CHAPTER 134

MISCELLANEOUS TRADE REGULATIONS

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

History: 1993 a. 482.

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

Discussion of malice as essential element. Malecki v. Fine−Lando Clinic, 162 W (2d) 73, 469 NW (2d) 629 (1991).

A doctor's personal service corporation was merely the alter ego of the doctor. The doctor and the corporation did not constitute "two or more persons" under this section. Wausau Medical Center v. Asplund, 182 W (2d) 274, 514 NW (2d) 34 (Ct. App. 1994).

134.02 Blacklisting and coercion of employes. (1) Any 2 or more persons, whether members of a partnership or company or stockholders in a corporation, who are employers of labor and who shall combine or agree to combine for any of the following purposes shall be fined not less than $100 nor more than $500, which fine shall be paid into the state treasury for the benefit of the school fund:

(a) Preventing any person seeking employment from obtaining employment.

(b) Procuring or causing the discharge of any employe by threats, promises, circulating blacklists or causing blacklists to be circulated.

(c) After having discharged any employe, preventing or attempting to prevent the employe from obtaining employment with any other person, partnership, company or corporation by the means described in par. (a) or (b).

(d) Authorizing, permitting or allowing any of their agents to blacklist any discharged employe or any employe who has voluntarily left the service of his or her employer.

(e) Circulating a blacklist of an employe who has voluntarily left the service of an employer to prevent the employe's obtaining employment under any other employer.

(f) Coercing or compelling any person to enter into an agreement not to unite with or become a member of any labor organization as a condition of his or her securing employment or continuing therein.

(2) (a) Nothing in this section shall prohibit any employer from giving any other employer, to whom a discharged employe has applied for employment, or to any bondsman or surety, a truthful statement of the reasons for the employe's discharge, when requested to do so by any of the following:

1. The discharged employe.

2. The person to whom the discharged employe has applied for employment.

3. Any bondsman or surety.

(b) It shall be a violation of this section to give a statement of the reasons for the employe's discharge with the intent to blacklist, hinder or prevent the discharged employe from obtaining employment.

(c) Nothing contained in this section shall prohibit any employer from keeping for the employer's own information and protection a record showing the habits, character and competency of the employer's employes and the cause of the discharge or voluntary quitting of any of them.

History: 1993 a. 482; 1995 a. 225.

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

History: 1993 a. 482.

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

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

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

History: 1985 a. 30 s. 42; 1993 a. 482.

134.05 Bribery of agent, etc. (1) Whoever corruptly gives, offers or promises to an agent, employe or servant, any gift or gratuity whatever, with intent to influence the agent's, employe's or servant's action in relation to the business of the agent's, employe's or servant's principal, employer or master shall be penalized as provided in sub. (4).

(2) An agent, employe or servant who does any of the following shall be penalized as provided in sub. (4):

(a) Corruptly requests or accepts a gift or gratuity or a promise to make a gift or to do an act beneficial to himself or herself, under an agreement or with an understanding that he or she shall act in any particular manner in relation to the business of the agent's, employe's or servant's principal, employer or master.

(b) Being authorized to procure materials, supplies or other articles either by purchase or contract for his or her principal, employer or master, or to employ service or labor for his or her principal, employer or master, receives directly or indirectly, for himself or herself or for another, a commission, discount or bonus from the person who makes such sale or contract, or furnishes such materials, supplies or other articles, or from a person who renders such service or labor.

(3) A person who gives or offers an agent, employe or servant authorized as described in sub. (2) (b) a commission, discount or bonus of the type described in sub. (2) (b), shall be penalized as provided in sub. (4).

(4) Whoever violates sub. (1), (2) or (3) shall be punished by a fine of not less than $10 nor more than $500, or by such fine and by imprisonment for not more than one year.

History: 1993 a. 482.

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

134.06 Bonus to chauffeurs for purchases, forbidden. It shall be unlawful for any chauffeur, driver or other person having the care of a motor vehicle for the owner to receive or take directly or indirectly without the written consent of such owner any bonus, discount or other consideration for supplies, or parts furnished or purchased for such motor vehicle or upon any work or labor done thereon by others or on the purchase of any motor vehicle for the chauffeur's, driver's or other person's employer and no person furnishing such supplies or parts, work or labor or selling any motor vehicle shall give or offer any such chauffeur or other person having the care of a motor vehicle for the owner thereof, directly or indirectly without such owner's written consent, any bonus, discount or other consideration thereon. Any person violating this section shall be guilty of a misdemeanor and punished by a fine not exceeding $25.

History: 1993 a. 482.

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

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

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

History: 1993 a. 482.

134.11 Invading of right to choose insurance agent or insurer by persons engaged in selling property. (1) Any person engaged in the business of selling real or personal property, and any trustee, director, officer, agent or employe of any such person, who requires, as a condition precedent to the selling of such property, or to the performance of any other act in connection therewith, that the person to whom such property is being sold, negotiate any policy of insurance or renewal thereof covering such property through a particular insurance agent, shall be fined

not less than $50 nor more than $200 or imprisoned not more than 6 months or both.

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

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

History: 1993 a. 482.

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

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

134.16 Fraudulently receiving deposits. Any officer, director, stockholder, cashier, teller, manager, messenger, clerk or agent of any bank, banking, exchange, brokerage or deposit company, corporation or institution, or of any person, company or corporation engaged in whole or in part in banking, brokerage, exchange or deposit business in any way, or any person engaged in such business in whole or in part who shall accept or receive, on deposit, or for safekeeping, or to loan, from any person any money, or any bills, notes or other paper circulating as money, or any notes, drafts, bills of exchange, bank checks or other commercial paper for safekeeping or for collection, when he or she knows or has good reason to know that such bank, company or corporation or that such person is unsafe or insolvent shall be imprisoned in the Wisconsin state prisons not more than 10 years nor less than one year or fined not more than $10,000.

History: 1977 c. 418.

134.17 Corporate name, recording, amendment, discontinuance, unlawful use. (1) Any person who engages in or advertises any mercantile or commission business under a name purporting or appearing to be a corporate name, with the intent to obtain credit, and which name does not disclose the real name of one or more of the persons engaged in the business, without first recording in the office of the register of deeds of the county in which his or her principal place of business is located, a verified statement disclosing and showing the name of all persons using the name, shall be fined not more than $1,000 or imprisoned in the county jail for not more than one year.

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

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

(4) For each recording, the register of deeds shall receive the fee specified for filing under s. 59.43 (2) (ag).

History: 1981 c. 245; 1993 a. 301; 1995 a. 201.

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

134.19 Fraud on exemption laws. Any person who shall, whether as principal, agent or attorney, with intent thereby to deprive any bona fide resident of this state of the resident's rights under the statutes thereof relating to the exemption of property or earnings from sale or garnishment, send or cause to be sent out of this state any claim for debt for the purpose of having the same collected by proceedings in attachment, garnishment or other mesne process, when the creditor and debtor and the person or corporation owing the debtor the money intended to be reached by any such proceedings are within the jurisdiction of the courts of this state; or who directly or indirectly assigns or transfers any claim for debt against such a resident for the purpose of having the same collected by such proceedings or any of them out of the wages or personal earnings of the debtor or of the debtor's minor children, whose earnings contribute to the support of the debtor's family, in courts without this state, when the creditor and debtor and person or corporation owing the money intended to be reached by such proceedings are each and all within the jurisdiction of the courts of this state, shall be fined not more than $50 nor less than $10 for each offense.

History: 1993 a. 482.

134.20 Fraudulent issuance or use of warehouse receipts or bills of lading. (1) Whoever, with intent to defraud, does any of the following shall be fined not more than $5,000 or imprisoned not more than 5 years, or both:

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

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

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

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

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

(f) In any manner removes beyond the immediate control of a warehouse keeper or carrier any goods covered by a warehouse receipt or bill of lading issued by such warehouse keeper or carrier, contrary to the terms and meaning of such receipt or bill and without the consent of the holder thereof.

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

(2) In this section:

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

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

History: 1983 a. 500 s. 43; 1993 a. 482; 1995 a. 225.

134.205 Warehouse keepers to keep register; liability for damages; penalty for fraud. (1) Every warehouse keeper shall keep in the office in which the business of the warehouse is transacted a register in which shall be entered with reference to each receipt issued, the facts specified in s. 407.202 (2). When the warehouse keeper ceases to be responsible for the delivery of the property described in the receipt, the fact and date of the delivery of the property and such other facts as may terminate liability on such receipt shall be entered in such register in connection with the original entry.

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

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

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

History: 1983 a. 500 s. 43; 1993 a. 482.

134.21 Penalty for unauthorized presentation of dramatic plays, etc. Any person who sells a copy or a substantial copy, or who causes to be publicly performed or represented for profit, any unpublished or undedicated dramatic play or musical composition, known as an opera, without the written consent of its owner or proprietor, or, who, knowing that such dramatic play or musical composition is unpublished or undedicated, and, without the written consent of its owner or proprietor, permits, aids, or takes part in such a performance or representation, shall be guilty of a misdemeanor, and upon conviction thereof shall be fined not less than $5 nor more than $100, or by imprisonment not exceeding 60 days.

134.22 Ticket refunds. (1) In this section:

(a) "Originally scheduled date" means the date on which an entertainment or sporting event is scheduled to be held when a ticket for the event is purchased from the promoter of the event or the promoter's agent.

(b) "Promoter" means a person who arranges, publicly promotes and causes the public offering for sale of tickets to an entertainment or sporting event. "Promoter" does not include a person whose only financial interest in an entertainment or sporting event is as a ticket seller or as the recipient of rental income for the site of the event.

(c) "Sporting event" does not include a competitive sports activity between school teams or between teams that belong to an established sports league.

(2) (a) Except as provided in pars. (b), (c) and (d), every promoter of an entertainment or sporting event that is not held on the originally scheduled date shall refund to any person who purchased a ticket for the event from the promoter or the promoter's agent for that date the amount paid for the ticket, minus handling and service charges not exceeding $5 or 20% of the amount paid for the ticket, whichever is less, if any of the following applies:

1. The purchaser presents the ticket for an event that is canceled to the promoter or the promoter's agent no later than 90 days after the event is canceled.

2. The purchaser presents the ticket for an event that is rescheduled, or that the promoter represents to the public is being rescheduled, to the promoter or the promoter's agent no later than 30 days after the originally scheduled date.

(b) Notwithstanding par. (a), and except as provided in par. (c), if the promoter of an entertainment or sporting event that is not held on the originally scheduled date is an organization described in section 501 (c) (3) of the internal revenue code that is exempt from federal income tax under section 501 (a) of the internal revenue code, the promoter shall be required to refund only that portion of the ticket price that the promoter attributes to the admission price of the event, minus handling and service charges not exceeding $5 or 20% of that portion of the ticket price, whichever is less, if all of the following apply:

1. The ticket states the portion of the ticket price that the promoter attributes to the admission price of the event and the portion of the ticket price that the promoter attributes to a donation.

2. The ticket states that the law applicable to ticket refunds applies only to the portion of the ticket price that the promoter attributes to the admission price of the event.

(c) No promoter of an entertainment or sporting event who is required to give a ticket refund under this section may deduct service and handling charges from the amount paid for that ticket unless the ticket states, or the promoter informs the purchaser at the time of the ticket sale of, the amount that the promoter may deduct under par. (a) or (b) for handling and service charges.

(cm) Nothing in this subsection requires a promoter or promoter's agent to refund any amount paid by a purchaser for a service provided by the promoter or promoter's agent that is not included in the price of a ticket for an entertainment or sporting event, if the promoter or promoter's agent informs the purchaser when the service is purchased that the amount paid for the service is nonrefundable.

(d) This subsection does not apply to any promoter of an entertainment or sporting event that is not held on the originally scheduled date because of inclement weather.

(3) Every promoter who is required to furnish a refund under sub. (2) shall furnish the refund to the purchaser no later than 60 days after presentation of the ticket by the purchaser to the promoter.

(4) The department of agriculture, trade and consumer protection shall investigate violations of this section. The department of agriculture, trade and consumer protection, or any district attorney upon informing the department of agriculture, trade and consumer protection, may, on behalf of the state, do any of the following:

(a) Bring an action for temporary or permanent injunctive relief in any court of competent jurisdiction for any violation of this section. The relief sought by the department of agriculture, trade and consumer protection or district attorney may include the payment by a promoter into an escrow account of an amount estimated to be sufficient to pay for ticket refunds. The court may, upon entry of final judgment, award restitution when appropriate to any person suffering loss because of violations of this section if proof of such loss is submitted to the satisfaction of the court.

(b) Bring an action in any court of competent jurisdiction for the recovery of a civil forfeiture against any person who violates this section in an amount not less than $50 nor more than $200 for each violation.

History: 1991 a. 121; 1995 a. 27.

134.23 Motion picture fair practices. (1) DEFINITIONS. As used in this section:

(a) "Blind bidding" means offering, bidding for, negotiating for or agreeing to any term for the licensing or exhibition of a

motion picture in this state prior to a trade screening of the motion picture.

(b) "Distributor" means a person who rents, sells, licenses or otherwise distributes to an exhibitor a motion picture for exhibition in this state.

(c) "License agreement" means a contract, agreement, understanding or condition between a distributor and an exhibitor relating to the exhibition of a motion picture in this state.

(d) "Trade screening" means the showing of a motion picture by a distributor in one of the 3 largest cities in this state.

(2) BLIND BIDDING PROHIBITED. A person may not engage in blind bidding.

(3) TRADE SCREENING. (a) Every trade screening shall be open to any exhibitor.

(b) A distributor shall provide reasonable and uniform notice to all exhibitors of all trade screenings.

(4) GUARANTEES PROHIBITED. A license agreement created or renewed after May 18, 1984, which provides for a fee or other payment to a distributor based in whole or in part on the attendance at a theater or the box office receipts of a theater may not contain or be conditioned upon a guarantee of a minimum payment by an exhibitor to the distributor.

(5) INJUNCTIVE RELIEF AND DAMAGES. A person aggrieved by a violation of this section may bring a civil action to enjoin further or continuing violations or to recover actual damages sustained as a result of a violation, together with costs of the action. In an action under this subsection, the court shall award reasonable attorney fees, notwithstanding s. 814.04 (1), to a party who obtains injunctive relief or an award of damages.

History: 1983 a. 454.

134.24 Music royalty collections; fair practices. (1) DEFINITIONS. In this section:

(a) "Copyright owner" means the owner of a copyright that is of a musical work and that is recognized and enforceable under 17 USC 101, et seq. "Copyright owner" does not include the owner of a copyright that is of a motion picture or audiovisual work or that is of part of a motion picture or audiovisual work.

(b) "Department" means the department of agriculture, trade and consumer protection.

(c) "Musical work" means a nondramatic musical work or a work of a similar nature.

(d) "Performing rights society" means an association or corporation that licenses the public performance of musical works on behalf of one or more copyright owners.

(e) "Proprietor" means the owner of a retail establishment or a restaurant.

(f) "Restaurant" includes an inn, bar, tavern or sports or entertainment facility in which the public may assemble and in which musical works may be performed or otherwise transmitted for the enjoyment of the public.

(g) "Royalties" means the fees payable to a copyright owner or performing rights society for the public performance of a musical work.

(2) DUTIES. A performing rights society shall do all of the following:

(a) File annually for public inspection with the department all of the following:

1. A certified copy of each document that is used at the time of filing by the performing rights society to enter into a contract with a proprietor doing business in this state.

2. A list, that is the most current list available at the time of the filing, of the copyright owners who are represented by the performing rights society and of the musical works licensed by the performing rights society.

(b) Make available, upon request of a proprietor, information as to whether a specific musical work is licensed under a contract entered into by the performing rights society and a copyright owner. A proprietor may request this information by telephone or other electronic means.

(c) Make available, upon written request of a proprietor and at the sole expense of a proprietor, any of the information required to be on file under par. (a).

(3) DISCLOSURE REQUIREMENTS. (a) No performing rights society may offer to enter into, or offer to enter into, a contract for the payment of royalties by a proprietor unless the performing rights society, at the time of the offer or between the time of the offer and 72 hours before the execution of the contract, provides to the proprietor a written notice of all of the obligations of the performing rights society as specified under sub. (2). The written notice shall also contain a statement as to whether the performing rights society is in compliance with any applicable federal law or court order that relates to the rates and terms of royalties to be paid by the proprietor or that relates to the circumstances or methods under which contracts subject to this section are offered to the proprietor.

(b) No performing rights society may make an incomplete or false disclosure in the written notice required under par. (a).

(4) CONTRACT REQUIREMENTS. (a) A contract entered into or renewed in this state by a proprietor and a performing rights society for the payment of royalties shall be in writing and signed by the parties.

(b) The information in the contract shall include all of the following:

1. The proprietor's name and business address and the name and location of each retail establishment and restaurant to which the contract applies.

2. The name of the performing rights society.

3. The length of the contract.

4. The schedule of rates and terms of the royalties to be collected under the contract, including any sliding scale or schedule for any increase or decrease of the rates during the term of the contract.

(5) PROHIBITED PRACTICES. No employe or agent of a performing rights society may do any of the following:

(a) Enter the business premises of a proprietor to discuss a contract under this section with the proprietor or his or her employes, without identifying himself or herself and making known the purpose of the visit before commencing any further communication with the proprietor or the proprietor's employes.

(b) Engage in any coercive conduct, act or practice that disrupts the business premises of a proprietor in a substantial manner.

(c) Use or attempt to use any deceptive act or practice in negotiating a contract with a proprietor or in collecting royalties from a proprietor.

(d) Fail to comply with the requirements imposed under subs. (2), (3) and (4).

(6) CIVIL REMEDY. Any person damaged as a result of a violation of this section may bring a civil action to recover damages, court costs and, notwithstanding s. 814.04 (1), reasonable attorney fees. The person may also request in the action any other legal or equitable relief.

(7) OTHER RIGHTS AND REMEDIES. This section does not limit any other right or remedy provided by law.

History: 1995 a. 284.

134.25 Misbranding of gold articles. (1) Any person, firm, corporation or association, who or which makes for sale, or sells, or offers to sell or dispose of, or has in his, her or its possession with intent to sell or dispose of, any article of merchandise made in whole or in part of gold or any alloy of gold, and having stamped, branded, engraved or imprinted thereon, or upon any tag, card or label attached thereto, or upon any box, package, cover or wrapper in which said article is encased or enclosed any mark, indicating or designed or intended to indicate, that the gold or alloy of gold in such article is of a greater degree of fineness than the actual fineness or quality of such gold or alloy, unless the

actual fineness of such gold or alloy, in the case of flat ware and watch cases, be not less by more than three one−thousandths parts, and in the case of all other articles be not less by more than one−half karat than the fineness indicated by the marks stamped, branded, engraved or imprinted upon any part of such article, or upon any tag, card or label attached thereto, or upon any box, package, cover or wrapper in which such article is encased or enclosed, according to the standards and subject to the qualifications hereinafter set forth, is guilty of misdemeanor.

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

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

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

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

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

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

134.28 Misbranding of base silver articles. Any person, firm, corporation or association, who or which makes for sale, or sells, or offers to sell or dispose of, or has in his, her or its possession with intent to sell or dispose of, any article of merchandise made in whole or in part of silver or of any alloy of silver, and having stamped, branded, engraved or imprinted thereon, or upon any tag, card or label attached thereto, or upon any box, package, cover or wrapper in which said article is encased or enclosed, any mark or word (other than the word "sterling" or the word "coin") indicating, or designed or intended to indicate, that the silver or alloy of silver in said article, is of a greater degree of fineness than the actual fineness or quality of such silver or alloy, unless the actual fineness of the silver or alloy of silver of which said article is composed be not less by more than four one−thousandths parts than the actual fineness indicated by the said mark or word (other than the word "sterling" or "coin") stamped, branded, engraved or imprinted upon any part of said article, or upon any tag, card or label attached thereto, or upon any box, package, cover or wrapper in which said article is encased or enclosed, subject to the qualifications hereinafter set forth, is guilty of a misdemeanor.

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

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

134.30 Misbranding of gold plated articles. Any person, firm, corporation or association, who or which makes for sale, or sells or offers to sell or dispose of, or has in his, her or its possession with intent to sell or dispose of, any article of merchandise made in whole or in part of inferior metal having deposited or plated thereon or brazed or otherwise affixed thereto a plate, plating, covering or sheet of gold or of any alloy of gold, and which article is known in the market as "rolled gold plate," "gold plate," "gold filled" or "gold electroplate," or by any similar designation, and having stamped, branded, engraved or imprinted thereon, or upon any tag, card or label attached thereto, or upon any box, package, cover or wrapper in which said article is encased or enclosed, any word or mark usually employed to indicate the fineness of gold, unless said word be accompanied by other words plainly indicating that such article or some part thereof is made of rolled gold plate, or gold plate, or gold electroplate, or is gold filled, as the case may be, is guilty of a misdemeanor.

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

134.32 Penalty for violations of sections 134.25 to 134.32. Every person, firm, corporation or association guilty of a violation of any one of the provisions of ss. 134.25 to 134.32, and every officer, manager, director or managing agent of any such person, firm, corporation or association, directly participating in such violation or consenting thereto, shall be punished by a fine

of not more than $500 nor less than $25, or imprisonment for not more than 3 months, or both, at the discretion of the court.

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

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

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

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

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

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

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

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

(3) TRADEMARK. If there is any quality mark printed, stamped or branded on the article itself, there must also be printed, stamped or branded on the said article itself the following mark, to wit: A trademark duly applied for or registered under the laws of the United States of the manufacturer of such article; except that if such manufacturer has sold or contracted to sell such article to a jobber, wholesaler or retail dealer regularly engaged in the business of buying and selling similar articles, this provision shall be deemed to be complied with if there is so marked on the said article the trademark duly registered under the laws of the United States of such jobber, wholesaler or retail dealer respectively; and in such event there may also be marked on the said article itself numerals intended to identify the articles, design or pattern provided, however, that such numerals do not appear or purport to be a part of the quality mark and provided that they are not calculated to mislead or deceive anyone into believing that they are part of the quality mark.

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

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

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

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

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

(c) An article consisting of at least nine hundred eighty−five thousandths parts of platinum, iridium, palladium, ruthenium, rhodium or osmium, where solder is not used and at least nine hundred fifty thousandths parts of said metals where solder is used, provided more than five hundred thousandths parts of said article consist of pure platinum, may be marked with the word "platinum," provided that said word is immediately preceded by a decimal fraction in one−thousandths showing the platinum content in proportion to the content of the entire article, and further provided that said mark "platinum" be followed by the name or abbreviation as herein allowed, of such one or more of the following metals, to wit: iridium, palladium, ruthenium, rhodium or osmium, that may be present in the article in quantity of more than fifty−thousandths parts of the entire article. The name of such other metal or metals other than platinum, however, shall each be immediately preceded by a decimal fraction in one−thousandths showing the content of such other metal or metals in proportion to the entire article, as for example, 600 plat., 350 pall., or 500 plat., 200 pall., 150 ruth., 100 rhod.

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

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

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

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

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

4. The mark shall be so applied that the karat mark shall immediately precede the platinum mark, as for example, "14 K & Plat.", "18 K & Plat.", as the case may be, it being expressly provided that in case the percentage of platinum exceeds the 5% provided herein, the quality mark may also include a declaration of the percentage of platinum, as for example, "18 K & 1/10th Plat.", or "14 K & 1/8th Plat.", or as the case may be.

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

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

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

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

(8) PENALTIES. Any person, firm, partnership, corporation or association or any officer, director, employe or agent thereof who makes, or sells, or offers to sell, or disposes of, or has in his or her or its possession, with intent to sell or dispose of, any article as herein defined to which is applied any quality mark which does not conform to all the provisions of this section, or from which is omitted any mark required by this section, shall be guilty of a misdemeanor and upon conviction thereof shall be punished by a fine of not more than $1,000 or by imprisonment for not more than 6 months, or by both such fine and imprisonment in the discretion of the court, provided, however, that it shall be a defense to any prosecution under this section for the defendant to prove that the said article was manufactured and marked with the intention of and for purposes of exportation from the United States, and that the said article was either actually exported from the United States to a foreign country within 6 months after date of manufacture thereof with the bona fide intention of being sold in the said country and of not being reimported, or that it was delivered within 6 months after date of manufacture thereof, to a person, firm or corporation whose exclusive customary business is the exportation of such articles from the United States.

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

History: 1979 c. 89; 1981 c. 390 s. 252; 1983 a. 189; 1993 a. 482.

134.34 Duplication of vessel hulls and parts. (1) In this section:

(a) "Direct molding process" means any direct molding process in which the original manufactured vessel hull or component part of a vessel is itself used as a plug for the making of the mold, which is then used to manufacture a duplicate item.

(b) "Mold" means a matrix or form in which a substance or material is shaped.

(c) "Plug" means a device or model used to make a mold for the purpose of exact duplication.

(2) No person may use the direct molding process to duplicate for the purpose of sale a manufactured vessel hull or component part of a vessel made by another person without the written permission of that other person.

(3) No person may knowingly sell a vessel hull or component part of a vessel duplicated in violation of sub. (2).

(4) This section applies only to vessel hulls or component parts of vessels duplicated using a mold made after June 30, 1983.

(5) A person who suffers injury or damage as the result of a violation of this section may bring an action in circuit court for an injunction prohibiting the violation. In addition, the person shall be entitled to actual damages incurred as a result of the violation, reasonable attorney fees and costs, notwithstanding s. 814.04 (1).

History: 1983 a. 324.

134.345 Form retention and disposal. (1) In this section:

(a) "Customer" means any person who causes a molder to make a form or to use a form to make a product.

(b) "Form" means an object in or around which material is placed to make a mold for pouring plastic or casting metal, and includes a mold, die or pattern.

(c) "Molder" means any person who makes a form or who uses a form to make a product.

(2) Unless a customer and a molder otherwise agree in writing a molder may, as provided in sub. (3), dispose of a form possessed by a customer if the customer does not take from the molder physical custody of the form within 3 years after the molder's last prior use of the form.

(3) A molder who wishes to dispose of a form shall send written notice by registered mail with return receipt requested to the customer's last−known address and to any address set forth in the agreement under which the molder obtained physical custody of the form. The notice shall state that the molder intends to dispose of the form. The molder may dispose of the form without liability to the customer if, within 120 days after the molder receives the return receipt of the notice or within 120 days after the molder sends notice if no return receipt is received within that period, the customer does not take physical custody of the form or enter into an agreement with the molder for taking possession or physical custody of the form.

History: 1987 a. 399.

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

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

134.36 Telegraph; divulging message; preference in sending, etc. Any officer or other person connected with, or in the business or management of, any telegraph company doing business in this state who shall divulge or communicate any telegraph message or dispatch or the substance or any part thereof, except to the person entitled to receive the same, or who shall give unlawful preference in the sending, transmitting or receiving of telegraph messages or dispatches, or shall wilfully fail or neglect to give preference to dispatches or messages in the order of time

in which applications are received shall be punished by imprisonment in the county jail not more than one year or by fine not exceeding $500.

134.37 Divulging message or forging receipt. Any person connected with a telegraph or messenger company, incorporated or unincorporated, operating a line of telegraph or engaged in the business of receiving and delivering messages in this state, in any capacity, who wilfully divulges the contents, or the nature of the contents of a private communication entrusted to the person for transmission or delivery, or who wilfully refuses or neglects to transmit or deliver the same, or who wilfully forges the name of the intended receiver to a receipt for any such message or communication or article of value entrusted to the person by said company, shall be imprisoned in the county jail, not exceeding one year, or be fined not to exceed $500, in the discretion of the court.

History: 1993 a. 482.

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

History: 1979 c. 89.

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

History: 1993 a. 482.

134.40 Injury to wires by removal of building, etc. (1) Except as provided under sub. (2), any person having the right so to do who shall wilfully remove or change any building or other structure or any timber, standing or fallen, to which any telegraph, telecommunications, electric light or electric power lines or wires are in any manner attached, or cause the same to be done, which shall destroy, disturb or injure the wires, poles or other property of any telegraph, telecommunications, electric light or electric power company transacting business in this state, without first giving to such company, at its office nearest to such place of injury, at least 24 hours' previous notice thereof, shall be imprisoned not more than 30 days or fined not more than $50. And any person who shall unlawfully break down, interrupt or remove any telegraph, telecommunications, electric light or electric power line or wire or destroy, disturb, interfere with or injure the wires, poles or other property of any telegraph, telecommunications, electric light or electric power company in this state shall be imprisoned not more than 3 months or fined not more than $100.

(2) This section does not apply to any person who is lawfully using a land survey marker for land surveying purposes no more than 30 inches below ground level.

History: 1985 a. 187, 297, 332.

134.41 Poles and wires on private property without owner's consent. (1) No person nor any officer, agent, servant or employe of any firm or corporation shall erect any pole or poles outside of the limits of any highway, street or alley or attach any wire or cables to any tree, building or structure, or string or suspend any wire, wires or cables over any private property without first obtaining the consent of the owner or agent of the owner, to erect such pole or poles or to string such wire or wires, or the consent of the owner or agent of the owner of any building or structure to which such wire, wires or cables are attached; and any person who shall fail to remove such pole, poles, wire or wires or to detach such wire, wires or cables within 10 days after such person, firm or corporation has been served with a notice to remove, as hereinafter provided, shall be deemed guilty of a misdemeanor and upon conviction thereof shall be fined in any sum not exceeding $25.

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

134.42 Cable television subscriber rights. (1) DEFINITIONS. In this section:

(a) "Cable operator" has the meaning given in s. 66.082 (2) (b).

(b) "Cable service" has the meaning given in s. 66.082 (2) (c).

(2) RIGHTS. (a) A cable operator shall repair cable service within 72 hours after a subscriber reports a service interruption or requests the repair if the service interruption is not the result of a natural disaster.

(b) Upon notification by a subscriber of a service interruption, a cable operator shall give the subscriber a credit for one day of cable service if cable service is interrupted for more than 4 hours in one day and the interruption is caused by the cable operator.

(bm) Upon notification by a subscriber of a service interruption, a cable operator shall give the subscriber a credit for each hour that cable service is interrupted if cable service is interrupted for more than 4 hours in one day and the interruption is not caused by the cable operator.

(c) A cable operator shall give a subscriber at least 30 days' advance written notice before deleting a program service from its cable service. A cable operator is not required to give the notice under this paragraph if the cable operator makes a channel change because of circumstances beyond the control of the cable operator.

(d) A cable operator shall give a subscriber at least 30 days' advance written notice before instituting a rate increase.

(e) 1. A cable operator may not disconnect a subscriber's cable service, or a portion of that service, for failure to pay a bill until the unpaid bill is at least 45 days past due.

2. If a cable operator intends to disconnect a subscriber's cable service, or a portion of that service, the cable operator shall give the subscriber at least 10 days' advance written notice of the disconnection. A cable operator is not required to give the notice under this subdivision if the disconnection is requested by the subscriber, is necessary to prevent theft of cable service or is necessary to reduce or prevent signal leakage, as described in 47 CFR 76.611.

(3) RULES AND LOCAL ORDINANCES ALLOWED. This section does not prohibit the department of agriculture, trade and consumer protection from promulgating a rule or from issuing an order consistent with its authority under ch. 100 that gives a sub-

scriber greater rights than the rights under sub. (2) or prohibit a city, village or town from enacting an ordinance that gives a subscriber greater rights than the rights under sub. (2).

(4) PENALTY; ENFORCEMENT. (a) A person who violates sub. (2) may be required to forfeit not more than $1,000 for each offense and not more than $10,000 for each occurrence. Failure to give a notice required under sub. (2) (c) or (d) to more than one subscriber shall be considered to be one offense.

(b) The department of agriculture, trade and consumer protection and the district attorneys of this state have concurrent authority to institute civil proceedings under this section.

History: 1991 a. 296; 1995 a. 27.

134.43 Privacy and cable television. (1) (a) Upon the request of the subscriber, each cable television connection capable of transmitting a message from the cable equipment shall be fitted with a device under the control of the subscriber that enables the subscriber to prevent reception and transmission of messages identified in par. (b) by the subscriber's cable equipment.

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

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

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

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

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

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

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

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

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

(3) Any person who is the victim of an intrusion of privacy under this section is entitled to relief under s. 895.50 (1) and (4) unless the act is permissible under ss. 968.27 to 968.37.

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

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

History: 1981 c. 271; 1987 a. 399.

134.45 Contracts restricting days for exhibiting motion picture films; penalty. (1) As used in this section the following words and terms shall be construed as follows:

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

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

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

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

(b) A domestic or foreign corporation, association or limited liability company exercising any of the powers, franchises or functions of a business entity in this state that violates any provision of this section, shall not have the right of, and shall be prohibited from, doing business in this state, and the department of financial institutions shall revoke its certificate to do business in this state.

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

History: 1993 a. 112, 482, 490; 1995 a. 27.

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

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

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

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

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

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

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

(d) "Sadomasochistic abuse" has the meaning set forth in s. 948.01 (4).

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

(2) EXHIBITION OF EXPLICIT SEXUAL MATERIAL PROHIBITED. No person may exhibit explicit sexual material harmful to minors at an outdoor theater with knowledge of the nature of the material, if the material is visible from a public street, sidewalk, thorough-

fare or other public place or from private property where it may be observed by minors.

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

History: 1977 c. 281; 1983 a. 189 s. 329 (2); 1987 a. 332 ss. 17, 64; 1991 a. 189.

134.50 Poultry dealing regulations. (1) It is unlawful for any poultry dealer to purchase any live or dead poultry without registering annually with the county clerk.

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

(3) Any poultry dealer or his or her servant or agent violating any of the provisions of this section shall, upon the first conviction, be punished by a fine of from $10 to $100. Upon a 2nd or subsequent conviction, a poultry dealer or his or her servant or agent shall be punished by a fine of from $25 to $500 or be imprisoned in the county jail for not more than 90 days, or by both such fine and imprisonment.

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

History: 1993 a. 482.

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

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

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

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

History: 1993 a. 482.

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

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

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

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

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

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

History: 1973 c. 239.

134.57 Detectives, settlement with employes. Any employer and any person employed to detect dishonesty on the part of employes, or fiduciary agents, on a commission basis or under a contract for a percentage of the amount recovered through or by reason of the detective work done by such person, shall submit the facts of the case and the settlement made with such employe or fiduciary agent to the circuit judge of the county wherein the dishonest act was committed, for approval or further proceedings, and the employe shall be notified of such hearing and shall have a right to be heard. Any such person or employer who shall not so submit the facts and settlement as made to such circuit judge for approval or further proceedings, shall be deemed guilty of a misdemeanor, and upon conviction shall be fined not less than $100 nor more than $500, or imprisoned in the county jail not less than 3 months nor more than one year.

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

History: 1975 c. 94.

134.59 Felons, burglar alarm installation. (1) No person may intentionally hire as a burglar alarm installer a felon who has not been pardoned. Any person engaged in the business of installing burglar alarms may request the department of justice to do a criminal history search on any person whom that person hires or proposes to hire as a burglar alarm installer.

(2) No person engaged in the business of installing burglar alarms may intentionally allow a felon who has not been pardoned to have access to individual burglar alarm installation records.

(3) Any person who violates sub. (1) or (2) may be required to forfeit not more than $1,000.

History: 1991 a. 216.

134.60 Cutting or transportation of evergreens. No person may cut for sale in its natural condition and untrimmed, with or without roots, any evergreen or coniferous tree, branch, bough, bush, sapling or shrub, from the lands of another without the written consent of the owner, whether such land is publicly or privately owned. The written consent shall contain the legal description of the land where the tree, branch, bough, bush, sapling or shrub was cut, as well as the name of the legal owner. The written

consent or a certified copy of the consent shall be carried by every person in charge of the cutting or removing of the trees, branches, boughs, bushes, saplings or shrubs, and shall be exhibited to any officer of the law, forest ranger, forest patrol officer, conservation warden, or other officer of the department of natural resources at the officer's request at any time. The officer may inspect the trees, branches, boughs, bushes, saplings or shrubs when being transported in any vehicle or other means of conveyance and may investigate to determine whether or not this section has been complied with. The officer may stop any vehicle or means of conveyance found carrying any trees, branches, boughs, bushes, saplings or shrubs upon any public highway of this state for the purpose of making such inspection and investigation, and may seize and hold, subject to the order of the court, any such trees, bushes, saplings or shrubs found being cut, removed or transported in violation of this section. No person may ship or transport any such trees, bushes, saplings or shrubs outside the county where they were cut unless the person attaches to the outside of each package, box, bale, truckload or carload shipped a tag or label on which appears the person's name and address. No common carrier or truck hauler may receive for shipment or transportation any such trees, bushes, saplings or shrubs unless the tag or label is attached. Any person who violates this section shall be fined not less than $10 nor more than $100. Any person who signs any such written consent or certified copy under this section who is not authorized to do so, and any person who lends or transfers or offers to lend or transfer any such written consent or certified copy to another person who is not entitled to use it, and any person not entitled to use any such written consent or certified copy, or who borrows, receives or solicits from another any such written consent or certified copy thereof shall be fined not less than $100 nor more than $500.

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

Cross−reference: See s. 23.50 concerning enforcement procedure.

134.65 Cigarette and tobacco products retailer license. (1) No person shall in any manner, or upon any pretense, or by any device, directly or indirectly sell, expose for sale, possess with intent to sell, exchange, barter, dispose of or give away any cigarettes or tobacco products to any person not holding a license as herein provided or a permit under ss. 139.30 to 139.41 or 139.79 without first obtaining a license from the clerk of the city, village or town wherein such privilege is sought to be exercised.

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

(b) In any municipality electing to come under this paragraph, upon filing of a proper written application a license shall be issued and continue in force for one year from the date of issuance unless sooner revoked. The fee for the license is $5 which shall be paid to the city, village or town treasurer before the license is issued.

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

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

(5) Any person violating this section shall be fined not more than $100 nor less than $25 for the first offense and not more than $200 nor less than $25 for the 2nd or subsequent offense. If upon such 2nd or subsequent violation, the person so violating this section was personally guilty of a failure to exercise due care to prevent violation thereof, the person shall be fined not more than $300 nor less than $25 or imprisoned not exceeding 60 days or both. Conviction shall immediately terminate the license of the person convicted of being personally guilty of such failure to exercise due care and the person shall not be entitled to another license hereunder for a period of 5 years thereafter, nor shall the person in that period act as the servant or agent of a person licensed hereunder for the performance of the acts authorized by such license.

History: 1983 a. 27; 1987 a. 67; 1993 a. 482.

134.66 Restrictions on sale or gift of cigarettes or tobacco products. (1) DEFINITIONS. In this section:

(a) "Cigarette" has the meaning given in s. 139.30 (1).

(b) "Distributor" means any of the following:

1. A person specified under s. 139.30 (3).

2. A person specified under s. 139.75 (4).

(c) "Identification card" means any of the following:

1. A license containing a photograph issued under ch. 343.

2. An identification card issued under s. 343.50.

3. An identification card issued under s. 125.08, 1987 stats.

(d) "Jobber" has the meaning given in s. 139.30 (6).

(e) "Manufacturer" means any of the following:

1. A person specified under s. 139.30 (7).

2. A person specified under s. 139.75 (5).

(g) "Retailer" means any person licensed under s. 134.65 (1).

(h) "School" has the meaning given in s. 118.257 (1) (c).

(hm) "Stamp" has the meaning given in s. 139.30 (13).

(i) "Subjobber" has the meaning given in s. 139.75 (11).

(j) "Tobacco products" has the meaning given in s. 139.75 (12).

(k) "Vending machine" has the meaning given in s. 139.30 (14).

(L) "Vending machine operator" has the meaning given in s. 139.30 (15).

(2) RESTRICTIONS. (a) No retailer, manufacturer or distributor may sell or give cigarettes or tobacco products to any person under the age of 18, except as provided in s. 938.983 (3). A vending machine operator is not liable under this paragraph for the purchase of cigarettes or tobacco products from his or her vending machine by a person under the age of 18 if the vending machine operator was unaware of the purchase.

(b) 1. A retailer shall post a sign in areas within his or her premises where cigarettes or tobacco products are sold to consumers stating that the sale of any cigarette or tobacco product to a person under the age of 18 is unlawful under this section and s. 938.983.

2. A vending machine operator shall attach a notice in a conspicuous place on the front of his or her vending machines stating that the purchase of any cigarette or tobacco product by a person under the age of 18 is unlawful under s. 938.983 and that the purchaser is subject to a forfeiture of not to exceed $25.

(c) 1. Except as provided in par. (cm), no retailer may keep a vending machine in any public place that is open to persons under the age of 18 unless all of the following apply:

a. The vending machine is in a place where it is ordinarily in the immediate vicinity, plain view and control of an employe.

b. The vending machine is in a place where it is inaccessible to the public when the premises are closed.

2. The person who ultimately controls, governs or directs the activities within the premises where the vending machine is located shall ensure that an employe of the retailer remains in the immediate vicinity, plain view and control of the vending machine whenever the premises are open.

3. Except as provided in subd. 4., a vending machine operator shall remove all of his or her vending machines that are located in any place prohibited by this paragraph by June 1, 1992.

4. Notwithstanding subd. 3., if a written agreement binding on a vending machine operator governs his or her vending machine that is located in any place prohibited by this paragraph, the vending machine operator shall remove the vending machine on the date that the written agreement expires or would be extended or renewed or on May 1, 1993, whichever occurs first.

(cm) 1. Notwithstanding par. (c), no retailer may place a vending machine within 500 feet of a school.

2. Except as provided in subd. 3., a vending machine operator shall remove all of his or her vending machines which are located within 500 feet of a school by September 1, 1989.

3. Notwithstanding subd. 2., if a written agreement binding on a vending machine operator governs the location of his or her vending machine which is located within 500 feet of a school, the vending machine operator shall remove the vending machine on the date that the written agreement expires or would be extended or renewed or on May 1, 1993, whichever occurs first.

(d) No manufacturer, distributor, jobber, subjobber or retailer, or their employes or agents, may provide cigarettes or tobacco products for nominal or no consideration to any person under the age of 18.

(e) No retailer may sell cigarettes in a form other than as a package or container on which a stamp is affixed under s. 139.32 (1).

(3) DEFENSE OF RETAILER, MANUFACTURER AND DISTRIBUTOR. Proof of all of the following facts by a retailer, manufacturer or distributor who sells cigarettes or tobacco products to a person under the age of 18 is a defense to any prosecution for a violation of sub. (2) (a):

(a) That the purchaser falsely represented that he or she had attained the age of 18 and presented an identification card.

(b) That the appearance of the purchaser was such that an ordinary and prudent person would believe that the purchaser had attained the age of 18.

(c) That the sale was made in good faith, in reasonable reliance on the identification card and appearance of the purchaser and in the belief that the purchaser had attained the age of 18.

(4) PENALTIES. (a) 1. In this paragraph, "violation" means a violation of sub. (2) (a), (c), (cm), (d) or (e) or a local ordinance which strictly conforms to sub. (2) (a), (c), (cm), (d) or (e).

2. A person who commits a violation is subject to a forfeiture of:

a. Not more than $500 if the person has not committed a previous violation within 12 months of the violation; or

b. Not less than $200 nor more than $500 if the person has committed a previous violation within 12 months of the violation.

3. A court shall suspend any license or permit issued under s. 134.65, 139.34 or 139.79 to a person for:

a. Not more than 3 days, if the court finds that the person committed a violation within 12 months after committing one previous violation;

b. Not less than 3 days nor more than 10 days, if the court finds that the person committed a violation within 12 months after committing 2 other violations; or

c. Not less than 15 days nor more than 30 days, if the court finds that the person committed the violation within 12 months after committing 3 or more other violations.

4. The court shall promptly mail notice of a suspension under subd. 3. to the department of revenue and to the clerk of each municipality which has issued a license or permit to the person.

(b) Whoever violates sub. (2) (b) shall forfeit not more than $25.

(5) LOCAL ORDINANCE. A county, town, village or city may adopt an ordinance regulating the conduct regulated by this section only if it strictly conforms to this section. A county ordinance adopted under this subsection does not apply within any town, village or city that has adopted or adopts an ordinance under this subsection.

History: 1987 a. 336; 1989 a. 31; 1991 a. 95; 1993 a. 210, 312; 1995 a. 352.

The state regulatory scheme for tobacco sales preempts municipalities from adopting regulations which are not in strict conformity with those of the state. U.S. Oil, Inc. v. City of Fond du Lac, 199 W (2d) 333, 544 NW (2d) 589 (Ct. App. 1995).

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

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

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

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

3. The only effective means of control is DDT.

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

1. An epidemic plant disease exists;

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

3. The only effective means of control is DDT.

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

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

134.68 Dating service contracts. (1) In this section, "dating service" means a service that purports to assist a person in obtaining friendship or companionship through a program in which a person is provided an opportunity to meet other persons.

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

(3) Every contract for a dating service shall contain all of the following:

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

(b) A provision under the caption stating: "RIGHT TO CANCEL. You are permitted to cancel this contract until midnight of the 3rd day after the date on which you signed the contract. If within this time period you decide you want to cancel this contract, you may do so by notifying.... (the seller) by any writing mailed or delivered to.... (the seller) at the address shown on the contract, within the previously described time period. If you do so cancel, any payments made by you will be refunded within 21 days after notice of cancellation is delivered, and any evidence of any indebtedness executed by you will be canceled by.... (the seller) and arrangements will be made to relieve you of any further obligation to pay the same."

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

(5) (a) No person may collect or by contract require a buyer to pay more than $100 for dating services before the buyer

receives or has the opportunity to receive those services unless the person selling dating services establishes proof of financial responsibility by maintaining any of the following commitments approved by the department of agriculture, trade and consumer protection in an amount not less than $25,000:

1. A bond.
2. A certificate of deposit.
3. An established escrow account.
4. An irrevocable letter of credit.

(b) The commitment described in par. (a) shall be established in favor of or made payable to the state, for the benefit of any buyer who does not receive a refund under the contractual provision described in sub. (3). The person selling dating services shall file with the department of agriculture, trade and consumer protection any agreement, instrument or other document necessary to enforce the commitment against the person selling dating services or any relevant 3rd party, or both.

(6) Any contract for a dating service is unenforceable against the buyer and is a violation of this section if the contract does not comply with the requirements of this section or the seller fails to perform in accordance with the contractual provisions required under this section.

(7) (a) The department of agriculture, trade and consumer protection or any district attorney may on behalf of the state:

1. Bring an action for temporary or permanent injunctive or other relief in any court of competent jurisdiction for any violation of this section. The court may in its discretion, upon entry of final judgment, award restitution when appropriate to any person suffering loss because of violations of this section if proof of such loss is submitted to the satisfaction of the court.

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

(b) The department may bring an action in circuit court to recover on a financial commitment maintained under sub. (5) against a person selling dating services or relevant 3rd party, or both, on behalf of any buyer who does not receive a refund due under the contractual provision described in sub. (3).

(c) Any person injured by a breach of a contract for dating services may bring a civil action to recover damages together with costs and disbursements, including reasonable attorney fees, and such other equitable relief as may be determined by the court.

History: 1993 a. 390; 1995 a. 27.

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

History: 1977 c. 29 s. 1503; Stats. 1977 s. 134.69.

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

(ag) "Center" means a fitness center or a weight reduction center.

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

(b) "Contract for center services" or "contract" means any of the following:

1. A contract for membership in any center.

2. A contract for instruction, training, assistance or use of facilities primarily for physical exercise, in weight control, or in figure development.

3. A contract for instruction, supervision or counseling for diet or weight loss or maintenance.

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

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

(e) "Weight reduction center" means an establishment that provides as its primary purpose instruction, supervision or counseling for diet or weight loss or maintenance, if physical exercise services are not provided on the premises.

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

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

(4) Every contract for fitness center services shall provide that performance of all of the agreed upon facilities and services will be available for the buyer's use on a specified date no later than 6 months after the date the contract is signed by the buyer.

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

(5m) Every contract for weight reduction center services shall be for a specified length of time not exceeding 2 years exclusive of any weight maintenance program. If the contract for weight reduction center services includes a weight maintenance program, the contract for weight reduction center services shall be for a specified length of time not exceeding 3 years. The contract for weight reduction center services shall clearly disclose the full price of the buyer's contractual obligation including any interest or other charges.

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

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

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

(6m) Every contract for weight reduction center service shall contain:

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

(b) A provision under the caption stating: "*Right to Cancel.* You are permitted to cancel this contract until midnight of the 3rd operating day after the date on which you signed the contract. If the facilities or services that are described in the contract are not available at the time you sign the contract, you have until midnight of the 3rd operating day after the day on which you received notice of their availability, to cancel the contract. If within this time period you decide you want to cancel this contract, you may do so by notifying.... (the seller) by any writing mailed or delivered to.... (the seller) at the address shown on the contract, within the previously described time period. If you do so cancel, any payments made by you, less the value of services already provided to you, will be refunded within 21 days after notice of cancellation is delivered, and any evidence of any indebtedness executed by you will be canceled by.... (the seller) and arrangements will be made to relieve you of any further obligation to pay the same."

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

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

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

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

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

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

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

1. Perform regular maintenance or make prompt equipment repairs.

2. Make improvements to the facilities or services.

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

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

(13) (a) Subject to sub. (8), no center may collect or by contract require a buyer to pay more than $100 for center services before the buyer receives or has the opportunity to receive those services unless the center establishes, for each center location, proof of financial responsibility as described in par. (b).

(b) 1. Except as provided in subd. 3., a center may establish proof of financial responsibility required under par. (a) by maintaining an established escrow account approved by the department of agriculture, trade and consumer protection for all amounts received from buyers in advance of the receipt of services or by maintaining any of the following commitments approved by the department of agriculture, trade and consumer protection in an amount not less than $25,000, subject to subd. 2.:

a. A bond.

b. A certificate of deposit.

d. An irrevocable letter of credit.

2. The commitment described in subd. 1. shall be established in favor of or made payable to the state, for the benefit of any buyer who does not receive a refund under sub. (11) (a). The center shall file with the department of agriculture, trade and consumer protection any agreement, instrument or other document necessary to enforce the commitment against the center or any relevant 3rd party, or both.

3. For 6 or more weight reduction centers owned or operated under the same trade name, the amount of the financial commitment under pars. (a) and (b) for those weight reduction centers is not required to exceed a total of $150,000. For a weight reduction center that submits to the department of agriculture, trade and consumer protection evidence satisfactory to the department that the weight reduction center collected a total of $50,000 or more but less than $100,000 from buyers of its center services in the previous calendar year, the amount of the financial commitment under pars. (a) and (b) is not required to exceed $10,000. For a weight reduction center that submits to the department evidence satisfactory to the department that the weight reduction center collected less than a total of $50,000 from buyers of its center services in the previous calendar year, the amount of the financial commitment under pars. (a) and (b) is not required to exceed $5,000.

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

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

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

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

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

(15) (a) The department of agriculture, trade and consumer protection shall investigate violations of this section or s. 134.705 (2) or (4). The department of agriculture, trade and consumer protection may on behalf of the state:

1. Bring an action for temporary or permanent injunctive or other relief in any court of competent jurisdiction for any violation of this section or s. 134.705 (2) or (4). The court may in its discretion, upon entry of final judgment, award restitution when appropriate to any person suffering loss because of violations of this section if proof of such loss is submitted to the satisfaction of the court.

2. Bring an action in any court of competent jurisdiction for the recovery of civil forfeitures against any person who violates this section or s. 134.705 (2) or (4) in an amount not less than $100 nor more than $10,000 for each violation.

(am) The department of agriculture, trade and consumer protection may bring an action in circuit court to recover on a

financial commitment maintained under sub. (13) against a center or relevant 3rd party, or both, on behalf of any buyer who does not receive a refund due under sub. (11) (a).

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

History: 1977 c. 276; 1987 a. 385; 1991 a. 247; 1993 a. 239; 1995 a. 27.

134.705 Fitness center staff requirements. (1) In this section:

(b) "Department" means the department of health and family services.

(c) "Fitness center" has the meaning given under s. 134.70 (1) (c).

(d) "Institution of higher education" has the meaning given under s. 39.32 (1) (a).

(2) A fitness center shall do any of the following:

(a) At all times during which the fitness center is open and its facilities and services are available for use, have at least one employe present on the premises of the fitness center who has satisfactorily completed a course or courses in basic first aid and basic cardiopulmonary resuscitation taught by an individual, organization or institution of higher education approved by the department.

(b) Ensure that each of its employes, within 90 days after hire, satisfactorily completes at least one course in basic first aid and basic cardiopulmonary resuscitation taught by an individual, organization or institution of higher education approved by the department.

(4) A fitness center shall post a notice or notices on its premises stating the requirements of sub. (2) and the penalty for a violation of sub. (2) under s. 134.70 (15) (a). The notice shall comply with the rules promulgated by the department under sub. (5) (d).

(5) The department shall promulgate rules establishing all of the following:

(a) The minimum standards for the qualifications and training of an individual, including an individual associated with an organization or institution of higher education, who teaches basic first aid or basic cardiopulmonary resuscitation to fitness center employes under sub. (2).

(b) The minimum hours of instruction and general content of the basic first aid and basic cardiopulmonary resuscitation courses taught to fitness center employes under sub. (2).

(c) Procedures governing the department's approval of individuals, organizations and institutions meeting the standards established under pars. (a) and (b).

(d) Specifications for the notice required under sub. (4) including:

1. Dimensions.
2. Print size or type.
3. The location or locations where the notice must be posted on the fitness center premises.

(7) A violation of sub. (2) or (4) is subject to s. 134.70 (15) (a). This subsection or s. 134.70 (15) (a) does not preclude a person injured as a result of a violation of this section from pursuing any other available equitable or legal relief.

History: 1987 a. 385; 1995 a. 27 s. 9126 (19).

134.71 Pawnbrokers and secondhand article and jewelry dealers. (1) DEFINITIONS. In this section:

(a) "Article" means any of the following articles except jewelry:

1. Audio−visual equipment.
2. Bicycles.
3. China.
4. Computers, printers, software and computer supplies.
5. Computer toys and games.
6. Crystal.
7. Electronic equipment.
8. Fur coats and other fur clothing.
9. Ammunition and knives.
10. Microwave ovens.
11. Office equipment.
12. Pianos, organs, guitars and other musical instruments.
13. Silverware and flatware.
14. Small electrical appliances.
15. Telephones.

(ag) "Auctioneer" means an individual who is registered as an auctioneer under ch. 480 and who sells secondhand articles or secondhand jewelry at an auction, as defined in s. 480.01 (1).

(am) "Charitable organization" means a corporation, trust or community chest, fund or foundation, organized and operated exclusively for religious, charitable, scientific, literary or educational purposes or for the prevention of cruelty to children or animals, no part of the net earnings of which inures to the benefit of any private shareholder or individual.

(b) "Customer" means a person with whom a pawnbroker, secondhand article dealer or secondhand jewelry dealer or an agent thereof engages in a transaction of purchase, sale, receipt or exchange of any secondhand article or secondhand jewelry.

(c) "Jewelry" means any tangible personal property ordinarily wearable on the person and consisting in whole or in part of any metal, mineral or gem customarily regarded as precious or semiprecious.

(d) "Municipality" means a city, village or town.

(e) "Pawnbroker" means any person who engages in the business of lending money on the deposit or pledge of any article or jewelry, or purchasing any article or jewelry with an expressed or implied agreement or understanding to sell it back at a subsequent time at a stipulated price.

(f) "Secondhand" means owned by any person, except a wholesaler, retailer or secondhand article dealer or secondhand jewelry dealer licensed under this section, immediately before the transaction at hand.

(g) "Secondhand article dealer" means any person, other than an auctioneer, who primarily engages in the business of purchasing or selling secondhand articles, except when engaging in any of the following:

1. Any transaction at an occasional garage or yard sale, an estate sale, a gun, knife, gem or antique show or a convention.

2. Any transaction entered into by a person while engaged in a business for which the person is licensed under sub. (2) or (4) or while engaged in the business of junk collector, junk dealer or scrap processor as described in s. 70.995 (2) (x).

3. Any transaction while operating as a charitable organization or conducting a sale the proceeds of which are donated to a charitable organization.

4. Any transaction between a buyer of a new article and the person who sold the article when new which involves any of the following:

a. The return of the article.

b. The exchange of the article for a different, new article.

5. Any transaction as a purchaser of a secondhand article from a charitable organization if the secondhand article was a gift to the charitable organization.

6. Any transaction as a seller of a secondhand article which the person bought from a charitable organization if the secondhand article was a gift to the charitable organization.

(h) "Secondhand jewelry dealer" means any person, other than an auctioneer, who engages in the business of any transaction con-

sisting of purchasing, selling, receiving or exchanging secondhand jewelry, except for the following:

1. Any transaction at an occasional garage or yard sale, an estate sale, a gun, knife, gem or antique show or a convention.

2. Any transaction with a licensed secondhand jewelry dealer.

3. Any transaction entered into by a person while engaged in a business of smelting, refining, assaying or manufacturing precious metals, gems or valuable articles if the person has no retail operation open to the public.

4. Any transaction between a buyer of new jewelry and the person who sold the jewelry when new which involves any of the following:

a. The return of the jewelry.

b. The exchange of the jewelry for different, new jewelry.

5. Any transaction as a purchaser of secondhand jewelry from a charitable organization if the secondhand jewelry was a gift to the charitable organization.

6. Any transaction as a seller of secondhand jewelry which the person bought from a charitable organization if the secondhand jewelry was a gift to the charitable organization.

(2) LICENSE FOR PAWNBROKER. No person may operate as a pawnbroker unless the person first obtains a pawnbroker's license under this section. A license issued to a pawnbroker by the governing body of a municipality authorizes the licensee to operate as a pawnbroker in that municipality.

(3) LICENSE FOR SECONDHAND ARTICLE DEALER. (a) Except as provided in par. (b), no person may operate as a secondhand article dealer unless the person first obtains a secondhand article dealer's license under this section. A license issued to a secondhand article dealer authorizes the licensee to operate as a secondhand article dealer anywhere in the state.

(b) A person who operates as a secondhand article dealer only on premises or land owned by a person having a secondhand dealer mall or flea market license under sub. (9) need not obtain a secondhand article dealer's license.

(4) LICENSE FOR SECONDHAND JEWELRY DEALER. No person may operate as a secondhand jewelry dealer unless the person first obtains a secondhand jewelry dealer's license under this section. A license issued to a secondhand jewelry dealer authorizes the licensee to operate as a secondhand jewelry dealer anywhere in the state.

(5) LICENSE APPLICATION. A person wishing to operate as a secondhand article dealer or a secondhand jewelry dealer and have a principal place of business in a municipality shall apply for a license to the clerk of that municipality. A person wishing to operate as a pawnbroker in a municipality shall apply for a license to the clerk of the municipality. The clerk shall furnish application forms under sub. (12) that shall require all of the following:

(a) The applicant's name, place and date of birth and residence address.

(b) The names and addresses of the business and of the owner of the business premises.

(c) A statement as to whether the applicant has been convicted within the preceding 10 years of a felony or within the preceding 5 years of a misdemeanor, statutory violation punishable by forfeiture or county or municipal ordinance violation in which the circumstances of the felony, misdemeanor or other offense substantially relate to the circumstances of the licensed activity and, if so, the nature and date of the offense and the penalty assessed.

(d) Whether the applicant is a natural person, corporation, limited liability company or partnership, and:

1. If the applicant is a corporation, the state where incorporated and the names and addresses of all officers and directors.

2. If the applicant is a partnership, the names and addresses of all partners.

2L. If the applicant is a limited liability company, the names and addresses of all members.

(e) The name of the manager or proprietor of the business.

(f) Any other information that the county or municipal clerk may reasonably require.

(6) INVESTIGATION OF LICENSE APPLICANT. The law enforcement agency of the county or municipality shall investigate each applicant for a pawnbroker's, secondhand article dealer's or secondhand jewelry dealer's license to determine whether the applicant has been convicted within the preceding 10 years of a felony or within the preceding 5 years of a misdemeanor, statutory violation punishable by forfeiture or county or municipal ordinance violation described under sub. (5) (c) and, if so, the nature and date of the offense and the penalty assessed. The law enforcement agency shall furnish the information derived from that investigation in writing to the clerk of the municipality or county.

(7) LICENSE ISSUANCE. (a) The governing body of the county or municipality shall grant the license if all of the following apply:

1. The applicant, including an individual, a partner, a member of a limited liability company or an officer, director or agent of any corporate applicant, has not been convicted within the preceding 10 years of a felony or within the preceding 5 years of a misdemeanor, statutory violation punishable by forfeiture or county or municipal ordinance violation in which the circumstances of the felony, misdemeanor or other offense substantially relate to the circumstances of being a pawnbroker, secondhand jewelry dealer, secondhand article dealer or secondhand article dealer mall or flea market owner.

2. With respect to an applicant for a pawnbroker's license, the applicant provides to the governing body a bond of $500, with not less than 2 sureties, for the observation of all municipal ordinances relating to pawnbrokers.

(b) No license issued under this subsection may be transferred.

(c) 1. Each license for a pawnbroker, secondhand article dealer or secondhand jewelry dealer is valid from January 1 until the following December 31.

2. Each license for a secondhand article dealer mall or flea market is valid for 2 years, from May 1 of an odd−numbered year until April 30 of the next odd−numbered year.

(8) PAWNBROKER AND DEALER REQUIREMENTS. (a) *Identification.* No pawnbroker, secondhand article dealer or secondhand jewelry dealer may engage in a transaction of purchase, receipt or exchange of any secondhand article or secondhand jewelry from a customer without first securing adequate identification from the customer. At the time of the transaction, the pawnbroker, secondhand article dealer or secondhand jewelry dealer shall require the customer to present one of the following types of identification:

1. A county identification card.

2. A state identification card.

3. A valid Wisconsin motor vehicle operator's license.

4. A valid motor vehicle operator's license, containing a picture, issued by another state.

5. A military identification card.

6. A valid passport.

7. An alien registration card.

8. A senior citizen's identification card containing a photograph.

9. Any identification document issued by a state or federal government, whether or not containing a picture, if the pawnbroker, secondhand article dealer or secondhand jewelry dealer obtains a clear imprint of the customer's right index finger.

(b) *Transactions with minors.* 1. Except as provided in subd. 2., no pawnbroker, secondhand article dealer or secondhand jewelry dealer may engage in a transaction of purchase, receipt or exchange of any secondhand article or secondhand jewelry from any minor.

2. A pawnbroker, secondhand article dealer or secondhand jewelry dealer may engage in a transaction described under subd. 1. if the minor is accompanied by his or her parent or guardian at the time of the transaction or if the minor provides the pawnbro-

ker, secondhand article dealer or secondhand jewelry dealer with the parent's or guardian's written consent to engage in the particular transaction.

(c) *Records.* 1. Except as provided in subd. 2., for each transaction of purchase, receipt or exchange of any secondhand article or secondhand jewelry from a customer, a pawnbroker, secondhand article dealer or secondhand jewelry dealer shall require the customer to complete and sign, in ink, the appropriate form provided under sub. (12). No entry on such a form may be erased, mutilated or changed. The pawnbroker, secondhand article dealer or secondhand jewelry dealer shall retain an original and a duplicate of each form for not less than one year after the date of the transaction except as provided in par. (e), and during that period shall make the duplicate available to any law enforcement officer for inspection at any reasonable time.

2. For every secondhand article purchased, received or exchanged by a secondhand article dealer from a customer off the secondhand article dealer's premises or consigned to the secondhand article dealer for sale on the secondhand article dealer's premises, the secondhand article dealer shall keep a written inventory. In this inventory the secondhand article dealer shall record the name and address of each customer, the date, time and place of the transaction and a detailed description of the article which is the subject of the transaction. The customer shall sign his or her name on a declaration of ownership of the secondhand article identified in the inventory and shall state that he or she owns the secondhand article. The secondhand article dealer shall retain an original and a duplicate of each entry and declaration of ownership relating to the purchase, receipt or exchange of any secondhand article for not less than one year after the date of the transaction except as provided in par. (e), and shall make duplicates of the inventory and declarations of ownership available to any law enforcement officer for inspection at any reasonable time.

(d) *Holding period.* 1. Except as provided in subd. 5., any secondhand article or secondhand jewelry purchased or received by a pawnbroker shall be kept on the pawnbroker's premises or other place for safekeeping for not less than 30 days after the date of purchase or receipt, unless the person known by the pawnbroker to be the lawful owner of the secondhand article or secondhand jewelry recovers it.

2. Except as provided in subd. 5., any secondhand article purchased or received by a secondhand article dealer shall be kept on the secondhand article dealer's premises or other place for safekeeping for not less than 10 days after the date of purchase or receipt.

3. Except as provided in subd. 5., any secondhand jewelry purchased or received by a secondhand jewelry dealer shall be kept on the secondhand jewelry dealer's premises or other place for safekeeping for not less than 15 days after the date of purchase or receipt.

4. During the period set forth in subd. 1., 2. or 3. the secondhand article or secondhand jewelry shall be held separate and apart and may not be altered in any manner. The pawnbroker, secondhand article dealer or secondhand jewelry dealer shall permit any law enforcement officer to inspect the secondhand article or secondhand jewelry during this period. Within 24 hours after a written request of a law enforcement officer during this period, a pawnbroker, secondhand article dealer or secondhand jewelry dealer shall make available for inspection any secondhand article or secondhand jewelry which is kept off the premises for safekeeping. Any law enforcement officer who has reason to believe any secondhand article or secondhand jewelry was not sold or exchanged by the lawful owner may direct a pawnbroker, secondhand article dealer or secondhand jewelry dealer to hold that secondhand article or secondhand jewelry for a reasonable length of time which the law enforcement officer considers necessary to identify it.

5. Subdivisions 1. to 4. do not apply to any of the following:

a. A coin of the United States, any gold or silver coin or gold or silver bullion.

b. A secondhand article or secondhand jewelry consigned to a pawnbroker, secondhand article dealer or secondhand jewelry dealer.

(e) *Report to law enforcement agency.* Within 24 hours after purchasing or receiving a secondhand article or secondhand jewelry, a pawnbroker, secondhand article dealer or secondhand jewelry dealer shall make available, for inspection by a law enforcement officer, the original form completed under par. (c) 1. or the inventory under par. (c) 2., whichever is appropriate. Notwithstanding s. 19.35 (1), a law enforcement agency receiving the original form or inventory or a declaration of ownership may disclose it only to another law enforcement agency.

(f) *Exception for customer return or exchange.* Nothing in this subsection applies to the return or exchange, from a customer to a secondhand article dealer or secondhand jewelry dealer, of any secondhand article or secondhand jewelry purchased from the secondhand article dealer or secondhand jewelry dealer.

(9) SECONDHAND ARTICLE DEALER MALL OR FLEA MARKET. (a) The owner of any premises or land upon which 2 or more persons operate as secondhand article dealers may obtain a secondhand article dealer mall or flea market license for the premises or land if the following conditions are met:

1. Each secondhand article dealer occupies a separate sales location and identifies himself or herself to the public as a separate secondhand article dealer.

2. The secondhand article dealer mall or flea market is operated under one name and at one address, and is under the control of the secondhand article dealer mall or flea market license holder.

4. Each secondhand article dealer delivers to the secondhand article dealer mall or flea market license holder, at the close of business on each day that the secondhand article dealer conducts business, a record of his or her sales that includes the location at which each sale was made.

(b) The secondhand article dealer license holder and each secondhand article dealer operating upon the premises or land shall comply with sub. (8).

(10) LICENSE REVOCATION. A governing body of a county or municipality may revoke any license issued by it under this section for fraud, misrepresentation or false statement contained in the application for a license or for any violation of this section or s. 943.34, 948.62 or 948.63.

(11) FEES. The license fees under this section are:

(a) For a pawnbroker's license, $210.

(b) For a secondhand article dealer's license, $27.50.

(c) For a secondhand jewelry dealer's license, $30.

(d) For a secondhand article dealer mall or flea market license, $165.

(12) APPLICATIONS AND FORMS. The department of agriculture, trade and consumer protection shall develop applications and other forms required under subs. (5) (intro.) and (8) (c). The department shall print a sufficient number of applications and forms to provide to counties and municipalities for distribution to pawnbrokers, secondhand article dealers and secondhand jewelry dealers at no cost.

(13) PENALTY. (a) Upon conviction for a first offense under this section, a person shall forfeit not less than $50 nor more than $1,000.

(b) Upon conviction for a 2nd or subsequent offense under this section, a person shall forfeit not less than $500 nor more than $2,000.

(14) ORDINANCE. A county or municipality may enact an ordinance governing pawnbrokers, secondhand article dealers or sec-

ondhand jewelry dealers if that ordinance is at least as stringent as this section.

History: 1989 a. 257; 1991 a. 269; 1993 a. 102, 112, 246; 1995 a. 27.

134.72 Prohibition of certain unsolicited messages by telephone or facsimile machine. (1) DEFINITIONS. In this section:

(a) "Facsimile machine" means a machine that transmits copies of documents by means of a telephone line, telegraph line, microwave, satellite, cellular radio, fiber optics, coaxial cable or any other transmission facility or any switching device.

(b) "Facsimile solicitation" means the unsolicited transmission of a document by a facsimile machine for the purpose of encouraging a person to purchase property, goods or services.

(c) "Telephone solicitation" means the unsolicited initiation of a telephone conversation for the purpose of encouraging a person to purchase property, goods or services.

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

(b) *Facsimile solicitation.* 1. A person may not make a facsimile solicitation without the consent of the person solicited unless all of the following apply:

a. The document transmitted by facsimile machine does not exceed one page in length and is received by the person solicited after 9 p.m. and before 6 a.m.

b. The person making the facsimile solicitation has had a previous business relationship with the person solicited.

2. Notwithstanding subd. 1., a person may not make a facsimile solicitation to a person who has notified the facsimile solicitor in writing or by facsimile transmission that the person does not want to receive facsimile solicitation.

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

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

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

History: 1977 c. 301; 1989 a. 336; 1995 a. 351.

134.74 Prize notices. (1) DEFINITIONS. In this section:

(a) "Prize" means a gift, award or other item or service of value.

(b) 1. "Prize notice" means a notice given to an individual in this state that satisfies all of the following:

a. Is or contains a representation that the individual has been selected or may be eligible to receive a prize.

b. Conditions receipt of a prize on a payment from the individual or requires or invites the individual to make a contact to learn how to receive the prize or to obtain other information related to the notice.

2. "Prize notice" does not include any of the following:

a. A notice given at the request of the individual.

b. A notice informing the individual that he or she has been awarded a prize as a result of his or her actual prior entry in a game, drawing, sweepstakes or other contest, if the individual is awarded the prize stated in the notice.

c. A notice given in the form of an in−pack chance promotion if it meets the requirements of s. 100.16 (2).

(c) "Solicitor" means a person who represents to an individual that the individual has been selected or may be eligible to receive a prize.

(d) "Sponsor" means a person on whose behalf a solicitor gives a prize notice.

(e) "Verifiable retail value" of a prize means:

1. A price at which the solicitor or sponsor can demonstrate that a substantial number of the prizes have been sold by a person other than the solicitor or sponsor in the trade area in which the prize notice is given.

2. If the solicitor or sponsor is unable to satisfy subd. 1., no more than 1.5 times the amount the solicitor or sponsor paid for the prize.

(2) WRITTEN PRIZE NOTICE REQUIRED. If a solicitor represents to an individual that the individual has been selected or may be eligible to receive a prize, the solicitor may not request, and the solicitor or sponsor may not accept, a payment from the individual in any form before the individual receives a written prize notice that contains all of the information required under sub. (3) (a) presented in the manner required under sub. (3) (b) to (f).

(3) DELIVERY AND CONTENTS OF WRITTEN PRIZE NOTICES. (a) A written prize notice shall contain all of the following information presented in the manner required under pars. (b) to (f):

1. The name and address of the solicitor and sponsor.

2. The verifiable retail value of each prize the individual has been selected or may be eligible to receive.

3. If the notice lists more than one prize that the individual has been selected or may be eligible to receive, a statement of the odds the individual has of receiving each prize.

4. Any requirement or invitation for the individual to view, hear or attend a sales presentation in order to claim a prize, the approximate length of the sales presentation and a description of the property or service that is the subject of the sales presentation.

5. Any requirement that the individual pay shipping or handling fees or any other charges to obtain or use a prize.

6. If receipt of the prize is subject to a restriction, a statement that a restriction applies, a description of the restriction and a statement containing the location in the notice where the restriction is described.

7. Any limitations on eligibility.

(b) 1. The verifiable retail value and the statement of odds required in a written prize notice under par. (a) 2. and 3. shall be stated in immediate proximity to each listing of the prize in each place the prize appears on the written prize notice and shall be in the same size and boldness of type as the prize.

2. The statement of odds shall include, for each prize, the total number of prizes to be given away and the total number of written prize notices to be delivered. The number of prizes and written prize notices shall be stated in Arabic numerals. The statement of odds shall be in the following form: ".... (number of prizes) out of.... written prize notices".

3. The verifiable retail value shall be in the following form: "verifiable retail value: $....".

(c) If an individual is required to pay shipping or handling fees or any other charges to obtain or use a prize, the following statement shall appear in immediate proximity to each listing of the prize in each place the prize appears in the written prize notice and shall be in not less than 10−point boldface type: "YOU MUST PAY $.... IN ORDER TO RECEIVE OR USE THIS ITEM."

(d) The information required in a written prize notice under par. (a) 4. shall be on the first page of the written prize notice in not less than 10−point boldface type. The information required under par. (a) 6. and 7. shall be in not less than 10−point boldface type.

(e) If a written prize notice is given by a solicitor on behalf of a sponsor, the name of the sponsor shall be more prominently and conspicuously displayed than the name of the promoter.

(f) A solicitor or sponsor may not do any of the following:

1. Place on an envelope containing a written prize notice any representation that the person to whom the envelope is addressed has been selected or may be eligible to receive a prize.

2. Deliver a written prize notice that contains language, or is designed in a manner, that would lead a reasonable person to believe that it originates from a government agency, public utility,

insurance company, consumer reporting agency, debt collector or law firm unless the written prize notice originates from that source.

3. Represent directly or by implication that the number of individuals eligible for the prize is limited or that an individual has been selected to receive a particular prize unless the representation is true.

(4) SALES PRESENTATIONS. If a prize notice requires or invites an individual to view, hear or attend a sales presentation in order to claim a prize, the sales presentation may not begin until the solicitor does all of the following:

(a) Informs the individual of the prize, if any, that has been awarded to the individual.

(b) If the individual has been awarded a prize, delivers to the individual the prize or the item selected by the individual under sub. (5) if the prize is not available.

(5) PRIZE AWARD REQUIRED; OPTIONS IF PRIZE NOT AVAILABLE. (a) A solicitor who represents to an individual in a written prize notice that the individual has been awarded a prize shall provide the prize to the individual unless the prize is not available. If the prize is not available, the solicitor shall provide the individual with any one of the following items selected by the individual:

1. Any other prize listed in the written prize notice that is available and that is of equal or greater value.

2. The verifiable retail value of the prize in the form of cash, a money order or a certified check.

3. A voucher, certificate or other evidence of obligation stating that the prize will be shipped to the individual within 30 days at no cost to the individual.

(b) If a voucher, certificate or other evidence of obligation delivered under par. (a) 3. is not honored within 30 days, the solicitor shall deliver to the individual the verifiable retail value of the prize in the form of cash, a money order or a certified check. The sponsor shall make the payment to the individual if the solicitor fails to do so.

(6) COMPLIANCE WITH OTHER LAWS. Nothing in this section shall be construed to permit an activity prohibited by s. 945.02 (3).

(7) PENALTIES. (a) Whoever violates this section may be required to forfeit not less than $100 nor more than $5,000 for each violation.

(b) Whoever intentionally violates this section may be fined not more than $10,000 or imprisoned for not more than 2 years or both. A person intentionally violates this section if the violation occurs after the department of agriculture, trade and consumer protection or a district attorney has notified the person by certified mail that the person is in violation of this section.

(8) ENFORCEMENT. The department of agriculture, trade and consumer protection shall investigate violations of this section. The department of agriculture, trade and consumer protection or any district attorney may on behalf of the state:

(a) Bring an action for temporary or permanent injunctive or other relief in any court of competent jurisdiction for any violation of this section. The court may, upon entry of final judgment, award restitution when appropriate to any person suffering loss because of a violation of this section if proof of such loss is submitted to the satisfaction of the court.

(b) Bring an action in any court of competent jurisdiction for the penalties authorized under sub. (7).

(9) PRIVATE ACTION. In addition to any other remedies, a person suffering pecuniary loss because of a violation by another person of this section may bring an action in any court of competent jurisdiction and shall recover all of the following:

(a) The greater of $500 or twice the amount of the pecuniary loss.

(b) Costs and reasonable attorney fees, notwithstanding s. 814.04.

History: 1991 a. 269, 315; 1995 a. 27.

134.77 Beverage container regulation. (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.

(b) "Beverage container" means an individual, separate, sealed plastic or metal container for a beverage.

(2) SELF−OPENING METAL BEVERAGE CONTAINERS. (a) No person may sell or offer for sale at retail in this state any metal beverage container so designed and constructed that it is opened by detaching a metal ring or tab.

(b) Paragraph (a) does not prohibit the sale of a beverage container which:

1. Is sealed with laminated tape, foil or other soft material that is detachable.

2. Contains milk−based, soy−based or similar products which require heat and pressure in the canning process.

(3) PLASTIC CONNECTORS. No person may sell or offer for sale at retail in this state any beverage container if the beverage container is connected to another beverage container by means of a device constructed of a material which does not decompose by photodegradation or biodegradation within a reasonable time after exposure to weather elements.

(4) PENALTY. Any person who violates sub. (2) or (3) shall forfeit not more than $500 for each violation. Each day of violation constitutes a separate offense.

History: 1987 a. 108.

134.80 Home heating fuel dealers. Any dealer selling fuel of any kind for the purpose of heating a private residence shall notify each private residential customer whose account is subject to disconnection of the existence of the fuel assistance programs provided by the department of administration under s. 16.385.

History: 1977 c. 418; 1981 c. 20; 1995 a. 27 s. 9126 (19); 1995 a. 417.

134.81 Water heater thermostat settings. No person who manufactures water heaters may sell any new water heater designed for use in a dwelling unit, as defined in s. 101.61 (1), unless that person does all of the following:

(1) Sets the thermostat of the water heater at no higher than 125 degrees Fahrenheit or at the minimum setting of that water heater if the minimum setting is higher than 125 degrees Fahrenheit.

(2) Attaches a plainly visible notice to the water heater warning that any thermostat setting above 125 degrees Fahrenheit may cause severe burns and consume energy unnecessarily.

History: 1987 a. 102.

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

(a) "Buyer" means an individual who:

1. Is a resident of this state; and

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

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

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

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

(e) "Payment" means:

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

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

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

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

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

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

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

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

(a) Shipping the ordered goods.

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

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

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

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

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

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

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

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

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

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

(5) The department of agriculture, trade and consumer protection or any district attorney may on behalf of the state:

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

(b) Bring an action in any circuit court for the recovery of a civil forfeiture against any person who violates this section in an amount of not less than $100 nor more than $1,000 for each violation.

(6) The department of agriculture, trade and consumer protection shall investigate violations of and enforce this section.

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

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

History: 1979 c. 62; 1995 a. 27.

134.85 Motor fuel dealerships. (1) DEFINITIONS. As used in this section:

(a) "Dealer" has the meaning given under s. 135.02 (2).

(b) "Dealership" has the meaning given under s. 135.02 (3).

(c) "Designated family member" means the spouse or child of a motor fuel dealer who has been designated in the most recent motor fuel dealership agreement with the motor fuel grantor as the successor to ownership of the motor fuel dealership and who either inherits ownership of the motor fuel dealership by will or intestate succession or who, in the case of the legal incapacity of the dealer, is appointed by a court as guardian for the motor fuel dealership.

(d) "Grantor" has the meaning given under s. 135.02 (5).

(2) SURVIVORSHIP PROVISIONS REQUIRED. Every motor fuel dealership agreement entered into, renewed or extended on or after December 1, 1987, shall contain all of the following provisions:

(a) Any designated family member may succeed to the ownership of the motor fuel dealership if all of the following conditions are met:

1. The designated family member gives the motor fuel grantor written notice of the intention to succeed to ownership of the motor fuel dealership within 60 days after the motor fuel dealer's death or legal incapacity.

2. Upon request of the motor fuel grantor, the designated family member provides personal and financial information reasonably necessary to determine under par. (b) whether the succession should be honored.

3. The designated family member agrees to be bound by all terms and conditions of the existing motor fuel dealership agreement.

4. There does not exist good cause under par. (b) for refusing to honor the succession.

(b) Good cause exists for refusing to honor a succession if a designated family member does not meet existing reasonable standards of the motor fuel grantor. The motor fuel grantor's existing reasonable standards may include requirements directly related to a person's management and technical skills, training and business experience, credit worthiness and other requirements directly related to a person's ability to operate the motor fuel dealership.

(c) If a motor fuel grantor believes in good faith, after requesting information under par. (a) 2., that good cause exists for refusing to honor succession of the motor fuel dealership by a designated family member, the motor fuel grantor may, within 90 days after receipt of the information, give notice complying with par. (d) to the designated family member.

(d) The notice under par. (c) shall be in writing and shall include all of the following:

1. A statement of the motor fuel grantor's refusal to honor succession and of the specific grounds constituting good cause for the refusal.

2. A statement of the motor fuel grantor's intent to terminate the existing motor fuel dealership agreement with the designated family member on a date not sooner than 90 days after the date the notice is given.

(e) Except as provided in par. (f), if the notice under par. (c) is not given within the time period specified in par. (c), the motor fuel grantor may not terminate the existing motor fuel dealership agreement with the designated family member under this section and may only terminate the existing motor fuel dealership agreement as otherwise permitted by law.

(f) Notwithstanding pars. (b) to (d) and ss. 135.03 and 135.04, the motor fuel grantor may terminate the existing motor fuel dealership agreement with the designated family member if, in the 12 months following receipt of the notice under par. (a) 1., the volume of motor fuel sold by the motor fuel dealership is less than 90% of the average annual volume of motor fuel sold by the motor fuel dealership in the 3 years preceding receipt of the notice under par. (a) 1., and the motor fuel grantor, within 15 months following receipt of the notice under par. (a) 1., gives notice in writing to the designated family member which includes all of the following:

1. A statement of the motor fuel grantor's intent to terminate the existing motor fuel dealership agreement with the designated family member on a date not sooner than 90 days after the date the notice is given.

2. A statement of the specific reasons for termination.

(3) ENFORCEMENT OF SURVIVORSHIP RIGHTS. (a) The department of agriculture, trade and consumer protection on behalf of the state or any person who claims injury as a result of a violation of sub. (2) may bring an action for temporary or permanent injunctive relief in any circuit court. It is no defense to an action under this paragraph that an adequate remedy exists at law.

(b) In any proceeding to determine whether good cause exists under sub. (2) (b), a motor fuel grantor has the burden of proving that the designated family member does not meet the motor fuel grantor's existing, reasonable standards.

(4) HOURS OF BUSINESS. (a) No motor fuel grantor may require a motor vehicle fuel dealer, who has a dealership with the motor fuel grantor on May 17, 1988, to keep his or her business open for more than 16 hours per day.

(b) Paragraph (a) applies to a motor fuel dealer after he or she renews or extends a motor fuel dealership agreement with a motor fuel grantor on or after May 17, 1988.

(5) MOTOR VEHICLES USED BY DISABLED; SERVICE. (a) In this subsection:

1. "Motor vehicle" has the meaning given in s. 340.01 (35).

2. "Pump" means a device used to dispense motor fuel for sale at retail.

(b) A motor fuel dealer shall have an employe dispense motor fuel into a motor vehicle from a full−service pump at the same price as the motor fuel dealer charges the general public for the same grade of motor fuel dispensed from a self−service pump, if all of the following apply:

1. The motor vehicle displays special registration plates issued under s. 341.14 (1), (1a), (1m), (1q) or (1r) (a) or a special identification card issued under s. 343.51 or is a motor vehicle registered in another jurisdiction and displays a registration plate, card or emblem issued by the other jurisdiction that designates that the vehicle is used by a physically disabled person.

2. The driver of the motor vehicle asks for the same price as charged for motor fuel dispensed from a self−service pump.

3. The motor fuel dealer sells motor fuel at retail from both full−service and self−service pumps.

(c) An employe of a motor fuel dealer who dispenses motor fuel under par. (b) need not provide any other services that are not provided to a customer who uses a self−service pump.

(d) A motor fuel dealer that violates par. (b) may be required to forfeit not more than $100 for each violation.

History: 1987 a. 95, 399; 1989 a. 31; 1995 a. 27.

134.87 Repair, replacement and refund under new motorized wheelchair warranties. (1) In this section:

(a) "Collateral costs" means expenses incurred by a consumer in connection with the repair of a nonconformity, including the costs of obtaining an alternative wheelchair or other assistive device for mobility.

(b) "Consumer" means any of the following:

1. The purchaser of a motorized wheelchair, if the motorized wheelchair was purchased from a motorized wheelchair dealer or manufacturer for purposes other than resale.

2. A person to whom the motorized wheelchair is transferred for purposes other than resale, if the transfer occurs before the expiration of an express warranty applicable to the motorized wheelchair.

3. A person who may enforce the warranty.

4. A person who leases a motorized wheelchair from a motorized wheelchair lessor under a written lease.

(c) "Demonstrator" means a motorized wheelchair used primarily for the purpose of demonstration to the public.

(d) "Early termination cost" means any expense or obligation that a motorized wheelchair lessor incurs as a result of both the termination of a written lease before the termination date set forth in that lease and the return of a motorized wheelchair to a manufacturer under sub. (3) (b) 3. "Early termination cost" includes a penalty for prepayment under a finance arrangement.

(e) "Early termination savings" means any expense or obligation that a motorized wheelchair lessor avoids as a result of both the termination of a written lease before the termination date set forth in that lease and the return of a motorized wheelchair to a manufacturer under sub. (3) (b) 3. "Early termination savings" includes an interest charge that the motorized wheelchair lessor would have paid to finance the motorized wheelchair or, if the motorized wheelchair lessor does not finance the motorized wheelchair, the difference between the total amount for which the lease obligates the consumer during the period of the lease term remaining after the early termination and the present value of that amount at the date of the early termination.

(f) "Manufacturer" means a person who manufactures or assembles motorized wheelchairs and agents of that person, including an importer, a distributor, factory branch, distributor branch and any warrantors of the manufacturer's motorized wheelchairs, but does not include a motorized wheelchair dealer.

(g) "Motorized wheelchair" means any motor−driven wheelchair, including a demonstrator, that a consumer purchases or accepts transfer of in this state.

(h) "Motorized wheelchair dealer" means a person who is in the business of selling motorized wheelchairs.

(i) "Motorized wheelchair lessor" means a person who leases a motorized wheelchair to a consumer, or who holds the lessor's rights, under a written lease.

(j) "Nonconformity" means a condition or defect that substantially impairs the use, value or safety of a motorized wheelchair, and that is covered by an express warranty applicable to the motorized wheelchair or to a component of the motorized wheelchair, but does not include a condition or defect that is the result of abuse, neglect or unauthorized modification or alteration of the motorized wheelchair by a consumer.

(k) "Reasonable attempt to repair" means any of the following occurring within the term of an express warranty applicable to a new motorized wheelchair or within one year after first delivery of the motorized wheelchair to a consumer, whichever is sooner:

1. The same nonconformity with the warranty is subject to repair by the manufacturer, motorized wheelchair lessor or any of the manufacturer's authorized motorized wheelchair dealers at least 4 times and the nonconformity continues.

2. The motorized wheelchair is out of service for an aggregate of at least 30 days because of warranty nonconformities.

(2) A manufacturer who sells a motorized wheelchair to a consumer, either directly or through a motorized wheelchair dealer, shall furnish the consumer with an express warranty for the motorized wheelchair. The duration of the express warranty shall be not less than one year after first delivery of the motorized wheelchair to the consumer. If a manufacturer fails to furnish an express warranty as required by this subsection, the motorized wheelchair shall be covered by an express warranty as if the manufacturer had furnished an express warranty to the consumer as required by this subsection.

(3) (a) If a new motorized wheelchair does not conform to an applicable express warranty and the consumer reports the nonconformity to the manufacturer, the motorized wheelchair lessor or any of the manufacturer's authorized motorized wheelchair dealers and makes the motorized wheelchair available for repair before one year after first delivery of the motorized wheelchair to a consumer, the nonconformity shall be repaired.

(b) 1. If, after a reasonable attempt to repair, the nonconformity is not repaired, the manufacturer shall carry out the requirement under subd. 2. or 3., whichever is appropriate.

2. At the direction of a consumer described under sub. (1) (b) 1., 2. or 3., do one of the following:

a. Accept return of the motorized wheelchair and replace the motorized wheelchair with a comparable new motorized wheelchair and refund any collateral costs.

b. Accept return of the motorized wheelchair and refund to the consumer and to any holder of a perfected security interest in the consumer's motorized wheelchair, as their interest may appear, the full purchase price plus any finance charge, amount paid by the consumer at the point of sale and collateral costs, less a reasonable allowance for use. Under this subd. 2. b., a reasonable allowance for use may not exceed the amount obtained by multiplying the full purchase price of the motorized wheelchair by a fraction, the denominator of which is 1,825 and the numerator of which is the number of days that the motorized wheelchair was driven before the consumer first reported the nonconformity to the motorized wheelchair dealer.

3. a. With respect to a consumer described in sub. (1) (b) 4., accept return of the motorized wheelchair, refund to the motorized wheelchair lessor and to any holder of a perfected security interest in the motorized wheelchair, as their interest may appear, the current value of the written lease and refund to the consumer the amount that the consumer paid under the written lease plus any collateral costs, less a reasonable allowance for use.

b. Under this subdivision, the current value of the written lease equals the total amount for which that lease obligates the consumer during the period of the lease remaining after its early termination, plus the motorized wheelchair dealer's early termination costs and the value of the motorized wheelchair at the lease expiration date if the lease sets forth that value, less the motorized wheelchair lessor's early termination savings.

c. Under this subdivision, a reasonable allowance for use may not exceed the amount obtained by multiplying the total amount for which the written lease obligates the consumer by a fraction, the denominator of which is 1,825 and the numerator of which is the number of days that the consumer drove the motorized wheelchair before first reporting the nonconformity to the manufacturer, motorized wheelchair lessor or motorized wheelchair dealer.

(c) To receive a comparable new motorized wheelchair or a refund due under par. (b) 1. or 2., a consumer described under sub. (1) (b) 1., 2. or 3. shall offer to the manufacturer of the motorized wheelchair having the nonconformity to transfer possession of that motorized wheelchair to that manufacturer. No later than 30 days after that offer, the manufacturer shall provide the consumer with the comparable new motorized wheelchair or refund. When the manufacturer provides the new motorized wheelchair or refund, the consumer shall return the motorized wheelchair having the nonconformity to the manufacturer, along with any endorsements necessary to transfer real possession to the manufacturer.

(d) 1. To receive a refund due under par. (b) 3., a consumer described under sub. (1) (b) 4. shall offer to return the motorized wheelchair having the nonconformity to its manufacturer. No later than 30 days after that offer, the manufacturer shall provide the refund to the consumer. When the manufacturer provides the refund, the consumer shall return to the manufacturer the motorized wheelchair having the nonconformity.

2. To receive a refund due under par. (b) 3., a motorized wheelchair lessor shall offer to transfer possession of the motorized wheelchair having the nonconformity to its manufacturer. No later than 30 days after that offer, the manufacturer shall provide the refund to the motorized wheelchair lessor. When the manufacturer provides the refund, the motorized wheelchair lessor shall provide to the manufacturer any endorsements necessary to transfer legal possession to the manufacturer.

3. No person may enforce the lease against the consumer after the consumer receives a refund due under par. (b) 3.

(e) No motorized wheelchair returned by a consumer or motorized wheelchair lessor in this state under par. (b), or by a consumer or motorized wheelchair lessor in another state under a similar law of that state, may be sold or leased again in this state unless full disclosure of the reasons for return is made to any prospective buyer or lessee.

(4) This section does not limit rights or remedies available to a consumer under any other law.

(5) Any waiver by a consumer of rights under this section is void.

(6) In addition to pursuing any other remedy, a consumer may bring an action to recover for any damages caused by a violation of this section. The court shall award a consumer who prevails in such an action twice the amount of any pecuniary loss, together with costs, disbursements and reasonable attorney fees, and any equitable relief that the court determines is appropriate.

History: 1991 a. 222.

134.90 Uniform trade secrets act. (1) DEFINITIONS. In this section:

(a) "Improper means" includes espionage, theft, bribery, misrepresentation and breach or inducement of a breach of duty to maintain secrecy.

(b) "Readily ascertainable" information does not include information accessible through a license agreement or by an employe under a confidentiality agreement with his or her employer.

(c) "Trade secret" means information, including a formula, pattern, compilation, program, device, method, technique or process to which all of the following apply:

1. The information derives independent economic value, actual or potential, from not being generally known to, and not being readily ascertainable by proper means by, other persons who can obtain economic value from its disclosure or use.

2. The information is the subject of efforts to maintain its secrecy that are reasonable under the circumstances.

(2) MISAPPROPRIATION. No person, including the state, may misappropriate or threaten to misappropriate a trade secret by doing any of the following:

(a) Acquiring the trade secret of another by means which the person knows or has reason to know constitute improper means.

(b) Disclosing or using without express or implied consent a trade secret of another if the person did any of the following:

1. Used improper means to acquire knowledge of the trade secret.

2. At the time of disclosure or use, knew or had reason to know that he or she obtained knowledge of the trade secret through any of the following means:

a. Deriving it from or through a person who utilized improper means to acquire it.

b. Acquiring it under circumstances giving rise to a duty to maintain its secrecy or limit its use.

c. Deriving it from or through a person who owed a duty to the person seeking relief to maintain its secrecy or limit its use.

d. Acquiring it by accident or mistake.

(3) INJUNCTIVE RELIEF. (a) 1. A court may grant an injunction against a person who violates sub. (2). Chapter 813 governs any temporary or interlocutory injunction or ex parte restraining order in an action under this section, except that no court may issue such an injunction or restraining order unless the complainant makes an application which includes a description of each alleged trade secret in sufficient detail to inform the party to be enjoined or restrained of the nature of the complaint against that party or, if the court so orders, includes written disclosure of the trade secret. The complainant shall serve this application upon the party to be enjoined or restrained at the time the motion for the injunction is made or the restraining order is served, whichever is earlier.

2. Except as provided in subd. 3., upon application to the court, the court shall terminate an injunction when a trade secret ceases to exist.

3. The court may continue an injunction for a reasonable period of time to eliminate commercial advantage which the person who violated sub. (2) otherwise would derive from the violation.

(b) In exceptional circumstances, an injunction granted under par. (a) may condition future use of a trade secret by the person who violated sub. (2) upon payment of a reasonable royalty by that person to the owner of the trade secret for no longer than the period of time for which the court may enjoin or restrain the use of the trade secret under par. (a). Exceptional circumstances include a material and prejudicial change of position, prior to acquiring knowledge or reason to know of a violation of sub. (2), that renders an injunction inequitable.

(c) In appropriate circumstances, the court may order affirmative acts to protect a trade secret.

(4) DAMAGES. (a) Except to the extent that a material and prejudicial change of position prior to acquiring knowledge or reason to know of a violation of sub. (2) renders a monetary recovery inequitable, a court may award damages to the complainant for a violation of sub. (2). A court may award damages in addition to, or in lieu of, injunctive relief under sub. (3). Damages may include both the actual loss caused by the violation and unjust enrichment caused by the violation that is not taken into account in computing actual loss. Damages may be measured exclusively by the imposition of liability for a reasonable royalty for a violation of sub. (2) if the complainant cannot by any other method of measurement prove an amount of damages which exceeds the reasonable royalty.

(b) If a violation of sub. (2) is wilful and malicious, the court may award punitive damages in an amount not exceeding twice any award under par. (a).

(c) If a claim that sub. (2) has been violated is made in bad faith, a motion to terminate an injunction is made or resisted in bad faith, or a violation of sub. (2) is wilful and deliberate, the court may award reasonable attorney fees to the prevailing party.

(5) PRESERVATION OF SECRECY. In an action under this section, a court shall preserve the secrecy of an alleged trade secret by reasonable means, which may include granting a protective order in a discovery proceeding, holding an in−camera hearing, sealing the record of the action and ordering any person involved in the action not to disclose an alleged trade secret without prior court approval.

(6) EFFECT ON OTHER LAWS. (a) Except as provided in par. (b), this section displaces conflicting tort law, restitutionary law and any other law of this state providing a civil remedy for misappropriation of a trade secret.

(b) This section does not affect any of the following:

1. Any contractual remedy, whether or not based upon misappropriation of a trade secret.

2. Any civil remedy not based upon misappropriation of a trade secret.

3. Any criminal remedy, whether or not based upon misappropriation of a trade secret.

(7) UNIFORMITY OF APPLICATION AND CONSTRUCTION. This section shall be applied and construed to make uniform the law relating to misappropriation of trade secrets among states enacting substantially identical laws.

History: 1985 a. 236.

NOTE: 1985 Wis. Act 236, which created this section, contains extensive notes describing this section and other sections affected by Act 236. See sections 14 and 16 of the Act for applicability dates.

For general discussion of provision and its application, see Minuteman, Inc. v. Alexander, 147 W (2d) 842, 434 NW (2d) 773 (1989).

Revisions to the law of trade secrets. Whitesel and Sklansky. WBB Aug. 1986.

134.95 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. 134.22, 134.68, 134.70, 134.71, 134.72, 134.74, 134.83 or 134.87 or ch. 136 or a rule promulgated under these sections or that chapter, 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 fine or forfeiture was imposed, was perpetrated against an elderly person or disabled person and if any of the factors under s. 100.264 (2) (a), (b) or (c) is present.

(3) PRIORITY FOR RESTITUTION. If the court orders restitution under s. 134.22 (4) (a), 134.68 (7), 134.70 (15), 134.74 (8), 134.83 (7) or 134.87 (6) 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.

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

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

(a) Directly commits the violation;

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

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

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