

No. 539, A.]

[Published July 20, 1961.

[Republished July 22, 1961.

CHAPTER 242

AN ACT to renumber 100.201 (2) (b), (c), (f), (g) and (h); to renumber and amend 100.201 (2) (d) and (e); to repeal and recreate 100.201 (6) (b); and to create 20.140 (49) and 100.201 (2) (b), (8) and (9) of the statutes, relating to unfair practices in the dairy industry, and making a revolving appropriation.

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

SECTION 1. 20.140 (49) of the statutes is created to read:

20.140 (49) UNFAIR TRADE PRACTICES IN THE DAIRY INDUSTRY. All moneys collected under s. 100.201 (8) shall be paid into the general fund within one week and are appropriated therefrom to the department of agriculture as a nonlapsible appropriation for the administration of s. 100.201.

SECTION 2. 100.201 (2) (b), (c), (f), (g) and (h) of the statutes are renumbered 100.201 (2) (c), (d), (g), (h) and (i), respectively.

SECTION 3. 100.201 (2) (b) of the statutes is created to read:

100.201 (2) (b) Discriminate in price, directly or indirectly, between different purchasers of selected dairy products of like grade and quality where the effect of such discrimination may be to substantially lessen competition or to create a monopoly, or to injure, destroy or prevent competition with any person who either grants or knowingly receives the benefit of such discrimination. Proof made at any proceeding under this paragraph that there has been discrimination in price shall be prima facie evidence of the truth of such charges. The burden of rebutting such prima facie evidence by a showing of justification shall be upon the person charged with the violation. Nothing under this paragraph shall prevent any person charged with a violation of this paragraph from rebutting such prima facie evidence by showing that his lower price was made in good faith to meet an equally low price of a competitor. Nothing in this paragraph shall be construed to apply to the submission of bids to or sales to the United States, the state, any municipality as defined in s. 345.05 (1) (a), or any religious, charitable or educational institution. Nothing in this paragraph shall prevent:

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

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

3. Price changes from time to time resulting from changing conditions affecting the market for or the marketability of the selected dairy products concerned, including but not limited to actual or imminent deterioration, obsolescence, distress sales under court process, or sales in good faith in discontinuance of business in the selected dairy products concerned.

SECTION 4. 100.201 (2) (d) and (e) of the statutes are renumbered 100.201 (2) (e) and (f) and 100.201 (2) (e) and (f) 1, as renumbered, are amended to read:

100.201 (2) (e) Make or underwrite loans to a retailer or become bound in any manner for the financial obligation of any retailer except that

a wholesaler may lend money to a retailer for the purchase of equipment for the storage, *transportation* and display of selected dairy products, provided the loan is for not more than 90 per cent of the purchase price, bears at least a 5 per cent annual interest rate, is payable in equal monthly instalments over a period of not more than 48 months, and is secured by a chattel mortgage specifying all payments by the retailer duly filed by the wholesaler within 10 days after the making or underwriting of said loan in the office of the register of deeds of the county in which the retailer is located, as provided in s. 241.10.

(f) 1. The wholesaler, under a bill of sale or conditional sales contract describing the property sold and specifying the price and terms of sale duly filed by him in the office of the register of deeds in the county in which the retailer is located within 10 days after delivery of the equipment described therein, may sell equipment for the storage, *transportation* and display of selected dairy products to the retailer but the selling price shall be not less than the cost to the wholesaler, less 10 per cent per year depreciation, plus transportation and installation costs, plus at least 6 per cent, but in no event shall it be less than \$50 per unit. In filing bills of sale under this section, the register of deeds shall follow the procedure provided in s. 122.10 for the filing of conditional sales contracts. If the wholesaler shall make said sale under a conditional sales contract, the terms of sale shall be no more favorable to the retailer than those provided in par. * * * (e).

SECTION 5. 100.201 (6) (b) of the statutes is repealed and recreated to read:

100.201 (6) (b) It is unlawful for any retailer to solicit or receive, directly or indirectly, any discount, rebate, price discrimination, advertising material, loan, equipment, payment, or other thing, which is prohibited by sub. (2), where such retailer, or any officer or agent thereof, knows or should know that the same is prohibited. Any retailer violating this paragraph shall be fined \$100.

SECTION 6. 100.201 (8) and (9) of the statutes are created to read:

100.201 (8) For the purpose of administering and enforcing the provisions of this section the first person who processes or manufactures any selected dairy product for sale at wholesale or sale at retail (except sales at retail by counter freezer operators licensed under s. 97.05) within this state, or the wholesaler who first receives any such product already processed from outside the state for sale within the state, shall pay to the department on or before the twenty-fifth day of each month following the month in which such wholesaler receives, processes or sells such selected dairy products, a fee as determined by the department, but not to exceed 2 mills per hundredweight of 3.5 per cent butterfat raw milk equivalent on all milk, cream (whether fresh, sour or storage), aerated or whipping cream, half and half, buttermilk, flavored milk or milk drink, vitamin fortified milk, and skim milk sold within the state in final consumer package or container to retailers or consumers or sold in such packages or containers to other wholesalers of selected dairy products for further sale within the state to retailers or consumers, and not to exceed 2 mills per gallon on all ice cream mix and ice milk mix made for freezing into ice cream and ice milk and ultimately sold within the state, whether in the form of mix or finished ice cream and ice milk. Products upon which fees have been paid shall be exempt from further fees in successive transactions. Any person claiming that products sold by him are not subject to assessment under any provision of this subsection by reason of the fact that they were not sold or resold within the state shall have the burden of so proving, and shall be obligated to pay assessment on such products unless and until he

produces records satisfying the department that such products are not subject to assessment.

(9) The provisions of ss. 133.17 and 133.185 shall not apply to any conduct either permitted, required or prohibited under the provisions of this section.

SECTION 7. It is the intention of this act to adapt the principles of price discrimination set forth in the Robinson-Patman act to the sale of selected dairy products in Wisconsin.

Approved July 12, 1961.
