish standards that are consistent, to the greatest extent practicable, with nationwide industry consensus standards. In developing standards, the department shall consult with the department of natural resources and the council on recycling and consider purchasing specifications under s. 16.72 (2) (e) and (f) and any existing federal standards. The department shall give priority to establishing standards for specific products commonly represented as being recycled, recyclable or degradable.

(2) FALSE ADVERTISING PROHIBITED. No person may represent any product as being recycled, recyclable or degradable unless the product meets standards established under sub. (1).

(3) PENALTY. Any person who violates sub. (2) may be required to forfeit not less than \$100 nor more than \$10,000 for each violation.

History: 1989 a. 335.

100.297 Plastic container recycled content. (1) DEFINITION. In this section, “plastic container” means a plastic container, as defined in s. 100.33 (1) (c), that is required to be labeled under s. 100.33 (2).

(2) PROHIBITION. Except as provided in sub. (3), no person may sell or offer for sale at retail any product in a plastic container unless the plastic container consists of at least 10% recycled or

remanufactured material, by weight beginning on January 1, 1995.

(3) EXCEPTION. Subsection (2) applies to a person who sells or offers to sell a product that is a food, beverage, drug, cosmetic or medical device and that is regulated under the federal food, drug and cosmetic act, 21 USC 301 to 394, in a plastic container only if the federal food and drug administration has approved the use of the specified recycled or remanufactured content in that plastic container.

History: 1989 a. 335; 1993 a. 245.

100.30 Unfair sales act. (1) POLICY. The practice of selling certain items of merchandise below cost in order to attract patronage is generally a form of deceptive advertising and an unfair method of competition in commerce. Such practice causes commercial dislocations, misleads the consumer, works back against the farmer, directly burdens and obstructs commerce, and diverts business from dealers who maintain a fair price policy. Bankruptcies among merchants who fail because of the competition of those who use such methods result in unemployment, disruption of leases, and nonpayment of taxes and loans, and contribute to an inevitable train of undesirable consequences, including economic depression.

(2) DEFINITIONS. When used in this section unless context otherwise requires:

(a) 1. With respect to the sale of cigarettes or other tobacco products, fermented malt beverages, intoxicating liquor or wine, or motor vehicle fuel, “cost to retailer” means the invoice cost of the merchandise to the retailer within 30 days prior to the date of sale, or replacement cost of the merchandise to the retailer, whichever is lower, less all trade discounts except customary discounts for cash, plus any excise taxes imposed on such merchandise or the sale thereof other than excise taxes collected by the retailer, and any cost incurred for transportation and any other charges not otherwise included in the invoice cost or the replacement cost of the merchandise as herein set forth, to which shall be added a markup to cover a proportionate part of the cost of doing business, which markup, in the absence of proof of a lesser cost, shall be 6% of the cost to the retailer as herein set forth.

2. With respect to the sale of merchandise other than cigarettes or other tobacco products, fermented malt beverages, intoxicating liquor or wine, or motor vehicle fuel, “cost to retailer” means the invoice cost of the merchandise to the retailer, or replacement cost of the merchandise to the retailer, whichever is lower, less all trade discounts except customary discounts for cash, plus any excise taxes imposed on such merchandise or the sale thereof other than excise taxes collected by the retailer, and any cost incurred for transportation and any other charges not otherwise included in the invoice cost or the replacement cost of the merchandise as herein set forth.

(b) “Cost to retailer” and “cost to wholesaler” as defined in pars. (a) and (c) mean bona fide costs; and purchases made by retailers and wholesalers at prices which cannot be justified by prevailing market conditions within this state shall not be used in determining cost to the retailer and cost to the wholesaler. Prices at which purchases of merchandise are made by retailers or wholesalers cannot be justified by prevailing market conditions in this state when they are below the lowest prices at which the manufacturer or producer of such merchandise sells to other retailers or wholesalers in this state.

(c) 1. a. With respect to the sale of cigarettes or other tobacco products, fermented malt beverages, intoxicating liquor or wine, or motor vehicle fuel, “cost to wholesaler” means, except as provided in subd. 1. b., the invoice cost of the merchandise to the wholesaler within 30 days prior to the date of sale, or the replacement cost of the merchandise to the wholesaler, whichever is lower, less all trade discounts except customary discounts for cash, plus any excise taxes imposed on the sale thereof prior to the sale at retail, and any cost incurred for transportation and any other charges not otherwise included in the invoice cost or the replace-

ment cost of the merchandise as herein set forth, to which shall be added, except for sales at wholesale between wholesalers, a markup to cover a proportionate part of the cost of doing business, which markup, in the absence of proof of a lesser cost, shall be 3% of the cost to the wholesaler as herein set forth.

b. For every person holding a permit as a distributor as defined in s. 139.30 (3) or as a multiple retailer as defined in s. 139.30 (8), with respect to that portion of the person's business which involves the purchase and sale of cigarettes "cost to wholesaler" means the cost charged by the cigarette manufacturer, disregarding any manufacturer's discount or any discount under s. 139.32 (5), plus the amount of tax imposed under s. 139.31. Except for a sale at wholesale between wholesalers, a markup to cover a proportionate part of the cost of doing business shall be added to the cost to wholesaler. In the absence of proof of a lesser cost, this markup shall be 3% of the cost to wholesaler as set forth in this subd. 1. b.

2. With respect to the sale of merchandise other than cigarettes or other tobacco products, fermented malt beverages, intoxicating liquor or wine, or motor vehicle fuel, "cost to wholesaler" means the invoice cost of the merchandise to the wholesaler, or the replacement cost of the merchandise to the wholesaler, whichever is lower, less all trade discounts except customary discounts for cash, plus any excise taxes imposed on the sale thereof prior to the sale at retail, and any cost incurred for transportation and any other charges not otherwise included in the invoice cost or the replacement cost of the merchandise as herein set forth.

(d) "Replacement cost" means the cost computed as specified in par. (a) or (c) at which the merchandise sold could have been bought by the retailer or wholesaler at any time if bought in the same quantity as the retailer's or wholesaler's last purchase of the said merchandise.

(e) "Retailer" includes every person engaged in the business of making sales at retail within this state, but, in the case of a person engaged in the business of selling both at retail and at wholesale, such term shall be applied only to the retail portion of such business.

(f) "Retailer" and "wholesaler" shall both be applied to any merchant who buys merchandise for resale at retail from the manufacturer or producer thereof and to any wholesaler under par. (L) 2. and, as to that merchandise or that wholesaler, the terms "cost to retailer" and "cost to wholesaler" as defined in pars. (a) and (c) shall both be applied, including the markup requirements.

(g) "Sell", "sale" or "sold" includes any advertising or offer to sell or any transfer of merchandise where title is retained by the retailer or wholesaler as security for the payment of the purchase price. In determining the selling price of merchandise by wholesalers and retailers under this section, all fractions of a cent shall be carried to the next full cent.

(h) "Sell at retail", "sales at retail" and "retail sale" mean any transfer for a valuable consideration, made in the ordinary course of trade or in the usual prosecution of the retailer's business, of title to tangible personal property to the purchaser for consumption or use other than resale or further processing or manufacturing.

(i) "Sell at wholesale", "sales at wholesale" and "wholesale sales" include any transfer for a valuable consideration made in ordinary course of trade or the usual conduct of the wholesaler's business, of title to tangible personal property to the purchaser for purposes of resale or further processing or manufacturing.

(k) In the case of retail sales of alcohol beverages, "trade discount" shall not include discounts in the form of cash or merchandise.

(L) "Wholesaler" includes every person holding a permit as a multiple retailer under s. 139.30 (8) and every person engaged in the business of making sales at wholesale within this state except as follows:

1. In the case of a person engaged in the business of selling both at wholesale and at retail, "wholesaler" applies only to the wholesale portion of that business.

2. In the case of a person holding a permit as a multiple retailer as defined in s. 139.30 (8), "wholesaler" applies to that portion of the person's business involving the purchase and sale of cigarettes and to any wholesale portion of that person's business.

(2m) DEFINITIONS; CONSTRUCTION. (a) When one or more items of merchandise are furnished or sold in combination with or on condition of the purchase of one or more other items, or are so advertised, all items shall be included in determining cost under sub. (2) (a) or (c); and if any of the items included therein are separately priced, such separate price shall be subject to the requirements of this section.

(b) Any retailer who also sells to other retailers shall use the invoice cost to other retailers in computing the selling price at retail under sub. (2) (a); and if that retailer is a manufacturer or producer, both sub. (2) (a) and (c) shall be used in computing the selling price at retail. In the absence of sales to other retailers, the manufacturer's or producer's invoice cost to wholesalers shall be used in computing the manufacturer's or producer's selling price at retail as provided in sub. (2) (a) and (c).

(3) ILLEGALITY OF LOSS LEADERS. Any sale of any item of merchandise either by a retailer or wholesaler, at less than cost as defined in this section with the intent or effect of inducing the purchase of other merchandise or of unfairly diverting trade from a competitor, impairs and prevents fair competition, injures public welfare and is unfair competition and contrary to public policy and the policy of this section. Such sales are prohibited. Evidence of any sale of any item of merchandise by any retailer or wholesaler at less than cost as defined in this section shall be prima facie evidence of intent or effect to induce the purchase of other merchandise, or to unfairly divert trade from a competitor, or to otherwise injure a competitor.

(4) PENALTIES. For any violation of sub. (3), the department or a district attorney may commence an action on behalf of the state to recover a forfeiture of not less than \$50 nor more than \$500 for the first violation and not less than \$200 nor more than \$2,500 for each subsequent violation.

(5) SPECIAL REMEDIES. In addition to the penalties under sub. (4), both of the following remedies apply for a violation of sub. (3):

(a) The department may issue a special order as provided in s. 93.18 against a retailer or wholesaler requiring the retailer or wholesaler to cease and desist from violating this section in the sale of cigarettes or other tobacco products, fermented malt beverages, intoxicating liquor or wine or motor vehicle fuel. The department or a district attorney may commence an action on behalf of the state against a retailer or wholesaler who violates a special order issued under this paragraph to recover a forfeiture of not less than \$200 nor more than \$5,000 for each violation.

(b) The department or a district attorney may bring an action to enjoin a violation of this section without being compelled to allege or prove that an adequate remedy at law does not exist. An action under this paragraph may be commenced and prosecuted by the department or a district attorney, in the name of the state, in a circuit court in the county where the offense occurred or in Dane county, notwithstanding s. 801.50.

(6) EXCEPTIONS. (a) The provisions of this section shall not apply to sales at retail or sales at wholesale where:

1. Merchandise is sold in bona fide clearance sales.
2. Perishable merchandise must be sold promptly in order to forestall loss.
3. Merchandise is imperfect or damaged or is being discontinued.
4. Merchandise is sold upon the final liquidation of any business.

5. Merchandise is sold for charitable purposes or to relief agencies.

6. Merchandise is sold on contract to departments of the government or governmental institutions.

7. The price of merchandise is made in good faith to meet an existing price of a competitor and is based on evidence in the possession of the retailer or wholesaler in the form of an advertisement, proof of sale or receipted purchase.

8. Merchandise is sold by any officer acting under the order or direction of any court.

(b) No retailer or wholesaler may claim the exemptions under par. (a) 1. to 4. if he or she limits or otherwise restricts the quantity of such merchandise which can be purchased by any buyer or if he or she fails to conspicuously disclose the reason for such sale in all advertisements relating thereto and on a label or tag on such merchandise or on a placard where the merchandise is displayed for sale.

(c) No person may claim the exemption under par. (a) 7. if that person holds a permit under subch. II of ch. 139.

(d) No retailer or wholesaler may claim the exemption under par. (a) 7. if that wholesaler or retailer holds a permit under subch. II of ch. 139.

History: 1973 c. 310; 1979 c. 34 ss. 950o to 950y, 2102 (3) (a); 1979 c. 176, 221; 1981 c. 79 s. 17; 1983 a. 189 ss. 136 to 138, 329 (20); 1983 a. 466; 1985 a. 313, 332; 1987 a. 175; 1993 a. 16.

Sub. (2) (Lm) [(2) (k), 1983 Stats.] qualifies the term "trade discount" in determining "cost to retailer" under (2) (a) for sales of fermented malt beverages and intoxicating liquors. Sub. (2) (Lm) [(2) (k), 1983 Stats.] is not a catchall prohibition against all trade discounts and does not apply to bona fide quantity discounts. 63 Atty. Gen. 516.

This section doesn't violate federal antitrust laws or constitutional due process. 77 Atty. Gen. 163.

Wisconsin's unfair sales act — Unfair to whom? Waxman, 66 MLR 293 (1983).

100.31 Unfair discrimination in drug pricing. (1) DEFINITIONS. In this section:

(a) "Drug" means any substance subject to 21 USC 353 (b).

(b) "Purchaser" means any person who engages primarily in selling drugs directly to consumers.

(c) "Seller" means any person who trades in drugs for resale to purchasers in this state.

(2) PRICE DISCRIMINATION PROHIBITED. Every seller shall offer drugs from the list of therapeutically equivalent drugs published by the federal food and drug administration to every purchaser in this state, with all rights and privileges offered or accorded by the seller to the most favored purchaser, including purchase prices for similar volume purchases, rebates, free merchandise, samples and similar trade concessions. Nothing in this subsection prohibits the giving of a discount for volume purchases.

(3) TREBLE DAMAGES. Any purchaser damaged by violation of this section may bring an action against the seller to recover treble damages sustained by reason of such violation.

(4) PENALTIES. For any violation of this section, the department or a district attorney may commence an action on behalf of the state to recover a forfeiture of not less than \$100 nor more than \$10,000 for each offense. Each delivery of a drug sold to a purchaser at a price in violation of this section and each separate day in violation of an injunction issued under this section is a separate offense.

(5) SPECIAL REMEDIES. The department or a district attorney may bring an action to enjoin a violation of this section without being compelled to allege or prove that an adequate remedy at law does not exist. An action under this subsection may be commenced and prosecuted by the department or a district attorney, in the name of the state, in a circuit court in the county where the offense occurred or in Dane county, notwithstanding s. 801.50.

History: 1975 c. 168, 421, 422; 1983 a. 188, 189; 1993 a. 352.

State and local units of government are not "purchasers" under (1) (c) and sellers of drugs are not prohibited from offering or according to them pricing arrangements which are not made available to other purchasers. 65 Atty. Gen. 59.

"Most favored purchaser" under (2) does not refer to purchasers outside Wisconsin. Constitutionality of statute upheld. *K-S Pharmacies v. American Home Products*, 962 F (2d) 728 (1992).

100.33 Plastic container labeling. (1) DEFINITIONS. In this section:

(a) "Beverage" means any alcohol beverage, as defined in s. 125.02 (1), malt beverage, tea, bottled drinking water, as defined under s. 97.34 (1) (a), soda water beverage, as defined under s. 97.34 (1) (b), or fruit or vegetable juice or drink which is intended for human consumption.

(ad) "Blister pack" means a container in which an item has a covering of plastic film or preformed semirigid plastic and the covering is affixed to a rigid backing.

(ag) "Bottle" means a plastic container the neck of which is smaller than its body, with a screw-on or press-on lid.

(ar) "Labeling" means attaching information to or embossing or printing information on a plastic container.

(b) "Material recovery" means the reuse, recycling, reclamation, composting or other recovery of useful materials from solid waste, with or without treatment.

(c) "Plastic container" means an individual, separate, rigid plastic bottle, can, jar or carton, except for a blister pack, that is originally used to contain a product that is the subject of a retail sale, as defined under s. 100.30 (2) (h).

(d) "Reclamation" means the treatment of solid waste and its return to productive use in a form or for a use that is different from its original form or use.

(e) "Recycling" means the treatment of solid waste and its return to productive use in a form and for a use that is the same as or similar to the original form and use.

(f) "Reuse" means the return of solid waste to productive use without treatment and without changing its form or use.

(g) "Sales at retail" has the meaning given in s. 100.30 (2) (h).

(h) "Sales at wholesale" has the meaning given in s. 100.30 (2) (i).

(2) LABELING RULES REQUIRED. The department shall promulgate rules establishing labeling requirements for plastic containers. The requirements shall be designed to provide information needed by operators of material recovery programs to facilitate the recycling, reclamation or reuse of plastic containers. The rules promulgated under this subsection shall permit a manufacturer of plastic containers and a person who places products in plastic containers to choose an appropriate method of labeling plastic containers. The department shall make an effort to develop rules which are consistent, to the greatest extent practicable, with national industry-wide plastic container coding systems. The rules shall exempt from the labeling requirements plastic containers that are readily identifiable because of their appearance.

(3) PROHIBITION. (a) *Sale of plastic beverage bottles.* On and after January 1, 1991, no person may sell or offer for sale at wholesale in this state a plastic beverage bottle with a capacity of 8 fluid ounces or more, or a beverage in such a plastic bottle, unless the bottle complies with the labeling requirements under sub. (2). On and after January 1, 1992, no person may sell or offer for sale at retail in this state a plastic beverage bottle with a capacity of 8 fluid ounces or more, or a beverage in such a plastic bottle, unless the bottle complies with the labeling requirements under sub. (2).

(b) *Sale of other plastic bottles.* 1. On and after January 1, 1991, no person may sell or offer for sale at wholesale in this state any plastic bottle with a capacity of 16 fluid ounces or more, or a product in such a plastic bottle, unless the bottle complies with the labeling requirements under sub. (2). On and after January 1, 1992, no person may sell or offer for sale at retail in this state any plastic bottle with a capacity of 16 fluid ounces or more, or a product in such a plastic bottle, unless the bottle complies with the labeling requirements under sub. (2).

2. On and after January 1, 1993, no person may sell or offer for sale at wholesale in this state any plastic bottle with a capacity of at least 8 fluid ounces but less than 16 fluid ounces, or a product in such a plastic bottle, unless the bottle complies with the labeling requirements under sub. (2). On and after January 1, 1994, no person may sell or offer for sale at retail in this state any plastic bottle with a capacity of at least 8 fluid ounces but less than 16 fluid ounces, or a product in such a plastic bottle, unless the bottle complies with the labeling requirements under sub. (2).

3. Subdivisions 1. and 2. do not apply to the sale or offer to sell of plastic beverage bottles or beverages in plastic bottles.

(c) *Sale of other plastic containers.* 1. On and after January 1, 1991, no person may sell or offer for sale at wholesale in this state any plastic container with a capacity of 16 fluid ounces or more, or a product in such a plastic container, unless the container complies with the labeling requirements under sub. (2). On and after January 1, 1992, no person may sell or offer for sale at retail in this state any plastic container with a capacity of 16 fluid ounces or more, or a product in such a plastic container, unless the container complies with the labeling requirements under sub. (2).

2. On and after January 1, 1992, no person may sell or offer for sale at wholesale in this state any plastic container with a capacity of at least 8 fluid ounces but less than 16 fluid ounces, or a product in such a plastic container, unless the container complies with the labeling requirements under sub. (2). On and after January 1, 1993, no person may sell or offer for sale at retail in this state any plastic container with a capacity of at least 8 fluid ounces but less than 16 fluid ounces, or a product in such a plastic container, unless the container complies with the labeling requirements under sub. (2).

3. Subdivisions 1. and 2. do not apply to the sale or offer to sell of any plastic bottles or any products in plastic bottles.

(3m) **VARIANCES.** Upon request, the department may grant a variance to a prohibition in sub. (3) for up to one year for a type of plastic container. The department may renew a variance. The department may only grant a variance if it is not technologically possible to label the plastic container.

(4) **PENALTY.** Any person who violates sub. (3) shall forfeit not more than \$500 for each violation. Each day of violation constitutes a separate offense.

History: 1987 a. 293, 403; 1989 a. 31, 335.

100.35 Furs to be labeled. (1) No person shall sell or offer or display for sale any coat, jacket or other garment made wholly or partially of fur without having attached thereto and conspicuously displayed a tag or label bearing in plain print in English the species of fur or pelt used therein. This section shall not apply to such garments as are displayed or offered for sale or sold at a price of less than \$50.

(2) Any person violating this section shall be punished as in s. 100.26 (1).

100.36 Frauds; substitute for butter; advertisement. No person may use the word “butter” in any way in connection or association with the sale or exposure for sale or advertisement of any substance designed to be used as a substitute for butter. No person may use terms such as “cream”, “creamery” or “dairy”, or the name or representation of any breed of dairy cattle, or any combination of such words and representation, or any other words or symbols or combinations thereof commonly used in the sale of butter unless at least 40% of the substitute is butterfat. If the term “butter” is used in connection with the name of any such product, it shall be qualified so as to distinguish it from butter as defined in s. 97.01 (1). Nothing in this section prohibits a person from using the term “light butter” or “lite butter” in the manner provided in s. 97.03 (3) (b).

History: 1983 a. 189 s. 329 (20); 1991 a. 111.

100.37 Hazardous substances act. (1) In this section:

(a) “Corrosive” means any substance which in contact with living tissue will cause destruction of tissue by chemical action, but does not refer to action on inanimate surfaces.

(b) “Extremely flammable” applies to any substance which has a flash point at or below 20 degrees Fahrenheit as determined by the Tagliabue open cup tester, and “flammable” applies to any substance which has a flash point of above 20 degrees to 80 degrees Fahrenheit, as determined by the Tagliabue open cup tester; “combustible” applies to any substance which has a flash point above 80 degrees Fahrenheit to 150 degrees as determined by the Tagliabue open cup tester, except that flammability or combustibility of solids and of the contents of self–pressurized containers shall be determined by methods as prescribed under the federal hazardous substances act (15 USC 1261 et seq) or found by the department to be generally applicable to such materials or containers, and established by rules adopted by the department, which shall also define “flammable”, “combustible” and “extremely flammable” in accordance with such methods.

(c) “Hazardous substance” means:

1. Any substance or mixture of substances, including a toy or other article intended for use by children, which is toxic, is corrosive, is an irritant, is a strong sensitizer, is flammable or combustible, or generates pressure through decomposition, heat or other means, if such substance or mixture of substances may cause substantial personal injury or substantial illness during or as a proximate result of any customary or reasonably foreseeable handling or use, including reasonably foreseeable ingestion by children.

2. Any substances which the department by rule finds, pursuant to sub. (2) (a), meet the requirements of subd. 1.

2m. Any substance included under sub. (2) (e) 2.

3. Any radioactive substance, if, with respect to such substance as used in a particular class of article or as packaged, the department determines by rule that the substance is sufficiently hazardous to require labeling in accordance with this section in order to protect the public health.

4. Any toy or other article intended for use by children which the department by rule determines in accordance with this section to present an electrical, mechanical or thermal hazard or to contain a toxic substance either in or on the toy or other article.

5. Except as otherwise provided in this section, “hazardous substance” does not apply to pesticides subject to ss. 94.67 to 94.71, to foods, drugs and cosmetics, to bullets or other ammunition, or gun powder for reloading ammunition, nor to substances intended for use as fuels when stored in containers and used in the heating, cooking or refrigeration system of a house, nor does it include any source material, special nuclear material or by–product material as defined in the atomic energy act of 1954, as amended, and regulations of the nuclear regulatory commission under such act.

(d) “Highly toxic” means any substance which falls within any of the following categories: Produces death within 14 days in half or more of a group of 10 or more laboratory white rats each weighing between 200 and 300 grams, at a single dose of 50 milligrams or less per kilogram of body weight, when orally administered; or produces death within 14 days in half or more of a group of 10 or more laboratory white rats each weighing between 200 and 300 grams, when inhaled continuously for a period of one hour or less at an atmosphere concentration of 200 parts per million by volume or less of gas or vapor or 2 milligrams per liter by volume or less of mist or dust, provided such concentration is likely to be encountered by persons when the substance is used in any reasonably foreseeable manner; or produces death within 14 days in half or more of a group of 10 or more rabbits tested in a dosage of 200 milligrams or less per kilogram of body weight, when administered by continuous contact with the bare skin for 24 hours or less. If the department finds that available data on human experience with any substance indicate results different from those obtained on animals in the above named dosages or concentrations, the human data shall take precedence.

(e) “Immediate container” does not include package liners.

(f) “Irritant” means any substance not corrosive which on immediate, prolonged or repeated contact with normal living tissue will induce a local inflammatory reaction.

(g) “Label” means a display of written, printed or graphic matter upon the immediate container of any substance or upon an article or tag attached thereto in the case of unpackaged articles; and a requirement made by or under authority of this section that any word, statement or other information appear on the label shall not be considered to be complied with unless such word, statement or other information also appears on the outside container or wrapper, if there is any, unless it is easily legible through the outside container or wrapper, and on all accompanying literature where there are directions for use, written or otherwise.

(h) “Misbranded package” or “misbranded package of a hazardous substance” means a hazardous substance in a container intended or suitable for household use, and includes a toy or other article intended for use by children whether or not in package form, which, except as otherwise provided under sub. (2), fails to bear a label:

1. Which states conspicuously the name and place of business of the manufacturer, packer, distributor or seller; the common or usual name, or the chemical name if there is no common or usual name, of the hazardous substance or of each component which contributes substantially to its hazard, unless the department by rule permits or requires the use of a recognized generic name; the signal word “DANGER” on substances which are extremely flammable, corrosive or highly toxic; the signal word “WARNING” or “CAUTION” on all other hazardous substances; an affirmative statement of the principal hazards, such as “Flammable”, “Combustible”, “Vapor harmful”, “Causes burns”, “Absorbed through skin” or similar wording descriptive of the hazard; precautionary measures describing the action to be followed or avoided, except when modified by rule of the department pursuant to sub. (2); instruction, when necessary or appropriate, for first-aid treatment; the word “poison” for any hazardous substance which is highly toxic; instructions for handling and storage of packages which require special care in handling or storage; and the statement “Keep out of the reach of children”, or its practical equivalent or, if the article is intended for use by children and is not a banned hazardous substance, adequate directions for the protection of children from the hazard; and

2. On which any statements required under subd. 1. are located prominently and are in the English language in conspicuous and legible type in contrast by typography, layout or color with other printed matter on the label.

(hm) “Practitioner” has the meaning given in s. 961.01 (19).

(i) “Radioactive substance” means a substance which emits ionizing radiation.

(j) “Strong sensitizer” means a substance which will cause on normal living tissue, through an allergic or photodynamic process, a hypersensitivity which becomes evident on reapplication of the same substances and which is designated as such by the department. Before designating any substance as a strong sensitizer, the department, upon consideration of the frequency of occurrence and severity of the reaction, shall find that the substance has a significant potential for causing hypersensitivity.

(k) “Toxic” applies to any substance, other than a radioactive substance, which has the capacity to produce personal injury or illness to persons through ingestion, inhalation, or absorption through any body surface.

(1m) (a) An article may be determined to present an electrical hazard if, in normal use or when subjected to reasonably foreseeable damage or abuse, its design or manufacture may cause personal injury or illness by electric shock.

(b) An article may be determined to present a mechanical hazard if, in normal use or when subjected to reasonably foreseeable damage or abuse, its design or manufacture presents an unreasonable risk of personal injury or illness from any of the following:

1. Fracture, fragmentation or disassembly of the article.
2. Propulsion of the article, or any part or accessory of the article.
3. Points or other protrusions, surfaces, edges, openings or closures.
4. Moving parts.
5. Lack or insufficiency of controls to reduce or stop motion.
6. Self-adhering characteristics of the article.
7. Aspiration or ingestion of the article, or any part or accessory of the article.
8. Instability of the article.
9. Any other aspect of the article’s design or manufacture including the capability of producing sounds at a level of 138 decibels or higher.

(c) An article may be determined to present a thermal hazard if, in normal use or when subjected to reasonably foreseeable damage or abuse, its design or manufacture presents an unreasonable risk of personal injury or illness because of heat as from heated parts, substances or surfaces.

(2) (a) Whenever in the judgment of the department such action will promote the objectives of this section by avoiding or resolving uncertainty as to its application, the department may by rule declare to be a hazardous substance, for the purposes of this section, any substance or mixture of substances which it finds meets the requirements of sub. (1) (c) 1.

(b) If the department finds that the requirements of this section are not adequate for the protection of the public health and safety in view of the special hazards presented by any particular hazardous substance, it may by rule establish such reasonable variations or additional requirements as it finds necessary for the protection of the public health and safety.

(c) If the department finds that, because of the size of the package involved or because of the minor hazard presented by the substance contained therein, or for other good and sufficient reasons, full compliance with the labeling requirements otherwise applicable under this section is impracticable or is not necessary for the adequate protection of the public health and safety, it may exempt such substances from these requirements to the extent it determines to be consistent with adequate protection of the public health and safety.

(d) The department may by rule prohibit the sale of a hazardous substance if it finds that notwithstanding cautionary labeling that is or may be required the degree or nature of the hazard involved in the presence or use of such substance is such that the public health and safety can only be protected by keeping such substance out of the channels of commerce in this state.

(e) 1. The department may summarily ban the sale or distribution of any hazardous substance or article if it finds that the hazard to public health or safety is so great that such hazard should not be permitted to continue. The department shall follow the procedure specified in s. 93.18 (3).

2. In addition to subd. 1. and except as provided in subd. 3., all of the following are hazardous substances, possess such a degree of hazard that adequate cautionary labeling cannot be written and may not be sold or distributed:

a. Propyl nitrite, isopropyl nitrite and mixtures containing propyl nitrite or isopropyl nitrite.

b. The nitrous acid esters of all alcohols having the formula of 5 carbon atoms, 12 hydrogen atoms and one oxygen atom including 1-pentyl nitrite, 2-pentyl nitrite, 3-pentyl nitrite, 2-methyl-1-butyl nitrite, 3-methyl-1-butyl nitrite (also known as isoamyl nitrite or isopentyl nitrite), 2-methyl-2-butyl nitrite (also known as tertiary pentyl nitrite), 3-methyl-2-butyl nitrite, 2, 2-dimethylpropyl nitrite (also known as neopentyl nitrite) and mixtures containing more than 5% of 1-pentyl nitrite, 2-pentyl nitrite, 3-pentyl nitrite, 2-methyl-1-butyl nitrite, 3-methyl-1-butyl nitrite, 2-methyl-2-butyl nitrite, 3-methyl-2-butyl nitrite or 2, 2-dimethyl nitrite.

- c. Ethyl chloride and ethyl nitrite.
- d. Any toy containing elemental mercury.

3. Subdivisions 1. and 2. do not apply to the sale or distribution of isoamyl nitrite (3–methyl–1–butyl nitrite) or ethyl chloride as prescription drugs obtained from, or pursuant to a valid prescription or order of, a practitioner while acting in the course of professional practice.

(f) The department may by rule prescribe the methods of sale of hazardous substances, including but not limited to glues, cements and hobby kit fuels, and may regulate the manner of display and restrict access by the general public to hazardous substances.

(g) The department may by rule prescribe package safety standards, including type of package material and safety closures for hazardous substances and pesticides, and may prohibit the sale of noncomplying or defective packages.

(h) The department may by rule limit or ban the use of any ingredient or combination of ingredients in any hazardous substance if it finds such action necessary to adequately protect the public health and safety.

(3) The following acts and the causing thereof are prohibited:

(a) The sale, or offering or exposing for sale of any misbranded package of a hazardous substance.

(b) The alteration, mutilation, destruction, obliteration or removal of the whole or any part of the label of, or the doing of any other act with respect to, a hazardous substance, if such act is done while the substance is held for sale, and results in the hazardous substance being in a misbranded package.

(c) The sale, or offering or exposing for sale of a hazardous substance in a reused food, drug or cosmetic container or in a container which, though not a reused container, is identifiable as a food, drug or cosmetic container by its labeling or by other identification. The reuse of a food, drug or cosmetic container as a container for a hazardous substance shall be deemed to be an act which results in the hazardous substance being in a misbranded package.

(d) The sale or offering for sale of any hazardous substance contrary to this section or to any rule or order of the department issued under this section.

(e) The sale or offering for sale, in violation of this section, of any article or substance which is a hazardous substance within the meaning of this section or the federal hazardous substances act (15 USC 1261 et seq).

(4) The department may apply to any court of competent jurisdiction for a temporary or permanent injunction restraining any person from violating sub. (3); irrespective of whether or not there exists an adequate remedy at law.

(5) If the department has reasonable cause to believe that any substance is in violation of this section or poses an imminent hazard to public health or safety, it may deliver to the owner or custodian thereof an order prohibiting the sale or movement of such substance until an analysis or examination has been completed. Such holding order is not effective for more than 14 days from the time of delivery thereof. The substance described in any such holding order may not be sold or moved for any purpose without the approval of the department. If the department, after analysis or examination, determines that the substance described in such order is not in violation of this section, it shall promptly notify the owner or custodian thereof and such notice shall terminate the holding order. If the analysis or examination shows that the substance is in violation of this section, the owner or custodian thereof shall be so notified in writing within the effective time of the holding order. Upon receipt of such notice the owner or custodian may dispose of the substance only as authorized by the department. The owner or custodian of the substance or article may within 10 days of receipt of such notice petition for a hearing as provided in s. 93.18.

(6) Nothing in this section shall affect the application of any law of this state specifically regulating any substance regulated by this section.

(7) Any manufacturer, distributor or retailer of a misbranded or banned package containing a hazardous substance shall, on demand of any person purchasing such products from it, if the package is misbranded at the time of sale or banned, repurchase such product and refund the full purchase price thereof to the purchaser making the demand for refund. If the purchaser is required to return the product to the manufacturer, distributor or retailer as a condition to the repurchase and refund, the purchaser shall be reimbursed for any reasonable and necessary charges incurred in its return.

(8) Whoever violates this section may be fined not more than \$5,000 or imprisoned not more than one year in the county jail or both.

History: 1975 c. 94 s. 91 (10); 1975 c. 117; 1983 a. 189 ss. 140, 141, 329 (20); 1991 a. 39; 1993 a. 34; 1995 a. 225, 448.

Federal preemption—The consumer product safety act of 1976 and its effect on Wisconsin law. 1977 WLR 813.

100.38 Antifreeze. (1) DEFINITION. “Antifreeze” includes all substances intended for use as the cooling medium, or to be added to the cooling liquid, in the cooling system of internal combustion engines in order to prevent freezing of the cooling liquid, or to lower its freezing point.

(2) ADULTERATION. An antifreeze is adulterated if:

(a) It consists in whole or in part of any substance which will render it injurious to the cooling system of an internal combustion engine; or

(b) It will make the operation of an engine dangerous to the user; or

(c) Its strength, quality or purity falls below the standards represented.

(3) MISBRANDING. An antifreeze shall be deemed to be misbranded if:

(a) Its labeling is false or misleading in any particular; or

(b) When in package form it does not bear a label containing the name and place of business of the manufacturer, packer, seller or distributor, together with an accurate statement of the quantity of the content in terms of weight and measure on the outside of the package; or

(c) It does not bear a statement warning of any hazard of substantial injury to human beings which may result from the intended use or reasonably foreseeable misuse of the antifreeze, and which complies with the requirements of s. 100.37.

(5) INSPECTION. The department shall enforce this section by inspection, chemical analyses or any other appropriate method and the department may promulgate such rules as are necessary to effectively enforce this section.

(6) ENFORCEMENT. It is unlawful to sell any antifreeze which is adulterated or misbranded. In addition to the penalties provided under sub. (7), the department may bring an action to enjoin violations of this section.

(7) PENALTY. Any person violating this section may be fined not less than \$50 or not more than \$500 for each offense.

History: 1971 c. 40 s. 93; 1979 c. 89, 342.

100.41 Flammable fabrics. (1) DEFINITIONS. In this section:

(a) “Article of wearing apparel” means any costume or article of clothing worn or designed to be worn by individuals.

(b) “Clear and present hazard” means a hazard found by the department to constitute a demonstrable danger to human safety, life or property.

(c) “Fabric” means any material woven, knitted, felted or otherwise produced from or in combination with any natural or synthetic fiber, film or substitute therefor which is manufactured

or designed for use and may reasonably be expected to be used in any product or to cover any product.

(d) “Federal act” means the federal flammable fabrics act, [15 USC 1191](#) et seq.

(e) “Furnishing” means any type of furnishing made in whole or in part of fabric or related material and which is manufactured or designed for use and may reasonably be expected to be used in or around homes, offices or other places of assembly or accommodation.

(f) “Product” means any article of wearing apparel, fabric or furnishing, including tents, awnings and knapsacks.

(g) “Related material” means paper, plastic, rubber, synthetic film or synthetic foam which is manufactured or designed for use or which may reasonably be expected to be used in or on any product.

(2) STANDARDS OF FLAMMABILITY. The department may by rule prescribe standards of flammability that have been promulgated pursuant to the federal act.

(3) PROHIBITED ACTS. No person may manufacture for sale, sell or offer for sale in this state any furnishing, product, fabric or related material in violation of this section or of any standards or rules adopted by the department under this section, or which fails to conform with applicable standards under the federal act.

(4) RULES. In addition to standards of flammability, the department may by rule prescribe labeling requirements that have been established by rules promulgated pursuant to the federal act, and may ban the sale of any product or material if it finds that its flammability is such as to constitute a clear and present hazard to personal safety or property.

(5) REMOVAL FROM SALE. The department may summarily ban the sale or distribution of any furnishing, fabric, product or related material if it finds that the hazard of flammability is so great that such hazard should not be permitted to continue prior to the time a hearing can be held. The department shall follow the procedure specified in [s. 93.18 \(3\)](#).

History: 1975 c. 117.

100.42 Product safety. (1) DEFINITIONS. In this section:

(a) “Aircraft” has the meaning given under [s. 114.002 \(3\)](#).

(b) “Boat” has the meaning given under [s. 30.50 \(2\)](#).

(c) “Consumer product” means any article, or component part thereof, produced or distributed for sale, or sold to consumers for personal use, consumption or enjoyment in or around the home, or for recreational or other purposes; but does not include bullets or other ammunition, or gun powder for reloading ammunition, motor vehicles or motor vehicle equipment, aircraft or aircraft equipment, boats or marine equipment, pesticides, hazardous substances, food and drugs, including animal feeds and drugs, or other products to the extent that they are regulated under other state or federal laws, or the state is specifically preempted from further regulation under federal law.

(d) “Drug” has the meaning given under [s. 450.01 \(10\)](#).

(e) “Federal act” means the federal consumer product safety act, [15 USC 2051](#) et seq.

(f) “Food” has the meaning given under [s. 97.01 \(6\)](#).

(g) “Labeling” means all labels and other written, printed or graphic matter on or attached to or accompanying any consumer product.

(h) “Motor vehicle” has the meaning given under [s. 340.01 \(35\)](#).

(i) “Pesticide” has the meaning given under [s. 94.67 \(25\)](#).

(2) SAFETY STANDARDS. The department may by rule adopt consumer product safety standards that have been promulgated pursuant to the federal act.

(3) REMOVAL FROM SALE: REPAIR OR REPLACEMENT. (a) The department may summarily ban the sale of any consumer product manufactured, sold or distributed in violation of this section or any

rule adopted under this section, or which presents an unreasonable risk of injury or imminent hazard to the public health, welfare and safety. Any such product may be summarily banned notwithstanding the existence of applicable safety standards or action taken toward the development or adoption of a standard. The department shall follow the procedure specified in [s. 93.18 \(3\)](#).

(b) If the department determines that a product presents a substantial hazard or risk of injury, the department may, after notice and opportunity for hearing under [s. 93.18](#), order the manufacturer, distributor or retailer of such product:

1. To bring such product into compliance with requirements of applicable consumer product safety standards, to recall such product or to repair any defects in products which have been sold;

2. To replace such product with a like or equivalent product which complies with applicable consumer product safety standards or which does not contain the defect; or

3. To refund the purchase price of the product.

(4) PROHIBITED ACTS; ENFORCEMENT. No person may manufacture, sell or distribute for sale any consumer product which is not in compliance with applicable consumer product safety standards under the federal act or rules of the department, or which has been banned as a hazardous product or ordered from sale by the department. No person may fail or refuse to comply with an order under sub. (3) (b) or any other rule or order under this section. In addition to other penalties and enforcement procedures, the department may apply to any court of competent jurisdiction for a temporary or permanent injunction restraining any person from violating this section or rules adopted under this section.

(5) EXEMPTIONS. Except with respect to a consumer product which is the subject of a temporary or permanent injunction or an order of the department banning its manufacture, sale or distribution, sub. (4) does not apply to any person who holds a certificate issued in accordance with section 14 (a) of the federal act to the effect that such consumer product conforms to all applicable consumer product safety standards under such act, unless such person knows that such consumer product does not conform; or to any person who relies in good faith on the representation of the manufacturer or distributor of such product that the product is not subject to an applicable safety standard under the federal act.

History: 1975 c. 117; 1977 c. 106 s. 15; 1981 c. 20 s. 2202 (51) (a); 1983 a. 27 s. 2202 (38); 1983 a. 189 s. 329 (20); 1985 a. 146 s. 8.

Federal preemption—The consumer product safety act of 1976 and its effect on Wisconsin law. 1977 WLR 813.

100.43 Packaging standards; poison prevention.

(1) DEFINITIONS. In this section:

(a) “Cosmetic” means articles other than soap, applied to the human body or any part thereof for cleansing, beautifying, promoting attractiveness, or altering the appearance, or any component of any such article.

(b) “Drug” has the meaning given under [s. 450.01 \(10\)](#), and includes animal drugs.

(c) “Federal act” means the federal poison prevention packaging act, [15 USC 1471](#) et seq.

(d) “Food” has the meaning given under [s. 97.01 \(6\)](#), and includes animal feeds.

(e) “Hazardous substance” has the meaning given under [s. 100.37 \(1\) \(c\)](#).

(f) “Household substance” means any substance customarily produced, distributed for sale, or sold to individuals for consumption or use in or about the household, or which is customarily kept or stored by individuals in or about the household, and which is a hazardous substance, a pesticide, a food, drug or cosmetic, or a substance intended for use as fuel when stored in a portable container and used in the heating, cooking, or refrigeration system of a house.

(g) “Labeling” means all labels and other written, printed, or graphic matter upon any household substance or its package, or accompanying such substance.

(h) “Package” means the immediate container or wrapping in which any household substance is contained for consumption, use or storage by individuals in or about the household and, for purposes of labeling conventional packaging under sub. (3), includes any outer container or wrapping used for retail display of any such substance to consumers. The term does not apply to shipping containers or wrappings used solely for the transportation of household substances in bulk or quantity to manufacturers, packers, or processors, or to wholesale or retail distributors thereof, or to containers or wrappings used by retailers to ship or deliver household substances to consumers, unless they are the only containers or wrappings used to ship or deliver the household substance to the consumer.

(i) “Pesticide” has the meaning given under s. 94.67 (25).

(j) “Special packaging” means packaging designed or constructed to make it significantly difficult for children under 5 years of age to open or obtain a toxic or harmful amount of the household substance contained therein within a reasonable time, but which may be readily opened by normal adults.

(2) PACKAGING STANDARDS. The department may by rule adopt special packaging standards that have been promulgated pursuant to the federal act.

(3) CONVENTIONAL PACKAGING EXEMPTIONS. (a) The manufacturer or packer of a household substance subject to special packaging standards may, as necessary to make such substance available to elderly or handicapped persons unable to use such substances when packaged in compliance with such standards, package any household substances subject to such standards in conventional packaging of a single size which does not comply with such standard if:

1. The manufacturer or packer also supplies such substance in packages which comply with applicable standards; and

2. The packages bear conspicuous labeling stating: “This package for households without young children”, or such other statement as may be prescribed under applicable standards.

(b) If it is determined that a household substance packaged in noncomplying package is not also being supplied by the manufacturer or packer in popular size packages which comply with special packaging standards, the department may by special order require the manufacturer or packer of such substance to package it exclusively in special packaging complying with applicable standards.

(c) A household substance, subject to special packaging standards, which is dispensed pursuant to a prescription of a physician, dentist, or other licensed medical practitioner may be sold in conventional or noncomplying packages when directed in such prescription or requested by the purchaser.

(4) PROHIBITED ACTS; ENFORCEMENT. (a) No person may manufacture, distribute or sell any household substance which is not packaged in compliance with applicable special packaging standards under the federal act or rules of the department. No person may violate this section or any rule or order issued under this section.

(b) The department may summarily ban the sale or distribution of any household substance which is sold or offered for sale in violation of this section or of any rules or order issued under this section. The department shall follow the procedure specified in s. 93.18 (3).

(c) The department may apply to any court of competent jurisdiction for a temporary or permanent injunction restraining any person from violating this section, or any rule or order issued under this section.

History: 1975 c. 117; 1977 c. 106 s. 15; 1977 c. 272; 1983 a. 189 s. 329 (20); 1985 a. 146 s. 8.

100.44 Identification and notice of replacement part manufacturer. (1) DEFINITIONS. In this section:

(a) “Motor vehicle” means any motor-driven vehicle required to be registered under ch. 341 or exempt from registration under s. 341.05 (2), including a demonstrator or executive vehicle not titled or titled by a manufacturer or a motor vehicle dealer. “Motor vehicle” does not mean a moped, semitrailer or trailer designed for use in combination with a truck or truck tractor.

(b) “Replacement part” means a replacement for any of the nonmechanical sheet metal or plastic parts that generally constitute the exterior of a motor vehicle, including inner and outer panels.

(2) IDENTIFICATION ON REPLACEMENT PART. A replacement part that is not made by or for a person who manufactures motor vehicles shall have the logo or name of the manufacturer of the replacement part affixed to or inscribed on the replacement part. The logo or name shall be placed on the replacement part so that to the extent practicable it is visible after installation.

(3) SALE OF UNLABELED REPLACEMENT PARTS. On or after January 1, 1993, no person may sell in this state or deliver for sale in this state a replacement part that is not made by or for a person who manufactures motor vehicles unless the replacement part identifies its manufacturer as required under sub. (2).

(4) PENALTY. Any person who violates sub. (3) may be required to forfeit not more than \$500 for each violation. Each day of violation constitutes a separate offense.

(5) ENFORCEMENT. For any violation of sub. (3), the department may, on behalf of the state, bring an action in any court of competent jurisdiction for the recovery of forfeitures authorized under sub. (4), for temporary or permanent injunctive relief and for any other appropriate relief. The court may make any order or judgment that is necessary to restore to any person any pecuniary loss suffered because of a violation of sub. (3) if proof of the loss is shown to the satisfaction of the court.

History: 1991 a. 176.

100.45 Mobile air conditioners. (1) DEFINITIONS. In this section:

(a) “Approved refrigerant recovery equipment” means equipment that the department or an independent standards testing organization approved by the department determines will minimize the release of ozone-depleting refrigerant when the equipment is used to transfer ozone-depleting refrigerant from mobile air conditioners into storage tanks.

(ad) “Approved refrigerant recycling equipment” means equipment that the department or an independent standards testing organization approved by the department determines will treat ozone-depleting refrigerant removed from a mobile air conditioner so that the ozone-depleting refrigerant meets the standard of purity for recycled refrigerant from mobile air conditioners established under sub. (5) (a) 1.

(ag) “Distributor” has the meaning given in s. 218.01 (1) (e).

(ar) “Manufacturer” has the meaning given in s. 218.01 (1) (L), except that, if more than one person satisfies the definition in s. 218.01 (1) (L) with respect to a motor vehicle, “manufacturer” means the person who installs the mobile air conditioner that is in the motor vehicle when the motor vehicle is distributed for sale in this state.

(b) “Mobile air conditioner” means mechanical vapor compression refrigeration equipment used to cool the driver or passenger compartment of a motor vehicle.

(c) “Motor vehicle” has the meaning given in s. 340.01 (35).

(d) “Ozone-depleting refrigerant” means a substance used in refrigeration that is or contains a class I substance, as defined in 42 USC 7671 (3) or a class II substance, as defined in 42 USC 7671 (4).

(e) “Trailer refrigeration equipment” means mechanical vapor compression refrigeration equipment used to cool a trailer designed for carrying property wholly on its own structure and for being drawn by a motor vehicle.

(2) DISTRIBUTION OF MOBILE AIR CONDITIONERS. (a) 1. Beginning on January 1, 1994, and ending on December 31, 1994, a manufacturer or distributor may not distribute for sale in this state a mobile air conditioner that contains ozone-depleting refrigerant and that is original equipment in a new motor vehicle unless at least 25% of the new motor vehicles distributed in the United States by that manufacturer or distributor during November and December 1993 are not equipped with mobile air conditioners that contain ozone-depleting refrigerant.

2. Beginning on January 1, 1995, and ending on December 31, 1995, a manufacturer or distributor may not distribute for sale in this state a mobile air conditioner that contains ozone-depleting refrigerant and that is original equipment in a new motor vehicle unless at least 50% of the new motor vehicles distributed in the United States by that manufacturer or distributor during November and December 1994 are not equipped with mobile air conditioners that contain ozone-depleting refrigerant.

3. After December 31, 1995, a manufacturer or distributor may not distribute for sale in this state a mobile air conditioner that contains ozone-depleting refrigerant and that is original equipment in a new motor vehicle.

(b) After December 31, 1991, the department may waive the application of par. (a) to a manufacturer or distributor for a period of one year if any of the following applies:

1. All substitutes for ozone-depleting refrigerant are toxic and their use is not safe for consumers, industry or the environment.

2. Substitutes for ozone-depleting refrigerant will not be available in sufficient quantities in time for the manufacturer or distributor to meet the requirements under par. (a).

3. An acceptable mobile air conditioner cannot be manufactured in sufficient quantities in time for the manufacturer to meet the requirements under par. (a) and the progress made by the manufacturer or distributor toward meeting the requirements under par. (a) is comparable with the progress made by other manufacturers and distributors toward meeting the requirements under par. (a).

(3) SALE OF REFRIGERANT. (a) After December 31, 1990, no person may sell or offer to sell any ozone-depleting refrigerant in a container holding less than 15 pounds of ozone-depleting refrigerant.

(b) No person may sell or offer to sell new or reclaimed ozone-depleting refrigerant for use in a mobile air conditioner or in trailer refrigeration equipment except to one of the following:

1. A person who intends to resell the ozone-depleting refrigerant.

2. A person who holds an annual registration certificate under sub. (4) (h).

(c) No person may offer to sell, sell or otherwise transfer possession of ozone-depleting refrigerant that was removed from a mobile air conditioner but has not been recycled or reclaimed unless the person does all of the following:

1. Certifies to the department that the person or another person uses approved refrigerant recovery equipment to remove the ozone-depleting refrigerant from mobile air conditioners.

2. Provides to the department upon request the identity of each person to whom it sells or otherwise transfers possession of the recovered ozone-depleting refrigerant.

3. Certifies to the department that it informs each person to whom it sells or otherwise transfers possession of the ozone-depleting refrigerant that the ozone-depleting refrigerant has not been recycled or reclaimed.

4. Certifies that all of the recovered ozone-depleting refrigerant is conveyed in a safe and timely manner to a refrigerant reclamation facility that is recognized by the department.

5. Holds an annual registration certificate from the department.

(4) SERVICING. No person, including a state agency, as defined in s. 234.75 (10), may perform motor vehicle repair that releases or may release ozone-depleting refrigerant from a mobile air conditioner or trailer refrigeration equipment or may install or service a mobile air conditioner or trailer refrigeration equipment that contains ozone-depleting refrigerant unless all of the following apply:

(a) The person does not use ozone-depleting refrigerant for cleaning purposes including to clean the interior or exterior surfaces of mobile air conditioners or trailer refrigeration equipment.

(b) Whenever the person removes ozone-depleting refrigerant from a mobile air conditioner or trailer refrigeration equipment the person pumps the ozone-depleting refrigerant into storage tanks.

(c) The person or another person does one of the following with any used ozone-depleting refrigerant:

1. Recycles the used ozone-depleting refrigerant using approved refrigerant recycling equipment at the establishment where the ozone-depleting refrigerant is removed or at another establishment under common ownership and either reuses the recycled ozone-depleting refrigerant in servicing a mobile air conditioner or trailer refrigeration equipment at one of the establishments under common ownership or sells or otherwise transfers possession of the recycled ozone-depleting refrigerant for conveyance to a refrigerant reclamation facility that is recognized by the department.

2. Removes the used ozone-depleting refrigerant using approved refrigerant recovery equipment and sells or otherwise transfers possession of the recovered ozone-depleting refrigerant in compliance with sub. (3) (c).

(d) The individuals who use the equipment under par. (c) have the qualifications established under sub. (5) (a) 2.

(e) The person does not knowingly or negligently release ozone-depleting refrigerant to the environment, except for minimal releases that occur during efforts to recover or recycle ozone-depleting refrigerant removed from mobile air conditioners or trailer refrigeration equipment.

(f) The person inspects and, if necessary, repairs mobile air conditioners or trailer refrigeration equipment that leaks or is suspected of leaking before putting additional ozone-depleting refrigerant into those mobile air conditioners or trailer refrigeration equipment.

(h) The person holds an annual registration certificate from the department.

(5) DEPARTMENT DUTIES. The department shall do all of the following:

(a) Promulgate rules for the administration of this section including establishing all of the following:

1. A standard of purity for recycled refrigerant from mobile air conditioners that is based on recognized national industry standards.

2. Qualifications, which may include training or certification requirements, for individuals who use approved refrigerant recycling equipment or approved refrigerant recovery equipment to ensure that those individuals use procedures for containment of ozone-depleting refrigerant.

3. Fees to cover the costs of administering subs. (2) (b) and (4).

(b) Identify approved refrigerant recycling equipment and approved refrigerant recovery equipment or approve independent testing organizations that may identify approved refrigerant

recycling equipment and approved refrigerant recovery equipment.

(c) Issue annual registration certificates to persons required to hold those certificates under subs. (3) (b) and (4) (h).

(5e) DEPARTMENT POWERS. The department may promulgate rules providing that any portion of sub. (3) or (4) applies with respect to a substance used as a substitute for an ozone-depleting refrigerant.

(5m) SURCHARGE FOR OPERATING WITHOUT REGISTRATION. An applicant for an annual registration certificate under sub. (5) (c) shall pay a registration fee surcharge of \$160 if the department determines that, within one year before submitting the application, the applicant engaged in an activity for which a registration certificate is required under this section without holding a registration certificate. Payment of the registration fee surcharge does not relieve the applicant from any other civil liability that results from violations of this section, but does not constitute evidence of a violation of law.

(6) PENALTIES. (a) Any person who violates sub. (2) shall be required to forfeit \$1,000. Each motor vehicle distributed in violation of sub. (2) constitutes a violation.

(b) Any person who violates sub. (3) shall be required to forfeit not less than \$50 nor more than \$1,000. Each sale in violation of sub. (3) constitutes a violation.

(c) Any person who violates sub. (4) shall be required to forfeit not less than \$50 nor more than \$1,000. Each repair, installation or servicing in violation of sub. (4) constitutes a violation.

History: 1989 a. 284; 1991 a. 97; 1993 a. 243.

100.46 Energy consuming products. (1) ENERGY CONSERVATION STANDARDS. The department may by rule adopt energy conservation standards for products that have been established in or promulgated under 42 USC 6291 to 6309.

(2) PROHIBITED ACTS; ENFORCEMENT. No person may sell at retail, install or cause to be installed any product that is not in compliance with rules promulgated under sub. (1). In addition to other penalties and enforcement procedures, the department may apply to a court for a temporary or permanent injunction restraining any person from violating a rule adopted under sub. (1).

History: 1993 a. 414.

NOTE: 1993 Wis. Act 414, which creates this section, contains extensive explanatory notes.

100.47 Sales of farm equipment. (1) DEFINITION. In this section, “farm equipment” means a tractor or other machinery used in the business of farming.

(2) SAFETY EQUIPMENT REQUIRED. No person in the business of selling farm equipment may sell farm equipment unless, at the time of sale, the farm equipment is equipped with all of the following:

- (a) A power takeoff master shield, if a tractor.
- (b) A power takeoff driveline shield extending to the 2nd universal joint, if farm equipment powered by a tractor.
- (c) Lights and reflectors meeting the applicable requirements under ch. 347, if farm equipment that can be operated on a highway.
- (d) A slow moving vehicle emblem meeting standards and specifications established under s. 347.245, if farm equipment that can be operated on a highway.

(3) DISCLOSURE. If farm equipment subject to sub. (2) (b) is equipped with a power takeoff shield that is not equivalent to the shield installed at the time of manufacture, the person who sells the farm equipment shall so notify the buyer in writing.

(4) EXCEPTIONS. Subsection (2) does not apply to:

- (a) Sales of farm equipment to another person in the business of selling farm equipment for the purpose of resale.
- (b) Sales of farm equipment for the purpose of salvage.
- (c) Sales by auction, unless the auctioneer holds title to the farm equipment being sold.

(5) PENALTY. Any person who violates this section may be required to forfeit not more than \$500 for each violation.

History: 1993 a. 455; 1993 a. 491 s. 142; Stats. 1993 s. 100.47.

100.50 Products containing or made with ozone-depleting substances. (1) DEFINITIONS. In this section:

- (a) “Class I substance” has the meaning given in 42 USC 7671 (3).
- (b) “Class II substance” has the meaning given in 42 USC 7671 (4).

(2) PRODUCT LABELING. Beginning on August 1, 1994, no person may represent in advertising or on a label that any product that the person manufactures, packages, distributes or sells is “ozone friendly” or use any similar description that implies that the product does not contribute to the depletion of stratospheric ozone if the product contains or is made with a class I substance or a class II substance.

(3) SALE OF PORTABLE FIRE EXTINGUISHERS. Beginning on August 1, 1994, no person may sell or offer to sell a portable fire extinguisher that contains a class I substance except for use by a commercial user.

(4) FIRE-EXTINGUISHING PRODUCTS. Beginning on January 1, 1995, a person may make, package, sell or offer to sell a fire-extinguishing product that contains a class I substance only if the class I substance has been recycled or reclaimed and, in the case of a sale or offer to sell, if sale of the product is not prohibited under sub. (3).

(5) RETURN TO MANUFACTURER. After the sale of a product is prohibited under sub. (3) or (4), a retailer that purchased the product from the manufacturer for resale before the date on which the prohibition takes effect may return the product to the manufacturer and the manufacturer shall refund the purchase price to the retailer.

(6) PENALTY; ENFORCEMENT. (a) Any person who violates sub. (2), (3) or (4) shall be required to forfeit not less than \$250 nor more than \$1,000. Each day on which a person sells or offers to sell in violation of one of those provisions constitutes a separate offense.

(am) If a court imposes a forfeiture under par. (a) on a person for a violation of sub. (2), (3) or (4), the court may order the person to accept the return of the product that is the subject of the violation and to refund the purchase price to the purchaser of that product.

(b) In lieu of or in addition to the remedy under par. (a), the department may seek an injunction restraining any person from violating this section.

(c) The department, or any district attorney upon the request of the department, may commence an action in the name of the state under par. (a) or (b).

History: 1993 a. 243; 1995 a. 27.