



1997 SENATE BILL 400

January 15, 1998 - Introduced by LAW REVISION COMMITTEE. Referred to
Committee on Agriculture and Environmental Resources.

1 **AN ACT to repeal** 134.24 (1) (b); **to renumber** 134.24 (title) and (1) (intro.) and
2 (a), 134.24 (1) (c) to (g), 134.24 (3), 134.24 (6) and (7), 134.67 (title), 134.67
3 (intro.), 134.67 (2) (a) 1. to 3. and 134.67 (2) (b) 1. to 3.; **to renumber and**
4 **amend** 134.22, 134.24 (2), 134.24 (4), 134.24 (5), 134.42, 134.67 (2) (a) (intro.),
5 134.67 (2) (b) (intro.), 134.67 (2) (c), 134.68, 134.70, 134.705, 134.74, 134.83 and
6 134.85; and **to amend** 15.135 (4) (c) 1., 46.03 (37) (intro.), 46.03 (37) (a), 46.03
7 (37) (b), 60.23 (24), 100.18 (8), 100.26 (1), 134.95 (2), 134.95 (3), 134.99 (1),
8 165.25 (4) (ar) and 707.55 (10) of the statutes; **relating to:** advisory members
9 of the land and water conservation board and the renumbering of certain
10 provisions of chapter 134 of the statutes (suggested as remedial legislation by
11 the department of agriculture, trade and consumer protection).

Analysis by the Legislative Reference Bureau

Current law requires the land and water conservation board to invite the U.S. secretary of agriculture to appoint a representative of the soil conservation service and a representative of the agricultural stabilization and conservation service to serve as advisory members of the board. This bill changes this provision so that it

SENATE BILL 400

refers to representatives of the natural resources conservation service and the farm service agency.

Chapter 134 of the statutes deals with regulation of certain trades. Most of the provisions in this chapter are not administered by any state agency. This bill renumbers the provisions in the chapter that are administered by the department of agriculture, trade and consumer protection or the department of health and family services into more appropriate chapters. The bill makes no major substantive changes to current law.

For further information, see the NOTES provided by the law revision committee of the legislative council.

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

LAW REVISION COMMITTEE PREFATORY NOTE: This bill is a remedial legislation proposal, requested by the department of agriculture, trade and consumer protection and introduced by the law revision committee under s. 13.83 (1) (c) 4., stats. After careful consideration of the various provisions of this bill, the law revision committee has determined that this bill makes minor substantive changes in the statutes, and that these changes are desirable as a matter of public policy.

1 **SECTION 1.** 15.135 (4) (c) 1. of the statutes is amended to read:

2 15.135 (4) (c) 1. The U.S. secretary of agriculture to appoint a representative
3 of the ~~soil~~ natural resources conservation service and a representative of the
4 ~~agricultural stabilization and conservation farm service agency~~ to serve as advisory
5 members of the board.

NOTE: According to the department of agriculture, trade and consumer protection, the proposed changes to this statute reflect organizational changes at the United States department of agriculture.

6 **SECTION 2.** 46.03 (37) (intro.) of the statutes is amended to read:

7 46.03 (37) FIRST AID INSTRUCTION. (intro.) In connection with first aid and
8 cardiopulmonary resuscitation instruction to fitness center employes required
9 under s. ~~134.705~~ 100.178, do all of the following:

10 **SECTION 3.** 46.03 (37) (a) of the statutes is amended to read:

11 46.03 (37) (a) Promulgate rules establishing standards and procedures under
12 s. ~~134.705~~ 100.178 (5) (a) to (c).

SENATE BILL 400

1 **SECTION 4.** 46.03 (37) (b) of the statutes is amended to read:

2 46.03 **(37)** (b) Approve individuals, organizations or institutions of higher
3 education which teach fitness center employes basic first aid and basic
4 cardiopulmonary resuscitation under s. ~~134.705~~ 100.178 (2).

5 **SECTION 5.** 60.23 (24) of the statutes is amended to read:

6 60.23 **(24)** CABLE TELEVISION. Enact and enforce an ordinance, and provide
7 forfeitures for a violation of that ordinance, that is similar to s. ~~134.42~~ 100.209, or
8 that gives a cable service subscriber greater rights than the rights under s. ~~134.42~~
9 100.209 (2).

10 **SECTION 6.** 100.18 (8) of the statutes is amended to read:

11 100.18 **(8)** Every wholesaler and every other person selling or distributing
12 motor fuel in this state shall keep posted in a conspicuous place, most accessible to
13 the public at his or her place of business, and on every pump from which delivery is
14 made directly into the fuel tank attached to a motor vehicle, a placard showing the
15 net selling price per gallon of all grades of motor fuel and the amount of all taxes per
16 gallon thereon. On pumps or other dispensing equipment from which motor fuel is
17 sold and delivered directly into fuel supply tanks attached to motor vehicles, such
18 posting shall be in figures not less than one inch high, except that no such placard
19 shall be required on a computer pump whereon the total net selling price per gallon
20 including all taxes is legibly shown on its face. Except for sales to drivers of motor
21 vehicles used by physically disabled persons under s. ~~134.85~~ 100.51 (5), all sales shall
22 be made at the posted price. Delivery slips shall also show the net selling price per
23 gallon of all grades of motor fuel and the amount of all taxes per gallon thereon. If
24 the wholesaler or person has more than one place of business in this state, the
25 wholesaler or person shall post that placard at all of his or her places of business.

SENATE BILL 400**SECTION 6**

1 All prices posted shall remain in effect for at least 24 hours after they are posted.
2 It shall be considered deceptive advertising to advertise or represent in any manner
3 the price of motor fuel offered for sale at retail to be less than the price so posted on
4 each pump.

5 **SECTION 7.** 100.26 (1) of the statutes is amended to read:

6 100.26 (1) Any person who violates any provision of this chapter, except s.
7 100.18 or, 100.20, 100.206 or 100.51, for which no specific penalty is prescribed shall
8 be fined not to exceed \$200, or imprisoned in the county jail not more than 6 months
9 or both.

10 **SECTION 8.** 134.22 of the statutes is renumbered 100.173, and 100.173 (4)
11 (intro.) and (a), as renumbered, are amended to read:

12 100.173 (4) (intro.) The department of ~~agriculture, trade and consumer~~
13 ~~protection~~ shall investigate violations of this section. The department of ~~agriculture,~~
14 ~~trade and consumer protection~~, or any district attorney upon informing the
15 department of ~~agriculture, trade and consumer protection~~, may, on behalf of the
16 state, do any of the following:

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

SENATE BILL 400

1 **SECTION 9.** 134.24 (title) and (1) (intro.) and (a) of the statutes are renumbered
2 100.206 (title) and (1) (intro.) and (a).

3 **SECTION 10.** 134.24 (1) (b) of the statutes is repealed.

4 **SECTION 11.** 134.24 (1) (c) to (g) of the statutes are renumbered 100.206 (1) (c)
5 to (g).

6 **SECTION 12.** 134.24 (2) of the statutes is renumbered 100.206 (2), and 100.206
7 (2) (a) 1., as renumbered, is amended to read:

8 100.206 (2) (a) 1. A certified copy of each document that is used at the time of
9 filing by the performing rights society to enter into a contract with a proprietor ~~doing~~
10 business who operates a retail establishment or restaurant in this state.

11 **SECTION 13.** 134.24 (3) of the statutes, as affected by 1997 Wisconsin Act 35,
12 is renumbered 100.206 (3).

13 **SECTION 14.** 134.24 (4) of the statutes is renumbered 100.206 (4), and 100.206
14 (4) (b) 1., as renumbered, is amended to read:

15 100.206 (4) (b) 1. The proprietor's name and ~~business~~ commercial address and
16 the name and location of each retail establishment and restaurant to which the
17 contract applies.

18 **SECTION 15.** 134.24 (5) of the statutes is renumbered 100.206 (5), and 100.206
19 (5) (a) and (b), as renumbered, are amended to read:

20 100.206 (5) (a) Enter the ~~business~~ commercial premises of a proprietor to
21 discuss a contract under this section with the proprietor or his or her employes,
22 without identifying himself or herself and making known the purpose of the visit
23 before commencing any further communication with the proprietor or the
24 proprietor's employes.

SENATE BILL 400

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

3 **SECTION 16.** 134.24 (6) and (7) of the statutes are renumbered 100.206 (6) and
4 (7).

5 **SECTION 17.** 134.42 of the statutes is renumbered 100.209, and 100.209 (3) and
6 (4) (b), as renumbered, are amended to read:

7 100.209 (3) RULES AND LOCAL ORDINANCES ALLOWED. This section does not
8 prohibit the department of ~~agriculture, trade and consumer protection~~ from
9 promulgating a rule or from issuing an order consistent with its authority under ~~ch.~~
10 ~~100~~ this chapter that gives a subscriber greater rights than the rights under sub. (2)
11 or prohibit a city, village or town from enacting an ordinance that gives a subscriber
12 greater rights than the rights under sub. (2).

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

16 **SECTION 18.** 134.67 (title) of the statutes is renumbered 94.709 (title).

17 **SECTION 19.** 134.67 (intro.) of the statutes is renumbered 94.709 (1).

18 **SECTION 20.** 134.67 (2) (a) (intro.) of the statutes, as affected by 1997 Wisconsin
19 Act 27, is renumbered 94.709 (2) (a) (intro.) and amended to read:

20 94.709 (2) (a) (intro.) In the event of the outbreak of an epidemic disease of
21 humans or animals spread by insects which it is known can be controlled by DDT but
22 cannot be adequately controlled by any other known pesticide, the department of
23 ~~agriculture, trade and consumer protection~~ may authorize the use of DDT in
24 controlling the epidemic upon a finding that:

SENATE BILL 400

1 **SECTION 21.** 134.67 (2) (a) 1. to 3. of the statutes are renumbered 94.709 (2) (a)
2 1. to 3.

3 **SECTION 22.** 134.67 (2) (b) (intro.) of the statutes, as affected by 1997 Wisconsin
4 Act 27, is renumbered 94.709 (2) (b) (intro.) and amended to read:

5 94.709 (2) (b) (intro.) In the event of the outbreak of a plant disease of epidemic
6 proportions which threatens a significant portion of the affected crop and which is
7 caused or spread by an insect which it is known can be controlled by DDT but cannot
8 be adequately controlled by any other known pesticide, the department of
9 agriculture, ~~trade and consumer protection~~ may authorize the use of DDT in
10 controlling the epidemic upon a finding that:

11 **SECTION 23.** 134.67 (2) (b) 1. to 3. of the statutes are renumbered 94.709 (2) (b)
12 1. to 3.

13 **SECTION 24.** 134.67 (2) (c) of the statutes, as affected by 1997 Wisconsin Act 27,
14 is renumbered 94.709 (2) (c) and amended to read:

15 94.709 (2) (c) The department of agriculture, ~~trade and consumer protection~~
16 also may authorize the use of DDT or its isomers or metabolites for specified research
17 by educational institutions if it finds that no ecologically significant residues of DDT
18 or its isomers or metabolites will be allowed to escape into the environment.

19 **SECTION 25.** 134.68 of the statutes is renumbered 100.175, and 100.175 (5) (a)
20 (intro.) and (b) and (7) (a) (intro.), as renumbered, are amended to read:

21 100.175 (5) (a) (intro.) No person may collect or by contract require a buyer to
22 pay more than \$100 for dating services before the buyer receives or has the
23 opportunity to receive those services unless the person selling dating services
24 establishes proof of financial responsibility by maintaining any of the following

SENATE BILL 400

1 commitments approved by the department of ~~agriculture, trade and consumer~~
2 ~~protection~~ in an amount not less than \$25,000:

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

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

11 **SECTION 26.** 134.70 of the statutes is renumbered 100.177, and 100.177 (13) (b)
12 1. (intro.), 2. and 3. and (15) (a) and (am), as renumbered, are amended to read:

13 100.177 (13) (b) 1. (intro.) Except as provided in subd. 3., a center may establish
14 proof of financial responsibility required under par. (a) by maintaining an
15 established escrow account approved by the department of ~~agriculture, trade and~~
16 ~~consumer protection~~ for all amounts received from buyers in advance of the receipt
17 of services or by maintaining any of the following commitments approved by the
18 department of ~~agriculture, trade and consumer protection~~ in an amount not less than
19 \$25,000, subject to subd. 2.:

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

SENATE BILL 400

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

13 **(15)** (a) ~~The department of agriculture, trade and consumer protection~~ shall
14 investigate violations of this section or s. ~~134.705~~ 100.178 (2) or (4). The department
15 of agriculture, trade and consumer protection may on behalf of the state:

16 1. Bring an action for temporary or permanent injunctive or other relief in any
17 court of competent jurisdiction for any violation of this section or s. ~~134.705~~ 100.178
18 (2) or (4). The court may in its discretion, upon entry of final judgment, award
19 restitution when appropriate to any person suffering loss because of violations of this
20 section if proof of such loss is submitted to the satisfaction of the court.

21 2. Bring an action in any court of competent jurisdiction for the recovery of civil
22 forfeitures against any person who violates this section or s. ~~134.705~~ 100.178 (2) or
23 (4) in an amount not less than \$100 nor more than \$10,000 for each violation.

24 (am) ~~The department of agriculture, trade and consumer protection~~ may bring
25 an action in circuit court to recover on a financial commitment maintained under

SENATE BILL 400**SECTION 26**

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

3 **SECTION 27.** 134.705 of the statutes is renumbered 100.178, and 100.178 (1) (b)
4 and (c), (4) and (7), as renumbered, are amended to read:

5 100.178 (1) (b) “Department” Notwithstanding s. 93.01 (3), “department”
6 means the department of health and family services.

7 (c) “Fitness center” has the meaning given under s. ~~134.70~~ 100.177 (1) (c).

8 (4) A fitness center shall post a notice or notices on its premises stating the
9 requirements of sub. (2) and the penalty for a violation of sub. (2) under s. ~~134.70~~
10 100.177 (15) (a). The notice shall comply with the rules promulgated by the
11 department under sub. (5) (d).

12 (7) A violation of sub. (2) or (4) is subject to s. ~~134.70~~ 100.177 (15) (a). This
13 subsection or s. ~~134.70~~ 100.177 (15) (a) does not preclude a person injured as a result
14 of a violation of this section from pursuing any other available equitable or legal
15 relief.

16 **SECTION 28.** 134.74 of the statutes is renumbered 100.171, and 100.171 (7) (b)
17 and (8) (intro.), as renumbered, are amended to read:

18 100.171 (7) (b) Whoever intentionally violates this section may be fined not
19 more than \$10,000 or imprisoned for not more than 2 years or both. A person
20 intentionally violates this section if the violation occurs after the department of
21 agriculture, ~~trade and consumer protection~~ or a district attorney has notified the
22 person by certified mail that the person is in violation of this section.

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

SENATE BILL 400

1 **SECTION 29.** 134.83 of the statutes is renumbered 100.174, and 100.174 (5)
2 (intro.) and (6), as renumbered, are amended to read:

3 100.174 **(5)** (intro.) The department of ~~agriculture, trade and consumer~~
4 ~~protection~~ or any district attorney may on behalf of the state:

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

7 **SECTION 30.** 134.85 of the statutes, as affected by 1997 Wisconsin Act 35, is
8 renumbered 100.51, and 100.51 (2) (b) and (3) (a), as renumbered, are amended to
9 read:

10 100.51 **(2)** (b) Good cause exists for refusing to honor a succession if a
11 designated family member does not meet existing reasonable standards of the motor
12 fuel grantor. The motor fuel grantor's existing reasonable standards may include
13 requirements directly related to a person's management and technical skills,
14 training and ~~business~~ commercial experience, credit worthiness and other
15 requirements directly related to a person's ability to operate the motor fuel
16 dealership.

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

22 **SECTION 31.** 134.95 (2) of the statutes is amended to read:

23 134.95 **(2)** SUPPLEMENTAL FORFEITURE. If a fine or a forfeiture is imposed on a
24 person for a violation under s. ~~134.22, 134.68, 134.70, 100.171, 100.173, 100.174,~~
25 100.175, 100.177, 134.71, 134.72, ~~134.74, 134.83~~ or 134.87 or ch. 136 or a rule

SENATE BILL 400**SECTION 31**

1 promulgated under these sections or that chapter, the person shall be subject to a
2 supplemental forfeiture not to exceed \$10,000 for that violation if the conduct by the
3 defendant, for which the fine or forfeiture was imposed, was perpetrated against an
4 elderly person or disabled person and if any of the factors under s. 100.264 (2) (a), (b)
5 or (c) is present.

6 **SECTION 32.** 134.95 (3) of the statutes is amended to read:

7 134.95 (3) PRIORITY FOR RESTITUTION. If the court orders restitution under s.
8 ~~134.22 (4) (a), 134.68 (7), 134.70 (15), 134.74 (8), 134.83 (7)~~ 100.171 (8), 100.173 (4)
9 (a), 100.174 (7), 100.175 (7), 100.177 (15) or 134.87 (6) for a pecuniary or monetary
10 loss suffered by a person, the court shall require that the restitution be paid by the
11 defendant before the defendant pays any forfeiture imposed under this section.

12 **SECTION 33.** 134.99 (1) of the statutes is amended to read:

13 134.99 (1) Whoever is concerned in the commission of a violation of this
14 chapter, ~~except s. 134.83,~~ for which a forfeiture is imposed is a principal and may be
15 charged with and convicted of the violation although he or she did not directly
16 commit it and although the person who directly committed it has not been convicted
17 of the violation.

18 **SECTION 34.** 165.25 (4) (ar) of the statutes is amended to read:

19 165.25 (4) (ar) The department of justice shall furnish all legal services
20 required by the department of agriculture, trade and consumer protection relating
21 to the enforcement of ss. 100.171, 100.173, 100.174, 100.175, 100.177, 100.18,
22 100.182, 100.20, 100.205, 100.207, 100.209, 100.21, 100.28, 100.50, ~~134.22, 134.42,~~
23 ~~134.68, 134.70, 134.74, 134.83 and 134.85~~ and 100.51 and chs. 136, 344, 704, 707 and
24 779, together with any other services as are necessarily connected to the legal
25 services.

SENATE BILL 400

1 **SECTION 35.** 707.55 (10) of the statutes is amended to read:

2 707.55 (10) GIFTS AND PRIZES. A mail or coupon promotion sent to residents of
3 this state that offers any award, gift or prize for visiting a development or attending
4 any sales presentation shall comply with the requirements of s. ~~134.74~~ 100.171.

NOTE: Chapter 134, stats., relating to miscellaneous trade regulations, contains a number of sections which are specifically assigned to the department of agriculture, trade and consumer protection (DATCP) for administration and enforcement. Other sections of ch. 134 are not assigned to any state agency, which, according to the DATCP, creates some confusion as to the scope of state agency responsibility for ch. 134. The treatment of SECTIONS 2 to 35 is necessary to renumber the laws in ch. 134 that are administered by DATCP to chs. 94 and 100, which DATCP says will help to alleviate this confusion.

5

(END)