

2001 DRAFTING REQUEST

Bill

Received: **09/19/2000**

Received By: **traderc**

Wanted: **As time permits**

Identical to LRB:

For: **Administration-Budget**

By/Representing: **Walker**

This file may be shown to any legislator: **NO**

Drafter: **rkite**

May Contact:

Alt. Drafters:

Subject: **Agriculture - miscellaneous
Trade Regulation - other**

Extra Copies: **RCT RPN**

Pre Topic:

DOA:.....Walker -

Topic:

Civil forfeitures for product safety, household hazardous substance, and commercial feed laws

Instructions:

See Attached

Drafting History:

<u>Vers.</u>	<u>Drafted</u>	<u>Reviewed</u>	<u>Typed</u>	<u>Proofed</u>	<u>Submitted</u>	<u>Jacketed</u>	<u>Required</u>
/?	traderc 11/13/2000 gibson 11/16/2000			_____			State
/1	rkite 12/08/2000	wjackson 12/12/2000	martykr 12/12/2000	_____	lrb docadmin 12/12/2000		State
/2	rkite 12/15/2000	wjackson 12/18/2000	martykr 12/20/2000	_____	lrb docadmin 12/20/2000		State
/3	rkite 02/07/2001	jdye 02/07/2001	martykr 02/07/2001	_____	lrb docadmin 02/07/2001		State
/4	rkite 02/14/2001	wjackson 02/14/2001	rschluet 02/14/2001	_____	lrb docadmin 02/14/2001		State

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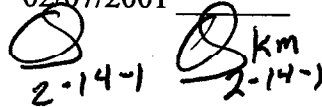
See Attached

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FE Sent For:

1/4 wlj 2/14

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2-14-1

<END>

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13 2/7 jkd

*cmk
12/21/7*

Vers. Drafted Reviewed Typed Proofed Submitted Jacketed Required

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<END>

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May Contact:

Alt. Drafters:

Subject: Agriculture - miscellaneous
Trade Regulation - other

Extra Copies: DATCP
RCT

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1/2 wlj 12/18
km 12/19
JF 12/20
km 20

FE Sent For:

<END>

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FE Sent For:

<END>

18. Civil Forfeitures for Violations of Consumer Product Safety, Hazardous Household Substance and Commercial Feed Laws

Explanation:

The department currently administers laws related to consumer product safety, hazardous household substances and commercial feed. Currently, there are criminal penalties, but no civil forfeiture penalties, for violations of these laws. The department proposes to create civil forfeiture penalties for violations of these laws. This would provide the department with a less harsh enforcement alternative in cases that do not warrant criminal prosecution. It would permit fairer and more effective enforcement, consistent with other consumer protection and agricultural regulations.

Statutory Changes:

SECTION ____ . 94.72(14)(c) of the statutes is created to read:

100.72(14)(c) The department or any district attorney may commence an action in the name of the state to recover a civil forfeiture to the state of not less than \$100 nor more than \$5,000 for each violation of this section, or a rule or order issued under this section.

[NOTE: See current criminal penalty under s. 94.72(14)(a), Stats.]

SECTION ____ . 100.37(9) of the statutes is created to read:

100.37(9) The department or any district attorney may commence an action in the name of the state to recover a civil forfeiture to the state of not less than \$100 nor more than \$5,000 for each violation of this section, or a rule or order issued under this section.

[NOTE: See current criminal penalty under s. 100.26(1), Stats.]

*no - if in
100.37 (8)
w*

SECTION ____ . 100.42(6) of the statutes is created to read:

100.42(6) The department or any district attorney may commence an action in the name of the state to recover a civil forfeiture to the state of not less than \$100 nor more than \$5,000 for each violation of this section, or a rule or order issued under this section.

[NOTE: See current criminal penalty under s. 100.26(1), Stats.]

SECTION ____ . 165.25(4)(ar) of the statutes is amended to read:

165.25(4)(ar) The department of justice shall furnish all legal services required by the department of agriculture, trade and consumer protection related to the enforcement of ss. 100.171, 100.173, 100.174, 100.175, 100.177, 100.18, 100.20, 100.205, 100.207, 100.209, 100.21, 100.28, 100.37, 100.42, 100.50 and 100.51 and chs. 136, 344, 704, 707 and 799, together with any other services as are necessarily connected to the legal services.



50m
State of Wisconsin
2001 - 2002 LEGISLATURE

RMK /1
LRB-0406/11
RNK.../...
Wlj

D-Note

DOA:.....Walker – Civil forfeitures for product safety, household hazardous substance, and commercial feed laws

FOR 2001-03 BUDGET — NOT READY FOR INTRODUCTION

DO NOT GEN

1 AN ACT ...; relating to: the budget. laws constituting the federal

~~the department of agriculture, trade and consumer protection~~
Analysis by the Legislative Reference Bureau AGRICULTURE

Under current law, a person is subject to a fine or imprisonment if the person violates certain laws enforced by DATCP including laws relating to the manufacture, distribution, and sale of commercial feed, laws relating to the safety of certain consumer products, and the hazardous substance act. This bill provides that a person who violates any of these laws may also be subject to a forfeiture.

Current law also provides that DOJ must furnish all legal services required by DATCP in the enforcement of certain laws including laws regulating various trade practices. This bill provides that, in addition to the laws specified under current law, DOJ must also furnish legal services required by DATCP in the enforcement of the hazardous substance act and laws relating to the safety of certain consumer products.

For further information see the *state* fiscal estimate, which will be printed as an appendix to this bill.

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

2 SECTION 1. 94.72 (14) (am) of the statutes is created to read:

No CHANGE To STATE AGENCY NAMES
the department of justice

(law) A

1 94.72 (14) ~~(a)~~ person who violates this section or an order issued or a rule
2 promulgated under this section is subject to a forfeiture of not less than \$100 nor
3 more than \$5,000 for each violation.

4 SECTION 2. 100.37 (8) of the statutes is renumbered 100.37 (8) (a) and amended
5 to read:

6 100.37 (8) (a) Whoever violates this section or an order issued or a rule
7 promulgated under this section may be fined not more than \$5,000 or imprisoned not
8 more than one year in the county jail or both.

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

9 SECTION 3. 100.37 (8) (b) of the statutes is created to read:

10 100.37 (8) (b) Any person who violates this section or an order issued or a rule
11 promulgated under this section is subject to a forfeiture of not less than \$100 nor
12 more than \$5,000 for each violation.

13 SECTION 4. 100.42 (6) of the statutes is created to read:

14 100.42 (6) PENALTIES. (a) Any person who violates this section shall be fined
15 an amount not to exceed \$200 or imprisoned in the county jail for not more than 6
16 months or both.

17 (b) Any person who violates this section or an order entered or a rule
18 promulgated under this section is subject to a forfeiture of not less than \$100 nor
19 more than \$5,000 for each violation.

20 SECTION 5. 165.25 (4) (ar) of the statutes is amended to read:

21 165.25 (4) (ar) The department of justice shall furnish all legal services
22 required by the department of agriculture, trade and consumer protection relating
23 to the enforcement of ss. 100.171, 100.173, 100.174, 100.175, 100.177, 100.18,
24 100.182, 100.20, 100.205, 100.207, 100.209, 100.21, 100.28, 100.37, 100.42, 100.50,

1 and 100.51 and chs. 136, 344, 704, 707, and 779, together with any other services as
2 are necessarily connected to the legal services.

History: 1971 c. 125 s. 522 (1); 1971 c. 215; 1973 c. 333; 1975 c. 81, 199; 1977 c. 29 s. 1656 (27); 1977 c. 187, 260, 273, 344; 1981 c. 20, 62, 96; 1983 a. 27; 1983 a. 36 s. 96 (2), (3), (4); 1983 a. 192; 1985 a. 29, 66; 1987 a. 416; 1989 a. 31, 115, 187, 206, 359; 1991 a. 25, 39, 269; 1993 a. 27, 28, 365; 1995 a. 27 ss. 4453 to 4454m, 9126 (19); 1995 a. 201; 1997 a. 27, 111.

3

(END)

DRAFTER'S NOTE
FROM THE
LEGISLATIVE REFERENCE BUREAU

LRB-0406/

RNK.....

1 dn
Wlj

William Walker:

Please note that in accordance with the proposed language for this draft, this draft specifies that the forfeitures created in the draft apply to not only violations of the applicable statute, but also to the violation of any order issued or rule promulgated under the statute. Current law, however, under s. 100.37 (8), stats., subjects a person to criminal penalties only if the person violates s. 100.37 (8). It does not specifically state whether the criminal penalties apply to a violation of an order issued or a rule promulgated under that statute. Accordingly, this draft also amends the criminal provisions to clarify that a person may also be fined for such violations. If this is not consistent with the intent of the request, please let me know and I will redraft accordingly.

Also, please note that under current law, a person who violates a provision of ch. 100 is subject to a fine or imprisonment or both if no specific penalty is otherwise prescribed. By creating a forfeiture under s. 100.42, an argument could be made that because a forfeiture is prescribed in that provision, the criminal penalty under s. 100.26 (1) does not apply to a violation of 100.42. Accordingly, this draft moves the criminal penalty for a violation of s. 100.42 from 100.26 (1) to s. 100.42 (6) (a) to clarify that both the civil and criminal penalties apply to violations of s. 100.42.

If you have any questions with regard to this draft, please feel free to contact me.

Robin N. Kite
Legislative Attorney
Phone: (608) 266-7291
E-mail: robin.kite@legis.state.wi.us

DRAFTER'S NOTE
FROM THE
LEGISLATIVE REFERENCE BUREAU

LRB-0406/1dn
RNK:wlj:kmm

December 12, 2000

William Walker:

Please note that in accordance with the proposed language for this draft, this draft specifies that the forfeitures created in the draft apply to not only violations of the applicable statute, but also to the violation of any order issued or rule promulgated under the statute. Current law, however, under s. 100.37 (8), stats., subjects a person to criminal penalties only if the person violates s. 100.37 (8). It does not specifically state whether the criminal penalties apply to a violation of an order issued or a rule promulgated under that statute. Accordingly, this draft also amends the criminal provisions to clarify that a person may also be fined for such violations. If this is not consistent with the intent of the request, please let me know and I will redraft accordingly.

Also, please note that under current law, a person who violates a provision of ch. 100 is subject to a fine or imprisonment or both if no specific penalty is otherwise prescribed. By creating a forfeiture under s. 100.42, an argument could be made that because a forfeiture is prescribed in that provision, the criminal penalty under s. 100.26 (1) does not apply to a violation of s. 100.42. Accordingly, this draft moves the criminal penalty for a violation of s. 100.42 from s. 100.26 (1) to s. 100.42 (6) (a) to clarify that both the civil and criminal penalties apply to violations of s. 100.42.

If you have any questions with regard to this draft, please feel free to contact me.

Robin N. Kite
Legislative Attorney
Phone: (608) 266-7291
E-mail: robin.kite@legis.state.wi.us

Kite, Robin

From: Matson, James K DATCP
Sent: Thursday, December 14, 2000 2:36 PM
To: Kite, Robin; Walker, William
Cc: Knapp, Barb H DATCP; Oemichen, William L DATCP; Stoebig, Tom J DATCP; Haas, Teel D DATCP; Ghilardi, David J DATCP; Moll, Keeley A DATCP
Subject: Budget draft; civil forfeiture penalties for consumer product safety law violations.

We have reviewed the LRB redraft of our proposed budget legislation to create civil forfeiture penalties for violations of consumer product safety, hazardous substance and commercial feed law violations (LRB-0406/1). We believe that the LRB draft improves and clarifies our original draft, with one important exception.

We believe that the civil forfeiture provisions under proposed ss. 94.72(14)(am), 100.37(8)(b) and 100.42(6)(b) of the LRB draft should be rephrased as follows, consistent with our original proposal:

"The department or any district attorney may commence an action in the name of the state to recover a civil forfeiture to the state of not less than \$100 nor more than \$5,000 for each violation of this section, or a rule or order issued under this section."

This formulation is consistent with other consumer protection penalty provisions under ch. 100, Stats., and helps to ensure a clear delineation of consumer protection functions between DATCP and the Department of Justice. This formulation was deliberately used in the 1996 budget provisions that re consolidated consumer protection programs in DATCP, and defined the respective roles of DATCP and DOJ under ch. 100, Stats.

Civil forfeiture actions must be brought in the name of the State of Wisconsin (see s. 778.02, Stats.). This formulation clarifies that DATCP is the state agency responsible for enforcement, and is authorized to bring civil forfeiture actions in the name of the state. DOJ may initiate a forfeiture action under these statutes only at DATCP's request, as DATCP's attorney. If DOJ declines to initiate a civil forfeiture action on DATCP's behalf in an important case, DATCP may proceed independently.

DATCP normally works with DOJ or district attorneys to prosecute consumer protection cases. District attorneys have general authority to prosecute civil forfeiture cases. The reference to district attorneys in this formulation merely reaffirms that general authority, so as not to inadvertently limit it.

Given the history and current resolution of the consumer protection jurisdictional issue, we believe that this formulation is important -- at least for the consumer product safety and hazardous substance statutes. It clearly delineates state agency responsibilities, establishes an appropriate attorney-client relationship between DATCP and DOJ, is consistent with other consumer protection penalty provisions, and gives both agencies an incentive to work together. We would be glad to discuss this with you, as necessary.

-- Jim Matson, DATCP Counsel (224-5022)

Kite, Robin

From: Walker, William
Sent: Friday, December 15, 2000 1:19 PM
To: Kite, Robin
Subject: RE: LRB-0406

Yes, please go ahead.

-----Original Message-----

From: Kite, Robin
Sent: Friday, December 15, 2000 1:17 PM
To: Walker, William
Subject: LRB-0406

Bill,

As you know, Jim Matson, DA/CP counsel, has asked that I redraft LRB-0406 to clarify that either a district attorney or DATCP may commence civil forfeiture actions under proposed ss. 94.72 (14) (am), 100.37 (8) (b) and 100.42 (6) (b). I am comfortable with making those changes if you concur with the request. Do you want me to proceed with that redraft?

Robin

Robin N. Kite, Legislative Attorney
Wisconsin Legislative Reference Bureau
P.O. Box 2037
Madison, Wisconsin 53701-2037
(608) 266-7291

STN

RWR
12

2001 - 2002 LEGISLATURE

LRB-04064

RNK:wj:km

DOA:.....Walker - Civil forfeitures for product safety, household hazardous substance, and commercial feed laws

FOR 2001-03 BUDGET - NOT READY FOR INTRODUCTION

DO NOT GEN

1 AN ACT ...; relating to: the budget.

Analysis by the Legislative Reference Bureau

AGRICULTURE

Under current law, a person is subject to a fine or imprisonment if the person violates certain laws enforced by DATCP including laws relating to the manufacture, distribution, and sale of commercial feed, laws relating to the safety of certain consumer products, and laws constituting the federal Hazardous Substances Act. This bill provides that a person who violates any of these laws may also be subject to a forfeiture.

Current law also provides that DOJ must furnish all legal services required by DATCP in the enforcement of certain laws including laws regulating various trade practices. This bill provides that, in addition to the laws specified under current law, DOJ must also furnish legal services required by DATCP in the enforcement of the Hazardous Substances Act and laws relating to the safety of certain consumer products.

For further information see the *state* fiscal estimate, which will be printed as an appendix to this bill.

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25 100.182, 100.20, 100.205, 100.207, 100.209, 100.21, 100.28, 100.37, 100.42, 100.50,

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2 are necessarily connected to the legal services.

3 (END)

2001-2002 DRAFTING INSERT
FROM THE
LEGISLATIVE REFERENCE BUREAU

LRB-0406/2ins.
RNK.....

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Use three times

^{no}₄ The department or any district attorney may commence an action in the name of the state to recover a civil forfeiture to the state of not less than \$100 nor more than \$5,000 for each violation of this section, or a rule or order issued under this section.



Today
State of Wisconsin
2001 - 2002 LEGISLATURE

RmR
13
LRB-0406/S
RNK: ~~Wj+jd~~
Wj+jd

D-Note

DOA:.....Walker – Civil forfeitures for product safety, household hazardous substance, and commercial feed laws

FOR 2001-03 BUDGET — NOT READY FOR INTRODUCTION

Do not gen

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Current law also provides that DOJ must furnish all legal services required by DATCP in the enforcement of certain laws including laws regulating various trade practices. This bill provides that, in addition to the laws specified under current law, DOJ must also furnish legal services required by DATCP in the enforcement of the Hazardous Substances Act and laws relating to the safety of certain consumer products.

For further information see the *state* fiscal estimate, which will be printed as an appendix to this bill.

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

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5 under this section.

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20 (b) The department or any district attorney may commence an action in the
21 name of the state to recover a civil forfeiture to the state of not less than \$100 nor
22 more than \$5,000 for each violation of this section, or a rule or order issued under this
23 section.

24 ~~**SECTION 5.** 165.25 (4) (ar) of the statutes is amended to read:~~

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6 ~~are necessarily connected to the legal services.~~

7

(END)

**DRAFTER'S NOTE
FROM THE
LEGISLATIVE REFERENCE BUREAU**

LRB-0406/3dn

RNK...:...

^
jld

William Walker and Andrew Statz:

This draft reconciles LRB-0406, LRB-0392, and LRB-2156. All of these drafts should continue to appear in the compiled bill.

Robin N. Kite
Legislative Attorney
Phone: (608) 266-7291
E-mail: robin.kite@legis.state.wi.us

**DRAFTER'S NOTE
FROM THE
LEGISLATIVE REFERENCE BUREAU**

LRB-0406/3dn
RNK:jld:cmh

February 7, 2001

William Walker and Andrew Statz:

This draft reconciles LRB-0406, LRB-0392, and LRB-2156. All of these drafts should continue to appear in the compiled bill.

Robin N. Kite
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Today
State of Wisconsin
2001 - 2002 LEGISLATURE

RmR
14
LRB-0406/11
RNK:wlj&jld/11/11

D-Note

DOA:.....Walker – Civil forfeitures for product safety, household hazardous substance, and commercial feed laws

FOR 2001-03 BUDGET — NOT READY FOR INTRODUCTION

DO NOT GEN

1 AN ACT ...; relating to: the budget.

Analysis by the Legislative Reference Bureau

AGRICULTURE

either
Under current law, a person is subject to a fine or imprisonment if the person violates certain laws enforced by DATCP including laws relating to the manufacture, distribution, and sale of commercial feed, laws relating to the safety of certain consumer products, and laws constituting the federal Hazardous Substances Act. This bill provides that a person who violates any of these laws may ~~also~~ be subject to a forfeiture *or a fine*.

Current law also provides that DOJ must furnish all legal services required by DATCP in the enforcement of certain laws including laws regulating various trade practices. This bill provides that, in addition to the laws specified under current law, DOJ must also furnish legal services required by DATCP in the enforcement of the Hazardous Substances Act and laws relating to the safety of certain consumer products.

For further information see the *state* fiscal estimate, which will be printed as an appendix to this bill.

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

SECTION 1

*Insert
2-1* →

1 SECTION 1. 94.72 (14) (am) of the statutes is created to read:

2 94.72 (14) (am) The department or any district attorney may commence an
3 action in the name of the state to recover a civil forfeiture to the state of not less than
4 \$100 nor more than \$5,000 for each violation of this section, or ~~a rule~~ ^{an} order issued
5 *or a rule promulgated* under this section.

6 SECTION 2. 100.37 (8) of the statutes is renumbered 100.37 (8) (a) and amended
7 to read:

8 100.37 (8) (a) Whoever violates this section or an order issued or a rule
9 promulgated under this section may be fined not more than \$5,000 or imprisoned not
10 more than one year in the county jail or both.

or a rule promulgated

11 SECTION 3. 100.37 (8) (b) of the statutes is created to read:

12 100.37 (8) (b) The department or any district attorney may commence an action
13 in the name of the state to recover a civil forfeiture to the state of not less than \$100
14 nor more than \$5,000 for each violation of this section, or ~~a rule~~ ^{an} order issued
15 this section.

16 SECTION 4. 100.42 (6) of the statutes is created to read:

17

18 100.42 (6) PENALTIES. (a) Any person who violates this section ~~shall~~ ^{may} be fined
19 an amount not to exceed \$200 or imprisoned in the county jail for not more than 6
20 months or both.

21 (b) The department or any district attorney may commence an action in the
22 name of the state to recover a civil forfeiture to the state of not less than \$100 nor
23 more than \$5,000 for each violation of this section, or ~~a rule~~ ^{an} order issued
24 section.

or a rule promulgated

(END)

2001-2002 DRAFTING INSERT
FROM THE
LEGISLATIVE REFERENCE BUREAU

LRB-0406/4ins.
RNK.....

Insert 2-1

SECTION [#] 94.72 (14) (a) of the statutes is amended to read:

94.72 (14) (a) A person who violates this section or an order issued or a rule promulgated under this section ~~shall~~ may be fined not more than \$200 or imprisoned not more than 6 months or both.

History: 1975 c. 39, 198, 199; 1977 c. 29 s. 1650m (4); 1979 c. 34; 1983 a. 189; 1985 a. 138; 1991 a. 39, 112; 1995 a. 4; 1997 a. 27, 253; 1999 a. 9.

DRAFTER'S NOTE
FROM THE
LEGISLATIVE REFERENCE BUREAU

LRB-0406/4dn

RNK...../.....

Wlj

Bill Walker:

As we discussed, this redraft ~~provides~~ clarifies the wording in the draft (and includes a new provision amending s. 94.72 (14) (a)) to provide that violators may be subject to a fine or a forfeiture rather than requiring the imposition of a fine. Also, earlier versions of the draft referred to "rules issued". I corrected the draft so that the reference is to "rules promulgated".

Please let me know if you have any questions regarding this draft.

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DRAFTER'S NOTE
FROM THE
LEGISLATIVE REFERENCE BUREAU

LRB-0406/4dn
RNK:wlj:rs

February 14, 2001

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State of Wisconsin
2001 - 2002 LEGISLATURE

LRB-0406/4
RNK:wlj&jld:rs

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FOR 2001-03 BUDGET — NOT READY FOR INTRODUCTION

1 AN ACT ...; relating to: the budget.

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3 (END)