

1 (4) DEBT TO EQUITY RATIO ASSESSMENT RATE. A milk contractor's debt to equity
2 ratio assessment rate is calculated, at the beginning of the license year, as follows:

3 (a) If the milk contractor has filed an annual financial statement under s.
4 126.44 and that financial statement shows positive equity and a debt to equity ratio
5 of not more than 2.0 to 1.0, the milk contractor's debt to equity ratio assessment rate
6 equals the greater of zero or the debt to equity ratio assessment factor in sub. (5) (a)
7 multiplied by the following amount:

- 8 1. Subtract 2 from the debt to equity ratio.
- 9 2. Divide the amount determined under subd. 1. by 3.
- 10 3. Raise the amount determined under subd. 2. to the 9th power.
- 11 4. Divide the debt to equity ratio by 3.25.
- 12 5. Raise the amount determined under subd. 4. to the 5th power.
- 13 6. Add the amount determined under subd. 3. to the amount determined under
14 subd. 5.
- 15 7. Add 0.025 to the amount determined under subd. 6.

16 (b) If the milk contractor files an annual financial statement under s. 126.44
17 and that financial statement shows a debt to equity ratio of greater than 2.0 to 1.0
18 but less than 3.1 to 1.0, the milk contractor's debt to equity ratio assessment rate
19 equals the debt to equity ratio assessment factor in sub. (5) (b) multiplied by the
20 following amount:

- 21 1. Subtract 2 from the debt to equity ratio.
- 22 2. Divide the amount determined under subd. 1. by 3.
- 23 3. Raise the amount determined under subd. 2. to the 9th power.
- 24 4. Divide the debt to equity ratio by 3.25.
- 25 5. Raise the amount determined under subd. 4. to the 5th power.

1 6. Add the amount determined under subd. 3. to the amount determined under
2 subd. 5.

3 7. Add 0.025 to the amount determined under subd. 6.

4 (c) If the milk contractor has filed an annual financial statement under s.
5 126.44 and that financial statement shows negative equity or a debt to equity ratio
6 of at least 3.1 to 1.0, the milk contractor's debt to equity ratio assessment rate equals
7 the debt to equity ratio assessment factor in sub. (5) (b) multiplied by 0.8146917.

8 (d) Except as provided in par. (e), if the milk contractor has not filed an annual
9 financial statement under s. 126.44, the milk contractor's debt to equity ratio
10 assessment rate equals the debt to equity ratio assessment factor in sub. (5) (b)
11 multiplied by 0.11325375.

12 (e) If the milk contractor has not filed an annual financial statement under s.
13 126.44 and the milk contractor procures producer milk in this state solely as a
14 producer agent, the milk contractor's debt to equity ratio assessment rate is 0.00025,
15 except that, for the milk contractor's 5th or higher consecutive full license year of
16 participation in the fund, the milk contractor's debt to equity ratio assessment rate
17 is 0.000175.

18 **(5) DEBT TO EQUITY RATIO ASSESSMENT FACTOR.** (a) A milk contractor's debt to
19 equity ratio assessment factor under sub. (4) (a) is 0.0015, except as follows:

20 1. For the milk contractor's 3rd consecutive full license year as a contributing
21 milk contractor, the milk contractor's current ratio assessment factor is 0.001.

22 2. For the milk contractor's 4th consecutive full license year as a contributing
23 milk contractor, the milk contractor's current ratio assessment factor is 0.0005.

1 3. For the milk contractor's 5th or higher consecutive full license year as a
2 contributing milk contractor, the milk contractor's current ratio assessment factor
3 is zero.

4 (b) A milk contractor's debt to equity ratio assessment factor under sub. (4) (b)
5 to (d) is 0.00225, except that, for the milk contractor's 5th or higher consecutive full
6 license year as a contributing milk contractor, the milk contractor's debt to equity
7 ratio assessment factor is 0.001.

8 **(6) QUARTERLY INSTALLMENTS.** (a) A contributing milk contractor shall pay the
9 milk contractor's annual fund assessment in equal quarterly installments that are
10 due as follows:

- 11 1. The first installment is due on June 1 of the license year.
- 12 2. The 2nd installment is due on September 1 of the license year.
- 13 3. The 3rd installment is due on December 1 of the license year.
- 14 4. The 4th installment is due on March 1 of the license year.

15 (b) A contributing milk contractor may prepay any of the quarterly
16 installments under par. (a).

17 (c) A contributing milk contractor who applies for an annual license after the
18 beginning of a license year shall pay the full annual fund assessment required under
19 this section. The milk contractor shall pay, with the first quarterly installment that
20 becomes due after the day on which the department issues the license, all of the
21 quarterly installments for that license year that were due before that day.

22 (d) If s. 126.45 (1) (b) requires a licensed milk contractor to become a
23 contributing milk contractor during the license year, the milk contractor shall pay
24 only those quarterly installments that become due after the requirement takes
25 effect.

1 (e) A contributing milk contractor who fails to pay the full amount of any
2 quarterly installment when due shall pay, in addition to that installment, a late
3 payment penalty of \$50 or 10% of the overdue installment amount, whichever is
4 greater.

5 (7) NOTICE OF ANNUAL ASSESSMENT AND QUARTERLY INSTALLMENTS. When the
6 department issues an annual license to a contributing milk contractor, the
7 department shall notify the milk contractor of all of the following:

8 (a) The amount of the milk contractor's annual fund assessment under this
9 section.

10 (b) The amount of each required quarterly installment under sub. (6) and the
11 date by which the milk contractor must pay each installment.

12 (c) The penalty that applies under sub. (6) (e) if the milk contractor fails to pay
13 any quarterly installment when due.

14 **126.47 Milk contractors; security. (1) SECURITY REQUIRED.** A milk
15 contractor shall file security with the department, and maintain that security until
16 the department releases it under sub. (7), if all of the following apply when the
17 department first licenses the milk contractor under s. 126.41 (1):

18 (a) The milk contractor reports more than \$1,500,000 in annual milk payroll
19 obligations under s. 126.41 (6) (a).

20 (b) The milk contractor files an annual financial statement under s. 126.44 (1)
21 and that financial statement shows negative equity.

22 (2) SECURITY CONTINUED. A milk contractor who filed security under s. 100.06,
23 1999 stats., before May 1, 2002, shall maintain that security until the department
24 releases it under sub. (7).

1 **(3) AMOUNT OF SECURITY.** A milk contractor who is required to file or maintain
2 security under this section shall at all times maintain security equal to the following
3 amount:

4 (a) Except for a milk contractor who procures producer milk in this state solely
5 as a producer agent, at least 75% of the amount last reported under s. 126.41 (6) (b)
6 or (9).

7 (b) For a milk contractor who procures milk in this state solely as a producer
8 agent, at least the following amounts:

9 1. For the license year beginning on May 1, 2002, 15% of the amount last
10 reported under s. 126.41 (6) (b) or (9).

11 2. For the license year beginning on May 1, 2003, 30% of the amount last
12 reported under s. 126.41 (6) (b) or (9).

13 3. For the license year beginning on May 1, 2004, 45% of the amount last
14 reported under s. 126.41 (6) (b) or (9).

15 4. For the license year beginning on May 1, 2005, 60% of the amount last
16 reported under s. 126.41 (6) (b) or (9).

17 5. For a license year beginning after May 1, 2005, 75% of the amount last
18 reported under s. 126.41 (6) (b) or (9).

19 **(4) FORM OF SECURITY.** The department shall review, and determine whether
20 to approve, security filed under this section. The department may approve only the
21 following types of security:

22 (a) Currency.

23 (b) A commercial surety bond if all of the following apply:

24 1. The surety bond is made payable to the department for the benefit of milk
25 producers and producer agents.

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1 2. The surety bond is issued by a person authorized to operate a surety business
2 in this state.

3 3. The surety bond is issued as a continuous term bond that may be canceled
4 only with the department's written agreement or upon 90 days' prior written notice
5 served on the department in person or by certified mail.

6 4. The surety bond is issued in a form, and subject to any terms and conditions,
7 that the department considers appropriate.

8 (c) A certificate of deposit or money market certificate, if all of the following
9 apply:

10 1. The certificate is issued or endorsed to the department for the benefit of milk
11 producers and producer agents.

12 2. The certificate may not be canceled or redeemed without the department's
13 written permission.

14 3. No person may transfer or withdraw funds represented by the certificate
15 without the department's written permission.

16 4. The certificate renews automatically without any action by the department.

17 5. The certificate is issued in a form, and subject to any terms and conditions,
18 that the department considers appropriate.

19 (d) An irrevocable bank letter of credit if all of the following apply:

20 1. The letter of credit is payable to the department for the benefit of milk
21 producers or producer agents.

22 2. The letter of credit is issued on bank letterhead.

23 3. The letter of credit is issued for an initial period of at least one year.

1 4. The letter of credit renews automatically unless, at least 90 days before the
2 scheduled renewal date, the issuing bank gives the department written notice, in
3 person or by certified mail, that the letter of credit will not be renewed.

4 5. The letter of credit is issued in a form, and subject to any terms and
5 conditions, that the department considers appropriate.

6 (e) Security filed with the department under s. 100.06, 1999 stats., before May
7 1, 2002, except that on January 1, 2003, the department shall withdraw its approval
8 of any security that is not approvable under pars. (a) to (d).

9 (f) A dairy plant trusteeship created before May 1, 2002, under s. 100.06, 1999
10 stats. This paragraph does not apply after January 1, 2003.

11 (5) DEPARTMENT CUSTODY OF SECURITY. The department shall hold, in its custody,
12 all security filed and maintained under this section. The department shall hold the
13 security for the benefit of milk producers and producer agents.

14 (6) ADDITIONAL SECURITY. (a) The department may, at any time, demand
15 additional security from a milk contractor if any of the following applies:

16 1. The milk contractor's existing security falls below the amount required
17 under sub. (3) for any reason, including depreciation in the value of the security,
18 increased obligations to milk producers or producer agents, or the cancellation of any
19 security filed with the department.

20 2. The milk contractor fails to provide required information that is relevant to
21 a determination of security requirements.

22 (b) The department shall issue a demand under par. (a) in writing. The
23 department shall indicate why additional security is required, the amount of
24 security required, and the deadline date for filing security. The department may not

1 specify a deadline for filing security that is more than 30 days after the date on which
2 the department issues its demand for security.

3 (c) A milk contractor may request a hearing, under ch. 227, on a demand for
4 security under par. (b). A request for hearing does not automatically stay a security
5 demand.

6 (d) If a milk contractor fails to comply with the department's demand for
7 security under this subsection, the milk contractor shall give written notice of that
8 fact to all milk producers and producer agents from whom the contractor procures
9 producer milk in this state. If the milk contractor fails to give accurate notice under
10 this paragraph within 5 days after the deadline for filing security under par. (b) has
11 passed, the department shall promptly notify milk producers and producer agents
12 by publishing a class 3 notice under ch. 985. The department may also give
13 individual notice to those milk producers or producer agents of whom the department
14 is aware.

15 (e) If a milk contractor fails to comply with the department's demand for
16 security under this subsection, the department may do any of the following:

- 17 1. Issue a summary order under s. 126.85 (2).
- 18 2. Suspend or revoke the milk contractor's license.

19 (7) **RELEASING SECURITY.** (a) The department may release security filed under
20 sub. (1) if any of the following applies:

- 21 1. The milk contractor reports not more than \$1,500,000 in milk payroll
22 obligations under s. 126.41 (6) (a) for at least 2 consecutive years and the milk
23 contractor pays the quarterly fund assessment that would have been required of the
24 milk contractor if the milk contractor had been a contributing milk contractor on the
25 most recent quarterly installment date under s. 126.46 (6).

1 2. The milk contractor's annual financial statement under s. 126.44 shows
2 positive equity for at least 2 consecutive years and the milk contractor pays the
3 quarterly fund assessment that would have been required of the milk contractor if
4 the milk contractor had been a contributing milk contractor on the most recent
5 quarterly installment date under s. 126.46 (6).

6 (b) On August 1, 2002, the department may release security maintained under
7 sub. (2), unless the milk contractor is required to file security under sub. (1).

8 (c) The department may release security to the extent that the security exceeds
9 the amount required under sub. (3).

10 (d) The department may release security if the milk contractor files alternative
11 security, of equivalent value, that the department approves.

12 (e) The department shall release security if the milk contractor has gone out
13 of business and paid all milk payroll obligations in full.

14 **126.48 Milk contractors; payments to producers. (1) FIRST MONTHLY**
15 **PAYMENT.** By the 4th day of each month, a milk contractor shall pay for producer milk
16 received during the first 15 days of the preceding month. The milk contractor shall
17 base the payment on an estimated price that is at least 80% of the class III price
18 published by the regional federal milk market administrator for the month
19 preceding the month in which the milk is received, or 80% of the contract price,
20 whichever is greater.

21 **(2) SECOND MONTHLY PAYMENT.** By the 19th day of each month, a milk contractor
22 shall pay the balance due for producer milk received during the preceding month.

23 **(3) PAYMENT EXPLANATION.** The department may, by rule, require a milk
24 contractor to provide a milk producer or producer agent with a written explanation

1 of each payment under this section. The department may specify the content of the
2 explanation, including information related to any of the following:

3 (a) Milk contractor identification.

4 (b) Milk producer or producer agent identification.

5 (c) Pay period.

6 (d) Volume of milk received.

7 (e) Grade of milk.

8 (f) Milk test results.

9 (g) Milk price and adjustments.

10 (h) Gross amount due.

11 (i) Average gross pay per hundredweight less hauling charges.

12 (j) Net amount due.

13 (k) Deductions and assignments.

14 **126.49 Milk contractors; records and reports. (1) REQUIRED RECORDS.** A
15 milk contractor shall keep accurate records and accounts of milk receipts, payments
16 for milk received, and amounts owed to milk producers. The department may, by
17 rule, specify records that a milk contractor must keep.

18 **(2) REQUIRED REPORTS.** The department may, by rule, require a milk contractor
19 to file with the department periodic reports of information needed for the
20 administration of this chapter.

21 **(3) RECORDS RETENTION; INSPECTION.** A milk contractor shall retain records
22 required under sub. (1) for at least 6 years after the records are created. A milk
23 contractor shall make the records available to the department for inspection and
24 copying upon request.

1 vegetable procurement contract. "Contract obligation" includes a net amount owed
2 for unharvested acreage.

3 (4) "Contributing vegetable contractor" means a vegetable contractor who is
4 licensed under s. 126.56 (1), who either has paid one or more quarterly installments
5 under s. 126.60 (6) or is required to contribute to the fund, but the first quarterly
6 installment under s. 126.60 (6) is not yet due, and who is not disqualified under s.
7 126.59 (2).

8 (6) "Current ratio" means the ratio of the value of current assets to the value
9 of current liabilities, calculated according to s. 126.58 (6) (c) 1.

10 (7) "Debt to equity ratio" means the ratio of the value of liabilities to equity,
11 calculated according to s. 126.58 (6) (c) 2.

12 (8) "Deferred payment contract" means a vegetable procurement contract in
13 which the vegetable producer or a producer agent agrees to accept payment after
14 January 31 for processing vegetables harvested during the previous calendar year.

15 (9) "Disqualified vegetable contractor" means a vegetable contractor who is
16 disqualified from the fund under s. 126.59 (2).

17 (10) "Food processing" has the meaning given in s. 97.29 (1) (g).

18 (10m) "License year" means the period beginning on February 1 and ending
19 on the following January 31.

20 (11) "Processing vegetables" means vegetables grown or sold for use in food
21 processing, regardless of whether those vegetables are actually harvested or
22 processed as food. "Processing vegetables" includes sweet corn grown or sold for use
23 in food processing, but does not include grain.

24 (12) "Producer agent" means a person who, without taking title to vegetables,
25 acts on behalf of a vegetable producer to market or accept payment for processing

1 vegetables that the vegetable producer grows in this state. "Producer agent" does not
2 include any of the following:

3 (a) A person who merely brokers a contract between a vegetable producer and
4 a vegetable contractor, without becoming a party to the contract or accepting
5 payment on behalf of the vegetable producer.

6 (b) A person who merely holds or transports processing vegetables for a
7 vegetable producer, without marketing the vegetables or accepting payment on
8 behalf of the vegetable producer.

9 (13) "Time of delivery" under a vegetable procurement contract means the time
10 at which one of the following occurs:

11 (a) The vegetable contractor harvests the vegetables.

12 (b) The vegetable producer delivers harvested vegetables to the custody or
13 control of the vegetable contractor.

14 (c) The vegetable contractor notifies the vegetable producer of the vegetable
15 contractor's refusal to harvest or accept delivery of vegetables.

16 (14) "Vegetable contractor" means a person who does any of the following:

17 (a) Contracts with a vegetable producer or a producer agent to procure
18 processing vegetables that a vegetable producer grows in this state.

19 (b) Contracts with a vegetable producer to market, as a producer agent,
20 processing vegetables that the vegetable producer grows in this state.

21 (15) "Vegetable procurement contract" means an oral or written agreement
22 under which a vegetable contractor does any of the following:

23 (a) Contracts with a vegetable producer or a producer agent to procure
24 processing vegetables that a vegetable producer grows in this state.

1 (b) Contracts with a vegetable producer to market, as a producer agent,
2 processing vegetables that the vegetable producer grows in this state.

3 (16) “Vegetable producer” means a person who grows processing vegetables in
4 this state.

5 (17) “Unharvested acreage” means land on which vegetables are grown, under
6 a vegetable procurement contract, that a vegetable contractor leaves unharvested for
7 any reason. “Unharvested acreage” includes all of the following:

8 (a) Land on which the vegetables are suitable for processing, but are not
9 harvested.

10 (b) Land on which the vegetables are abandoned as being unsuitable for
11 processing.

12 **126.56 Vegetable contractors; licensing.** (1) LICENSE REQUIRED. (a) Except
13 as provided in sub. (2), no person may operate as a vegetable contractor without a
14 current annual license from the department.

15 (b) A license under par. (a) expires on the January 31 following its issuance.
16 No person may transfer or assign a license issued under par. (a).

17 (2) EXEMPT CONTRACTORS. The following vegetable contractors are exempt from
18 licensing under sub. (1):

19 (a) A vegetable contractor who procures vegetables primarily for unprocessed,
20 fresh market use and is licensed under the federal Perishable Agricultural
21 Commodities Act, 7 USC 499a to 499t.

22 (b) A restaurant or retail food establishment that procures processing
23 vegetables solely for retail sale at the restaurant or retail food establishment.

1 **(3) LICENSE APPLICATION.** A vegetable contractor shall apply for a license under
2 sub. (1) in writing, on a form provided by the department. The applicant shall
3 provide all of the following:

4 (a) The applicant's legal name and any trade name under which the applicant
5 proposes to operate as a vegetable contractor.

6 (b) A statement of whether the applicant is an individual, corporation,
7 partnership, cooperative, limited liability company, trust, or other legal entity. If the
8 applicant is a corporation or cooperative, the application shall identify each officer
9 of the corporation or cooperative. If the applicant is a partnership, the application
10 shall identify each partner.

11 (c) The mailing address of the applicant's principal business location and the
12 name of a responsible individual who may be contacted at that address.

13 (d) The street address of each business location from which the applicant
14 operates as a vegetable contractor in this state and the name of a responsible
15 individual who may be contacted at each location that is staffed.

16 (e) All license fees and surcharges required under sub. (4).

17 (f) The sworn and notarized statement required under sub. (9).

18 (g) A financial statement if required under s. 126.58 (1) and not yet filed.

19 (h) Other relevant information required by the department.

20 **(4) LICENSE FEES AND SURCHARGES.** A vegetable contractor applying for a license
21 under sub. (1) shall pay the following fees and surcharges, unless the department
22 specifies a different fee or surcharge amount by rule:

23 (a) A nonrefundable license processing fee of \$25.

24 (b) A fee of \$25 plus 5.75 cents for each \$100 in contract obligations reported
25 under sub. (9) (a), less any credit provided under sub. (6).

1 (c) A license surcharge of \$500 if the department determines that, within 365
2 days before submitting the license application, the applicant operated as a vegetable
3 contractor without a license in violation of sub. (1). The applicant shall also pay any
4 license fees, license surcharges, and fund assessments that are still due for the
5 license year in which the applicant violated sub. (1).

6 (d) A license surcharge of \$100 if during the preceding 12 months the applicant
7 failed to file an annual financial statement required under s. 126.58 (1) (b) by the
8 applicable deadline.

9 (e) A license surcharge of \$100 if a renewal applicant fails to renew a license
10 by the license expiration date of January 31.

11 **(4m) EFFECT OF PAYMENT OF SURCHARGE.** Payment under sub. (3) (c) does not
12 relieve the applicant of any other civil or criminal liability that results from the
13 violation of sub. (1), but does not constitute evidence of any law violation.

14 **(5) LICENSE FOR PART OF YEAR; FEES.** A person who applies for an annual
15 vegetable contractor license after the beginning of a license year shall pay the full
16 annual fee amounts required under sub. (4).

17 **(6) FEE CREDITS.** (a) If the balance in the fund contributed by vegetable
18 contractors exceeds \$1,000,000 on November 30 of any license year, the department
19 shall credit 50% of the excess amount against fees charged under sub. (4) (b) to
20 contributing vegetable contractors who file timely license renewal applications for
21 the next license year. The department shall credit each contributing vegetable
22 contractor on a prorated basis, in proportion to the total fees that the vegetable
23 contractor has paid under sub. (4) (b) for the 4 preceding license years.

24 (b) The fee under sub. (4) (b) is reduced by one cent for each \$100 in contract
25 obligations reported under sub. (9) (a) if the department, under a contract with the

1 applicant, grades all of the graded vegetables that the applicant procures from
2 vegetable producers or producer agents.

3 (7) FEE STATEMENT. The department shall provide, with each license application
4 form, a written statement of all license fees and surcharges required under sub. (4).
5 The department shall specify any fee credits for which the applicant may qualify
6 under sub. (6).

7 (8) NO LICENSE WITHOUT FULL PAYMENT. The department may not issue a license
8 under sub. (1) until the applicant pays all license fees and surcharges identified in
9 the department's statement under sub. (7). The department shall refund a fee or
10 surcharge paid under protest if upon review the department determines that the fee
11 or surcharge is not applicable.

12 (9) SWORN AND NOTARIZED STATEMENT. As part of a license application under sub.
13 (3), an applicant shall provide a sworn and notarized statement, signed by the
14 applicant or an officer of the applicant, that reports all of the following:

15 (a) The total amount of contract obligations that the applicant incurred during
16 the applicant's last completed fiscal year. If the applicant has not yet operated as a
17 vegetable contractor, the applicant shall estimate the amount of contract obligations
18 that the applicant will incur during the applicant's first complete fiscal year.

19 (b) The largest amount of unpaid contract obligations that the vegetable
20 contractor had at any time during the vegetable contractor's last completed fiscal
21 year.

22 (c) The amount of unpaid contract obligations that the vegetable contractor has
23 at the time of application.

24 (d) The amount of unpaid contract obligations under par. (c) that are due for
25 payment before the license year for which the applicant is applying.

1 (e) The amount of unpaid obligations under par. (c) that the contractor has
2 under deferred payment contracts.

3 (f) Whether the applicant and the applicant's affiliates and subsidiaries will
4 collectively grow more than 10% of the total acreage of any vegetable species grown
5 or procured by the applicant during the license year for which the applicant is
6 applying.

7 (g) Whether the applicant will pay cash on delivery under all vegetable
8 procurement contracts during the license year for which the applicant is applying.

9 (h) Whether the applicant is a producer-owned cooperative or organization
10 that procures vegetables solely from its producer owners on the basis of a cooperative
11 marketing method under which the producer-owned cooperative or organization
12 pays its producer owners a prorated share of sales proceeds for the marketing year
13 after a final accounting and the deduction of marketing expenses.

14 **(10) ACTION GRANTING OR DENYING APPLICATION.** (a) The department shall grant
15 or deny a license application under sub. (3) within 30 days after the department
16 receives a complete application. If the department denies a license application, the
17 department shall give the applicant a written notice stating the reasons for the
18 denial.

19 (b) A license becomes invalid after February 5 of the license year for which it
20 is issued unless the license holder has by February 5 paid all producer obligations
21 that were due and payable during the preceding license year.

22 **(11) LICENSE DISPLAYED.** A vegetable contractor licensed under sub. (1) shall
23 prominently display a copy of that license at each business location from which the
24 vegetable contractor operates in this state.

1 **(12) NOTICE REQUIRED.** (a) A vegetable contractor who files security under s.
2 126.61 shall immediately notify the department if, at any time, the vegetable
3 contractor's unpaid contract obligations exceed the amount last reported under sub.
4 (9) (b).

5 (b) A vegetable contractor shall immediately notify the department if the
6 amount of unpaid obligations under deferred payment contracts exceeds the amount
7 last reported under sub. (9) (e).

8 **126.57 Vegetable contractors; insurance.** (1) FIRE AND EXTENDED COVERAGE
9 INSURANCE. (a) Except as provided in par. (b), a vegetable contractor who is required
10 to be licensed under s. 126.56 (1) shall maintain fire and extended coverage
11 insurance, issued by an insurance company authorized to do business in this state,
12 that covers all vegetables in the custody of the vegetable contractor, whether owned
13 by the vegetable contractor or held for others, at the full local market value of the
14 vegetables.

15 (b) Paragraph (a) does not apply to a vegetable contractor if any of the following
16 applies:

17 1. The vegetable contractor pays cash on delivery under all vegetable
18 procurement contracts.

19 2. The vegetable contractor is a producer-owned cooperative or organization
20 that procures processing vegetables only from its producer owners.

21 **(2) INSURANCE CANCELLATION; REPLACEMENT.** Whenever an insurance policy
22 under sub. (1) is canceled, the vegetable contractor shall replace the policy so that
23 there is no lapse in coverage.

1 **(3) INSURANCE COVERAGE; MISREPRESENTATION.** No vegetable contractor may
2 misrepresent any of the following to the department or to any vegetable producer or
3 producer agent:

4 (a) That the vegetable contractor is insured.

5 (b) The nature, coverage, or material terms of the vegetable contractor's
6 insurance policy.

7 **126.58 Vegetable contractors; financial statements. (1) REQUIRED**
8 **ANNUAL FINANCIAL STATEMENT.** (a) Except as provided in par. (c), a vegetable
9 contractor shall file an annual financial statement with the department, before the
10 department first licenses the vegetable contractor under s. 126.56 (1), if the
11 vegetable contractor reports more than \$500,000 in contract obligations under s.
12 126.56 (9) (a).

13 (b) Except as provided in par. (c), a vegetable contractor licensed under s.
14 126.56 (1) shall file an annual financial statement with the department during each
15 license year if the vegetable contractor's license application for that year reports
16 more than \$500,000 in contract obligations under s. 126.56 (9) (a). The vegetable
17 contractor shall file the annual financial statement by the 15th day of the 4th month
18 following the close of the vegetable contractor's fiscal year, except that the
19 department may extend the filing deadline for up to 30 days if the vegetable
20 contractor, or the accountant reviewing or auditing the financial statement, files a
21 written extension request at least 10 days before the filing deadline.

22 (c) A vegetable contractor is not required to file a financial statement under par.
23 (a) or (b) if any of the following applies:

24 1. The vegetable contractor pays cash on delivery under all vegetable
25 procurement contracts.

1 2. The vegetable contractor is a producer-owned cooperative that procures
2 processing vegetables only from its producer owners.

3 **(2) VOLUNTARY FINANCIAL STATEMENT.** A contributing vegetable contractor who
4 is not required to file a financial statement under sub. (1) may file an annual
5 financial statement with the department for any of the following reasons:

6 (a) To qualify for a lower fund assessment under s. 126.60.

7 (b) To avoid filing security under s. 126.61 (1) (b).

8 **(3) REVIEWED OR AUDITED FINANCIAL STATEMENT.** (a) A vegetable contractor filing
9 an annual financial statement under sub. (1) or (2) shall file an audited financial
10 statement if the vegetable contractor's latest annual license application reported
11 more than \$4,000,000 in annual contract obligations under s. 126.56 (9) (a).

12 (b) If par. (a) does not apply, a vegetable contractor filing an annual financial
13 statement under sub. (1) or (2) shall file either a reviewed financial statement or an
14 audited financial statement.

15 **(4) ACCOUNTING PERIOD.** A vegetable contractor filing an annual financial
16 statement under sub. (1) or (2) shall file a financial statement that covers the
17 vegetable contractor's last completed fiscal year unless the vegetable contractor has
18 been in business for less than one year.

19 **(4m) INTERIM FINANCIAL STATEMENT.** The department may, at any time, require
20 a vegetable contractor licensed under s. 126.56 (1) to file an interim financial
21 statement with the department. The vegetable contractor shall provide, with the
22 interim financial statement, the vegetable contractor's sworn and notarized
23 statement that the financial statement is correct. An interim financial statement
24 need not be a reviewed or audited financial statement.

1 **(5) GENERALLY ACCEPTED ACCOUNTING PRINCIPLES.** (a) Except as provided in par.
2 (b), a vegetable contractor filing a financial statement under this section shall file a
3 financial statement that is prepared according to generally accepted accounting
4 principles.

5 (b) If a vegetable contractor is a sole proprietor and the vegetable contractor's
6 financial statement is not audited, the vegetable contractor shall file a financial
7 statement that is prepared on a historical cost basis.

8 **(6) FINANCIAL STATEMENT CONTENTS.** (a) Except as provided in par. (b), a
9 vegetable contractor filing a financial statement under this section shall file a
10 financial statement that consists of a balance sheet, income statement, equity
11 statement, statement of cash flows, notes to those statements, and any other
12 information required by the department. If the vegetable contractor is a sole
13 proprietor, the vegetable contractor shall file his or her business and personal
14 financial statements.

15 (b) If a vegetable contractor has been in business for less than one year, the
16 vegetable contractor may file an annual financial statement under sub. (1) or (2)
17 consisting of a balance sheet and notes.

18 (c) A vegetable contractor filing a financial statement under this section shall
19 include in the financial statement, or in an attachment to the financial statement,
20 calculations of all of the following:

21 1. The vegetable contractor's current ratio, excluding any assets required to be
22 excluded under sub. (7).

23 2. The vegetable contractor's debt to equity ratio, excluding any assets
24 required to be excluded under sub. (7).

1 (7) ASSETS EXCLUDED. A vegetable contractor may not include any of the
2 following assets in the calculations under sub. (6) (c), unless the department
3 specifically approves their inclusion:

4 (a) A nontrade note or account receivable from an officer, director, employee,
5 partner, or stockholder, or from a member of the family of any of those individuals,
6 unless the note or account receivable is secured by a first priority security interest
7 in real or personal property.

8 (b) A note or account receivable from a parent organization, a subsidiary, or an
9 affiliate other than an employee.

10 (c) A note or account that has been receivable for more than one year, unless
11 the vegetable contractor has established an equal offsetting reserve for uncollectible
12 notes and accounts receivable.

13 (9) ENTITY COVERED. A person filing a financial statement under this section
14 may not file, in lieu of that person's financial statement, the financial statement of
15 the person's parent organization, subsidiary, predecessor, or successor.

16 (10) DEPARTMENT REVIEW. The department may analyze a financial statement
17 filed under this section and may reject a financial statement that fails to comply with
18 this section.

19 **126.59 Contributing vegetable contractors; disqualification. (1)**
20 CONTRIBUTION REQUIRED. A vegetable contractor licensed under s. 126.56 (1) shall pay
21 fund assessments under s. 126.60 unless one of the following applies:

22 (a) The vegetable contractor is disqualified under sub. (2).

23 (b) The vegetable contractor pays cash on delivery under all vegetable
24 procurement contracts.

1 (c) The vegetable contractor is a producer-owned cooperative that procures
2 processing vegetables only from its producer owners.

3 (1m) VOLUNTARY CONTRIBUTION. A vegetable contractor who is exempt under
4 sub. (1) (b) or (c) may volunteer to pay fund assessments under s. 126.60.

5 (2) DISQUALIFIED CONTRACTOR. (a) A vegetable contractor who is required to file
6 security under s. 126.61 (1) (a) is disqualified from the fund until the department
7 determines that one of the conditions in s. 126.61 (7) (a) 1. or 2. is satisfied.

8 (b) A vegetable contractor is disqualified from the fund if the department
9 denies, suspends, or revokes the vegetable contractor's license.

10 (c) A vegetable contractor is disqualified from the fund, and required to pay
11 cash on delivery under vegetable procurement contracts, if the department issues a
12 written notice disqualifying the vegetable contractor for cause. Cause may include
13 any of the following:

14 1. Failure to pay fund assessments under s. 126.60 when due.
15 2. Failure to file a financial statement under s. 126.58 when due.
16 3. Failure to reimburse the department, within 60 days after the department
17 issues a reimbursement demand under s. 126.73 (1), for the full amount that the
18 department pays to claimants under s. 126.72 (1) because of that vegetable
19 contractor's default.

20 4. Failure to reimburse a bond surety, within 60 days after the bond surety
21 issues a reimbursement demand under s. 126.73 (2), for the full amount that the
22 surety pays to the department under s. 126.72 (2) or (3) for the benefit of claimants
23 affected by that vegetable contractor's default.

1 **(3) PAYMENTS BY DISQUALIFIED VEGETABLE CONTRACTOR.** (a) The department may
2 not return, to a disqualified vegetable contractor, any fund assessments that the
3 vegetable contractor paid as a contributing vegetable contractor.

4 (b) A disqualified vegetable contractor remains liable for any unpaid fund
5 installment under s. 126.60 that became due while the vegetable contractor was a
6 contributing vegetable contractor. A disqualified vegetable contractor is not liable
7 for any fund installment that becomes due after the vegetable contractor is
8 disqualified under sub. (2).

9 **126.60 Contributing vegetable contractors; fund assessments. (1)**

10 **GENERAL.** A contributing vegetable contractor shall pay an annual fund assessment
11 for each license year. The assessment equals \$20 or the sum of the following,
12 whichever is greater, unless the department by rule specifies a different assessment:

13 (a) The vegetable contractor's current ratio assessment. The current ratio
14 assessment for a license year equals the vegetable contractor's current ratio
15 assessment rate under sub. (2) multiplied by the amount reported under s. 126.56
16 (9) (a) in the vegetable contractor's license application for that license year.

17 (b) The vegetable contractor's debt to equity ratio assessment. The debt to
18 equity ratio assessment for a license year equals the vegetable contractor's debt to
19 equity ratio assessment rate under sub. (4) multiplied by the amount reported under
20 s. 126.56 (9) (a) in the vegetable contractor's license application for that license year.

21 (c) The vegetable contractor's deferred contract assessment. The deferred
22 contract assessment for a license year equals the amount, if any, reported under s.
23 126.56 (9) (e) in the vegetable contractor's license application for that license year,
24 multiplied by a deferred vegetable contract assessment rate of 0.0025.

1 (2) CURRENT RATIO ASSESSMENT RATE. A vegetable contractor's current ratio
2 assessment rate is calculated, at the beginning of the license year, as follows:

3 (a) If the vegetable contractor has filed an annual financial statement under
4 s. 126.58 and that financial statement shows a current ratio of at least 1.25 to 1.0,
5 the vegetable contractor's current ratio assessment rate equals the greater of zero
6 or the current ratio assessment factor in sub. (3) (a) multiplied by the following
7 amount:

- 8 1. Subtract 4 from the current ratio.
- 9 2. Divide the amount determined under subd. 1. by 2.
- 10 3. Multiply the amount determined under subd. 2. by negative one.
- 11 4. Raise the amount determined under subd. 3. to the 3rd power.
- 12 5. Subtract 0.65 from the current ratio.
- 13 6. Divide 0.60 by the amount determined under subd. 5.
- 14 7. Raise the amount determined under subd. 6. to the 5th power.
- 15 8. Add the amount determined under subd. 4. to the amount determined under
16 subd. 7.

- 17 9. Add 0.25 to the amount determined under subd. 8.

18 (b) If the vegetable contractor has filed an annual financial statement under
19 s. 126.58 and that financial statement shows a current ratio of less than 1.25 to 1.0,
20 but greater than 1.1 to 1.0, the vegetable contractor's current ratio assessment rate
21 equals the current ratio assessment factor in sub. (3) (b) multiplied by the following
22 amount:

- 23 1. Subtract 4 from the current ratio.
- 24 2. Divide the amount determined under subd. 1. by 2.
- 25 3. Multiply the amount determined under subd. 2. by negative one.

- 1 4. Raise the amount determined under subd. 3. to the 3rd power.
- 2 5. Subtract 0.65 from the current ratio.
- 3 6. Divide 0.60 by the amount determined under subd. 5.
- 4 7. Raise the amount determined under subd. 6. to the 5th power.
- 5 8. Add the amount determined under subd. 4. to the amount determined under
- 6 subd. 7.
- 7 9. Add 0.25 to the amount determined under subd. 8.

8 (c) If the vegetable contractor has filed an annual financial statement under
9 s. 126.58 and that financial statement shows a current ratio of less than or equal to
10 1.1 to 1.0, the vegetable contractor's current ratio assessment rate equals the current
11 ratio assessment factor in sub. (3) (b) multiplied by 7.512617.

12 (d) If the vegetable contractor has not filed an annual financial statement
13 under s. 126.58, the vegetable contractor's current ratio assessment rate equals the
14 current ratio assessment factor in sub. (3) (b) multiplied by 3.84961.

15 (3) CURRENT RATIO ASSESSMENT FACTOR. (a) A vegetable contractor's current
16 ratio assessment factor under sub. (2) (a) is 0.00048, except as follows:

17 1. For the vegetable contractor's 4th and 5th consecutive full license years as
18 a contributing vegetable contractor, the vegetable contractor's current ratio
19 assessment factor is 0.00029.

20 2. For the vegetable contractor's 6th or higher consecutive full license year as
21 a contributing vegetable contractor, the vegetable contractor's current ratio
22 assessment factor is zero.

23 (b) A vegetable contractor's current ratio assessment factor under sub. (2) (b)
24 to (d) is 0.00072, except as follows:

1 1. For the vegetable contractor's 4th and 5th consecutive full license years as
2 a contributing vegetable contractor, the vegetable contractor's current ratio
3 assessment factor is 0.00058.

4 2. For the vegetable contractor's 6th or higher consecutive full license year as
5 a contributing vegetable contractor, the vegetable contractor's current ratio
6 assessment factor is 0.00035.

7 (4) DEBT TO EQUITY RATIO ASSESSMENT RATE. A vegetable contractor's debt to
8 equity ratio assessment rate for a license year is calculated, at the beginning of the
9 license year, as follows:

10 (a) If the vegetable contractor has filed an annual financial statement under
11 s. 126.58 and that financial statement shows positive equity and a debt to equity
12 ratio of not more than 4.0 to 1.0, the vegetable contractor's debt to equity ratio
13 assessment rate equals the greater of zero or the debt to equity ratio assessment
14 factor in sub. (5) (a) multiplied by the following amount:

15 1. Subtract 4 from the debt to equity ratio.

16 2. Divide the amount determined under subd. 1. by 4.

17 3. Raise the amount determined under subd. 2. to the 3rd power.

18 4. Subtract 1.85 from the debt to equity ratio.

19 5. Divide the amount determined under subd. 4. by 2.5.

20 6. Raise the amount determined under subd. 5. to the 7th power.

21 7. Add the amount determined under subd. 3. to the amount determined under
22 subd. 6.

23 8. Add one to the amount determined under subd. 7.

24 (b) If the vegetable contractor has filed an annual financial statement under
25 s. 126.58 and that financial statement shows a debt to equity ratio of greater than

1 4.0 to 1.0 but less than 6.0 to 1.0, the vegetable contractor's debt to equity ratio
2 assessment rate equals the debt to equity ratio assessment factor in sub. (5) (b)
3 multiplied by the following amount:

- 4 1. Subtract 4 from the debt to equity ratio.
- 5 2. Divide the amount determined under subd. 1. by 4.
- 6 3. Raise the amount determined under subd. 2. to the 3rd power.
- 7 4. Subtract 1.85 from the debt to equity ratio.
- 8 5. Divide the amount determined under subd. 4. by 2.5.
- 9 6. Raise the amount determined under subd. 5. to the 7th power.
- 10 7. Add the amount determined under subd. 3. to the amount determined under
11 subd. 6.
- 12 8. Add one to the amount determined under subd. 7.

13 (c) If the vegetable contractor has filed an annual financial statement under
14 s. 126.58 and that financial statement shows negative equity or a debt to equity ratio
15 of at least 6.0 to 1.0, the vegetable contractor's debt to equity ratio assessment rate
16 equals the debt to equity ratio assessment factor in sub. (5) (b) multiplied by
17 35.859145.

18 (d) If the vegetable contractor has not filed an annual financial statement
19 under s. 126.58, the vegetable contractor's debt to equity ratio assessment rate
20 equals the debt to equity ratio assessment factor in sub. (5) (b) multiplied by 1.34793.

21 (5) DEBT TO EQUITY RATIO ASSESSMENT FACTOR. (a) A vegetable contractor's debt
22 to equity ratio assessment factor under sub. (4) (a) is 0.000135, except as follows:

- 23 1. For the vegetable contractor's 4th and 5th consecutive full license years as
24 a contributing vegetable contractor, the vegetable contractor's debt to equity ratio
25 assessment factor is 0.00008.

1 2. For the vegetable contractor's 6th or higher consecutive full license year as
2 a contributing vegetable contractor, the vegetable contractor's debt to equity ratio
3 assessment factor is zero.

4 (b) A vegetable contractor's debt to equity ratio assessment factor under sub.
5 (4) (b) to (d) is 0.000203, except as follows:

6 1. For the vegetable contractor's 4th and 5th consecutive full license years as
7 a contributing vegetable contractor, the vegetable contractor's debt to equity ratio
8 assessment factor is 0.00016.

9 2. For the vegetable contractor's 6th or higher consecutive full license year as
10 a contributing vegetable contractor, the vegetable contractor's debt to equity ratio
11 assessment factor is 0.0001.

12 **(6) QUARTERLY INSTALLMENTS.** (a) A contributing vegetable contractor shall pay
13 the vegetable contractor's annual fund assessment in equal quarterly installments
14 that are due as follows:

15 1. The first installment is due on March 1 of the license year.

16 2. The 2nd installment is due on June 1 of the license year.

17 3. The 3rd installment is due on September 1 of the license year.

18 4. The 4th installment is due on December 1 of the license year.

19 (b) A contributing vegetable contractor may prepay any of the quarterly
20 installments under par. (a).

21 (c) A contributing vegetable contractor who applies for an annual license after
22 the beginning of a license year shall pay the full annual fund assessment required
23 under this section. The vegetable contractor shall pay, with the first quarterly
24 installment that becomes due after the day on which the department issues the
25 license, all of that year's quarterly installments that were due before that day.

1 (d) A contributing vegetable contractor who fails to pay the full amount of any
2 quarterly installment when due shall pay, in addition to that installment, a late
3 payment penalty of \$50 or 10% of the overdue installment amount, whichever is
4 greater.

5 (7) NOTICE OF ANNUAL ASSESSMENT AND QUARTERLY INSTALLMENTS. When the
6 department issues an annual license to a contributing vegetable contractor, the
7 department shall notify the vegetable contractor of all of the following:

8 (a) The amount of the vegetable contractor's annual fund assessment under
9 this section.

10 (b) The amount of each required quarterly installment under sub. (6) and the
11 date by which the vegetable contractor must pay each installment.

12 (c) The penalty that applies under sub. (6) (d) if the vegetable contractor fails
13 to pay any quarterly installment when due.

14 **126.61 Vegetable contractors; security. (1) SECURITY REQUIRED.** (a) Except
15 as provided in par. (c), a vegetable contractor shall file security with the department,
16 and maintain that security until the department releases it under sub. (7), if all of
17 the following apply when the department first licenses the vegetable contractor
18 under s. 126.56 (1):

19 1. The vegetable contractor reports more than \$1,000,000 in annual contract
20 obligations under s. 126.56 (9) (a).

21 2. The vegetable contractor files a financial statement under s. 126.58 (1) and
22 that financial statement shows negative equity.

23 (b) Except as provided in par. (c), a vegetable contractor shall file security with
24 the department to cover the full amount of the unpaid deferred contract obligations
25 last reported under s. 126.56 (9) (e) or (12) (b), and maintain that security until it is

1 released under sub. (7), unless the vegetable contractor files an annual financial
2 statement under s. 126.58 and that financial statement shows positive equity, a
3 current ratio of at least 1.25 to 1.0, and a debt to equity ratio of not more than 4.0 to
4 1.0.

5 (c) A vegetable contractor is not required to file security under par. (a) or (b) if
6 any of the following applies:

7 1. The vegetable contractor pays cash on delivery under all vegetable
8 procurement contracts.

9 2. The vegetable contractor is a producer-owned cooperative that procures
10 processing vegetables only from its producer members.

11 (2) SECURITY CONTINUED. A vegetable contractor who filed security under s.
12 100.03, 1999 stats., before February 1, 2002, shall maintain that security until the
13 department releases it under sub. (7).

14 (3) AMOUNT OF SECURITY. A vegetable contractor who is required to file or
15 maintain security under this section shall, at all times, maintain security that is at
16 least equal to the sum of the following:

17 (a) Seventy-five percent of the amount last reported under s. 126.56 (9) (b) or
18 (12) (a), except that this amount is not required of a contributing vegetable contractor
19 after May 1, 2002.

20 (b) The amount required under sub. (1) (b), if any.

21 (4) FORM OF SECURITY. The department shall review, and determine whether
22 to approve, security filed under this section. The department may approve only the
23 following types of security:

24 (a) Currency.

25 (b) A commercial surety bond if all of the following apply:

1 1. The surety bond is made payable to the department for the benefit of
2 vegetable producers and producer agents.

3 2. The surety bond is issued by a person authorized to operate a surety business
4 in this state.

5 3. The surety bond is issued as a continuous term bond that may be canceled
6 only with the department's written agreement, or upon 90 days' prior written notice
7 served on the department in person or by certified mail.

8 4. The surety bond is issued in a form, and subject to any terms and conditions,
9 that the department considers appropriate.

10 (c) A certificate of deposit or money market certificate, if all of the following
11 apply:

12 1. The certificate is issued or endorsed to the department for the benefit of
13 vegetable producers and producer agents.

14 2. The certificate may not be canceled or redeemed without the department's
15 written permission.

16 3. No person may transfer or withdraw funds represented by the certificate
17 without the department's written permission.

18 4. The certificate renews automatically without any action by the department.

19 5. The certificate is issued in a form, and subject to any terms and conditions,
20 that the department considers appropriate.

21 (d) An irrevocable bank letter of credit if all of the following apply:

22 1. The letter of credit is payable to the department for the benefit of vegetable
23 producers and producer agents.

24 2. The letter of credit is issued on bank letterhead.

25 3. The letter of credit is issued for an initial period of at least one year.

1 4. The letter of credit renews automatically unless, at least 90 days before the
2 scheduled renewal date, the issuing bank gives the department written notice, in
3 person or by certified mail, that the letter of credit will not be renewed.

4 5. The letter of credit is issued in a form, and subject to any terms and
5 conditions, that the department considers appropriate.

6 (e) Security filed with the department under s. 100.03, 1999 stats., before
7 February 1, 2002, except that on January 1, 2003, the department shall withdraw
8 its approval of any security that is not approvable under pars. (a) to (d).

9 **(5) DEPARTMENT CUSTODY OF SECURITY.** The department shall hold, in its custody,
10 all security filed and maintained under this section. The department shall hold the
11 security for the benefit of vegetable producers and producer agents.

12 **(6) ADDITIONAL SECURITY.** (a) The department may, at any time, demand
13 additional security from a vegetable contractor if any of the following applies:

14 1. The vegetable contractor's existing security falls below the amount required
15 under sub. (3) for any reason, including a depreciation in the value of the security
16 filed with the department, increased obligations to vegetable producers or producer
17 agents, or the cancellation of any security filed with the department.

18 2. The vegetable contractor fails to provide required information that is
19 relevant to a determination of security requirements.

20 (b) The department shall issue a demand under par. (a) in writing. The
21 department shall indicate why additional security is required, the amount of
22 security required, and the deadline date for filing security. The department may not
23 specify a deadline for filing security that is more than 30 days after the date on which
24 the department issues its demand for security.

1 (c) A vegetable contractor may request a hearing, under ch. 227, on a security
2 demand under par. (b). A request for hearing does not automatically stay a security
3 demand.

4 (d) If a vegetable contractor fails to comply with the department's security
5 demand under this subsection, the vegetable contractor shall give written notice of
6 that fact to all vegetable producers and producer agents from whom the vegetable
7 contractor procures processing vegetables. If the vegetable contractor fails to give
8 accurate notice under this paragraph within 5 days after the security filing deadline
9 under par. (b) has passed, the department shall promptly notify vegetable producers
10 and producer agents by publishing a class 3 notice under ch. 985. The department
11 may also give individual notice to vegetable producers or producer agents of whom
12 the department is aware.

13 (e) If a vegetable contractor fails to comply with the department's demand for
14 security under this subsection, the department may do any of the following:

15 1. Issue a summary order under s. 126.85 (2) that prohibits the vegetable
16 contractor from procuring processing vegetables from vegetable producers or
17 producer agents, or requires the vegetable contractor to pay cash on delivery under
18 all vegetable procurement contracts.

19 2. Suspend or revoke the vegetable contractor's license.

20 (7) **RELEASING SECURITY.** (a) The department may release security filed under
21 sub. (1) (a), except for any amount of security that the vegetable contractor is
22 required to file because sub. (1) (b) applies to the vegetable contractor, if any of the
23 following applies:

24 1. The vegetable contractor reports less than \$1,000,000 in annual contract
25 obligations under s. 126.56 (9) (a) for at least 2 consecutive years and the vegetable

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1 contractor pays the quarterly fund assessment that would have been required of the
2 vegetable contractor if the vegetable contractor had been a contributing vegetable
3 contractor on the most recent quarterly installment date under s. 126.60 (6).

4 2. The vegetable contractor's annual financial statement under s. 126.58 shows
5 positive equity for at least 2 consecutive years and the vegetable contractor pays the
6 quarterly fund assessment that would have been required of the vegetable contractor
7 if the vegetable contractor had been a contributing vegetable contractor on the most
8 recent quarterly installment date under s. 126.60 (6).

9 (b) The department may release security filed under sub. (1) (b), except for any
10 amount of security that the vegetable contractor is required to file because sub. (1)
11 (a) applies to the vegetable contractor, if any of the following applies:

12 1. The vegetable contractor has no unpaid obligations under deferred payment
13 contracts, and will not use deferred payment contracts in the current license year.

14 2. The vegetable contractor files 2 consecutive annual financial statements
15 under s. 126.58 that show a current ratio of at least 1.25 to 1.0, positive equity, and
16 a debt to equity ratio of not more than 4.0 to 1.0.

17 (c) On May 1, 2002, the department may release security maintained under
18 sub. (2), unless the vegetable contractor is required to file security under sub. (1).

19 (d) The department may release security to the extent that the security exceeds
20 the amount required under sub. (3).

21 (e) The department may release security if the vegetable contractor files
22 alternative security, of equivalent value, that the department approves.

23 (f) The department shall release security if the vegetable contractor has gone
24 out of business and paid all contract obligations in full.

1 **126.62 Vegetable contractors; records. (1) RECORDS REQUIRED.** A vegetable
2 contractor shall keep all of the following:

3 (a) Copies of all written vegetable procurement contracts.

4 (b) A current record of all vegetable contract obligations, payments, and unpaid
5 balances.

6 **(2) RECORDS RETENTION.** A vegetable contractor shall keep all of the following
7 records for at least 6 years from the date of their creation:

8 1. Records required under sub. (1).

9 2. Records that the vegetable contractor was required to keep, under s. 100.03,
10 1999 stats., and department rules, before February 1, 2002.

11 **(3) RECORDS INSPECTION.** A vegetable contractor shall make records required
12 under this section available to the department for inspection and copying upon
13 request.

14 **126.63 Vegetable contractors; business practices. (1) VEGETABLE GRADING**
15 **AND TARE.** (a) A vegetable contractor shall grade vegetables according to the following
16 standards if the vegetable grade may affect the amount received by the vegetable
17 producer:

18 1. Standard grading procedures that the department establishes by rule.

19 2. Uniform grade standards that the department establishes by rule, unless the
20 vegetable procurement contract clearly specifies alternative grade standards.

21 (b) If a vegetable contractor makes any deduction for tare, the vegetable
22 contractor shall determine tare according to procedures that the department
23 establishes by rule.

1 (c) The department shall establish grade standards for vegetables that conform
2 to grade standards adopted by the federal department of agriculture under 7 USC
3 1621 to 1632.

4 (2) PROHIBITED DEDUCTIONS. No vegetable purchaser may deduct, from the
5 amount payable under a vegetable procurement contract, an amount designated for
6 the payment of any vegetable contractor license fee, surcharge, or fund assessment
7 under this subchapter.

8 (3) TIMELY PAYMENT. A vegetable contractor shall pay a vegetable producer or
9 producer agent according to the vegetable procurement contract. The vegetable
10 contractor shall make the following payments by the following dates, unless the
11 contract specifies a different payment date in writing:

12 (a) The 15th day of the month immediately following the month in which the
13 vegetable contractor harvests or accepts delivery of processing vegetables, the full
14 amount owed under the contract for those vegetables.

15 (b) The 15th day of the month immediately following the month in which the
16 vegetable contractor rejects or fails to harvest processing vegetables tendered under
17 the vegetable procurement contract, the full amount owed under the contract for
18 those vegetables.

19 (4) ANNUAL PAYMENT DEADLINE. (a) Except as provided in par. (b) or (c), a
20 vegetable contractor shall pay all outstanding obligations to vegetable producers by
21 January 31 of each license year.

22 (b) For processing vegetables tendered or delivered in January of any license
23 year, a vegetable contractor shall pay the full amount owed under the vegetable
24 procurement contract by February 15 or by the 30th day after the date of delivery,
25 whichever date is later.

1 (c) A vegetable contractor may pay outstanding producer obligations in
2 accordance with a deferred payment contract that complies with sub. (5) and
3 specifies a payment date after January 31 for processing vegetables delivered on or
4 before December 31.

5 (5) DEFERRED PAYMENT CONTRACT. (a) Before a vegetable contractor offers a
6 deferred payment contract to any vegetable producer, the vegetable contractor shall
7 put the deferred payment contract to a vote of vegetable producers, as provided in
8 par. (b), obtain the approval of a majority of the voting vegetable producers, and
9 comply with par. (c).

10 (b) To put a deferred payment contract to a vote of vegetable producers, the
11 vegetable contractor shall give written notice to all vegetable producers in this state
12 from whom the vegetable contractor procured the same type of processing vegetables
13 during the preceding license year. In the notice, the vegetable contractor shall
14 include a copy of the proposed contract, shall announce a meeting at which the
15 vegetable producers will be asked to vote on the proposed contract, and shall include
16 a mail ballot by which a vegetable producer may vote without attending the meeting.
17 The vegetable contractor shall conduct the voting by secret ballot.

18 (c) To comply with this paragraph, a vegetable contractor shall file all of the
19 following with the department:

20 1. A sworn statement certifying that the contract was approved in a vote of
21 vegetable producers under this subsection.

22 2. Any additional security required under s. 126.61 (3).

23 (6) CASH ON DELIVERY. A vegetable contractor shall pay cash on delivery under
24 all vegetable procurement contracts if any of the following applies:

1 (a) The vegetable contractor stated, in the vegetable contractor's last annual
2 statement under s. 126.56 (9) (g), that the vegetable contractor would pay cash on
3 delivery.

4 (b) The department disqualifies the vegetable contractor, under s. 126.59 (2)
5 (c), or requires the vegetable contractor to pay cash on delivery under s. 126.61 (6)
6 (e).

7 **126.64 Vegetable contractors; prohibited practices.** No vegetable
8 contractor may do any of the following:

9 (1) Misrepresent the weight, grade, or quality of processing vegetables under
10 a vegetable procurement contract.

11 (2) Falsify any record or account, or conspire with any other person to falsify
12 a record or account.

13 (3) Make any false or misleading representation to the department.

14 (4) If the vegetable contractor is licensed under s. 126.56, engage in any activity
15 that is inconsistent with representations made in the vegetable contractor's annual
16 license application.

17 (5) Make any false or misleading representation to a vegetable producer or
18 producer agent related to matters regulated under this chapter.

19 (6) Fail to file the full amount of security required under s. 126.61 (6) by the
20 date that the department specifies.

21 SUBCHAPTER VII

22 RECOVERY PROCEEDINGS

23 **126.68 Definitions.** In this subchapter:

24 (1) "Contributing contractor" means any of the following:

25 (a) A contributing grain dealer, as defined in s. 126.10 (3).

1 (b) A contributing grain warehouse keeper, as defined in s. 126.25 (2).

2 (c) A contributing milk contractor, as defined in s. 126.40 (1).

3 (d) A contributing vegetable contractor, as defined in s. 126.55 (4).

4 (2) "Depositor" has the meaning given in s. 126.25 (5).

5 (3) "Grain dealer" has the meaning given in s. 126.10 (9).

6 (4) "Grain producer" has the meaning given in s. 126.10 (10).

7 (5) "Grain warehouse keeper" has the meaning given in s. 126.25 (9).

8 (6) "Milk contractor" has the meaning given in s. 126.40 (8).

9 (7) "Milk producer" has the meaning given in s. 126.40 (10).

10 (8) "Producer grain" has the meaning given in s. 126.10 (14).

11 (9) "Producer milk" has the meaning given s. 126.40 (14).

12 (10) "Vegetable contractor" has the meaning given in s. 126.55 (14).

13 (11) "Vegetable procurement contract" has the meaning given in s. 126.55 (15).

14 (12) "Vegetable producer" has the meaning given in s. 126.55 (16).

15 **126.70 Recovery proceedings.** (1) **DEFAULT CLAIMS.** Any of the following
16 persons may file a default claim with the department against a contractor who is
17 licensed, or required to be licensed, under this chapter:

18 (a) A grain producer or producer agent, as defined in s. 126.10 (13), who claims
19 that a grain dealer has failed to pay, when due, for producer grain that the grain
20 dealer procured in this state.

21 (b) A depositor who is either a grain producer or a producer agent, as defined
22 in s. 126.10 (13), and who claims that a grain warehouse keeper has failed to return
23 stored grain or its equivalent upon demand.

1 (c) A milk producer or producer agent, as defined in s. 126.40 (13), who claims
2 that a milk contractor has failed to pay, when due, for producer milk procured in this
3 state.

4 (d) A vegetable producer or producer agent, as defined in s. 126.55 (12), who
5 claims that a vegetable contractor has failed to make payment when due under a
6 vegetable procurement contract.

7 **(2) FILING DEFAULT CLAIMS.** A claimant shall file a default claim under sub. (1)
8 within 30 days after the claimant first learns of the default, subject to sub. (3). The
9 claimant shall specify the nature and amount of the default. The department may
10 investigate the alleged default and may require the claimant to provide supporting
11 documentation.

12 **(3) INITIATING A RECOVERY PROCEEDING.** (a) The department may initiate a
13 recovery proceeding in response to one or more default claims under sub. (1). The
14 department shall issue a written notice announcing the recovery proceeding. The
15 department shall mail or deliver a copy of the notice to the contractor and each
16 claimant in the proceeding.

17 (b) If the department has reason to believe that other persons may have default
18 claims under sub. (1) against the same contractor, the department may invite those
19 persons to file their claims in the recovery proceeding. The department may publish
20 the invitation in any of the following ways:

- 21 1. By posting it at the contractor's place of business.
- 22 2. By publishing it as a class 3 notice under ch. 985.
- 23 3. By mailing or delivering it to prospective claimants known to the
24 department.
- 25 4. By other means that the department considers appropriate.

1 (c) In its invitation under par. (b), the department may specify a deadline date
2 and a procedure for filing default claims. An invitation may indicate the amount of
3 a prospective claimant's apparent claim and may ask the prospective claimant to
4 verify or correct that amount.

5 (d) The department may initiate separate recovery proceedings for default
6 claims that comply with sub. (2) but are filed after the deadline date under par. (c).

7 (4) AUDITING CLAIMS. The department shall audit each claim included in a
8 recovery proceeding. The department shall disallow a claim if the department finds
9 any of the following:

10 (a) That the claim is false or not adequately documented.

11 (b) That the claimant filed the claim more than 30 days after the claimant first
12 learned of the contractor's default, unless the department specifies a later
13 claim-filing deadline under sub. (3) (c).

14 (c) That the claimant, without any contractual obligation to do so, continued
15 to deliver grain, milk, or vegetables to the defaulting contractor more than 10 days
16 after the claimant first learned of the contractor's default.

17 (d) That the claimant failed to comply with claim-filing deadlines or
18 procedures specified under sub. (3) (c).

19 (e) That the person filing the claim is not an authorized claimant under sub.
20 (1).

21 (5) ALLOWED CLAIM AMOUNTS. (a) The department shall determine the amount
22 of an allowed claim based on the contract between the parties. If the contract terms
23 are unclear, the department may determine the allowed claim amount based on local
24 market prices, applicable milk marketing order prices, customs in the trade, or other
25 evidence that the department considers appropriate.

1 (b) Notwithstanding par. (a), if the default involves a grain warehouse keeper's
2 failure to return stored grain to a depositor upon demand, the department shall
3 calculate the value of the grain based on local market prices on the day on which the
4 depositor made the demand.

5 (c) The department shall subtract from the allowed claim amount any
6 offsetting payments made by the contractor and any obligations for which the
7 claimant is liable to the contractor.

8 (6) PROPOSED DECISION. After the department completes its audit under sub. (4),
9 the department shall issue a proposed decision. The department shall mail or deliver
10 a copy of the proposed decision to the contractor and each claimant. The department
11 shall do all of the following in the proposed decision:

12 (a) Specify proposed findings of fact, proposed conclusions of law, and a
13 proposed order.

14 (b) Allow or disallow each default claim and specify the amount of each allowed
15 claim. The department may disallow part of a claim.

16 (c) Specify, for each allowed claim, the amount that the department is
17 authorized to pay under s. 126.71.

18 (d) Specify the method, under s. 126.71, by which the department will pay the
19 authorized amounts under par. (c).

20 (e) Explain a claimant's right under s. 126.87 (4) to seek court recovery of that
21 portion of an allowed claim that is not paid by the department.

22 (f) Specify a date by which the contractor or claimant may file written
23 objections to the proposed decision.

24 (7) FINAL DECISION IF NO OBJECTIONS. If no contractor or claimant files a timely
25 written objection to the proposed decision under sub. (6), the department may issue

1 the proposed decision as the department's final decision in the recovery proceeding,
2 without further notice or hearing. The department shall mail or deliver a copy of the
3 final decision to the contractor and each claimant.

4 (8) OBJECTIONS TO PROPOSED DECISION; NOTICE, HEARING, AND FINAL DECISION. (a)

5 If a contractor or claimant files a timely written objection to the proposed decision
6 under sub. (6), the department shall hold a public hearing on the objection. The
7 department shall follow applicable contested case procedures under ch. 227. The
8 department may hear all objections in a single proceeding. At the conclusion of the
9 contested case proceeding, the department shall issue a final decision affirming or
10 modifying the proposed decision under sub. (6).

11 (b) The department may issue a final decision under sub. (7) related to default
12 claims that are not affected by objections under par. (a), regardless of whether the
13 department has completed the contested case proceeding under par. (a).

14 **126.71 Paying default claims.** (1) CLAIMS AGAINST CONTRIBUTING
15 CONTRACTOR. Except as provided in sub. (2) or (3), the department shall pay from the
16 appropriate sources under s. 126.72 the following default claim amounts:

17 (a) For each default claim allowed under s. 126.70 against a grain dealer or milk
18 contractor who was a contributing contractor when the default occurred:

- 19 1. Ninety percent of the first \$20,000 allowed.
- 20 2. Eighty-five percent of the next \$20,000 allowed.
- 21 3. Eighty percent of the next \$20,000 allowed.
- 22 4. Seventy-five percent of any amount allowed in excess of \$60,000.

23 (b) For each default claim allowed under s. 126.70 against a grain warehouse
24 keeper who was a contributing contractor when the default occurred, 100% of the
25 first \$100,000 allowed.

1 (c) For each default claim allowed under s. 126.70 against a vegetable
2 contractor who was a contributing contractor when the default occurred:

- 3 1. Ninety percent of the first \$40,000 allowed.
- 4 2. Eighty-five percent of the next \$40,000 allowed.
- 5 3. Eighty percent of the next \$40,000 allowed.
- 6 4. Seventy-five percent of any amount allowed in excess of \$120,000.

7 **(1m) WHEN DEFAULT OCCURS.** For the purposes of this chapter, a default occurs
8 on the date on which payment or delivery becomes overdue.

9 **(2) CLAIMS AGAINST CONTRACTOR WHO HAS FILED SECURITY.** If the department
10 allows default claims under s. 126.70 against a contractor who has security on file
11 with the department, the department shall convert that security and use the
12 proceeds as follows:

13 (a) If the contractor was not a contributing contractor when the default
14 occurred, the department shall use the security proceeds to pay the full amount of
15 the allowed claims, except that, if the security is not adequate to pay the full amount
16 of the allowed claims, the department shall pay claimants on a prorated basis in
17 proportion to their allowed claims.

18 (b) If the contractor was a contributing contractor when the default occurred,
19 the department shall use the security proceeds to reimburse the sources under s.
20 126.72 from which the department makes any claim payment under sub. (1). If the
21 security amount exceeds the amount payable under sub. (1) from the sources under
22 s. 126.72, the department shall use the remaining security proceeds to pay the
23 balance of the allowed claims. If the security amount is not adequate to pay the full
24 remaining balance, the department shall pay claimants on a prorated basis in
25 proportion to their allowed claims.

1 (c) Notwithstanding par. (b), if the contractor was a contributing contractor
2 when the default occurred, the department may, at its discretion, pay claims directly
3 from security proceeds rather than from a fund source under s. 126.72. If the
4 department acts under this paragraph, the department shall first pay claims in the
5 amounts provided in sub. (1). If the security amount exceeds the amount payable
6 under sub. (1) from the sources under s. 126.72, the department shall use the
7 remaining security proceeds to pay the balance of the allowed claims. If the security
8 amount is not adequate to pay the full remaining balance, the department shall pay
9 claimants on a prorated basis in proportion to their allowed claims.

10 (3) PAYMENT RESTRICTIONS. (a) The department may not pay any portion of the
11 following from any source identified in s. 126.72:

12 1. A default claim related to a default by a grain dealer or grain warehouse
13 keeper that occurs before September 1, 2002.

14 2. A default claim related to a default by a milk contractor that occurs before
15 May 1, 2002.

16 3. A default claim related to a default by a vegetable contractor that occurs
17 before February 1, 2002.

18 4. A default claim allowed against a contractor who was not a contributing
19 contractor when the default occurred.

20 (b) The department may not pay any default claim under this chapter, except
21 as provided in sub. (1) or (2).

22 (c) If the total amount of default claims exceeds the amount available under s.
23 126.72, the department shall prorate the available amount among the eligible
24 claimants in proportion to the amount of their allowed claims.

1 (4) EFFECT OF PAYMENT. A claimant who accepts payment under sub. (1) or (2)
2 releases his or her claim against the contractor to the extent of the payment. A
3 payment under sub. (1) or (2) does not prevent a claimant from recovering the
4 balance of an allowed claim directly from the contractor.

5 **126.72 Claims against contributing contractor; payment sources. (1)**
6 PRODUCER SECURITY FUND. From the appropriation under s. 20.115 (1) (w), the
7 department shall make payments authorized under s. 126.71 (1), up to the deductible
8 amount in sub. (4).

9 (2) INDUSTRY BOND PROCEEDS. The department shall make a demand against the
10 appropriate industry bond under s. 126.06 and shall use the proceeds of that bond
11 to make payments authorized under s. 126.71 (1), to the extent that those payments
12 exceed the deductible amount in sub. (4).

13 (3) BLANKET BOND PROCEEDS. The department shall make a demand against the
14 blanket bond under s. 126.07 and shall use the bond proceeds to pay any remaining
15 amounts authorized under s. 126.71 (1) after the department makes payments under
16 subs. (1) and (2).

17 (4) DEDUCTIBLE AMOUNT. The deductible amount, for purposes of subs. (1) and
18 (2), is as follows:

19 (a) For default claims against a grain dealer or grain warehouse keeper who
20 was a contributing contractor when the default occurred:

21 1. If the department allows the claims on or after September 1, 2002, but before
22 September 1, 2004, \$500,000.

23 2. If the department allows the claims on or after September 1, 2004, but before
24 September 1, 2006, \$750,000.

1 **126.78 Definitions.** In this subchapter:

2 (1) “Contributing contractor” has the meaning given in s. 126.68 (1).

3 (2) “Depositor” has the meaning given in s. 126.25 (5).

4 (3) “Grain dealer” has the meaning given in s. 126.10 (9).

5 (4) “Grain warehouse keeper” has the meaning given in s. 126.25 (9).

6 (5) “Milk contractor” has the meaning given in s. 126.40 (8).

7 (6) “Producer agent” means a person who is a producer agent, as defined in s.
8 126.10 (13), 126.40 (13), or 126.55 (12).

9 (7) “Vegetable contractor” has the meaning given in s. 126.55 (14).

10 (8) “Vegetable producer” has the meaning given in s. 126.55 (16).

11 **126.80 Department authority; general.** The department shall administer
12 this chapter.

13 **126.81 Rule-making.** The department may promulgate rules to do any of the
14 following:

15 (1) Interpret and implement this chapter.

16 (2) Modify the license fees and surcharges provided in s. 126.11 (4), 126.26 (3),
17 126.41 (3), 126.42, or 126.56 (4).

18 (3) Modify the fund assessments provided under s. 126.15, 126.30, 126.46, or
19 126.60, as provided in s. 126.88.

20 (4) Require a contractor to notify producers and producer agents of the
21 contractor’s license, security, or fund contribution status under this chapter.

22 **126.82 Investigations.** The department may conduct investigations that it
23 considers necessary for the administration of this chapter, including investigations
24 to determine any of the following:

25 (1) Whether a contractor complies with this chapter.

- 1 (2) Whether a contractor is able to honor contract obligations when due.
- 2 (3) Whether a contractor has failed to honor contract obligations when due.
- 3 (4) Whether a grain warehouse keeper has sufficient grain on hand to meet the
- 4 grain warehouse keeper's obligations to depositors.
- 5 (5) The nature and amount of a contractor's storage obligations or other
- 6 contract obligations.

7 **126.83 Information.** The department may require a contractor to provide

8 information that is relevant to the administration and enforcement of this chapter.

9 **126.84 Records; confidentiality.** (1) PUBLIC RECORDS EXEMPTION. The

10 following records obtained by the department under this chapter are not open to

11 public inspection under s. 19.35:

- 12 (a) Contractor financial statements.
- 13 (b) A contractor's purchase, storage, or procurement records.

14 (2) USE OF RECORDS IN COURT OR ADMINISTRATIVE PROCEEDINGS. Notwithstanding

15 sub. (1), the department may introduce any information obtained under this chapter

16 in a court proceeding or administrative contested case, subject to any protective

17 order that the court or administrative tribunal determines to be appropriate.

18 **126.85 Remedial orders.** (1) GENERAL. The department may, by special

19 order, require a contractor to remedy a violation of this chapter or a rule promulgated

20 under this chapter. The department may order the contractor to take specific

21 remedial actions, including actions to remedy deficiencies or to prevent losses to

22 persons protected under this chapter. Except as provided in sub. (2), the department

23 shall give the contractor notice and an opportunity for hearing before the department

24 issues an order.

1 **(2) SUMMARY ORDER.** The department may issue an order under sub. (1) without
2 prior notice or hearing if the department finds that the order is necessary to prevent
3 a clear and imminent threat of harm to persons protected under this chapter.
4 Conditions indicating a clear and imminent threat of harm include the following:

5 (a) A contractor fails to pay producers according to this chapter or according
6 to the contractor's contracts with producers.

7 (b) A contractor fails to file replacement insurance within the time required
8 under this chapter.

9 (c) A contractor fails to file security according to this chapter, or in response to
10 the department's demand under this chapter.

11 (d) A contractor fails to pay a fund assessment when due.

12 (e) A vegetable contractor fails to pay vegetable producers by January 31 for
13 vegetables delivered by December 31 of the previous year, except as authorized in a
14 deferred payment contract.

15 (f) A grain warehouse keeper fails to return grain to depositors upon demand,
16 as required under s. 126.34 (4).

17 (g) A grain warehouse keeper fails to maintain adequate grain inventory as
18 required under s. 126.34 (3), and at least one of the following applies:

19 1. The amount of the deficiency exceeds 10,000 bushels or 10% of the grain
20 warehouse keeper's obligations to depositors, whichever amount is less.

21 2. The grain warehouse keeper fails to correct the deficiency within 15 days
22 after receiving the department's written notice that a deficiency exists.

23 **(3) HEARING ON SUMMARY ORDER.** (a) A contractor named in a summary order
24 under sub. (2) may, within 10 days after receiving the order, request a hearing on the
25 order. The department shall hold an informal hearing as soon as possible after

1 receiving a hearing request, but not later than 10 days after receiving the hearing
2 request, unless the contractor waives the informal hearing or agrees to hold it at a
3 later date. If the matter is not resolved at the informal hearing, the department shall
4 hold a contested case hearing under ch. 227 as soon as reasonably possible.

5 (b) A hearing request under par. (a) does not automatically stay a summary
6 order. The department may stay a summary order pending hearing.

7 **126.86 License actions. (1) GENERAL.** The department may for cause deny,
8 suspend, revoke, or impose conditions on a contractor's license, as provided in s.
9 93.06 (7) and (8). Cause may include any of the following:

10 (a) The contractor fails to comply with this chapter or a rule promulgated under
11 this chapter.

12 (b) The contractor fails to comply with an order that the department issues
13 under this chapter.

14 (c) The contractor fails to provide relevant information that the department
15 requests under this chapter or falsifies information provided to the department.

16 (d) The contractor fails to file a financial statement, security, fees, or
17 assessments required under this chapter, or fails to meet other requirements for
18 licensing.

19 (e) The contractor fails to honor contract obligations to persons who are
20 authorized to file default claims under s. 126.70 (1).

21 (f) The contractor fails to reimburse the department, within 60 days after the
22 department issues a reimbursement demand under s. 126.73 (1), for the full amount
23 that the department pays to claimants under s. 126.72 (1) because of the contractor's
24 default.

1 (g) The contractor fails to reimburse a bond surety, within 60 days after the
2 bond surety issues a reimbursement demand under s. 126.73 (2), for the full amount
3 that the surety pays to the department under s. 126.72 (2) or (3) for the benefit of
4 claimants affected by the contractor's default.

5 (2) HEARING ON LICENSE ACTION; GENERAL. Except as provided in sub. (3), the
6 department shall give a contractor notice and an opportunity for hearing before the
7 department suspends, revokes, or imposes conditions on a license held by the
8 contractor.

9 (3) SUMMARY ACTION. (a) The department may, without prior notice or hearing,
10 summarily suspend, revoke, or impose conditions on a license held by a contractor
11 if the department finds that summary action is necessary to prevent a clear and
12 imminent threat of harm to persons protected under this chapter. Conditions
13 indicating a clear and imminent threat of harm include those identified in s. 126.85
14 (2).

15 (b) A contractor who is the subject of a summary action under par. (a) may,
16 within 10 days after receiving notice of that action, request a hearing on the action.
17 The department shall hold an informal hearing as soon as possible after receiving a
18 hearing request, but not later than 10 days after receiving the hearing request,
19 unless the contractor waives the informal hearing or agrees to hold it at a later date.
20 If the matter is not resolved at the informal hearing, the department shall hold a
21 contested case hearing under ch. 227 as soon as reasonably possible.

22 (c) A request for hearing under par. (b) does not automatically stay a summary
23 action under par. (a). The department may stay a summary action pending hearing.

24 **126.87 Court actions.** (1) INJUNCTION. The department may petition the
25 circuit court for an ex parte temporary restraining order, a temporary injunction, or

1 a permanent injunction to prevent, restrain, or enjoin any person from violating this
2 chapter, any rule promulgated under this chapter, or any order issued under this
3 chapter. The department may seek this remedy in addition to any other penalty or
4 remedy provided under this chapter.

5 (2) PENALTIES. (a) A person who violates this chapter, a rule promulgated under
6 this chapter, or an order issued under this chapter is subject to a forfeiture of not less
7 than \$250 nor more than \$5,000 for each violation.

8 (b) A person who intentionally violates this chapter, a rule promulgated under
9 this chapter, or an order issued under this chapter may be fined not more than
10 \$10,000 or imprisoned for not more than one year in the county jail or both.

11 (4) PRIVATE REMEDY. (a) A person whose claim is allowed under s. 126.70 may
12 bring an action against the contractor to recover the amount of the allowed claim, less
13 any recovery amount that the department pays to the claimant under s. 126.71. In
14 any court action under this subsection, the claimant may recover costs including all
15 reasonable attorney fees, notwithstanding s. 814.04 (1). This subsection does not
16 limit any other legal cause of action that the claimant may have against the
17 contractor.

18 (b) A claim allowed under s. 126.70 has the same priority in an insolvency
19 proceeding or creditor's action as a claim for wages, except as otherwise provided by
20 federal law.

21 (5) COLLECTIONS. The department may bring an action in court to recover any
22 unpaid amount that a contractor owes the department under this chapter, including
23 any unpaid fund assessment or reimbursement.

1 **126.88 Modifying fund assessments.** The department may by rule modify
2 the fund assessments provided under s. 126.15, 126.30, 126.46, or 126.60. The
3 department shall modify fund assessments as necessary to do all of the following:

4 (1) Maintain an overall fund balance of at least \$5,000,000 after January 1,
5 2006, but not more than \$22,000,000 at any time.

6 (2) Maintain a fund balance attributable to grain dealers of at least \$1,000,000
7 after January 1, 2006, but not more than \$6,000,000 at any time.

8 (3) Maintain a fund balance attributable to grain warehouse keepers of at least
9 \$200,000 after January 1, 2006, but not more than \$1,000,000 at any time.

10 (4) Maintain a fund balance attributable to milk contractors of at least
11 \$3,000,000 after January 1, 2006, but not more than \$12,000,000 at any time.

12 (5) Maintain a fund balance attributable to vegetable contractors of at least
13 \$800,000 after January 1, 2006, but not more than \$3,000,000 at any time.

14 **126.89 Calculations.** If a number used in or resulting from a calculation made
15 to determine the amount of an assessment under s. 126.15, 126.30, 126.46, or 126.60,
16 other than a number that appears in one of those sections, extends more than 6
17 decimal places to the right of the decimal point, a person making the calculation shall
18 round the number to the nearest whole digit in the 6th decimal place to the right of
19 the decimal point. The amount of an assessment may be rounded to the nearest
20 whole dollar.

21 **126.90 Agricultural producer security council.** The agricultural producer
22 security council shall advise the department on the administration and enforcement
23 of this chapter. The council shall meet as often as the department considers
24 necessary, but at least once annually. The department shall inform the council of

1 fund balances and payments, and shall consult with the council before modifying any
2 license fee, license surcharge, or fund assessment under this chapter.

3 ***-0392/3.32* SECTION 2815.** Chapter 127 of the statutes is repealed.

4 ***-0456/1.1* SECTION 2816.** 134.71 (5) (intro.) of the statutes is amended to
5 read:

6 134.71 (5) LICENSE APPLICATION. (intro.) A person wishing to operate as a
7 secondhand article dealer or a secondhand jewelry dealer and have a principal place
8 of business in a municipality shall apply for a license to the clerk of that municipality.
9 A person wishing to operate as a pawnbroker in a municipality shall apply for a
10 license to the clerk of the municipality. The clerk shall furnish application forms
11 under ~~sub. (12)~~ that shall require all of the following:

12 ***-0456/1.2* SECTION 2817.** 134.71 (8) (c) 1. of the statutes is amended to read:

13 134.71 (8) (c) 1. Except as provided in subd. 2., for each transaction of purchase,
14 receipt or exchange of any secondhand article or secondhand jewelry from a
15 customer, a pawnbroker, secondhand article dealer or secondhand jewelry dealer
16 shall require the customer to complete and sign, in ink, the appropriate form
17 ~~provided under sub. (12)~~. No entry on such a form may be erased, mutilated or
18 changed. The pawnbroker, secondhand article dealer or secondhand jewelry dealer
19 shall retain an original and a duplicate of each form for not less than one year after
20 the date of the transaction except as provided in par. (e), and during that period shall
21 make the duplicate available to any law enforcement officer for inspection at any
22 reasonable time.

23 ***-0456/1.3* SECTION 2818.** 134.71 (12) of the statutes is amended to read:

24 134.71 (12) APPLICATIONS AND FORMS. The department of agriculture, trade and
25 consumer protection ~~shall~~ may develop sample applications and other sample forms

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1 required under subs. (5) (intro.) and (8) (c). ~~The department shall print a sufficient~~
2 ~~number of applications and forms to provide to counties and municipalities for~~
3 ~~distribution to pawnbrokers, secondhand article dealers and secondhand jewelry~~
4 ~~dealers at no cost~~ and may provide the samples to counties and municipalities to
5 reproduce and distribute or to revise for reproduction and distribution.

6 ***-1997/3.14* SECTION 2819.** 134.72 (title) of the statutes is amended to read:
7 **134.72 (title) Prohibition of certain unsolicited messages by telephone**
8 **or facsimile machine.**

9 ***-1997/3.15* SECTION 2820.** 134.72 (1) (c) of the statutes is renumbered 100.52
10 (1) (e).

11 ***-1997/3.16* SECTION 2821.** 134.72 (2) (title) of the statutes is repealed and
12 recreated to read:

13 134.72 (2) (title) PROHIBITION.

14 ***-1997/3.17* SECTION 2822.** 134.72 (2) (a) of the statutes is renumbered 100.52
15 (2) and amended to read:

16 100.52 (2) PRERECORDED TELEPHONE SOLICITATION. ~~No person~~ An employee of a
17 professional telemarketer may not use an electronically prerecorded message in
18 telephone solicitation without the consent of the person called.

19 ***-1997/3.18* SECTION 2823.** 134.72 (2) (b) (title) of the statutes is repealed.

20 ***-1997/3.19* SECTION 2824.** 134.72 (2) (b) 1. (intro.), a. and b. and 2. of the
21 statutes are renumbered 134.72 (2) (a) (intro.), 1. and 2. and (b), and 134.72 (2) (b),
22 as renumbered, is amended to read:

23 134.72 (2) (b) Notwithstanding ~~subd. 1. par. (a),~~ a person may not make a
24 facsimile solicitation to a person who has notified the facsimile solicitor in writing

1 or by facsimile transmission that the person does not want to receive facsimile
2 solicitation.

3 ***-1997/3.20* SECTION 2825.** 134.72 (3) (a) of the statutes is amended to read:
4 134.72 (3) (a) *Intrastate.* This section applies to any intrastate telephone
5 solicitation ~~or intrastate facsimile solicitation.~~

6 ***-1997/3.21* SECTION 2826.** 134.72 (3) (b) of the statutes is amended to read:
7 134.72 (3) (b) *Interstate.* This section applies to any interstate telephone
8 solicitation, ~~or interstate facsimile solicitation,~~ received by a person in this state.

9 ***-1997/3.22* SECTION 2827.** 134.72 (4) of the statutes is amended to read:
10 134.72 (4) PENALTY. A person who violates this section may be required to
11 forfeit up to not more than \$500.

12 ***-2318/3.13* SECTION 2828.** 135.02 (3) (c) of the statutes is created to read:
13 135.02 (3) (c) A contract or agreement, either expressed or implied, whether
14 oral or written, between 2 or more persons by which a wholesaler, as defined in s.
15 125.02 (21), is granted the right to sell or distribute fermented malt beverages or use
16 a trade name, trademark, service mark, logotype, brand, advertising, or other
17 commercial symbol related to fermented malt beverages.

18 ***-2318/3.14* SECTION 2829.** 135.067 of the statutes is created to read:
19 **135.067 Fermented malt beverage dealerships. (1) COMPENSATION OF**
20 **PRIOR DEALER.** Notwithstanding s. 135.03, any person who assumes, in whole or in
21 part, a dealership described in s. 135.02 (3) (c) following the grantor's termination,
22 cancellation, or nonrenewal in whole or in part of a prior dealership agreement shall
23 compensate the prior dealer for the fair market value of that portion of the dealership
24 assumed unless the grantor terminated, canceled, or failed to renew for any of the
25 following reasons:

SECTION 2829

1 (a) The prior dealer engaged in material fraudulent conduct or made material
2 and substantial misrepresentations in its dealings with the grantor or with others
3 related to the dealership.

4 (b) The prior dealer was convicted of, or pleaded no contest to, a felony crime
5 substantially related to the dealer's ability to operate the dealership.

6 (c) The prior dealer knowingly distributed dealership products outside the
7 territory authorized by the grantor.

8 (2) **BINDING ARBITRATION.** The grantor shall advise the person assuming the
9 dealership of the person's obligations under sub. (1) prior to the person's assumption
10 of the dealership. If the person assuming a dealership under sub. (1) and the prior
11 dealer agree in writing to the fair market value of that portion of the dealership
12 assumed, the person assuming the dealership shall pay the agreed upon sum to the
13 prior dealer within 30 days of the date on which the parties reached the agreement.
14 If no written agreement for compensation of the prior dealer is reached within 30
15 days after the grantor's termination, cancellation, or nonrenewal of the prior
16 dealership agreement, the prior dealer may submit the dispute for binding
17 arbitration, subject to ch. 788, through a nationally recognized arbitration
18 association. Unless the parties agree otherwise, the arbitration shall be conducted
19 on an expedited basis to the extent an expedited proceeding is reasonably available
20 through the arbitration association, and each party shall pay an equal share of the
21 cost of the arbitration.

22 *~~1536/3.4~~* **SECTION 2830.** Chapter 137 (title) of the statutes is amended to
23 read:

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CHAPTER 137
AUTHENTICATIONS AND ELECTRONIC
TRANSACTIONS AND RECORDS

***-1536/3.5* SECTION 2831.** Subchapter I (title) of chapter 137 [precedes 137.01] of the statutes is amended to read:

CHAPTER 137
SUBCHAPTER I
NOTARIES AND COMMISSIONERS
OF DEEDS; NONELECTRONIC
NOTARIZATION AND ACKNOWLEDGEMENT

***-1536/3.6* SECTION 2832.** 137.01 (3) (a) of the statutes is amended to read:
137.01 (3) (a) ~~Every~~ Except as authorized in s. 137.19, every notary public shall provide an engraved official seal which makes a distinct and legible impression or official rubber stamp which makes a distinct and legible imprint on paper. The impression of the seal or the imprint of the rubber stamp shall state only the following: “Notary Public,” “State of Wisconsin” and the name of the notary. But any notarial seal in use on August 1, 1959, shall be considered in compliance.

***-1536/3.7* SECTION 2833.** 137.01 (4) (a) of the statutes is amended to read:
137.01 (4) (a) Every official act of a notary public shall be attested by the notary public’s written signature or electronic signature, as defined in s. ~~137.04 (2)~~ 137.11 (8).

***-1536/3.8* SECTION 2834.** 137.01 (4) (b) of the statutes is amended to read:
137.01 (4) (b) ~~All~~ Except as authorized in s. 137.19, all certificates of acknowledgments of deeds and other conveyances, or any written instrument required or authorized by law to be acknowledged or sworn to before any notary

1 public, within this state, shall be attested by a clear impression of the official seal or
2 imprint of the rubber stamp of said officer, and in addition thereto shall be written
3 or stamped either the day, month and year when the commission of said notary public
4 will expire, or that such commission is permanent.

5 ***-1536/3.9*** SECTION 2835. Subchapter II (title) of chapter 137 [precedes
6 137.04] of the statutes is amended to read:

7 **CHAPTER 137**

8 **SUBCHAPTER II**

9 **ELECTRONIC SIGNATURES**

10 **TRANSACTIONS AND RECORDS;**

11 **ELECTRONIC NOTARIZATION**

12 **AND ACKNOWLEDGEMENT**

13 ***-1536/3.10*** SECTION 2836. 137.04 of the statutes is repealed.

14 ***-1536/3.11*** SECTION 2837. 137.05 (title) of the statutes is renumbered 137.25
15 (title) and amended to read:

16 **137.25 (title) Submission of written documents records to**
17 **governmental units.**

18 ***-1536/3.12*** SECTION 2838. 137.05 of the statutes is renumbered 137.25 (1)
19 and amended to read:

20 137.25 (1) Unless otherwise prohibited provided by law, with the consent of a
21 governmental unit of this state that is to receive a record, any document record that
22 is required by law to be submitted in writing to a that governmental unit and that
23 requires a written signature may be submitted by transforming the document into
24 as an electronic format, but only with the consent of the governmental unit that is

1 ~~to receive the document record, and if submitted as an electronic record may~~
2 ~~incorporate an electronic signature.~~

3 *~~1536/3.13~~* SECTION 2839. 137.06 of the statutes is repealed.

4 *~~1536/3.14~~* SECTION 2840. 137.11 to 137.24 of the statutes are created to
5 read:

6 **137.11 Definitions.** In this subchapter:

7 (1) “Agreement” means the bargain of the parties in fact, as found in their
8 language or inferred from other circumstances and from rules, regulations, and
9 procedures given the effect of agreements under laws otherwise applicable to a
10 particular transaction.

11 (2) “Automated transaction” means a transaction conducted or performed, in
12 whole or in part, by electronic means or by the use of electronic records, in which the
13 acts or records of one or both parties are not reviewed by an individual in the ordinary
14 course in forming a contract, performing under an existing contract, or fulfilling an
15 obligation required by the transaction.

16 (3) “Computer program” means a set of statements or instructions to be used
17 directly or indirectly in an information processing system in order to bring about a
18 certain result.

19 (4) “Contract” means the total legal obligation resulting from the parties’
20 agreement as affected by this subchapter and other applicable law.

21 (5) “Electronic” means relating to technology having electrical, digital,
22 magnetic, wireless, optical, electromagnetic, or similar capabilities.

23 (6) “Electronic agent” means a computer program or an electronic or other
24 automated means used independently to initiate an action or respond to electronic

1 records or performances in whole or in part, without review or action by an
2 individual.

3 (7) “Electronic record” means a record that is created, generated, sent,
4 communicated, received, or stored by electronic means.

5 (8) “Electronic signature” means an electronic sound, symbol, or process
6 attached to or logically associated with a record and executed or adopted by a person
7 with the intent to sign the record.

8 (9) “Governmental unit” means:

9 (a) An agency, department, board, commission, office, authority, institution, or
10 instrumentality of the federal government or of a state or of a political subdivision
11 of a state or special purpose district within a state, regardless of the branch or
12 branches of government in which it is located.

13 (b) A political subdivision of a state or special purpose district within a state.

14 (c) An association or society to which appropriations are made by law.

15 (d) Any body within one or more of the entities specified in pars. (a) to (c) that
16 is created or authorized to be created by the constitution, by law, or by action of one
17 or more of the entities specified in pars. (a) to (c).

18 (e) Any combination of any of the entities specified in pars. (a) to (d).

19 (10) “Information” means data, text, images, sounds, codes, computer
20 programs, software, databases, or the like.

21 (11) “Information processing system” means an electronic system for creating,
22 generating, sending, receiving, storing, displaying, or processing information.

23 (12) “Record” means information that is inscribed on a tangible medium or that
24 is stored in an electronic or other medium and is retrievable in perceivable form.

1 **(13)** “Security procedure” means a procedure employed for the purpose of
2 verifying that an electronic signature, record, or performance is that of a specific
3 person or for detecting changes or errors in the information in an electronic record.
4 The term includes a procedure that requires the use of algorithms or other codes,
5 identifying words or numbers, encryption, callback, or other acknowledgment
6 procedures.

7 **(14)** “State” means a state of the United States, the District of Columbia,
8 Puerto Rico, the U.S. Virgin Islands, or any territory or insular possession subject
9 to the jurisdiction of the United States. The term includes an Indian tribe or band,
10 or Alaskan native village, which is recognized by federal law or formally
11 acknowledged by a state.

12 **(15)** “Transaction” means an action or set of actions occurring between 2 or
13 more persons relating to the conduct of business, commercial, or governmental
14 affairs.

15 **137.12 Application.** **(1)** Except as otherwise provided in sub. (2) and except
16 in ss. 137.25 and 137.26, this subchapter applies to electronic records and electronic
17 signatures relating to a transaction.

18 **(2)** Except as otherwise provided in sub. (3), this subchapter does not apply to
19 a transaction to the extent it is governed by:

20 **(a)** Any law governing the execution of wills or the creation of testamentary
21 trusts; or

22 **(b)** Chapters 401 and 403 to 410, other than ss. 401.107 and 401.206.

23 **(3)** This subchapter applies to an electronic record or electronic signature
24 otherwise excluded from the application of this subchapter under sub. (2) to the
25 extent it is governed by a law other than those specified in sub. (2).

1 (4) A transaction subject to this subchapter is also subject to other applicable
2 substantive law.

3 (5) This subchapter applies to the state of Wisconsin, unless otherwise
4 expressly provided.

5 **137.13 Use of electronic records and electronic signatures; variation**
6 **by agreement.** (1) This subchapter does not require a record or signature to be
7 created, generated, sent, communicated, received, stored, or otherwise processed or
8 used by electronic means or in electronic form.

9 (2) This subchapter applies only to transactions between parties each of which
10 has agreed to conduct transactions by electronic means. Whether the parties agree
11 to conduct a transaction by electronic means is determined from the context and
12 surrounding circumstances, including the parties' conduct.

13 (3) A party that agrees to conduct a transaction by electronic means may refuse
14 to conduct other transactions by electronic means. The right granted by this
15 subsection may not be waived by agreement.

16 (4) Except as otherwise provided in this subchapter, the effect of any provision
17 of this subchapter may be varied by agreement. Use of the words "unless otherwise
18 agreed," or words of similar import, in this subchapter shall not be interpreted to
19 preclude other provisions of this subchapter from being varied by agreement.

20 (5) Whether an electronic record or electronic signature has legal consequences
21 is determined by this subchapter and other applicable law.

22 **137.14 Construction.** This subchapter shall be construed and applied:

23 (1) To facilitate electronic transactions consistent with other applicable law;

24 (2) To be consistent with reasonable practices concerning electronic
25 transactions and with the continued expansion of those practices; and

1 (3) To effectuate its general purpose to make uniform the law with respect to
2 the subject of this subchapter among states enacting laws substantially similar to
3 the Uniform Electronic Transactions Act as approved and recommended by the
4 National Conference of Commissioners on Uniform State Laws in 1999.

5 **137.15 Legal recognition of electronic records, electronic signatures,**
6 **and electronic contracts.** (1) A record or signature may not be denied legal effect
7 or enforceability solely because it is in electronic form.

8 (2) A contract may not be denied legal effect or enforceability solely because an
9 electronic record was used in its formation.

10 (3) If a law requires a record to be in writing, an electronic record satisfies that
11 requirement in that law.

12 (4) If a law requires a signature, an electronic signature satisfies that
13 requirement in that law.

14 **137.16 Provision of information in writing; presentation of records.**

15 (1) If parties have agreed to conduct a transaction by electronic means and a law
16 requires a person to provide, send, or deliver information in writing to another
17 person, a party may satisfy the requirement with respect to that transaction if the
18 information is provided, sent, or delivered, as the case may be, in an electronic record
19 capable of retention by the recipient at the time of receipt. An electronic record is not
20 capable of retention by the recipient if the sender or its information processing
21 system inhibits the ability of the recipient to print or store the electronic record.

22 (2) If a law other than this subchapter requires a record to be posted or
23 displayed in a certain manner, to be sent, communicated, or transmitted by a
24 specified method, or to contain information that is formatted in a certain manner,
25 then:

1 (a) The record shall be posted or displayed in the manner specified in the other
2 law.

3 (b) Except as otherwise provided in sub. (4) (b), the record shall be sent,
4 communicated, or transmitted by the method specified in the other law.

5 (c) The record shall contain the information formatted in the manner specified
6 in the other law.

7 (3) If a sender inhibits the ability of a recipient to store or print an electronic
8 record, the electronic record is not enforceable against the recipient.

9 (4) The requirements of this section may not be varied by agreement, but:

10 (a) To the extent a law other than this subchapter requires information to be
11 provided, sent, or delivered in writing but permits that requirement to be varied by
12 agreement, the requirement under sub. (1) that the information be in the form of an
13 electronic record capable of retention may also be varied by agreement; and

14 (b) A requirement under a law other than this subchapter to send,
15 communicate, or transmit a record by 1st-class or regular mail or with postage
16 prepaid may be varied by agreement to the extent permitted by the other law.

17 **137.17 Attribution and effect of electronic records and electronic**
18 **signatures.** (1) An electronic record or electronic signature is attributable to a
19 person if the electronic record or electronic signature was created by the act of the
20 person. The act of the person may be shown in any manner, including a showing of
21 the efficacy of any security procedure applied to determine the person to which the
22 electronic record or electronic signature was attributable.

23 (2) The effect of an electronic record or electronic signature that is attributed
24 to a person under sub. (1) is determined from the context and surrounding

1 circumstances at the time of its creation, execution, or adoption, including the
2 parties' agreement, if any, and otherwise as provided by law.

3 **137.18 Effect of change or error.** (1) If a change or error in an electronic
4 record occurs in a transmission between parties to a transaction, then:

5 (a) If the parties have agreed to use a security procedure to detect changes or
6 errors and one party has conformed to the procedure, but the other party has not, and
7 the nonconforming party would have detected the change or error had that party also
8 conformed, the conforming party may avoid the effect of the changed or erroneous
9 electronic record.

10 (b) In an automated transaction involving an individual, the individual may
11 avoid the effect of an electronic record that resulted from an error made by the
12 individual in dealing with the electronic agent of another person if the electronic
13 agent did not provide an opportunity for the prevention or correction of the error and,
14 at the time the individual learns of the error, the individual:

15 1. Promptly notifies the other person of the error and that the individual did
16 not intend to be bound by the electronic record received by the other person;

17 2. Takes reasonable steps, including steps that conform to the other person's
18 reasonable instructions, to return to the other person or, if instructed by the other
19 person, to destroy the consideration received, if any, as a result of the erroneous
20 electronic record; and

21 3. Has not used or received any benefit or value from the consideration, if any,
22 received from the other person.

23 (2) If neither sub. (1) (a) nor (b) applies, the change or error has the effect
24 provided by other law, including the law of mistake, and the parties' contract, if any.

25 (3) Subsections (1) (b) and (2) may not be varied by agreement.

1 **137.19 Notarization and acknowledgement.** If a law requires a signature
2 or record to be notarized, acknowledged, verified, or made under oath, the
3 requirement is satisfied if the electronic signature of the person authorized to
4 administer the oath or to make the notarization, acknowledgment, or verification,
5 together with all other information required to be included by other applicable law,
6 is attached to or logically associated with the signature or record.

7 **137.20 Retention of electronic records; originals.** (1) If a law requires
8 that a record be retained, the requirement is satisfied by retaining the information
9 set forth in the record as an electronic record which:

10 (a) Accurately reflects the information set forth in the record after it was first
11 generated in its final form as an electronic record or otherwise; and

12 (b) Remains accessible for later reference.

13 (2) A requirement to retain a record in accordance with sub. (1) does not apply
14 to any information the sole purpose of which is to enable the record to be sent,
15 communicated, or received.

16 (3) A person may comply with sub. (1) by using the services of another person
17 if the requirements of that subsection are satisfied.

18 (4) Except as provided in sub. (6), if a law requires a record to be presented or
19 retained in its original form, or provides consequences if the record is not presented
20 or retained in its original form, a person may comply with that law by using an
21 electronic record that is retained in accordance with sub. (1).

22 (5) If a law requires retention of a check, that requirement is satisfied by
23 retention of an electronic record containing the information on the front and back of
24 the check in accordance with sub. (1).

1 (6) A record retained as an electronic record in accordance with sub. (1)
2 satisfies a law requiring a person to retain a record for evidentiary, audit, or like
3 purposes, unless a law enacted after the effective date of this subsection [revisor
4 inserts date], specifically prohibits the use of an electronic record for the specified
5 purpose.

6 (7) This section does not preclude a governmental unit of this state from
7 specifying additional requirements for the retention of any record subject to the
8 jurisdiction of that governmental unit.

9 **137.21 Admissibility in evidence.** In a proceeding, a record or signature
10 may not be excluded as evidence solely because it is in electronic form.

11 **137.22 Automated transactions.** In an automated transaction:

12 (1) A contract may be formed by the interaction of electronic agents of the
13 parties, even if no individual was aware of or reviewed the electronic agent's actions
14 or the resulting terms and agreements.

15 (2) A contract may be formed by the interaction of an electronic agent and an
16 individual, acting on the individual's own behalf or for another person, including by
17 an interaction in which the individual performs actions that the individual is free to
18 refuse to perform and which the individual knows or has reason to know will cause
19 the electronic agent to complete the transaction or performance.

20 (3) The terms of a contract under sub. (1) or (2) are governed by the substantive
21 law applicable to the contract.

22 **137.23 Time and place of sending and receipt.** (1) Unless otherwise
23 agreed between the sender and the recipient, an electronic record is sent when it:

24 (a) Is addressed properly or otherwise directed properly to an information
25 processing system that the recipient has designated or uses for the purpose of

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1 receiving electronic records or information of the type sent and from which the
2 recipient is able to retrieve the electronic record;

3 (b) Is in a form capable of being processed by that system; and

4 (c) Enters an information processing system outside the control of the sender
5 or of a person that sent the electronic record on behalf of the sender or enters a region
6 of the information processing system designated or used by the recipient which is
7 under the control of the recipient.

8 (2) Unless otherwise agreed between a sender and the recipient, an electronic
9 record is received when:

10 (a) It enters an information processing system that the recipient has
11 designated or uses for the purpose of receiving electronic records or information of
12 the type sent and from which the recipient is able to retrieve the electronic record;
13 and

14 (b) It is in a form capable of being processed by that system.

15 (3) Subsection (2) applies even if the place where the information processing
16 system is located is different from the place where the electronic record is deemed
17 to be received under sub. (4).

18 (4) Unless otherwise expressly provided in the electronic record or agreed
19 between the sender and the recipient, an electronic record is deemed to be sent from
20 the sender's place of business and to be received at the recipient's place of business.

21 For purposes of this subsection:

22 (a) If the sender or recipient has more than one place of business, the place of
23 business of that person is the place having the closest relationship to the underlying
24 transaction.

1 (b) If the sender or the recipient does not have a place of business, the place of
2 business is the sender's or recipient's residence, as the case may be.

3 (5) An electronic record is received under sub. (2) even if no individual is aware
4 of its receipt.

5 (6) Receipt of an electronic acknowledgment from an information processing
6 system described in sub. (2) establishes that a record was received but, by itself, does
7 not establish that the content sent corresponds to the content received.

8 (7) If a person is aware that an electronic record purportedly sent under sub.
9 (1), or purportedly received under sub. (2), was not actually sent or received, the legal
10 effect of the sending or receipt is determined by other applicable law. Except to the
11 extent permitted by the other law, the requirements of this subsection may not be
12 varied by agreement.

13 **137.24 Transferable records.** (1) In this section, "transferable record"
14 means an electronic record that would be a note under ch. 403 or a record under ch.
15 407 if the electronic record were in writing.

16 (1m) An electronic record qualifies as a transferable record under this section
17 only if the issuer of the electronic record expressly has agreed that the electronic
18 record is a transferable record.

19 (2) A person has control of a transferable record if a system employed for
20 evidencing the transfer of interests in the transferable record reliably establishes
21 that person as the person to which the transferable record was issued or transferred.

22 (3) A system satisfies the requirements of sub. (2), and a person is deemed to
23 have control of a transferable record, if the transferable record is created, stored, and
24 assigned in such a manner that:

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1 (a) A single authoritative copy of the transferable record exists which is unique,
2 identifiable, and, except as otherwise provided in pars. (d) to (f), unalterable;

3 (b) The authoritative copy identifies the person asserting control as the person
4 to which the transferable record was issued or, if the authoritative copy indicates
5 that the transferable record has been transferred, the person to which the
6 transferable record was most recently transferred;

7 (c) The authoritative copy is communicated to and maintained by the person
8 asserting control or its designated custodian;

9 (d) Copies or revisions that add or change an identified assignee of the
10 authoritative copy can be made only with the consent of the person asserting control;

11 (e) Each copy of the authoritative copy and any copy of a copy is readily
12 identifiable as a copy that is not the authoritative copy; and

13 (f) Any revision of the authoritative copy is readily identifiable as authorized
14 or unauthorized.

15 (4) Except as otherwise agreed, a person having control of a transferable record
16 is the holder, as defined in s. 401.201 (20), of the transferable record and has the same
17 rights and defenses as a holder of an equivalent record or writing under chs. 401 to
18 411, including, if the applicable statutory requirements under s. 403.302 (1),
19 407.501, or 409.308 are satisfied, the rights and defenses of a holder in due course,
20 a holder to which a negotiable record of title has been duly negotiated, or a purchaser,
21 respectively. Delivery, possession, and endorsement are not required to obtain or
22 exercise any of the rights under this subsection.

23 (5) Except as otherwise agreed, an obligor under a transferable record has the
24 same rights and defenses as an equivalent obligor under equivalent records or
25 writings under chs. 401 to 411.