

CHAPTER 343.

OFFENSES AGAINST PROPERTY.

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343.01 Arson of dwellings. Any person who wilfully and maliciously sets fire to or burns or causes to be burned or who aids, counsels or procures the burning of any dwelling house, or any kitchen, shop, barn, stable or other outhouse that is parcel thereof, or belonging to or adjoining thereto, owned by himself or another, shall be deemed guilty of arson, and upon conviction thereof shall be punished by imprisonment in the state prison for not less than two years nor more than twenty years.

Note: This statute is constitutional. Voss v. State, 204 W 432, 236 NW 128.

In a prosecution for maliciously burning a dwelling house owned by the defendant, and the burning of household furnishings with intent to defraud the insurance company, resulting from an explosion and fire of concededly incendiary origin which occurred while the defendant was away on a two-day trip, the evidence is held insuffi-

cient to sustain a conviction, it being considered that, disregarding proof of motive, every act of the defendant relating to the offense was as consistent with her innocence as with her guilt, and that the evidence with respect to motive was not sufficient in connection with the remainder of the evidence to warrant the jury in finding the defendant guilty beyond a reasonable doubt. Wittig v. State, 235 W 274, 292 NW 379.

343.02 Arson of buildings not dwellings. Any person who wilfully and maliciously sets fire to or burns or causes to be burned or who aids, counsels or procures the burning of any barn, stable, garage or other building, owned by himself or another, not a parcel of a dwelling house; or any shop, storehouse, warehouse, factory, mill or other building, owned by himself or another; or any church, meetinghouse, courthouse, workhouse, school, jail or other public building or any public bridge; shall, upon conviction thereof, be punished by imprisonment in the state prison for not less than one year nor more than ten years.

Note: The words "other building" must be given a literal meaning and are not limited by the doctrine of *noscitur a sociis*.

These words extend to and include a fishing shack. Boardman v. State, 203 W 173, 233 NW 556.

343.03 Arson of diverse structures and things. Any person who wilfully and maliciously sets fire to or burns or causes to be burned or who aids, counsels or procures the burning of any barrack, cock, crib, rick or stack of hay, corn, wheat, oats, barley or other grain or vegetable product of any kind; or any field of standing hay or grain of any kind; or any pile of coal, wood or other fuel; or any pile of planks, boards, posts, rails or other lumber; or any street car, railway car, ship, boat or other water craft, automobile or other motor vehicle; or any other personal property not herein specifically named, owned by another and of the value of twenty-five dollars or more, shall upon conviction thereof, be punished by imprisonment in the state prison for not less than one year nor more than three years.

343.04 Arson to defraud insurer. Any person who wilfully and with intent to injure or defraud the insurer sets fire to or burns or causes to be burned or who aids, counsels or procures the burning of any goods, wares, merchandise or other chattels or personal property of any kind, whether such property is owned by himself or another, which at the time is insured by any person or corporation against loss or damage by fire, shall upon conviction thereof be punished by imprisonment in the state prison for not less than one year nor more than five years.

Note: See note to 343.01, citing Wittig v. State, 235 W 274, 292 NW 379.

343.05 Attempt at arson. (1) Any person who wilfully and maliciously attempts to set fire to or attempts to burn or to aid, counsel or procure the burning of any of the buildings or property mentioned in the foregoing sections, or who commits any act preliminary thereto or in furtherance thereof, shall upon conviction thereof, be punished by a fine of not more than one thousand dollars or by imprisonment in the state prison for not less than one year nor more than two years.

(2) The placing or distributing of any flammable, explosive or combustible material or substance or any device in any building or property mentioned in the foregoing sections in an arrangement or preparation with intent to eventually wilfully and maliciously set fire to or burn same, or to procure the setting fire to or burning of same, shall, for the purposes of sections 343.01 to 343.05, constitute an attempt to burn such building or property.

343.06 Arson; liability of husband or wife. The preceding sections of this chapter shall severally extend to a married woman who may commit either of the offenses therein described, though the property burnt or set fire to may belong partly or wholly to her husband; and said sections shall also severally apply to a married man, though the property burnt or set fire to may belong partly or wholly to his wife, and though said property may be occupied by such married man or married woman, or by such married man and wife as a residence.

343.07 [Repealed by 1929 c. 244 s. 1]

343.07 Lighted cigarettes, etc.; penalty. (1) No person shall throw or otherwise deposit any lighted cigar or cigarette or empty any lighted pipe on any public highway or parkway in this state.

(2) Any person violating any provision of this section, where such violation results in damage to persons or property in an amount of less than twenty-five dollars, shall be punished by a fine of not more than ten dollars or by imprisonment in the county jail for not more than ten days. Where such violation results in damage to persons or property in an amount of twenty-five dollars or more, such punishment shall be by a fine of not to exceed one hundred dollars or by imprisonment in the county jail for not more than six months. [1937 c. 132]

343.071 to 343.081 [Repealed by 1927 c. 29 s. 1]

343.08 Causing fires by tobacco smoking. (1) Any person who, by smoking, or attempting to light or to smoke cigarettes, cigars, pipes or tobacco, in any manner in which lighters or matches are employed, shall, in a careless, reckless or negligent manner, set fire to any bedding, furniture, curtains, drapes, house or any household fittings, or any part of any building specified in subsection (2), so as to endanger life or property in any way or to any extent, shall be fined not less than \$10 nor more than \$50, together with costs, and in lieu of payment thereof may be imprisoned not less than one day nor more than 15 days.

(2) In each sleeping room of all hotels, rooming houses, lodging houses and other places of public abode, a plainly printed notice shall be kept posted in a conspicuous place advising tenants of the provisions of this section. [1947 c. 426]

343.09 Breaking house in night, being armed. Any person who shall break and enter any dwelling house in the nighttime with intent to commit the crime of murder, rape, robbery, larceny or other felony, or after having entered with such intent shall break any such dwelling house in the nighttime, any person being then lawfully therein, and the offender being armed with a dangerous weapon at the time of such breaking or entering, or so arming himself in such house, or making an actual assault on any person lawfully therein, shall be punished by imprisonment in the state prison not more than fifteen years nor less than five years.

Note: Counts of an information charging the defendant with breaking and entering a dwelling house in the nighttime with intent to commit adultery, and with intent to commit a felony, and with assaulting another lawfully therein, are held to state offenses under 343.09 and 343.10. State ex rel. Wagner v. Lee, 220 W 150, 264 NW 484.

343.10 Breaking, unarmed. Any person who shall break and enter any dwelling house in the nighttime, with such intent as is mentioned in section 343.09, or who, having entered with such intent, shall break such dwelling house in the nighttime, the offender not being armed, nor arming himself in such house with a dangerous weapon, nor making an assault upon any person then being lawfully therein, shall be punished by imprisonment in the state prison not more than eight years nor less than three years.

Note: An instruction, in relation to a defendant charged with breaking and entering a dwelling with intent to commit larceny, but who did not participate in the actual breaking and entering, that the only question the jury needed to determine was whether this defendant aided and assisted in the commission of the offense, was not prejudicial as misleading the jury as to the importance of an acquaintance with the plan and an intent to assist, when considered in connection with additional instructions on the subject. Smith v. State, 251 W 68, 27 NW (2d) 773.

343.11 Breaking office, car, etc., for felonious purposes. Any person who shall break and enter in the nighttime any office, shop, or warehouse, or any other building not adjoining or occupied with any dwelling house, or any ship, steamboat, vessel, railroad freight car, or passenger car, with the intention to commit the crime of murder, rape, robbery, larceny, or other felony shall be punished by imprisonment in the state prison not more than ten years, nor less than one year, or by imprisonment in the county jail for not more than one year, provided that nothing herein shall be held to remit any penalty for offenses heretofore committed.

343.12 Entry at night, breaking at day. Any person who shall enter in the nighttime, without breaking, or shall break and enter in the daytime any dwelling house or any outhouse, thereto adjoining and occupied therewith, or any office, shop or warehouse or

other building, or any ship, steamboat or vessel, railroad freight car or passenger car, with intent to commit the crime of murder, rape, robbery, larceny or other felony shall be punished by imprisonment in the state prison not more than three years nor less than one year, or by imprisonment in the county jail not more than one year.

343.121 Burglary with explosives. (1) Any person who, with intent to commit crime, breaks and enters, either by day or by night, any building, whether inhabited or not, and opens or attempts to open any vault, safe, or other secure place by use of nitroglycerine, dynamite, gunpowder, or any other explosive, shall be deemed guilty of burglary with explosives.

(2) Any person duly convicted of burglary with explosives shall be punished by imprisonment for a term of not less than fifteen nor more than forty years.

343.122 Entering bank or trust company. Any person who, with intent to commit crime, breaks and enters by day or night, any bank or trust company building, whether inhabited or not, and opens or attempts to open any vault, safe or other secure place therein by the use of any means or method, including those specified in section 343.121, or who shall through intimidation, force or use of a dangerous weapon, or if any confederate present be aiding or abetting by such means, feloniously rob, steal, take or carry away from such building any money or other property which may be the subject of larceny, shall be punished by imprisonment in the state prison not less than fifteen years nor more than forty years.

Note: The penalty prescribed by this section is not cruel or unusual punishment which is prohibited by the constitution. State v. Grukowski, 205 W 164, 236 NW 523. In a prosecution for bank robbery, the evidence held to sustain a conviction. Ford v. State, 206 W 138, 238 NW 865.

343.13 Unlawful entry. Any unlawful entry of a dwelling house, bank, trust company or other building with intent to commit a felony shall be deemed a breaking and entering of such dwelling house, bank, trust company or other building within the meaning of sections 343.09 to 343.122.

Note: Evidence that accused, without license to enter, broke screen door, forced it open by pulling out hook, forcibly pushed resident barring his entry aside, and entered and searched house, held sufficient to show unlawful breaking and entry. Evidence that accused, a married man, upon entering dwelling, stated that he wanted to have sexual intercourse with resident's housekeeper and that he searched house for housekeeper showed intent to commit "felony." Wagner v. State, 218 W 79, 259 NW 826.

343.131 Possession of burglarious tools. Any person who shall knowingly have in his possession any nitroglycerine, or other explosive, thermite, engine, machine, tool, implement, device, chemical, or substance designed and adapted for cutting, or burning through, forcing, or breaking open any building, room, vault, safe, or other depository, knowing the same to be designed and adapted for such purpose, with intent to use or employ the same therefor in order to steal from any building, room, vault, safe, or other depository any money or other property, shall be punished by imprisonment in the state prison not more than ten years or in the county jail not more than one year, or by fine not exceeding one thousand dollars, or by both such fine and imprisonment.

Note: Although they may be within the statute under some circumstances, simple tools such as a small screwdriver, pencil-type flashlight, metal hammer, chisel, and whetstone are not as a matter of law tools "designed and adapted for cutting, or burning through, forcing, or breaking open any building, room or vault," within 343.131. Diefenbach v. State, 245 W 468, 14 NW (2d) 908.

343.14 Larceny; stealing lead pipe; penalty. Any person who shall break and enter at any time, any meetinghouse, church, courthouse, townhouse, college, academy or other building erected and employed for public use and steal therein the money or property of another, or shall steal lead pipe from any building partially constructed, or shall commit the crime of larceny in any dwelling house, office, shop, bank, warehouse or other building, ship, steamboat, vessel, railroad freight car or passenger car by stealing therein the money or property of another, if the money or property so stolen shall exceed the value of twenty dollars, shall be punished by imprisonment in the state prison not more than three years nor less than one year, or by imprisonment in the county jail not more than one year nor less than six months or by fine not exceeding two hundred dollars; and if the money or property so stolen shall not exceed the value of twenty dollars he shall be punished by imprisonment in the county jail not more than six months or by fine not exceeding one hundred dollars.

343.15 Larceny from the person. Any person who shall commit the crime of larceny by stealing from the person of another shall be punished by imprisonment in the state prison not more than seven years nor less than one year, or by imprisonment in the county jail not more than one year nor less than three months or by fine not exceeding two hundred dollars.

343.16 Stealing at a fire. Any person who shall steal the property of another in a building that is on fire or that is removed from such building or any other building in the

vicinity, in consequence of an alarm caused by fire, shall be punished by imprisonment in the state prison not more than five years nor less than one year, or by fine not exceeding five hundred dollars, or by imprisonment in the county jail not more than one year.

343.17 Larceny; property; values; bailee; gas. Any person, who shall commit the crime of larceny by stealing the property of another, any money, goods or chattels, or any bank note, bond, promissory note, bill of exchange, order, certificate, book of account, conveyance of real estate, bill of sale, mortgage, valuable contract, receipt, release, defeasance, railroad passenger ticket, ticket of admission to any place, any writ, process, public record, or any instrument in writing whereby any demand, right or obligation is created, increased, diminished or extinguished, or who shall wrongfully divert, and apply to his own use or wrongfully deprive the owner of any gas, water, steam or electricity, or any personal property whatever, if the value thereof shall exceed twenty-five thousand dollars, he shall be punished by imprisonment in the state prison not more than twenty-five years nor less than ten years; if the value thereof shall not exceed twenty-five thousand dollars and shall exceed ten thousand dollars, he shall be punished by imprisonment in the state prison not more than twenty years nor less than five years; if the value thereof shall not exceed ten thousand dollars and shall exceed one thousand dollars he shall be punished by imprisonment in the state prison not more than ten years nor less than one year; if the value thereof shall exceed one hundred dollars, shall, unless it be otherwise provided in these statutes as to some particular offense, be punished by imprisonment in the state prison not more than five years nor less than one year, or in the county jail not more than one year, or by a fine not exceeding five thousand dollars; and if the value thereof shall not exceed one hundred dollars and shall exceed twenty dollars, he shall be punished by imprisonment in the state prison or county jail not more than one year nor less than six months or by fine not exceeding two hundred dollars; and if the value thereof shall not exceed twenty dollars he shall be punished by imprisonment in the county jail not more than six months or by a fine not exceeding one hundred dollars; and the value of a railroad ticket shall be the price for which it is authorized to be sold to passengers by the company for which it is sold; and the value of such gas, water, steam or electricity shall be the regular current price therefor charged to the consumer by the seller thereof. Whoever being a bailee of any chattel, money or valuable security shall fraudulently take or fraudulently convert the same to his own use or the use of any person other than the owner thereof, although he shall not break bulk or otherwise determine the bailment, shall be guilty of larceny, and may be convicted thereof on an indictment or information for larceny, and upon such conviction be punished as hereinbefore prescribed. [1939 c. 401]

Cross Reference: For similar prohibitions relative to electricity, gas, water and steam, see 98.25 (2) and 343.175.

Note: In the instant prosecution for the larceny of two automobiles, an instruction to find the defendants guilty if the jury were satisfied beyond a reasonable doubt that said automobiles were taken and converted by the defendants for their use with intent to steal said automobiles was a sufficient instruction on the elements of larceny, in the absence of any request for further instructions on that subject. *Schroeder v. State*, 222 W 251, 267 NW 899.

In prosecution for larceny of a gambling device, refusal to submit question of value of device held reversible error, since degree

of offense depended upon value of article stolen. *State v. Clementi*, 224 W 145, 272 NW 29.

Where A employs B in one county and authorizes him to sign checks on A for a specific purpose, and B goes into adjoining county and signs check on A for his own purpose, contrary to his authority, B is guilty of either embezzlement or larceny if check is paid. Venue in prosecution should be laid in county where check was signed and delivered. Embezzlement may be prosecuted either under 343.17 or 343.20. Prosecution under 343.17 is suggested so that conviction for larceny may result if either theft or embezzlement of money is proved. 28 Atty. Gen. 426.

343.171 [Renumbered section 94.34 by 1935 c. 550 s. 59]

343.172 Larceny of property in nature of realty. Any person who, by a trespass, with intent to steal, shall take and carry away anything of value which is parcel of the realty or annexed thereto and the property of the owner of the realty, against the will of such owner, shall be guilty of larceny and shall be punished as provided in section 343.17 for the larceny of personal property of the same value as that so taken and carried away. The same courts shall have jurisdiction under this section as would have jurisdiction if such property were personal property.

343.173 Stealing birds, dogs or beasts. Any person who shall wrongfully take, entice or carry away, without the consent of the owner thereof, any bird ordinarily kept in a state of confinement, or any dog or beast of any value, not the subject of larceny at common law, shall be punished by imprisonment in the county jail not more than one year nor less than ten days, or by fine not exceeding one hundred dollars nor less than five dollars.

343.174 Larceny of domestic animals. Any person who shall steal, take and carry away, irrespective of value, any domestic fowl or poultry, pig, calf, horse, colt or other domestic animal, shall be punished by imprisonment in the state prison not more than five years, or by imprisonment in the county jail not more than one year, or by a fine of not

less than twenty-five dollars nor more than one thousand dollars, or by both such fine and imprisonment in the county jail.

343.175 Fraudulent use of gas, electricity, water and steam. (1) Any person who wilfully, with intent to injure or defraud:

(a) Connects a tube, pipe, wire or other instrument or contrivance with a pipe or wire used for the conducting or supplying illuminating gas, fuel, natural gas, water or electricity in such a manner as to supply such gas, water or electricity to any burner, orifice, lamp, fixture, appliance or motor where the same is or can be burned or used without passing through the meter or instrument provided for registering the quantity consumed, or uses such gas, water or electricity obtained by reason of the making of such connection;

(b) Or obstructs, removes, alters, injures or prevents the action of a meter or other instrument used to measure or register the quantity of illuminating fuel, natural gas, water or electricity consumed in or about any grounds, building or buildings thereon, or at an orifice or burner, lamp, fixture, appliance or motor, or by a consumer or other person or a person other than a state inspector or deputy inspector of gas meters or an employe of the company or utility owning or having supervisory control of any gas, water or electric meter, who wilfully shall detach or disconnect such meter, or make or report any test of, or examine for the purpose of testing any such meter so detached or disconnected;

(c) Or in any manner whatever changes, extends or alters any service or other pipe, wire or attachment of any kind, connecting or through which natural or artificial gas or water or electricity is furnished from the gas mains or pipes, water mains or pipes, or wires of any person, company, corporation or utility without first procuring from said person, company, corporation or utility written permission to make such change, extension or alterations or uses gas, water or electricity obtained by reason of such changes, extensions or alterations;

(d) Or makes any connection or reconnection with the gas mains, service pipes, water mains, water pipes or wires of any person, company, corporation or utility furnishing to consumers natural or artificial gas or water or electricity; or turns on or off, or in any manner interferes with any valve or stopcock or other appliances belonging to such person, company, corporation or utility and connected with its service or other pipes or wires, or enlarges the orifice of mixers, or uses natural gas for heating purposes except through mixers or uses electricity, water or artificial gas for any purpose before it has passed through an instrument for measuring the quantity consumed, without first procuring from such person, company, corporation or utility a written permit to turn on or off such stopcock or valve, or to make such connections or reconnections or to enlarge the orifice of mixers or to use for heating purposes without mixers, or to interfere with the valves, stopcocks, wires or other appliances of such person, company, corporation or utility as the case may be;

(e) Or retains possession of or refuses to deliver any mixer or mixers, meter or meters, lamp or lamps or other appliances which may be or may have been loaned or rented to them by any person, company, corporation or utility for the purpose of furnishing gas, water, electricity or power through the same, or who sells, loans or in any manner disposes of the same to any person or persons other than the said person, company, corporation or utility entitled to the possession of the same;

(f) Or sets on fire any gas escaping from wells, broken or leaking mains, pipes, valves or other appliances used by any person, company or corporation in conveying gas to consumers, or interferes in any manner with the wells, pipes, mains, gate-boxes, valves, stopcocks, wires, cables, conduits, or any other appliances, machinery or property of any person, company, corporation or utility engaged in furnishing gas, water or electricity to consumers unless employed by or acting under the authority and direction of such person, company or corporation;

(g) Or opens or causes to be opened or reconnects or causes to be reconnected any valve lawfully closed or disconnected by a district steam corporation;

(h) Or turns on steam or causes it to be turned on, or causes steam to reenter any premises when the same has been lawfully stopped from entering such premises, shall be punished by imprisonment in the county jail not more than six months, or by a fine not exceeding one hundred dollars.

(2) The existence of any of the conditions with reference to meters, or attachments described in subsection (1), is presumptive evidence that the person to whom gas, electricity, water or steam is at the time being furnished by or through such meters or attachments, has with intent to defraud, created or caused to be created with reference to such meters or attachments, the condition so existing; provided that the mere turning off of the stopcock to a gas meter shall not be deemed such presumptive evidence. [1935 c. 262]

Cross Reference: For similar prohibitions relative to electricity, gas, water and steam, see 93.25 (2) and 343.17.

343.18 Operation of motor vehicle without owner's consent. Any person who shall take, use and operate any automobile, motor cycle, or other similar motor vehicle upon any public highway of this state without the consent of the owner thereof shall, upon conviction thereof, be punished by imprisonment in the state prison not more than five years, or by imprisonment in the county jail or workhouse not more than one year, or by a fine of not more than one thousand dollars, or by both such fine and imprisonment in the discretion of the court.

Note: A prosecution and conviction of defendants on a charge either of the larceny of two certain automobiles or of having taken, used and operated such automobiles on the highway without the owners' consent does not bar a prosecution and conviction for the other offense, since each is a distinct statutory offense and each contains distinct elements which are not included in the other. *Schroeder v. State*, 222 W 251, 267 NW 899.

Under this section person may be convicted in county where he operated car although taking actually occurred in another county. 22 Atty. Gen. 904.

Sentence to state prison under this section must be construed as indeterminate sentence from one to five years in view of 359.07, which provides that minimum shall not be less than one year. 25 Atty. Gen. 717.

343.181 [Repealed by 1935 c. 427]

343.182 [Repealed by 1929 c. 454 s. 1; 1929 c. 516 s. 14]

343.183 Destruction of manufacturer's serial number. (1) Any person who removes, defaces, alters, destroys or changes the manufacturer's serial number upon any automobile, motor cycle or other manufactured article for the purpose of concealing or misrepresenting the identity of such manufactured article, and any person who buys, sells, disposes of, conceals, receives or has in his possession any automobile, motor cycle, or manufactured article with knowledge that the manufacturer's serial number thereof has been removed, defaced, altered or destroyed for the purpose of concealing or misrepresenting the identity of said manufactured article, shall be deemed guilty of an offense under this law and shall be fined not more than \$200 or imprisoned not more than six months, or both such fine and imprisonment.

(2) The fact that a person buys, sells, disposes of, conceals, receives, or has in his possession any such manufactured article from which the manufacturers' serial number has been removed, defaced, altered or destroyed, shall be prima facie evidence that such person has knowledge of such removal, defacement, alteration, or destruction, and that the same was done for the purpose of concealment or misrepresenting the identity of such manufactured article.

343.19 Receiving stolen property. Any person who shall buy, receive, conceal or aid in the concealment of stolen money, goods or property, knowing the same to have been stolen, shall receive the same punishment as is hereinbefore provided for the stealing of such money, goods or property; and in any prosecution for such offense it shall not be necessary to aver or prove that the person who stole the same has been convicted.

Note: In a prosecution under this section for receiving stolen property, knowing the same to be stolen, it is essential to a conviction that the jury shall find beyond a reasonable doubt that the defendant receiver knew or had a guilty belief that the property was stolen; and it is not sufficient that the evi-

dence convinces the jury beyond a reasonable doubt that the defendant ought to have known that the property was stolen, but it must go further and satisfy them that he did know or believe. *Oosterwyk v. State*, 242 W 398, 8 NW (2d) 346.

343.20 Embezzlement; penalty. (1) Any officer, agent, clerk, employe or servant of this state or of any county, town, school district, city, village or other municipal corporation therein, or of any banking, railroad, insurance or telegraph company or other corporation, or of any joint stock company or association, or in the service or employment thereof, who, by virtue of such office or employment, shall have the possession or custody of, or who shall be entrusted with the safe-keeping, the disbursement, investment or payment of any money or fund, or with the safe-keeping, sale, carrying or delivering of any goods, wares, merchandise, produce, lumber or any other property or thing which is the subject of larceny, belonging to or under the care or control of the state, or such municipal or other corporation, or in which the state or such corporation has an interest, or any factor, carrier, warehouseman, storage, forwarding or commission merchant, or any bailee, executor, administrator, guardian, or any trustee, agent, clerk, attorney, messenger, employe or servant of any private person, corporation, copartnership or association, except apprentices and other persons under the age of sixteen years, who, by virtue of his business or employment, shall have the care, custody, or possession of or shall be entrusted with the safe-keeping, disbursement, investment or payment of any money, or shall have the care, custody or possession of or shall be entrusted with the safe-keeping, carrying, sale or delivery of any goods, wares, merchandise, produce, lumber or any other property or thing which is the subject of larceny, belonging to such other person, corporation, copartnership or association, shall embezzle or fraudulently convert to his own use or to the use of any other person except the owner thereof, or shall take, carry away or secrete, with intent to convert to his own use or to the use of any other person except the owner thereof

any such money, fund, goods, wares, merchandise, produce, lumber or any other property or thing shall be punished, if the money or property so embezzled shall exceed the value of twenty-five thousand dollars, by imprisonment in the state prison not more than twenty-five years nor less than ten years, and if the money or property so embezzled shall not exceed the value of twenty-five thousand dollars and shall exceed the value of ten thousand dollars, by imprisonment in the state prison not more than twenty years nor less than five years or if the money or property so embezzled shall not exceed the value of ten thousand dollars and shall exceed the value of one thousand dollars, by imprisonment in the state prison not more than ten years nor less than one year, and if the money or property so embezzled shall exceed the value of one hundred dollars and shall not exceed the value of one thousand dollars, by imprisonment in the state prison not more than five years nor less than one year, and if the money or property so embezzled shall not exceed the value of one hundred dollars and shall exceed the value of twenty dollars by imprisonment in the state prison or county jail not more than one year nor less than six months or by fine not exceeding two hundred dollars, and if the money or property so embezzled shall not exceed the value of twenty dollars by imprisonment in the county jail not more than six months or by fine not exceeding one hundred dollars.

(2) Any person who is a member of any copartnership or one of two or more beneficial owners of any property specified in this section or of any property or thing which is the subject of larceny, who shall embezzle or fraudulently convert to his own use or to the use of any other person, except the other members of such copartnership or the other beneficial owners of such property or thing, or who shall take, carry away or secrete with intent to convert to his own use or to the use of any other person except as aforesaid, any such property or thing shall be punished as provided in this section the same as if he had not been or was not a member of such copartnership or one of such beneficial owners. The offense of embezzlement may be prosecuted and punished in any county in which the person charged had possession of the property or thing alleged to have been embezzled.

Note: The terms of the sentences being within those authorized by statute, the supreme court is without power to reduce them although the circumstances might have justified greater leniency. *Mueller v. State*, 208 W 550, 243 NW 411.

Although criminal responsibility is not imposed upon a director merely because he failed to exercise care and prudence, there is sufficient participation to impose such responsibility when there is an act or omission on his part which logically leads to the inference that he has had a share in the wrongful acts of the corporation which constitute the offense. *State ex rel. Kropf v. Gilbert*, 213 W 196, 251 NW 478.

If the embezzlement charge consists in failure to account, the venue should be laid in the county where the defendant was under obligation to account, or declined to do so upon proper demand. *Podell v. State*, 228 W 513, 279 NW 653.

The subsequent restoration of the fund embezzled or the payment of the shortage does not expunge or conclusively contradict the guilt of one who has completed the embezzlement, and the repayment of money unlawfully converted is material only so far as it may bear on the defendant's intent to defraud. *McGeever v. State*, 239 W 37, 300 NW 485.

In a prosecution of a clerk of courts for embezzlement of funds received by him in his official capacity, based on an audit show-

ing shortages in his accounts, the evidence was insufficient to sustain a verdict of guilty, in that the evidence merely showed poor bookkeeping and that the defendant had received for money never received by him, and there was no evidence of any criminal motive or intent nor of attempted concealment by false entries or otherwise, hence the trial court properly set aside the verdict. *State v. Witte*, 243 W 423, 10 NW (2d) 117.

Where intent to defraud the owner is an essential element, which must be duly established in order to convict a defendant of embezzlement, the jury should be instructed to that effect when instructions on that subject are properly requested. Although containing no specific instruction on the element of intent to defraud, instructions under which the jury could not convict the defendant of embezzlement unless duly satisfied that the defendant had received the money, and that he had received it, not as a loan to him, but for the purpose of delivering it to a third person, and that after so receiving it he had appropriated the money for his personal use, were not prejudicial. *State v. Legg*, 243 W 449, 10 NW (2d) 137.

Prosecution for crime of embezzlement must be in county where person charged had possession of property or thing alleged to have been embezzled and not in county where demand was made. 21 Atty. Gen. 1051.

343.21 Evidence. The refusal or wilful neglect of any officer or other person named in section 343.20 to pay over any moneys or to deliver any property in his care, custody or possession, by virtue of his office or employment upon the demand thereof by the proper person, copartnership, corporation or authority entitled to receive the same, or as required by law, or the selling, mortgaging or pledging of any such property, or the loaning or depositing of any such moneys, by such officer or other person, for his own gain, profit or advantage without special authority shall in each case be prima facie evidence of the embezzlement thereof; and every public officer shall promptly pay over, as required by law, the same moneys received and held by him by virtue of his office and the whole thereof, and he shall not be allowed to set up or plead any account or claim for his services or fees as an offset or counterclaim against such payment.

Note: Where note is not given in good faith but merely as part of a fraudulent scheme for obtaining possession of money from another, giving of note does not con-

clusively determine that transaction was a loan so as to preclude prosecution for embezzlement. *Hanser v. State*, 217 W 587, 259 NW 418.

In a prosecution of a superintendent of a county asylum for embezzlement of county funds, the evidence was sufficient to sustain a finding of "conversion." *State v. Davidson*, 242 W 406, 8 NW (2d) 275.

343.22 Prosecution of officers. Any person who shall demand of any officer any sum of money received and held by such officer in his official capacity, and which he shall be entitled to demand and receive, and he shall be unable to obtain the same by reason of such money having been embezzled by such officer, and who shall neglect or refuse more than thirty days after such demand to make complaint against such officer for the purpose of having him prosecuted criminally for such embezzlement shall be punished by imprisonment in the county jail not more than one year or by fine not exceeding five hundred dollars.

343.23 Refusal to pay in money. The refusal of any officer to pay any demand in money, when the sum so demanded was actually received by such officer in good faith in checks, drafts, certificates of deposit or currency which may have depreciated in value, provided payment be tendered in the checks, drafts, certificates of deposit or currency received by such officer, shall not be evidence of the embezzlement of such money so demanded.

343.24 False pretenses; personating another; penalty. Any person who shall falsely personate or represent another and in such assumed character shall receive any money or other property whatever intended to be delivered to the party so personated, with intent to convert the same to his own use, shall, if the money or property so received shall exceed in value the sum of one hundred dollars, be punished by imprisonment in the state prison not more than five years nor less than one year, or in the county jail not more than one year, or by fine not exceeding one thousand dollars, nor less than two hundred dollars; and if the value of the money or property so received shall not exceed one hundred dollars, he shall be punished by imprisonment in the state prison or county jail not more than one year or by fine not exceeding two hundred dollars.

343.241 Hired horses and vehicles; penalty for wilful injury. Any person who shall obtain for hire from the keeper of a livery stable or any other person the possession or use of a horse or other draft animal or any vehicle, and who shall recklessly, wantonly or by gross negligence injure or destroy or cause, suffer, allow or permit the same or any part thereof to be injured or destroyed, shall be deemed guilty of a misdemeanor, and upon conviction thereof shall be punished by a fine of not less than five dollars nor more than one hundred dollars or by imprisonment in the county jail not more than sixty days, or by both such fine and imprisonment.

343.25 Obtaining money by false pretenses; penalty. Any person who shall designedly, by any false pretenses or by any privy or false token and with intent to defraud, obtain from any other person any money, goods, wares, merchandise, or other property, or shall obtain with such intent the signature of any person to any written instrument, the false making whereof would be punishable as forgery, shall if the amount of money or other property so received or the face value of such written instrument shall exceed the sum of one hundred dollars, be punished by imprisonment in the state prison not more than five years nor less than one year, or by imprisonment in the county jail not more than one year, or by fine not exceeding one thousand dollars or less than two hundred dollars, and if the amount of money or property so received or face value of such written instrument so procured, shall not exceed the sum of one hundred dollars, he shall be punished by imprisonment in the state prison or county jail not more than one year, or by a fine not exceeding two hundred dollars.

Note: Evidence that defendant with intent to procure credit filed deliberately false statement of assets and received credit from banks thereon, to prejudice of banks, did not sustain felony charge of obtaining money under false pretenses, where there was no evidence of intent to defraud and no obtaining of money, goods, wares and merchandise such as is necessary to maintenance of felony charge. *Pepin v. State ex rel. Chambers*, 217 W 568, 259 NW 410.

This section does not include obtaining of credit. *Lochner v. State*, 218 W 472, 261 NW 227.

It is not necessary, to constitute the offense of obtaining money or other property by false pretenses, that the defrauded person relied solely on the pretense in parting with his property, it being sufficient if the pretense was one of the material matters relied on, as where a defrauded vendor of an automobile relied both on a down payment, in

the form of a worthless check, and a conditional sales contract. *Whitmore v. State*, 238 W 79, 298 NW 194.

Evidence that the defendant in obtaining a loan for which he was to give a mortgage represented the premises to be presently unincumbered and eligible for a first mortgage, was sufficient, as showing a false representation of fact, to support a prosecution for obtaining money by false pretenses, even though by resort to the office of register of deeds the true state of the title could have been ascertained, hence was sufficient to warrant holding the defendant for trial. *Frank v. State ex rel. Meiers*, 244 W 658, 12 NW (2d) 923.

One who obtains check by false pretenses may be guilty of violating 343.25, though check was not cashed. One instrumental in getting another to obtain property by false pretenses may be indicted as accessory before fact. 24 Atty. Gen. 145.

343.251 Certain badges; penalty for unauthorized wearing. Any person who shall wilfully wear the insignia, rosette, or badge or any imitation thereof, of the military order of the Loyal Legion of the United States, the Grand Army of the Republic, the United Spanish War Veterans, Veterans of Foreign Wars of the United States, or the Military

Order of Foreign Wars, or of the American Legion, or of the Thirty-second Division Veteran Association, or of the Benevolent and Protective Order of Elks of the United States, Knights of Columbus, Odd Fellows, Free Masons, Knights of Pythias, or of any other society, order, or organization, operating under the lodge system, of ten years' standing in the state of Wisconsin, or of any duly incorporated fraternal, social, or service organization, or shall wilfully use the same to obtain aid or assistance thereby within this state, or shall wilfully use the name of such society, order or organization, the titles of its officers, or its insignia, unless he shall be entitled to use or wear the same under the constitution, by-laws, rules and regulations thereof, shall be punished by imprisonment in the county jail not more than thirty days or by fine not exceeding twenty dollars, or by both such fine and imprisonment.

343.252 Police badges and uniforms; unauthorized use. (1) Any person who shall wear the badge or insignia, or any imitation thereof, of any police department in this state, or use the same to obtain aid or assistance within this state, unless he shall be entitled to use or wear the same under appointment made by virtue of law, shall be punished by imprisonment in the county jail not more than thirty days, or by a fine not exceeding twenty dollars, or by both such fine and imprisonment.

(2) Any person not regularly appointed a member of any police department in this state who shall wear a uniform, or any part of a uniform, of the color and style adopted by any police department, shall be punished for each such offense by a fine of not less than ten dollars nor more than one hundred dollars, or by imprisonment in the county jail not less than five days nor more than thirty days, or by both such fine and imprisonment. The district attorney of the county in which any such offense is committed shall bring an action in the name of the state against the offender.

(3) Nothing in this section shall be construed as prohibiting persons of the theatrical profession from wearing such uniform in any playhouse or theater while actually engaged in following said profession.

343.253 Mendicant impostors. Any person engaged in soliciting, procuring or attempting to solicit or procure money or other thing of value, by falsely pretending and representing himself to be blind, deaf, dumb, without arms or legs, or to be otherwise physically deficient or to be otherwise suffering from any physical defect or infirmity shall be deemed guilty of a misdemeanor and upon conviction thereof shall be punished by imprisonment in the county jail not more than ninety days or by a fine of not more than one hundred dollars, or both such imprisonment and fine.

343.254 Discrimination against national guard. No association or corporation, constituted or organized for the purpose of promoting the success of the trade, employment or business of the members thereof, shall by any constitution, rule, by-law, resolution, vote or regulation, discriminate against any member of the national guard of the state of Wisconsin, because of such membership in respect to the eligibility of such member of the said national guard to membership in such association or corporation, or in respect to his right to retain said last mentioned membership. It is the purpose of this section and section 21.14 to protect a member of the said national guard from disadvantage in his means of livelihood and liberty therein but not to give him any preference or advantage on account of his membership in said national guard. A person who aids in enforcing any such provisions against a member of the said national guard with the intent to discriminate against him because of such membership, shall be deemed guilty of a misdemeanor and upon conviction thereof shall be punished by a fine of not less than \$10 nor more than \$20, or by imprisonment in the county jail for not less than 10 days nor more than 20 days.

343.26 False receipts; penalty. Any wharfinger, master of a vessel or boat, or any officer, agent, or clerk of any railroad, express, or transportation company who shall issue any receipt, bill of lading, voucher, or other document to any person purporting to be the owner thereof, or as security for any loan or indebtedness for any goods, wares, merchandise, lumber, timber, grain, flour, or other property, produce, or commodity, unless at the time of issuing the same such property shall have been actually received or shipped according to the terms and meaning of such receipt, bill of lading, voucher, or other document so issued, or who shall sell or incumber, ship, transfer, or in any manner remove beyond his immediate control, any such property so received, contrary to the terms and meaning of such receipt, bill of lading, voucher, or other document, without the consent of the holder thereof, or who shall deliver any such property or any part thereof, except to the person holding such receipt, bill of lading, voucher, or other document, and upon the surrender and cancellation thereof, or in case of any partial delivery of such property, upon the indorsement thereon of such partial delivery, unless required by legal process, or shall issue any second or duplicate receipt or bill of lading, for any such property, while any former re-

ceipt or bill of lading for any such property or any part thereof shall be outstanding and uncanceled, without writing across the face thereof the word "duplicate," shall be punished by imprisonment in the state prison not more than three years nor less than one year, or by imprisonment in the county jail not more than one year or by fine not exceeding one thousand dollars.

343.27 Casting away ship. Any person who shall wilfully cast away, burn, sink or otherwise destroy any ship, steamboat or vessel with intent to injure or defraud any owner of such vessel, steamboat or ship, or the owner of any property laden on board the same, or any insurer of such vessel or property or of any part thereof, shall be punished by imprisonment in the state prison not more than ten years nor less than three years.

343.28 Fitting out ship to destroy. Any person who shall lade, equip or fit out, or assist in lading, equipping or fitting out any steamboat, ship or vessel with the intent that the same shall be wilfully cast away, burnt, sunk or otherwise destroyed, to injure or defraud any owner or insurer of such vessel or of any property laden on board the same shall be punished by imprisonment in the state prison not more than five years nor less than two years, or by fine not exceeding five thousand dollars nor less than five hundred dollars.

343.29 False bill of lading. Any owner of any ship, steamboat or vessel or of any property laden or pretended to be laden on board the same, or any other person concerned in the lading or fitting out of any such ship, steamboat or vessel who shall make out or exhibit or cause to be made out or exhibited any false or fraudulent invoice, bill of lading, bill of parcels or other false estimates of any goods or property laden or pretended to be laden on board such vessel, with intent to injure or defraud any insurer of such vessel or property or of any part thereof, shall be punished by imprisonment in the state prison not more than three years nor less than one year, or by fine not exceeding one thousand dollars nor less than three hundred dollars.

343.30 False protest. Any master, officer or mariner of any ship, steamboat or vessel who shall make or cause to be made or shall swear to any false affidavit or protest, or any owner or other person concerned in such vessel or in the goods or property laden on board such vessel who shall procure any such false affidavit or protest to be made or shall exhibit the same, with intent to injure, deceive or defraud any insurer of such ship, steamboat or vessel, or of the goods or property laden on board the same, or any other person, shall be punished by imprisonment in the state prison not more than five years nor less than two years, or by fine not exceeding two thousand dollars nor less than five hundred dollars.

343.31 Gross fraud. Any person who shall be convicted of any gross fraud or cheat at common law shall be punished by imprisonment in the state prison not more than four years nor less than one year, or by fine not exceeding one thousand dollars nor less than fifty dollars.

343.32 Sale of land without title. Any person who shall falsely and fraudulently represent that he is the owner of any parcel or tract of land to which he has no title and shall execute a deed of the same with intent to defraud any person whatever, shall be punished by imprisonment in the state prison not more than two years nor less than one year, or by imprisonment in the county jail not more than one year nor less than three months.

343.321 Sale of incumbered property. Any person who shall convey real estate, knowing that an incumbrance exists thereon, with intent to defraud, without, before the consideration is paid or secured, informing the grantee of the existence and nature of such incumbrance shall be punished by imprisonment in the state prison not more than three years or by fine not exceeding five thousand dollars, or by both such imprisonment and fine. Any person who shall sell or incumber any personal property upon which a lien for labor or services exists, knowing that such lien is unsatisfied, without informing the purchaser or incumbrancer of the existence of the lien, shall be punished by imprisonment in the county jail not more than two years or by fine not exceeding two thousand dollars, or by both such imprisonment and fine.

Note: President of bank may be prosecuted for his knowledge is not imputed to bank in case of not informing bank of incumbrance transaction between himself and bank. 20 on real estate which he mortgaged to bank; Atty. Gen. 459.

343.322 Fee splitting by physicians. (1) Any physician or surgeon who shall claim or demand and collect and receive any money or other thing of value as compensation for his professional services in treating or operating upon a patient who was induced or advised by another physician or surgeon to submit to such treatment or operation, and who shall have previously paid or delivered, or shall thereafter pay or deliver, any money or other consideration to such other physician or surgeon or his agent, as compensation for such inducement or advice, or as compensation for assistance in the case, or any physician or surgeon, giving such inducement or advice, who shall, as compensation therefor, or as

compensation for assistance in the case, demand, receive or retain any money or other consideration directly or indirectly from the physician or surgeon treating or operating upon the patient so induced or advised, shall be guilty of a criminal fraud and upon a conviction thereof shall be punished by a fine of not more than one hundred dollars or by imprisonment in the county jail not exceeding six months. Such conviction shall operate also as an annulment of the license held by the convicted person to practice as such physician or surgeon.

(2) Any physician or surgeon, not a citizen of Wisconsin, who shall in any adjoining state treat or operate upon a citizen of Wisconsin, and who shall have previously paid or delivered, or shall thereafter pay or deliver, any money or other thing of value to another physician or surgeon as compensation for inducing or advising such patient to submit to such treatment or operation, or as compensation for assistance in the case, is forbidden to practice medicine or surgery within this state or to participate in this state with other physicians and surgeons in consultations. Every violation of this subsection shall be a misdemeanor punishable by a fine or by imprisonment as prescribed in subsection (1).

(3) Any physician, surgeon, nurse, anaesthetist, or medical assistant or any medical or surgical firm or corporation who shall render any medical or surgical service or assistance whatever or give any medical, surgical or any similar advice or assistance whatever to any patient for which a charge is made from such patient receiving any such service, advice or assistance, shall render an individual statement or account of his charges therefor directly to such patient, distinct and separate from any statement or account by any other person, firm or corporation having rendered or who may render any medical, surgical or any similar service whatever or who has given or may give any medical, surgical or any similar advice or assistance to such patient. Any violation of this provision shall be punishable by the penalty prescribed in subsection (1) of this section.

(4) All prosecutions under this section shall be in the circuit court.

Note: Fee splitting by physicians is not permitted even where more than one physician takes part in operation but each physician must render his bill direct to patient. 24 Atty. Gen. 580.

343.329 [Repealed by 1945 c. 98]

343.33 [Renumbered section 98.25 by 1935 c. 550 s. 314]

343.33 Use of gaseous compounds in containers. (1) No person, firm or corporation, excepting the manufacturer thereof or persons authorized by said manufacturer so to do, shall sell or offer for sale or deliver, carbon dioxide, acetylene, oxygen, hydrogen or any other gas or gaseous compound, shipped, consigned or delivered in steel containers or containers made of other metal, unless such containers shall bear upon the surface thereof, in plainly legible characters, the name, initials or trade-mark of the manufacturer.

(2) No person, firm or corporation other than such manufacturer or persons authorized by such manufacturer so to do, shall refill or use in any manner such container or receptacle which has imprinted thereon the name, initials or trade-mark of such manufacturer, for any gas, compound or other material whatsoever.

(3) No person, firm or corporation to whom such product of said manufacturer has been sold or delivered in such containers, shall sell, loan, deliver or permit to be delivered such containers to any persons whomsoever other than such manufacturer or persons authorized by such manufacturer to receive the delivery of such containers.

(4) The foregoing provisions shall not apply to any carbon dioxide or other products above referred to, contained in such containers, unless the title to such containers is retained by said manufacturer or its representative and unless said carbon dioxide and other products contained in said containers were sold and delivered upon the understanding and agreement that the container in which it was delivered shall be returned to such manufacturer or its representative as soon as the contents thereof have been used up by the purchaser.

(5) Any person who shall fail to comply with any of the foregoing provisions of this section shall be punished by imprisonment in the county jail for not more than one year or by a fine not exceeding one thousand dollars, or by both such fine and imprisonment. [1939 c. 136]

343.331 Misbranding of gold articles. (1) Any person, firm, corporation or association, who or which makes for sale, or sells, or offers to sell or dispose of, or has in his, her or its possession with intent to sell or dispose of, any article of merchandise made in whole or in part of gold or any alloy of gold, and having stamped, branded, engraved or imprinted thereon, or upon any tag, card or label attached thereto, or upon any box, package, cover or wrapper in which said article is incased or inclosed any mark, indicating or designed or intended to indicate, that the gold or alloy of gold, in such article is of a greater degree of fineness than the actual fineness or quality of such gold or alloy, unless the actual fineness of such gold or alloy, in the case of flat ware and watch cases, be not less by more

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

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

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

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

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

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

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

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

343.335 Testing of silver articles. (1) In any test for the ascertainment of the fineness of any such article mentioned in sections 343.332, 343.333 and 343.334, according to the standards therein, the part of the article taken for the test, analysis or assay, shall be such part or portion as does not contain or have attached thereto any solder or alloy of inferior metal used for brazing or uniting the parts of such article.

(2) In addition to the foregoing test and standards, the actual fineness of the entire quantity of metal purporting to be silver contained in any article mentioned in sections

343.332, 343.333 and 343.334, including all solder or alloy of inferior fineness used for brazing or uniting the parts of any such article (all such silver, alloy or solder being assayed as one piece) shall not be less by more than ten one-thousandths parts than the fineness indicated according to the foregoing standards, by the mark stamped, branded, engraved or imprinted upon such article, or upon any tag, card or label attached thereto, or upon any box, package, cover or wrapper in which said article is incased or inclosed.

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

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

343.338 Penalty for violations of sections 343.331 to 343.338. Every person, firm, corporation or association guilty of a violation of any one of the provisions of sections 343.331 to 343.338, and every officer, manager, director or managing agent of any such person, firm, corporation or association, directly participating in such violation or consenting thereto, shall be punished by a fine of not more than five hundred dollars nor less than twenty-five dollars, or imprisonment for not more than three months, or both, at the discretion of the court.

343.339 [*Repealed by 1931 c. 486 s. 1*]

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(d) An article consisting of nine hundred fifty thousandths parts of the following metals: platinum, iridium, palladium, ruthenium, rhodium or osmium with less than five

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

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

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

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

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

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

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

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

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

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

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

(9) EFFECT OF INVALIDITY. If any part of this section, or the application thereof to any particular situation, is held invalid, the remainder of this section, or the application of such provision to other situations, shall not be affected thereby.

(10) **EFFECTIVE DATE.** This act shall take effect July 1, 1937, and shall not apply to any article manufactured prior thereto. [1937 c. 230]

343.34 [Renumbered sections 97.41, 97.72 (4) by 1935 c. 550 s. 239, 285]

343.341 **Manufacture and distribution of cheating tokens, etc.; penalty.** (1) Any person who, with intent to cheat or defraud the owner or lessee or other person entitled to the contents of any telephone or other box, receptacle, depository or other contrivance intended for the receipt or deposit of coins or knowing that the same is intended for unlawful use, shall manufacture for sale, or sell, offer to sell, advertise for sale or give away or possess any token, slug, false or counterfeited coin, device or any substance whatsoever intended or calculated to be placed or deposited in any such telephone or other box, receptacle, depository or contrivance, shall be punished by imprisonment in the county jail not more than one year or by fine not exceeding \$500 or by both such imprisonment and fine. The manufacture, sale, offering for sale, advertising for sale, distribution, giving away or possession of any such token, slug, false or counterfeited coin, device or substance shall be prima facie evidence of intent to cheat or defraud within the meaning of this section.

(2) Any person who shall wilfully place or deposit in such box, receptacle, depository or contrivance any token, slug, false or counterfeited coin, device or any substance whatsoever except lawful money of the United States, with intent to cheat or defraud the owner or lessees thereof or other person lawfully entitled to the contents of such box, receptacle, depository or contrivance, shall be punished by imprisonment in the county jail not more than 60 days or by fine not exceeding \$50, or by both such imprisonment and fine. The placing or depositing of such token, slug, false or counterfeited coin, device or any substance whatsoever in such box, receptacle, depository or contrivance shall be prima facie evidence of intent to cheat or defraud within the meaning of this section. [1943 c. 506]

343.342 [Repealed by 1931 c. 148 s. 1]

343.35 **False pretense as to heirship.** Any person who shall fraudulently and falsely pretend an infant to have been born of parents whose child would be entitled to a share in any personal estate or to inherit any real estate, with intent of intercepting the inheritance of any such real estate or the proper distribution of any such personal estate from any person lawfully entitled thereto, shall be punished by imprisonment in the state prison not more than ten years nor less than one year.

343.36 **Substitution of infant.** Any person to whom an infant under the age of six years shall be confided for nursing, education or any other purpose who shall, with intent to deceive any parent or guardian of such child or any other person, substitute and produce to such parent, guardian or other person another child in place of the one so confided shall be punished by imprisonment in the state prison not more than seven years nor less than one year.

343.37 **Corporation officers; frauds by; penalty.** Any director, officer or manager of any body corporate or public company who shall as such receive or possess himself of any money or other property of such body corporate or public company, otherwise than in payment to him of a just debt or demand, or who shall, with intent to defraud, omit to make or cause to be made a full and true entry thereof in the books or accounts of such body corporate or public company, or who shall, with intent to defraud, destroy, alter, mutilate or falsify any of the books, papers, writings or securities belonging to such body corporate or public company, or shall make or concur in making any false entry or material omission in any book of records, accounts or other document of such body corporate or public company; or who shall make, circulate or publish or concur in making, circulating or publishing any written or printed statement or account which he shall know to be false in any particular, with intent to deceive or defraud any member, shareholder or creditor of any such body corporate or public company, or with intent to induce any person to become a shareholder or partner therein, or to entrust or advance any money or property to, or enter into any security for the benefit of such body corporate or public company, and any person who shall receive any money, chattel or valuable security which has been fraudulently obtained or disposed of as aforesaid, knowing the same to have been so fraudulently obtained or disposed of, shall be punished by imprisonment in the county jail for not to exceed one year or in the state prison not more than five years or by fine not exceeding five thousand dollars.

Note: The evidence in a trial for knowingly and wilfully concurring in the making and publication of a false statement of a bank with intent to deceive the members, shareholders or creditors thereof, is held to warrant the jury's findings of the falsity of items in the published statement and of the knowledge of such fact on the part of the defendant who was the president of the bank. *Hobbins v. State*, 214 W 496, 253 NW 570.

343.375 [Repealed by 1935 c. 55]

343.38 False certificate of stock. Any president, cashier, treasurer, secretary or other officer, or any agent of any bank, railroad, manufacturing or other corporation who shall wilfully and designedly sign, with intent to issue, sell, or pledge or cause to be issued, sold or pledged, any false, fraudulent or simulated certificate or other evidence of the ownership or transfer of any share or shares of the capital stock of such corporation, or any certificate or other evidence of such ownership or transfer, the signing, issuing, selling or pledging of which, by such president, cashier, treasurer or other officer or agent, shall not be authorized by the charter and by-laws of such corporation or by a resolution of the board of directors or trustees or by some amendment thereof, shall be punished by imprisonment in the state prison not more than ten years nor less than one year or by fine not exceeding five thousand dollars.

343.39 Fraudulent conveyance. Any person being a party to any conveyance or assignment of any interest in lands, goods or things in action, or of any rents or profits issuing therefrom, or to any charge upon such real estate, interest, rents or profits made or created, with intent to defraud prior or subsequent purchasers or incumbrancers, or to hinder, delay or defraud creditors or other persons, and any person being privy to or knowing of any such conveyance, assignment or charge who shall wilfully put the same in use as having been made in good faith shall be punished by imprisonment in the county jail not more than one year or by fine not exceeding five hundred dollars.

343.40 Purchase of property in controversy. Any judicial officer who shall take any conveyance of any land or tenements or of any interest therein, and who is not in the lawful possession thereof at the time, from any person not being in the possession thereof, while such lands or tenements shall be the subject of controversy by action in court, knowing the pendency of such action and that the grantor was not in the possession of such lands or tenements, shall be punished by imprisonment in the county jail not more than one year or by fine not exceeding two hundred dollars.

343.401 Issue of worthless check. (1) Any person who, with intent to defraud, shall make or draw, or utter or deliver, any checks, drafts, or order, for the payment of money, upon any bank or other depository, knowing at the time of such making, drawing, uttering or delivering, that the maker, or drawer, has not sufficient funds in, or credit with, such bank or other depository, for the payment of such check, draft, or order, in full, upon its presentation, shall be guilty of a misdemeanor, and punishable by imprisonment for not more than one year, or by a fine of not more than one thousand dollars, or both fine and imprisonment.

(2) As against the maker or drawer thereof, the making, drawing, uttering or delivering of a check, draft or order, payment of which is refused by the drawee, shall be prima facie evidence of intent to defraud and of knowledge of insufficient funds in, or credit with, such bank or other depository, provided such maker or drawer shall not have paid the drawee thereof the amount due thereon, together with all costs and protest fees, within five days after receiving notice that such check, draft or order has not been paid by the drawee.

(2m) The issuance for any purpose of a check, draft or order which is not honored or paid upon presentation because of no account at, insufficient or no funds in, or credit with the bank upon which such instrument was drawn, shall render the person or firm issuing the same liable for all costs and expenses in connection with the collection of the amount for which it was written.

(3) The word "credit" as used herein, shall be construed to mean an arrangement or understanding with the bank or depository, for the payment of such check, draft or order. [1943 c. 243]

Note: It was error to sentence a defendant, convicted of issuing worthless checks, to the state prison for one year, since 343.401, making the offense a misdemeanor, did not designate the place of punishment, and since 353.27, providing that persons convicted of any offense the punishment of which is not prescribed by any statute shall be punished by imprisonment in the county jail was applicable. *Grimes v. State*, 236 W 31, 293 NW 925.

Criminal charge may be brought under this section against defendant who gave check for live stock, stopped payment on check, sold the stock, and then offered to settle for smaller amount. 25 Atty. Gen. 687. This section is not violated by issuance of check in payment of past due account. 26 Atty. Gen. 50.

343.402 Fraud on innkeeper; costs. (1) (a) Any person who obtains any food, lodging, or other service or accommodation at any hotel, inn, or boarding or lodging house, without paying therefor, except when credit shall have been given by express agreement; and (b) any person who obtains credit at any hotel, inn, or boarding or lodging house, by the use of any false show or pretenses of baggage or by other false and fraudulent means or misrepresentation; and (c) any person who, after obtaining food, lodging, credit or other service or accommodation at any hotel, inn, or boarding or lodging house, absconds or surreptitiously removes his baggage or other effects therefrom without paying for such

food, lodging, or other service or accommodation; and any person who shall violate any of the provisions of this section or who shall either while a guest at any hotel, inn, or boarding or lodging house, or upon severing the relationship of guest, in any other manner defraud any such hotel, inn, or boarding or lodging house, the proprietor, manager, clerk, cashier or other person in charge thereof, in any transaction arising out of such relationship as guest, shall be guilty of a felony and upon conviction thereof shall be punished by imprisonment for not more than one year or by a fine of not more than five hundred dollars or by both such fine and imprisonment.

(2) For the purposes of this act, the refusal of payment upon presentation when due, and the return unpaid of any bank check, draft, money order, or other instrument for the payment of money, given to any hotel, inn, or boarding or lodging house, the proprietor, manager, clerk, cashier or other person in charge thereof, in payment of any obligation owing such hotel, inn, or boarding or lodging house, shall be prima facie evidence of an intent to defraud.

343.403 [Renumbered sections 95.12, 95.69 by 1935 c. 550 s. 120, 179]

343.404 [Renumbered sections 94.12, 94.77 by 1935 c. 550 s. 37, 106]

343.405 **Fraud on life insurance company.** Any person who shall effect a policy or certificate of insurance or procure either to be effected on his life, with the intent of absconding or concealing himself for the purpose of procuring for himself or any other person the whole or any part of the money payable pursuant to such policy or certificate; or any person having a policy or certificate of insurance upon his life who shall abscond or conceal himself with the intent to procure for himself or any other person the money so payable, in whole or in part, or any person who shall knowingly aid, assist or abet another whose life is insured in absconding or concealing himself for the purpose of procuring for himself or any other person any insurance moneys, or any person who shall knowingly aid, assist or abet the assured named in any such policy or certificate, who has absconded or concealed himself for the purpose of obtaining from any insurance company any insurance moneys for himself or any other person; or any person who shall knowingly aid, assist or abet the beneficiary or beneficiaries, or either or any of them, named in any policy or certificate of insurance, or the next of kin, or any person having an insurable interest in the life of any assured who has absconded or concealed himself for the purpose of obtaining any insurance moneys for himself or any other person, in attempting to procure or procuring such moneys shall be fined not less than five hundred dollars nor more than three thousand dollars or imprisoned in the state prison not less than one year nor more than five years.

343.406 **Fraudulent statements to procure insurance benefits.** Any solicitor, agent, policyholder, physician or other person who shall knowingly make a false or fraudulent statement of any material fact or thing in a certificate or sworn statement, as to the death or disability of a certificate holder or policyholder of any company, corporation, association, order or society, transacting the business of insurance, for the purpose of procuring payment of an indemnity or benefit named in the certificate or policy of such holder, shall be guilty of a misdemeanor, and upon conviction shall be punished by a fine of not less than one hundred dollars nor more than one thousand dollars, or by imprisonment in the county jail for not less than one month nor more than one year, and if said person convicted be an agent or physician, his license to solicit or practice in this state may be revoked, in the discretion of the court.

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

343.408 [Renumbered sections 97.52, 97.72, by 1935 c. 550 s. 252, 285]

343.409 [Repealed by 1929 c. 421 s. 1]

343.41 False statements; penalty. Any person who shall, directly or indirectly, designedly make or cause to be made any false signed statement in writing, in reference to his assets or liabilities, or both, or the assets or liabilities of any firm or corporation of which he may be a member, stockholder, officer or employe, whether made to a mercantile agency or otherwise, for the purpose of securing fidelity or surety bonds or procuring credit in any form, or for the purpose of procuring any extension of credit already given, provided such statement is relied upon by any person, firm or corporation and actual financial loss is thereby sustained in excess of the sum of \$1,000 shall be punished by imprisonment in the state prison not more than 3 years nor less than one year or by fine not more than twice the amount of the actual financial loss sustained, or both, and if the actual financial loss shall be \$1,000 or less, shall be punished by imprisonment in the county jail for not more than one year or by a fine not exceeding \$500. [1941 c. 311]

343.411 [Renumbered sections 94.13, 94.77 by 1935 c. 550 s. 38, 106]

343.412 False statements by insurance companies. Any officer, director, attorney in fact, manager or employe of any insurance corporation, Lloyd's association, interinsurer, fraternal or mutual benefit society or other insurer, who shall wilfully and knowingly subscribe to, make or cause to be made, any false entry in the books thereof, or shall knowingly subscribe to or exhibit false papers, or shall knowingly make, state or publish any false report or statement of any such insurance corporation, Lloyd's association, interinsurer, fraternal or mutual benefit society or other insurer, shall be punished by a fine of not less than \$100 nor more than \$5,000 or by imprisonment in the state penitentiary not less than one nor more than 10 years, or by both such fine and imprisonment. [1943 c. 234]

Note: One who knowingly subscribes to is committed in county, where papers are false papers with intent to deceive insurance subscribed to and put into mail. 19 Atty. commissioner violates this section; offense Gen. 180.

343.413 [Renumbered sections 93.07, 100.18, 100.26 (1) by 1935 c. 550 s. 8, 353, 364]

343.42 Injury to dam, mill, etc. Any person who shall wilfully and maliciously break down, injure, remove or destroy any dam, reservoir, canal or trench, or any gate, flume, flashboards or other appurtenance thereof, or the wheels, mill gear or machinery of any mill, or shall wilfully or wantonly and without color of right draw off the water contained in any mill pond, reservoir, canal or trench shall be punished by imprisonment in the state prison not more than two years nor less than one year, or by imprisonment in the county jail not more than one year nor less than three months, or by fine not exceeding five hundred dollars nor less than fifty dollars.

343.421 Trespass on fox or mink farm punished. (1) Any person owning or breeding silver, silver black, black foxes, or mutations thereof, or mink which have been raised in captivity shall have the same property rights therein as enjoyed by owners or breeders of domestic animals.

(2) Whenever the owner of any premises upon which silver, silver black, black foxes, or mutations thereof, or mink which have been raised in captivity are being bred or raised shall maintain large sign boards with the following inscription painted in large letters on the side facing from the inclosure: "Fur Farm—Keep Out" in such manner and size as to be legible for a distance of 100 feet, at points not more than 200 feet apart, along the boundary lines of such premises, no person, without the consent of such owner, shall enter upon such premises and approach within a distance of 150 yards from any point of an outer fence or inclosure within which the dens or pens of such animals are located. Maintenance of signs herein provided, shall not be construed as posting, nor prevent recovery of damages, under section 29.596. Any person violating the provisions of this subsection shall be fined not more than \$200, or by imprisonment in the county jail not more than 6 months.

(3) No person, without the permission of the owner of an inclosure within which silver, silver black, black foxes, or mutations thereof, or mink which have been raised in captivity are kept for breeding purposes, shall enter such inclosures. Any person violating the provisions of this subsection shall be fined not more than \$200 or be imprisoned in the county jail not more than 6 months. [1935 c. 415; 1945 c. 563]

343.422 Malicious destruction of property. Any person who shall wilfully or maliciously injure or destroy any building, structure or other property of another, by the use of gunpowder, dynamite or other explosive substance or compound, shall be punished by imprisonment in the state prison not more than fifteen years nor less than one year.

343.43 Injury to bridge, post, wire, lamp, canal, railroad; depot, nuisance. (1) Any person who shall wilfully, maliciously or wantonly break down, remove, injure or destroy any bridge on any highway, turnpike, public driveway, plank road or any toll

bridge, telegraph, telephone or other posts, wires, electric lamp, appliance or fixture, or any turnpike or plank-road gate, or any lock, culvert or embankment of any canal, or any embankment, culvert, cattle guard or fence of any railroad, or remove, injure, destroy or displace any electric, horse or other railroad fixtures or machinery, or disconnect the cars of any railroad train, or, without permission, shall run or place on any railroad track any hand car shall be punished by imprisonment in the state prison not more than three years nor less than one year, or in the county jail not more than one year, or by fine not exceeding \$1,000.

(2) Any person who shall wilfully, maliciously or wantonly destroy, injure, deface or damage any portion of any such depot or waiting room, or destroy, remove or injure any personal property of any interurban or other railway company therein, or who shall commit any nuisance therein, shall be punished by imprisonment in the county jail not less than six months, nor more than one year, or by fine not less than fifty nor more than two hundred fifty dollars.

343.431 Injury to car, engine, etc. Any person who shall, individually or in association with one or more others, wilfully break, injure, tamper with, or remove any part or parts of any electric, horse, or other railway car, coach, or locomotive, or any automobile, or other similar motor vehicle, or any other portable vehicle or traction engine, or any part or parts of any stationary engine, machine, implement, or machinery for the purpose of injuring, defacing, or destroying such locomotive, engine, car, coach, automobile, or other vehicle, implement, or machinery, or of preventing the useful operation thereof or any other purpose, or who shall in any other way wilfully or maliciously interfere with or prevent the running or operation of any locomotive, engine, automobile, or other vehicle, or machinery shall be punished as provided in subsection (1) of section 343.43. [1931 c. 470 s. 10]

Note: Evidence held to sustain conviction lawful operation of automobile, and for for unlawfully injuring and interfering with rioting. *Sekat v. State*, 218 W 91, 260 NW 246.

343.432 Injury to telephone or apparatus. Any person who shall, individually or in association with one or more others, wilfully break, injure or remove any part or parts of any telephone or apparatus used in connection therewith, or wilfully break, injure, open or remove any telephone or other box, receptacle, depository or contrivance intended for the receipt or deposit of coins, for the purpose of injuring or destroying such telephone apparatus, box, receptacle, depository or contrivance or of preventing the useful operation thereof, or for any unlawful purpose, shall be punished by imprisonment in the county jail not more than 60 days or by fine not exceeding \$50, or by both such imprisonment and fine. [1943 c. 506; 1945 c. 505]

343.44 Injury to fence, tree, building, etc. Any person who shall wilfully, maliciously or wantonly destroy, remove, throw down or injure any fence, hedge or wall inclosing any orchard, pasture, meadow, garden or any field whatever on land belonging to or lawfully occupied by another, or open and leave open, throw down, injure, remove or destroy any gate or bars in such fence, hedge or wall, or cut down, root up, sever, injure, destroy or carry away when severed any fruit, shade, ornamental or other tree, or any shrub, root, plant, fruit, flower, grain or other vegetable production, or dig up, sever or carry away any mineral, earth or stone, or tear down, mutilate, deface or injure any building, signboard, fence or railing, or sever and carry away any part thereof standing or being upon the land of another or held in trust; or who shall wilfully, maliciously or wantonly cut down, root up, injure, destroy or remove or carry away any fruit, ornamental or other tree, or any shrub, fruit, flower, vase or statue, arbor or any ornamental structure standing or being in any street or public ground in any city or village, in any private inclosure or highway, or destroy, remove, mutilate or injure any milestone or board, or any guidepost or board erected in any highway or other public way, or on any turnpike, plank road or railroad, or deface or obliterate any device or inscription thereon, or cut down, break down, remove, mutilate or injure any monument erected or tree marked for the purpose of designating the boundaries of any town or tract of land or subdivision thereof, or deface or obliterate any figures, letters, device or inscription thereon, made for such purpose, or break, remove, destroy or injure any post, guard, railing or lamp-post or lamp thereon erected or being on any bridge, street, sidewalk, alley, court, passage, park, public ground, highway, turnpike, plank or railroad, or extinguish or break any lamp on any such lamp-post, or tear, deface, mutilate or injure any book, map, pamphlet, chart, picture or other property belonging to any public library, or take and carry away the same with intent to convert to his own use, or shall injure or destroy any personal property of another shall be punished by imprisonment in the county jail not more than six months or by fine not exceeding one hundred dollars.

Note: In the provision in this section for or injure any fence, hedge, etc., the quoted the punishment of any person who "shall adverbs are used in the disjunctive, so that wilfully, maliciously or wantonly destroy" even if they are considered applicable also

to the provision in the same section for the punishment of any person who "shall injure or destroy" any personal property of another, neither malice nor wantonness is an essential element that must be proved in addition to wilfulness in order to sustain a conviction for the latter offense. *State v. Carroll*, 239 W 625, 2 NW (2d) 211.

343.441 [Renumbered sections 94.37, 94.77 by 1935 c. 550 s. 62, 106]

343.442 Lotus and other wild flowers protected. (1) Any person who shall wilfully cut, root up, sever, injure, destroy, remove or carry away on or from public highway, public property or public waters or on or from the property of another, without the written permission of the owner or person entitled to possession, any American lotus, or who shall without such written permission wilfully sell, expose for sale or purchase any flowers, roots, seed pods, bulbs or whole plants of any American lotus so gathered or taken, shall be punished by imprisonment in the county jail not more than six months or by fine not exceeding \$100.

(2) Any person who shall wilfully root up, injure, destroy, remove or carry away on or from public highways, public property or property of another, without the written permission of the owner or person entitled to possession, any trailing arbutus (*Epigaea repens*) or any species of lady's-slipper (*Cypripedium*) or any members of the orchid family (*Orchidaceae*) trillium (*Liliaceae*) of any species or any American bittersweet or any pitcher-plants (Turk's caps) or any wood lilies, or who shall without such written permission wilfully sell, expose for sale or purchase any flowers, roots, seed pods, bulbs or whole plants of any trailing arbutus, lady's-slipper, trillium, American bittersweet, Turk's caps or wood lilies so gathered or taken shall, upon conviction, be punished by a fine of not to exceed one hundred dollars or by imprisonment in the county jail not to exceed thirty days. The provisions of subsections (1) and (2) of this section shall not prevent licensed nurseries from selling, shipping, or otherwise disposing of any of said plants or parts thereof when such plants have been officially inspected and certified according to the provisions of section 94.59. There shall be attached to or accompany the plants or parts thereof a copy of the nursery certificate issued such nursery and the same shall be prima facie evidence that the plants or parts thereof were legally taken or transported.

(3) The state conservation commission and its deputies shall have the same police and enforcement powers in respect to this section as it has in respect to the provisions of chapter 29 of the statutes. It shall erect or cause to be erected in suitable places near public waters or public property where the American lotus is found or the restricted areas where the arbutus or lady's-slipper or trillium are prevalent, substantial and permanent signs warning all persons against violations of this section. It may also erect or cause to be erected similar signs on private property with the consent of the owner thereof. When the American lotus causes damage to property bordering on public waters, the commission may authorize the removal of all or part of the American lotus growing in such waters.

(4) If any provision of this section, or its application to any person or circumstance shall be held unconstitutional, such decision shall not affect the constitutionality of any other provision or its application to other persons or circumstances. [1933 c. 108; 1939 c. 277, 509]

343.443 Mutilation of United States structures. Any person who shall wilfully deface, injure or remove any signal, monument, building or other property of the United States, constructed or used pursuant to the laws thereof, shall forfeit not exceeding \$50 for each offense, and be liable to the United States for all damages sustained by it in consequence thereof.

343.45 Injury to public property. Any person who shall cut down, injure or destroy any tree or timber growing or standing upon land belonging or mortgaged to or held in trust by the state, or who shall take and carry away any timber or wood so cut or severed, or previously cut or severed and remaining upon such land, or who shall take or carry away any mineral, earth or stone from such land, or who shall wilfully, maliciously or wantonly cut down, injure or destroy any tree or timber growing or standing upon land belonging or mortgaged to or held in trust by any county in the state, or take and carry away any timber or wood so cut or severed, or previously cut or severed and remaining upon such land, or who shall so dig or carry away any mineral, earth or stone from such land, or mutilate, deface, injure or destroy any building or other structure belonging to the state or to any county, town, city, village, school district, or school board, board of trustees, corporation, company or association and used for religious, educational, penal, correctional, charitable or other public purposes, or any building or personal property whatever of any person or copartnership, or who shall enter, without right, any agricultural or industrial fairgrounds inclosed by a fence not less than six feet high and injure or destroy any property therein, shall be punished by imprisonment in the county jail not more than six months or by fine not exceeding one hundred dollars.

343.451 Injuring levee, etc. Any person who shall wilfully injure, damage or tear down any levee or embankment built by or under the direction of any town, village, city, county or state for the protection of property, or who shall knowingly suffer his animals to do any damage thereto shall be punished by imprisonment in the county jail not more than six months or by fine not exceeding one hundred dollars.

343.452 Removal of brands, etc., from casks. Any person who shall wilfully, maliciously or wantonly obliterate, injure or destroy the names, marks or brands affixed to any cask, barrel, keg, bottle, jug, fountain, box or other package used or intended to be used by any person or firm domiciled in this state or by any corporation created under the laws thereof and engaged in the manufacture or sale of ale, porter, lager beer, soda water, mineral water or other beverage in any such package as is herein mentioned, shall be punished by imprisonment in the county jail not exceeding sixty days or by fine of not more than one hundred dollars, or by both such imprisonment and fine.

343.453 Penalty. Any person violating any of the provisions of section 27.012 (1) shall be deemed guilty of a misdemeanor, and upon conviction thereof shall be subject to a fine of not less than \$10 nor more than \$100, or imprisonment in the county jail for not more than 90 days or by both such fine and imprisonment. [43.08 (2)]

343.454 Public sewer; wrongful connection; injury. No person shall break open or make connection with any public sewer except by the consent and direction of the board of public works, and any person who shall do so, or who shall wilfully or maliciously obstruct, damage or injure any public or private sewer, or wilfully injure any of the material employed or used for the purposes of sewerage shall be fined not more than five hundred dollars or be imprisoned in the county jail not to exceed three months.

343.455 Injury to cemetery, etc. Any person who shall wilfully or wantonly destroy, mutilate, injure or remove any tomb, monument, gravestone, building or other structure, fence, wall, railing, tree, shrub, plant or flower within the limits of any burying ground or cemetery or other thing intended for the ornament or protection thereof shall be punished by imprisonment in the county jail not more than three months or by fine not exceeding one hundred dollars. "Burying ground" or "cemetery" within the meaning of this section shall mean and include, without limitation, any area of land which since 1840 was donated or yielded to the public for interment of deceased persons and was used by the public for that purpose, whether a legal conveyance of such land was made therefor or not. [1935 c. 302]

Note: Act of city in laying out and constructing street over portion of cemetery owned by it in which graves are located which are not marked by any tombstones, headstones or other distinguishing marks, so that such graves will be covered by an earth fill and hard-surfaced street, does not, under facts submitted, show any violation of 343.455, 351.42 or 351.43, or any other criminal statutes. 33 Atty. Gen. 233.

343.46 Capitol building and park; state libraries. Any person who shall wilfully or wantonly deface, mutilate or injure the capitol building at the city of Madison, or any property of the state within the same, or make marks or characters of any kind by writing, printing, painting or in any other way upon any part of said building, or upon or within any book in the state library or in the library of the state historical society, or in any office in the capitol, or in any way injure the trees or shrubbery within the park around the same, or the fences or other structures, statuary or ornaments within or around said park, or walk or be upon any part of said park other than upon the walks and driveways thereof, or catch, kill, destroy, wound, maim, worry or molest the birds, squirrels or game in said park, or fire or discharge any firearm, or fire or explode any firecracker or other thing containing any explosive substance in said park, except as permitted by the director of purchases, or deposit any filth or commit any nuisance within said park, or who shall hitch any team or animal to the fences, hydrants, posts, poles or trees around said park, or who shall allow any horse or other animal belonging to him or in his charge to remain hitched or unhitched upon any street within eleven feet of the cement curb surrounding said park, or who shall suffer or permit any dog belonging to him or in his charge, custody or control, to chase, worry, molest, disturb or catch any squirrel, bird or game in said park shall be punished by imprisonment in the county jail not more than ten days or by fine not exceeding \$25; and the director of purchases and his employes are hereby authorized and it is made their duty to arrest on view, with or without process, or cause to be arrested and to prosecute any person guilty of such offense, and to summarily kill any dogs found in said park.

343.461 Height of building limited. (1) In cities of the first class no building shall be erected to a height of more than one hundred twenty-five feet above the grade of the street upon or nearest which the building fronts.

(2) Except in cities of the first class, no building shall be erected to a height of more than one hundred feet above the grade of the street upon or nearest which the building fronts.

(3) The restrictions contained in this section shall not apply to grain or coal elevators, sugar refineries nor cement works. The provisions of this section shall not apply to steeples, domes, towers, belfries, statuary or other ornamentation, covered with fireproof materials and intended and used for strictly ornamental purposes. This section shall not apply to flagstaffs, chimneys, pipes, cupolas or roof houses not exceeding fifteen feet in length or width nor twelve feet in height, providing such cupolas or roof houses be covered with fireproof materials.

(4) Any person, firm or corporation violating the provisions of this section shall forfeit to the state not more than one hundred nor less than twenty-five dollars for each day such violation continues. It shall be the duty of the district attorney of the county in which such violation occurs, with the aid of the attorney-general, to enforce the collection of such forfeiture.

(5) The erection, use or maintenance of any building in violation of the provisions of this section may be restrained at the instance of any citizen or taxpayer of this state, and upon his request it shall be the duty of the district attorney of any county wherein such violation occurs or is threatened, to institute and prosecute any necessary action to restrain such erection, use or maintenance.

343.462 Burning bituminous coal near capitol. (1) It shall be unlawful to burn any bituminous coal for heating, power or any other purpose or purposes within any of the following blocks surrounding the capitol park in the city of Madison, viz.: Blocks 64, 65, 66, 67, 68, 71, 72, 73, 74, 75, 76, 77, 82, 83, 84, 85, 88, 89, 90, 91, 98, 99, 100, 101, 102, 103, 104, 105, 107, 108, 109 and 110 or in the streets or alleys adjoining said blocks, except in smoke preventing furnaces of such an efficiency that no smoke shall be visible emitting from the top or outlet of the stack or chimney.

(2) Any person, firm or corporation who shall cause, allow, or permit bituminous coal to be burned in violation of this section shall forfeit the sum of twenty-five dollars for each day or part thereof during which such violation continues.

(3) It shall be the duty of the director of purchases, with the assistance of the attorney-general, to institute proper proceedings to collect fines for and restrain violations hereof.

(4) The limitations contained in this section are imposed for the protection of the state capitol and its contents.

343.463 State and county institutions; disorderly conduct. Any person who shall be guilty of any noisy, boisterous or disorderly conduct, or of fighting, immoderate drinking, drunkenness, indecent exposure of the person, lewd, wanton or obscene conduct, or vulgar or obscene language, or of any offense against the laws or the regulations governing the state fair grounds or either of the charitable, curative, reformatory, and penal institutions of the state or any county, within the same or the grounds thereof, shall be punished by a fine of not less than one dollar nor more than fifty dollars or by imprisonment in the county jail not less than two days nor more than sixty days; but if a different penalty or punishment is prescribed by law for any such offense the same may be imposed instead of the penalty or punishment prescribed in this section. [1939 c. 470]

Note: This section is applicable only to prohibit disorderly conduct, etc., committed the places therein mentioned and does not in other places. 35 Atty. Gen. 326.

343.47 Cruelty to animals. (1) Any person who shall wilfully, maliciously or wantonly kill, maim, mutilate, disfigure or injure any horse, mule, cattle, sheep, dog or other domestic animal of another, except in cases expressly authorized by law, or administer poison to any such animal, or expose any poison with the intent that the same may be taken or swallowed by any such animal, or who shall overdrive, overload, maim, wound, torture, torment, cruelly beat or kill any such animal belonging to himself or another, or, being the owner or having the care or charge thereof, shall fail to provide necessary food, water or shelter for any such animal, or who shall turn out and abandon, without proper care and protection, or cruelly work any such animal of which he is the owner or has the care or charge, when old, diseased, disabled or unfit for work, or who shall carry or confine any live animal, fowl or bird in a cruel or inhuman manner, or cause, procure or abet any cruelty above mentioned, or the fighting or baiting of bulls, dogs or cocks shall, in all cases where such cruelty results in the death of such animal or is occasioned by the administering of poison, be punished by imprisonment in the county jail for a period not less than three months or by imprisonment in the state prison for a period of not to exceed two years, or by a fine not to exceed five hundred dollars, and in all other cases, shall be punished by imprisonment in the county jail not more than six months or by a fine not exceeding one hundred dollars, or by both such fine and imprisonment in the discretion of the court.

(2) Any person who shall torture any animal of any kind whatsoever shall be deemed guilty of a misdemeanor and upon conviction thereof shall be punished by a fine not exceeding one hundred dollars or by imprisonment in the county jail not to exceed six months

or by both such fine and imprisonment; provided, however, that this section shall not forbid experiments carried on for scientific research.

(3) Any person who, while hunting with a gun or bow and arrow, shall wilfully injure or kill any domestic animal or fowl by shooting shall be fined not less than \$50 nor more than \$100 or imprisoned not more than 6 months, or both. [1947 c. 145]

343.471 Neglect of milch cow. Any person owning or having the possession, care or custody of a cow giving milk, who shall wantonly neglect or fail to milk, or to have such cow milked or otherwise relieved of her milk, for such length of time as will cause her to suffer pain by reason of the swelling of her udder, shall be fined in any sum not exceeding ten dollars.

343.472 Keeping place for baiting animals. Any person who shall keep or use or be in any way connected with or interested in, the management of, or who shall receive any money or other thing of value for the admission of any person to any house, apartment, pit or place kept or used or intended to be used for baiting or fighting any bird or animal, and any owner or occupant of any house, apartment, pit or place who procures or permits the same to be used or occupied for such baiting or fighting shall be punished by fine of not more than one hundred dollars nor less than ten dollars or by imprisonment in the county jail not more than thirty days nor less than ten days, or by both such fine and imprisonment.

343.473 Injury to animal by dog. (1) Any owner or keeper of a dog, who, negligently or otherwise, allows or permits such dog to leave his inclosure and which dog shall have killed, wounded, or worried any horse, cattle, sheep or lamb, in addition to being liable in damages therefor according to law, shall be punished by a fine of not less than ten nor more than twenty-five dollars.

(2) The owner or keeper of any dog which shall have worried, wounded or killed any horse, cattle, sheep or lamb, who shall have verbal or written notice of the fact given him, shall, if such dog again worry, wound or kill any such animal, in addition to being liable in damages therefor according to law, be punished by a fine of not less than twenty-five nor more than fifty dollars, and in default of the payment thereof be committed to the county jail until payment is made, for not exceeding twenty days.

343.474 Penalty for docking. Whoever shall cut the solid portion of the tail of any horse in the operation known as docking or by any other operation performed for the purpose of shortening the tail, or whoever shall cause the same to be done, or assist in doing such cutting, shall be punished by a fine of not less than one hundred dollars nor more than two hundred fifty dollars, or by imprisonment in the county jail not exceeding one year, or by both such fine and imprisonment.

343.48 Injury to buoy, beacon, etc. Any person who shall wilfully injure, destroy or remove any buoy or beacon placed in the waters of this state by authority of the United States or of this state, or who shall moor or attach in any way any vessel to any such buoy or beacon shall be punished by imprisonment in the county jail not more than ninety days or by fine not exceeding fifty dollars.

343.481 Penalty for injuring guide board, markers, etc. (1) No person shall injure, deface or remove any sign, guide board, mile post, signal or marker erected by the state or by any municipality thereof for the warning, instruction or information of the public.

(2) Any person who violates any of the provisions of this section shall be guilty of a misdemeanor and on conviction thereof shall be punished by a fine of not less than twenty-five dollars nor more than fifty dollars or by imprisonment in the county jail for a period not exceeding thirty days, or by both such fine and imprisonment in the discretion of the court. The court may, in addition, order any such person either to restore or replace any such damaged sign, mile post, signal or marker, or to pay the cost thereof.

(3) On conviction of any person of a violation of this section, the person or persons who informed against and aided in the prosecution of such offense to conviction, shall be paid by the court one-half of the amount of the fine paid into the court.

343.482 Advertising in highways prohibited, where. (1) No person shall erect, or cause to be erected, any advertising, direction, guide, warning or other sign or marker within any public highway within a distance of one thousand feet from the intersection of any two or more highways, when such intersection is beyond the corporate limits of any city or village, unless permission is first obtained from the officials charged with the maintenance of such highways.

(2) In case any person shall violate the provisions of this section, the authorities in charge of the maintenance of the highway upon which such violation occurs shall promptly remove such advertising, direction, guide, warning or other sign or marker.

(3) If any signs at present exist in the public right of way on any highway within one thousand feet of the intersection of any two or more highways or streets beyond the limits of any incorporated city or village which are, in the opinion of the officials in charge of the maintenance of such highway, a menace to the safety of the public traveling along such highways, said officials shall notify the owners of such signs to remove the same, or to remove the danger producing features, and in case the owners do not do so, or in case the owners cannot be found with reasonable effort, the authorities in charge of said highway shall remove said signs from within the right of way.

(4) The triangles bounded by any two adjacent intersecting highways and a line drawn between the points on the center lines of said highways one thousand feet from the intersection of their center lines, are declared prohibited ground for the erection of any danger producing advertising signs, when such intersection is beyond the corporate limits of any city or village. No advertising sign, design or insignia shall hereafter be erected within said triangles which will endanger the safety of the public traveling along any highways, and if there now exist in any such triangle any advertising signs, designs, or insignia endangering the safety of the public traveling along such highways, the authorities in charge of the maintenance of such highways shall take up the matter with the owner of the sign and with the owner of the land, and shall cause the same to be removed, or to be so altered as to remove the danger producing features. Within the same triangles the authorities in charge of maintaining any road shall require the property owner to minimize the obstruction to the view across the triangle insofar as is possible, and shall make such arrangements with him as will make travel on the intersecting highways as safe as is reasonably possible.

(5) Any person who violates any of the provisions of this section shall be guilty of a misdemeanor and on conviction thereof shall be punished by a fine of not less than twenty-five dollars nor more than one hundred dollars for each offense, or by imprisonment in the county jail for a period not exceeding thirty days, or by both such fine and imprisonment in the discretion of the court.

343.483 Highways, cultivation of; injury by farm machinery. (1) No person shall, within the limits of any public highway, plough, cultivate or otherwise work any lands in such manner as to interfere with or obstruct the drainage in any public highway ditch, nor shall any person operate any farm or other machinery on, over, along or across any public highway in such manner as to materially damage the said highway.

(2) Any person who shall violate the provisions of this section shall be guilty of a misdemeanor, and upon conviction thereof shall be punished by a fine of not less than ten dollars nor more than fifty dollars, or by imprisonment in the county jail not less than ten days nor more than thirty days, and shall in addition pay the whole cost of restoring the ditch or highway, or both, to their former condition.

343.484 Obstructing highway with embankment or ditch. Any person who shall wilfully or maliciously make any ditch, depression or embankment or place any obstruction in any public highway intended or calculated to impede or incommode the use of such highway, or who shall place any obstruction in any ditch constructed to drain any highway, shall be guilty of a misdemeanor and upon conviction shall be punished by a fine of not less than ten nor more than one hundred dollars. [1931 c. 378]

343.485 Camping on highways. It shall be unlawful for any person or persons to camp in wagons, tent or otherwise on the public highways or lands adjacent thereto, after a notice to remove therefrom by the owners of such adjacent lands, or the owner of land abutting on the highway, or by a member of the board of supervisors or any trustee of any town or village where such camping place is made. Any person or persons violating the provisions of this section shall be deemed guilty of a misdemeanor, and upon conviction thereof shall be fined not exceeding ten dollars, or imprisoned in the county jail not exceeding thirty days, or both.

343.486 Mutilation of trees. (1) It shall be unlawful for any person to injure, mutilate, cut down or destroy any shade tree growing on or within any street or highway in any incorporated village in this state, unless express permission so to do be first granted by the board of trustees of such village.

(2) Any person violating the provisions of this section shall be guilty of a misdemeanor, and upon conviction thereof, shall be punished by a fine of not less than ten nor more than one hundred dollars or by imprisonment for not less than ten nor more than thirty days.

343.487 Trains obstructing highways. It shall be unlawful to stop any railroad train, locomotive or car upon or across any highway or street crossing, outside of cities, or leave the same standing upon such crossing, longer than ten minutes, except in cases of accident; and any conductor, engineer, brakeman or other person in charge thereof or re-

sponsible therefor who shall violate this section shall be liable to a fine of not more than twenty-five dollars or to imprisonment of not more than fifteen days.

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

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

(3) Whenever any regularly appointed agent of any humane society or any peace officer in this state shall ascertain or observe any shipment of chickens in a crowded or congested condition, such agent or peace officer may take or cause to be taken such steps as to give immediate relief.

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

343.49 Nondelivery of share of lumber. Any owner or lessee or any person in the use or occupancy of any lumber or shingle mill in this state who shall manufacture logs, other than his own, into lumber, timber, pickets or shingles upon shares and who shall neglect or refuse for thirty days after a demand thereof by the person entitled to receive the same to deliver to such person such share thereof as may be due pursuant to custom or contract or to pay the value thereof in money, shall be punished by imprisonment in the county jail not more than one year or by fine not exceeding two hundred dollars.

343.50 Booming or manufacturing marked log. Any owner, lessee or other person in the occupancy and possession of any boom in the navigable waters of this state who shall knowingly turn or admit into such boom any log not his own and having thereon the mark or brand of the owner thereof, without the consent of such owner and in the absence of any law implying or dispensing with such consent; or any owner, lessee or other person in the occupancy and possession of any lumber or shingle mill in this state who shall knowingly manufacture into lumber, timber, pickets or shingles any log not his own and having thereon the mark or brand of the owner thereof, without such consent of such owner and in the absence of any law implying or dispensing with such consent, shall be punished by imprisonment in the state prison not more than two years nor less than one year, or by fine not exceeding five hundred dollars.

343.51 Larceny of logs; evidence; damages; right of search. (1) Every person who shall wilfully take, carry away or otherwise convert to his own use, or sell or dispose of, without the consent of the owner, any log or cant suitable to be worked into plank, board, joist, shingles or other lumber, such log or cant being the property of another, whether the owner thereof be known or unknown, and lying and being in any river in or bordering on this state, or in any tributary thereof, or in or on any slough, ravine, island, bottoms or land adjoining any such river or tributary thereof, such log or cant being so taken, carried away or otherwise converted, sold or disposed of within this state or therein taken possession of with intent to sell or dispose of as aforesaid, shall be punished by imprisonment in the county jail not more than one year nor less than three months, or by fine not exceeding two hundred dollars nor less than one hundred dollars, and on a second conviction for a like offense shall be punished by imprisonment in the state prison not more than two years nor less than six months and by fine not exceeding four hundred dollars nor less than one hundred dollars.

(2) Every person guilty of either of such offenses shall, whether convicted thereof in a criminal prosecution or not, be liable to pay the owner of such log, cant or other lumber, respecting which the offense was committed, double the value of the same, to be recovered in an action. In any prosecution under this section if any such log, cant or other lumber shall be found in the possession of the defendant with the mark wholly or partly cut out or destroyed or partly sawed or manufactured into lumber of any kind, fence posts or rails such possession shall be presumptive evidence of his guilt. The owner of any such log, cant or other lumber may, at any time by himself or his agent, enter in a peaceable manner into or upon any mill or mill boom, or raft of logs, cant or other lumber in any river or its tributaries within this state or on or near the banks thereof in search of any such log, cant or other lumber which he may have lost; and any person who shall wilfully

prevent or obstruct such search shall forfeit for such offense not less than twenty dollars nor more than fifty dollars.

343.511 Larceny of timber and trees. Any person who shall wilfully sever from the land of another any timber or trees standing or growing thereon and take and convert the same to his own use, or who shall take and convert to his own use any timber, trees, logs, ties, posts, poles or bark which shall have been wilfully severed from the land of another, without the consent of the owner of such land, knowing the same to have been so severed by persons in the employ of the party so converting such timber, trees, logs, ties, posts, poles or bark to his own use, shall be deemed guilty of larceny, and in any case not within the provisions of section 343.51 or section 343.45, shall be punished as provided in section 343.17 for the larceny of property of the same value.

343.512 Criminal action; forest trespass. Every person who, unlawfully cuts, or injures any kind of wood or timber standing, lying or growing upon the lands of another, or of the state, or of the United States, or upon any public highway, or unlawfully and wilfully injures or destroys or carries away any of the products of such wood or timber lands is guilty of a misdemeanor, and upon conviction, shall be fined not less than twenty-five dollars nor more than one thousand dollars, or be imprisoned not less than fifteen days nor more than three years, or by both such fine and imprisonment.

343.52 [*Repealed by 1935 c. 213 s. 15*]

343.53 Driving nails, etc., into logs. Any person who shall wilfully, maliciously or mischievously drive or cause to be driven or imbedded any nails, spikes or pieces of iron, steel or other metallic substance, or any rock or stone into any log or logs or timber intended to be cut or sawed into boards, lath, shingles or other lumber or to be marketed for such purpose shall be punished by imprisonment in state prison not more than five years or by imprisonment in the county jail not more than six months, or by fine not to exceed five hundred dollars, in the discretion of the court.

343.54 Alteration and forgery of log marks. Every person who shall cut out, alter or destroy any mark made or caused to have been made by the owner or any log, cant or other lumber lying and being as described in section 343.51, without the consent of the owner thereof, shall, on conviction, be punished by a fine not less than fifty dollars and by imprisonment in the county jail not less than three months, and on a second conviction for like crime shall be punished by a fine not less than one hundred dollars and by imprisonment in the state prison not more than two years. Every person who shall falsely make, forge or counterfeit any mark recorded as provided in section 108.09 [Stats. 1925] and use the same in marking logs or timber, knowing the same to be the mark of another person, firm or corporation and with intent to defraud, shall be punished by imprisonment in the state prison not to exceed five years or by a fine of not more than \$2,000 nor less than \$500.

343.55 Destruction of boom. Any person who shall wilfully and maliciously break, cut away, injure or destroy any boom lawfully established and being in any of the waters of this state, or make any cut or breach in the same with intent to destroy the same, shall be punished by imprisonment in the county jail not more than six months or by fine not exceeding one hundred dollars.

343.551 Fraud in scaling logs. Any lumber or deputy lumber inspector or any other person employed to scale logs who shall purposely over or under scale or measure the same, or knowingly report a greater or less amount than the true scale thereof, or make any record of a greater or less amount of logs than he has actually scaled, or who shall omit or neglect to scale any logs he is lawfully called upon to scale, for the purpose of defrauding another, and any person who shall procure the performance of any such act, or cause such omission or neglect, or knowingly and willingly be interested therein or profit thereby, shall be punished by imprisonment in the state prison for not more than five years nor less than one year, or in the county jail for not more than one year nor less than six months, or by fine of not more than five thousand dollars nor less than one hundred dollars. Any person who shall make any certificate of scalement which scalement he did not personally make shall be punished by imprisonment in the county jail not more than six months nor less than one month, or by fine of not more than five hundred dollars nor less than one hundred dollars.

343.56 Forgery and counterfeiting. Any person who shall falsely make, alter, forge or counterfeit any public record, or any certificate, return or attestation of any clerk of a court, register of deeds, notary public, justice of the peace or any other public officer in relation to any matter wherein such certificate, return or attestation may be received as legal proof, or any charter, deed, will, testament, bond or writing obligatory, letter of attorney, policy of insurance, bill of lading, bill of exchange, promissory note or any

order, acquittance or discharge for money or other property, or any acceptance of a bill of exchange, indorsement or assignment of a bill of exchange or promissory note, or other assignable instrument, or any accountable receipt for money, goods or other property, or any note, bond, certificate, bill of credit or any public security issued by any commissioner or other officer authorized to issue the same on behalf or for any debt of the United States or of this state or any municipal corporation therein, or any bank bill, treasury note, promissory note, draft, warrant, bond or other evidence of debt issued by the United States or by any state or territory of the United States or by any other state, government or country, or by any corporation or company duly authorized by the United States or by any state or territory of the United States, or by any other state, government or country and by the laws thereof with intent to injure or defraud shall be punished by imprisonment in the state prison not more than seven years nor less than one year.

Note: To warrant a conviction for forgery under this section, when the evidence establishes that the defendant falsely made an accountable receipt for money with intent to injure or defraud, it is not necessary to prove also that there was a simulation or forgery of some person's handwriting. State v. Arndt, 249 W 510, 25 NW (2d) 72, 742.

343.561 Forgery of archaeological objects. The reproduction or forgery of any archaeological object which derives value from its antiquity, or the making of any such object, whether copied or not, with intent to represent the same to be the original and genuine, with intent to deceive or offer any such object for sale or exchange, representing the same to be the original and genuine, or knowingly having possession of any such reproduced or forged objects with intent to offer the same as original and genuine, is hereby declared to be a misdemeanor, and any person convicted thereof shall be punished by a fine of not more than one hundred dollars, or by imprisonment in the county jail for not more than six months, or by both such fine and imprisonment.

343.57 Uttering forged paper. Any person who shall utter, publish, pass or tender in payment as true, or who shall have in his possession with intent to utter, publish, pass or tender in payment, sell or barter, as true or false, any false, forged, counterfeit or spurious record, deed, instrument, or other writing, or any note, certificate, bill of credit, bank bill, treasury note, draft, bond, or other evidence of debt, or any public security mentioned in section 343.56, knowing the same to be false, forged, counterfeit or spurious, with intent to injure or defraud, shall be punished by imprisonment in the state prison not more than seven years nor less than one year.

Note: In a prosecution for uttering forged certificates of indebtedness, whether the defendant had an intent to defraud was the jury, and the evidence, showing that the defendant before circulating the same had purchased \$2,500 of such forged certificates for \$700, when genuine certificates were circulating freely at about face value, was sufficient to sustain a finding of guilty. Lurye v. State, 221 W 68, 265 NW 221.

343.571 Warehouse receipts, frauds respecting. Any person who as principal or agent shall issue, or shall pledge, sell, transfer, indorse, assign, deliver or in any way pass to another person, firm or corporation the title to any instrument not issued by a warehouseman, person, firm, or corporation owning or operating a warehouse or other place for the storing of goods, and not being a warehouse receipt, but made in the likeness or similitude as to design or contents of a warehouse receipt, and calculated to induce any person to believe such instrument to be a warehouse receipt, or any person as principal or agent who shall print on the face of a genuine warehouse receipt or upon the back thereof any condition of the transfer of such warehouse receipt making or tending to make a transfer of any title or interest in the property attempted to be conveyed by the transfer of such warehouse receipt a conditional sale of such property, and thereby shall obtain the signature of any person, firm or corporation to any written instrument, or shall obtain from any person, firm or corporation any chattel, money, promissory note, check, or other negotiable instrument or valuable security, shall be deemed guilty of a felony and upon conviction thereof shall be punished by a fine of not exceeding five hundred dollars or by imprisonment not exceeding three years, or by both such fine and imprisonment.

343.58 Making or having tools for counterfeiting. Any person who shall engrave, make or mend or begin to engrave, make or mend any plate, block, press or other tool or instrument or implement, or shall make or provide any paper or other materials adapted or designed for the forging or making any false or counterfeit note, certificate or other bill of credit, in the similitude of the notes, certificates or bills of credit issued by lawful authority for any debt of this state, the United States or any other state, government or country, or any false or counterfeit note or bill in the similitude of the notes or bills issued by any bank or banking company established in this state or within the United States or any territory thereof, or within any other government or country; and any person who shall have in his possession any such plate or block, engraved in any part, or any press or other tool, instrument or implement, paper or other material adapted and designed as aforesaid, with intent to use the same or to cause or permit the same to be used in forging

or making any such false and forged certificate, bill or note shall be punished by imprisonment in the state prison not more than five years nor less than one year.

343.59 Connecting parts of bank notes. Any person who shall fraudulently connect together different parts of several bank notes or other genuine instruments in such manner as to produce an additional note or instrument, with intent to pass all of them as genuine, the same shall be deemed a forgery in like manner as if each of them had been falsely made, and he shall be punished by imprisonment in the state prison not more than seven years nor less than one year.

343.60 Fictitious signature to note, etc. Any person who shall fraudulently affix to any instrument or writing purporting to be a note, draft or other evidence of debt issued by any corporation a fictitious or pretended signature, purporting to be the signature of an officer or agent of such corporation, with intent to pass the same as true, it shall be deemed a forgery, though no such person may ever have been an officer or agent of such corporation nor such corporation ever have existed, and he shall be punished by imprisonment in the state prison not more than seven years nor less than one year.

343.61 Counterfeiting or having coin with intent to pass. Any person who shall counterfeit any gold or silver coin, current by law or usage within this state, or who shall have in his possession at the same time ten or more pieces of false money or coin, counterfeited in the similitude of any gold or silver coin current as aforesaid, knowing the same to be false and counterfeit and with intent to utter or pass the same as true or sell the same as true or false, shall be punished by imprisonment in the state prison not more than five years nor less than one year.

343.62 Possession of counterfeit coin. Any person who shall have in his possession any number of pieces less than ten of the counterfeit coin mentioned in section 343.61, knowing the same to be counterfeit, with intent to utter or pass the same as true or sell the same as true or false, and any person who shall utter, pass or tender in payment as true any such counterfeit coin, knowing the same to be false and counterfeit with intent to injure or defraud, shall be punished by imprisonment in the state prison not more than three years nor less than one year.

343.63 Making, etc., tools for coining. Any person who shall cast, stamp, engrave, make or mend, or shall knowingly have in his possession any mould, pattern, die, puncheon, engine, press or other tool or instrument adapted and designed for coining or making any counterfeit coin in the similitude of any gold or silver coin current by law or usage in this state, with intent to use the same or cause or permit the same to be used or employed in coining or making any such false and counterfeit coin as aforesaid, shall be punished by imprisonment in the state prison not more than five years nor less than one year.

343.64 Erasing writing. The total erasure or obliteration of any instrument or writing by which any pecuniary obligation, or any right, interest or claim to property shall be, or shall be intended to be, created, increased, discharged, diminished or in any manner affected, with intent to defraud, shall be deemed forgery the same as the false alteration of any part of such instrument or writing.

343.65 Counterfeiting label on goods. Any person who shall knowingly and wilfully forge or counterfeit or cause or procure to be counterfeited upon any goods, wares or merchandise the private stamp or label of any mechanic or manufacturer, with intent to defraud the purchaser or manufacturer of any goods, wares or merchandise whatsoever, shall be punished by imprisonment in the county jail not more than six months or by fine not exceeding one hundred dollars.

343.651 Use of trade-mark without authority. Every person who shall knowingly and wilfully use or display the genuine label, name or seal, trade-mark, term, design, device or form of advertisement of any person, association or union in any manner, or in or about the sale of goods or merchandise not being authorized so to do by such person, union or association, shall be deemed guilty of a misdemeanor, and shall be punished by imprisonment for not more than three months or by a fine of not more than one hundred dollars.

343.652 [*Repealed by 1935 c. 477 s. 9*]

343.655 Resale of forestry stock. Any person who shall sell forestry stock furnished by the conservation commission for reforestation purposes shall be deemed guilty of a misdemeanor, and upon conviction thereof shall be punished by a fine of not less than fifty dollars nor more than two hundred dollars. [*1931 c. 162*]

343.66 Counterfeiting trade-mark, etc.; obtaining by fraud. (1) Any person who shall counterfeit or imitate any label, trade-mark, term, design, device or form of advertisement adopted or used by any other person or any association or union of workmen for the purpose of designating, making known or distinguishing any goods, wares, merchandise or other product of labor as having been made, manufactured, pro-

duced, prepared, packed or put on sale by such person, association or union, or by a member or members of such association or union, or sells, offers for sale or in any way utters or circulates any counterfeit or imitation of any such label, trade-mark, term, design, device or form of advertisement, or knowingly uses any such counterfeit or imitation, or knowingly sells or disposes of, or keeps or has in his possession, with intent that the same shall be sold or disposed of, any goods, wares, merchandise or other product of labor to which any such counterfeit or imitation is attached or affixed, or on which the same is printed, painted, stamped or impressed, or knowingly sells or disposes of, or keeps or has in his possession with intent that the same shall be sold or disposed of, any goods, wares, merchandise or other product of labor contained in any box, case, can or package to which or on which any such counterfeit or imitation is attached, affixed, printed, painted, stamped or impressed shall be punished by imprisonment in the county jail not more than 6 months nor less than 10 days, or by fine not exceeding \$100 nor less than \$10, or by both such fine and imprisonment.

(2) Any person who shall, for himself or on behalf of another or of any association or union, procure the filing and recording in the office of the secretary of state of any label, trade-mark, term, design, device or form of advertisement by making any false or fraudulent representations or declarations, verbally or in writing, or by any other fraudulent means shall be punished by imprisonment in the county jail not more than one year or by fine not exceeding two hundred dollars, or by both such fine and imprisonment.

343.661 Forgery of association cards. Any person who shall falsely make, alter, forge or counterfeit any card or receipt of dues purporting to be given or issued by any association of railway employes, or by any of its officers to its members, with intent to injure, deceive or defraud, shall be punished as hereinafter provided.

343.662 Forgery of certificate. Any person who shall falsely make, alter, forge or counterfeit any letter or certificate purporting to be given by any corporation or person, or officer or agent of such corporation or person to an employe of such corporation or person at the time of such employe's leaving the service of such corporation or person, showing the capacity or capacities in which such employe was employed by such corporation or person, the date of leaving the service or the reason or cause of such leaving, with the intent to injure, deceive or defraud, shall be punished as hereinafter provided.

343.663 Uttering forged instrument. Any person who shall utter, publish, pass or tender as true, or who shall have in his possession with intent to utter, publish, pass or tender as true, any false, altered, forged or counterfeited letter, certificate, card or receipt, the forging, altering or counterfeiting whereof is prohibited by either of the preceding sections of this act, with intent to injure, deceive or defraud, shall be punished as hereinafter provided.

343.664 Penalty. Any person violating any of the provisions of sections 343.661 to 343.663, shall, upon conviction thereof, be punished by imprisonment in the state's prison or county jail not more than one year or by fine not exceeding two hundred dollars.

343.665 Penalty for making counterfeit ticket or pass. Any person who shall falsely make, alter, forge or counterfeit any railroad, street railway, interurban railway or common motor carrier of passengers ticket or pass, or any other instrument purporting to give the right to ride upon any train of any railroad company, line or system of street or interurban railway, or bus of any common motor carrier of passengers, with the intent to injure or defraud, shall be punished by imprisonment in the state prison, not more than seven years and not less than one year. [1937 c. 243]

343.666 Penalty for tendering, using or selling. Any person who shall utter, publish, pass, or tender as true, or shall sell or barter or have in his possession, with intent to utter, publish, pass, or tender as true, or to sell or barter, any false, forged, counterfeit or spurious railroad, street railway, interurban railway or common motor carrier of passengers ticket or pass, or any other instrument purporting to give the right to ride upon any train of any railroad company, line or system of street or interurban railway, or bus of any common motor carrier of passengers, knowing the same to be false, forged, counterfeit or spurious, with intent to injure or defraud, shall be punished by imprisonment in the state prison not more than seven years nor less than one year. [1937 c. 243]

343.67 Defacing notices. Any person who shall wilfully, wantonly or with intent to defraud another take down, tear, mutilate, deface or alter any public notice posted up as authorized or required by law, before the expiration of the time for which such notice is by law required to be given by posting, shall be punished by imprisonment in the county jail not more than six months or by fine not exceeding one hundred dollars.

343.68 Destruction of legislative papers. Any person who shall wilfully or without lawful authority destroy, alter, mutilate, forge or abstract from the files, or who shall

cause or procure to be destroyed, altered, mutilated, forged or abstracted from the files any act, bill, petition, memorial, resolution, journal, report or any other document appertaining to or forming a part of the business or proceedings of legislation, with intent to change or destroy the legal effect thereof or to embarrass, delay or pervert such legislation, shall be punished by imprisonment in the county jail not more than one year or by fine not exceeding five hundred dollars.

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

Note: In an action for damages for wrongful conspiracy of defendants, whereby plaintiff was required to give up a retail cleaning and dyeing business, evidence held sufficient to show such conspiracy, as against a motion for nonsuit. *Boyce v. Independent Cleaners, Inc.*, 206 W 521, 240 NW 132.

The complaint does not state a cause of action under this section, since it contains no allegation that the defendants conspired to do the acts complained of, and the existence of a conspiracy is essential to create

civil liability for violation of the statute. *Judevine v. Benzies-Montanye F. & W. Co.*, 222 W 512, 269 NW 295.

One who tacitly consents to the object of a conspiracy and goes along with the other conspirators is guilty even though he intends to take no active part in the crime but stands by while they put the conspiracy into effect. *O'Neil v. State*, 237 W 391, 296 NW 96.

It is violation of this section to picket retail business for purpose of injuring its trade. 24 Atty. Gen. 613.

343.682 Blacklisting and coercion of employes. (1) Any two or more persons, whether members of a partnership or company or stockholders in a corporation, who are employers of labor, who shall combine or agree to combine for the purpose of preventing any person seeking employment from obtaining the same, or for the purpose of procuring or causing the discharge of any employe by threats, promises, circulating blacklists or causing the same to be circulated, or who shall, after having discharged any employe, prevent or attempt to prevent such employe from obtaining employment with any other person, partnership, company or corporation by the means aforesaid, or shall authorize, permit or allow any of his or their agents to blacklist any discharged employe or any employe who has voluntarily left the service of his employer, or circulate a blacklist of such employe to prevent his obtaining employment under any other employer, or who shall coerce or compel any person to enter into an agreement not to unite with or become a member of any labor organization as a condition of his securing employment or continuing therein, shall be punished by fine of not more than five hundred dollars nor less than one hundred dollars, which fine shall be paid into the state treasury for the benefit of the school fund.

(2) Nothing in this section shall prohibit any employer of labor from giving any other such employer, to whom a discharged employe has applied for employment, or to any bondsman or surety, a truthful statement of the reasons for such discharge, when requested so to do by such employe, the person to whom he has applied for employment, or any bondsman or surety; but it shall be a violation of this section to give such information with the intent to blacklist, hinder or prevent such employe from obtaining employment; neither shall anything herein contained prohibit any employer of labor from keeping for his own information and protection a record showing the habits, character and competency of his employes and the cause of the discharge or voluntary quitting of any of them.

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

Note: The defendant's admission, "I would just as soon kill my own brother if he went into that shop. We did a good job on a few old fellows," made shortly after a codefendant, and then the defendant, had assaulted a nonstriking employe, constituted an admission as to the defendant's own motives and purposes in committing the assault, and was probative of his own guilt

under this section. *State v. Jakubowski*, 251 W 74, 27 NW (2d) 742.

Peaceable picketing is mere act of inviting attention to existence of strike as by signs or banners, and seizure or destruction of property or use of force or threats and calling of vile names is not peaceable picketing. 22 Atty. Gen. 340.

See note to 103.53, citing 23 Atty. Gen. 279.

343.69 Sale of mortgaged property. (a) Any mortgagor of personal property or any vendee under a conditional sales contract of personal property, who during the existence of the lien or title created by such chattel mortgage, or conditional sales contract shall sell, transfer, conceal, remove or carry or drive away said personal property or any part thereof, without the written consent of the mortgagee or his assigns or of the conditional sale vendor or his assigns, as the case may be, and with the intent to defraud, shall be punished by imprisonment in the county jail not more than one year or in the state prison not less than one nor more than 5 years or by fine not exceeding \$1,000.

(b) Any mortgagor of personal property or any vendee under a conditional sales contract of personal property, who during the existence of the lien or title created by such chattel mortgage or conditional sales contract shall sell, transfer, conceal, remove or carry or drive away said personal property, or any part thereof, without the written consent of the mortgagee or his assigns or the conditional sales contract vendor or his assigns, as the case may be, and shall thereby hinder or delay such mortgagee, vendor or assigns from repossessing any of said personal property for a period of 72 hours after service of a written demand for the return of said personal property on such mortgagor or vendee shall be punished by imprisonment in the county jail not more than one year or in the state prison not less than one nor more than 5 years, or by fine not exceeding \$1,000.

(c) And any mortgagor of personal property or any vendee under a conditional sales contract of personal property, who during the existence of the lien or title created by such chattel mortgage or conditional sales contract shall sell said personal property, or any part thereof, without disclosing to the purchaser thereof by a written statement executed and delivered prior to such sale, the amount due on said chattel mortgage or conditional sales contract and the name and address of the holder thereof, shall be punished by imprisonment in the county jail not more than one year or in the state prison not less than one nor more than 5 years or by fine not exceeding \$1,000. [1943 c. 346; 1945 c. 73]

Note: Where individual has complete control of corporation he may be prosecuted personally for criminal act of corporation in selling mortgaged property in violation of this section. 21 Atty. Gen. 108.

Trade-in of exempt automobile worth less than statutory exemption limit upon which there is chattel mortgage not signed by wife of mortgagor is not violation of this section. 26 Atty. Gen. 105.

Removal from the state of Wisconsin without mortgagee's previous written consent of personal property mortgaged to department of veterans affairs violates 343.69 (b) and is illegal. Department has power to give such consent when it deems it advisable. Rule is the same in removing pledged personal property from one county to another within the state. 35 Atty Gen. 364.

343.70 Nondelivery of arms; resisting officer. Any person having in his possession, under the laws of this state, any arms, equipments or other military property, who shall wilfully neglect or refuse, after lawful demand thereof, by order of the commander in chief of the national guard of the state, to deliver up the same promptly, and any person who shall knowingly resist any proper officer in lawfully taking possession of such arms, equipments or other military property shall be punished by imprisonment in the county jail not more than six months or by fine not exceeding one hundred dollars.

343.701 Use of water. Any person who shall wantonly interfere with the free use of the water from any spring or in any creek or stream running across or in any highway shall be guilty of a misdemeanor and be liable to any person damaged thereby for all damages sustained.

343.71 Causing vexatious suit. Any person who, for vexation and trouble, shall cause or procure any civil action or proceeding before any court or magistrate to be instituted or carried on in the name of any other person, without the consent of such person or where there is no such person known, shall be punished by imprisonment in the county jail not more than six months, and be liable to pay to any party injured by such civil action or proceeding treble the damages that he may have suffered thereby.

343.72 Opening letters. Any person who shall wilfully open or read or cause to be opened or read any sealed letter not addressed to himself, without being authorized so to do either by the writer of such letter or the person to whom it is addressed, and any person who shall publish the whole or any part of such letter without such authority, knowing the same to have been so unlawfully opened (and such act or acts shall not be punishable by the laws of the United States), shall be punished by imprisonment in the county jail not more than three months or by fine not exceeding one hundred dollars.

343.721 Penalty for unauthorized presentation of dramatic plays, etc. Any person who sells a copy or a substantial copy, or who causes to be publicly performed or represented for profit, any unpublished or undedicated dramatic play or musical composition, known as an opera, without the written consent of its owner or proprietor, or, who, knowing that such dramatic play or musical composition is unpublished or undedicated, and, without the written consent of its owner or proprietor, permits, aids, or takes part in such a performance or representation, shall be guilty of a misdemeanor, and upon conviction

thereof shall be fined not less than five dollars nor more than one hundred dollars, or by imprisonment not exceeding sixty days.

343.722 Corporate name, filing, amendment, discontinuance, unlawful use. (1) Any person or persons who shall engage in or advertise any mercantile or commission business under a name purporting or appearing to be a corporate name, with intent thereby to obtain credit, and which name does not disclose the real name or names of one or more of the persons engaged in said business, without first filing in the office of the register of deeds of the county wherein his or their principal place of business may be, a verified statement disclosing and showing the name or names of all persons using such name, shall be deemed guilty of a misdemeanor and on conviction thereof shall be punished by a fine of not to exceed \$1,000 or by imprisonment in the county jail not more than one year.

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

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

(4) For each such filing the register of deeds shall receive a fee of \$1. [1943 c. 203; 1947 c. 230]

Note: This section is applicable to such name as "Reliable Laundry," "West Side Ga- similar names. 22 Atty. Gen. 359.

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

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

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

343.725 [Renumbered sections 95.47, 95.69 by 1935 c. 550 s. 157, 179]

343.726 [Renumbered sections 95.13, 95.69 by 1935 c. 550 s. 121, 179]

343.727 [Renumbered section 94.24 by 1935 c. 550 s. 49]

343.728 [Renumbered sections 94.25 and part of 94.77 by 1935 c. 550 s. 50, 106]

343.729 Veterans' papers, medals, etc., as security. (1) It shall be unlawful for any person, except as provided by section 502 of the world war adjusted compensation act, to receive or accept as security, assignment or loan any adjusted compensation certificate, or to make a loan to a veteran in consideration of naming by the veteran of such person or any other person as beneficiary.

(2) The refusal or wilful neglect of any person or corporation to return to and deliver upon demand by a veteran owning any adjusted compensation certificate, adjusted service credit, adjusted service pay, or the proceeds thereof, in his care, custody or control as above mentioned in the preceding section upon demand by the proper person entitled to receive the same or its proceeds shall be in such case prima facie evidence of the unlawful withholding of said adjusted compensation certificate.

(3) It shall be unlawful for any person to receive or accept as a security or to withhold from a veteran or honorably discharged soldier, sailor or marine any discharge paper, citation, warrant, medal, badge or evidence upon which such veteran is entitled to certain rights, as a veteran under the laws of the United States or of this state, and any transfer of the same during the life of the veteran upon a consideration or otherwise shall be null and void, and the refusal or wilful neglect of any person to return or deliver upon de-

mand, any such discharge, citation, warrant, medal, hadge or evidence aforesaid shall be deemed a misdemeanor.

(4) Any person who shall violate the provisions of this section shall be deemed guilty of a misdemeanor and upon conviction thereof shall be punished by a fine of not more than one hundred dollars or by imprisonment in the county jail not more than six months, or by both such fine and imprisonment. [1931 c. 93]

343.74 Sabotage. (1) DEFINITIONS. As used in this section:

(a) "Highway" includes any private or public street, way or other place used for travel to or from property.

(b) "Highway commissioners" mean any individuals, board or other body having authority under then existing law to discontinue the use of the highway which it is desired to restrict or close to public use and travel.

(c) "Public utility" includes any pipe line, gas, electric, heat, water, oil, sewer, telephone, telegraph, radio, railway, railroad, airplane, transportation, communication or other system, by whomsoever owned or operated for public use.

(d) "Person" includes firm, partnership, corporation or association.

(e) "Peace officer" includes sheriffs, undersheriffs, deputy sheriffs, police officers, policemen appointed pursuant to the provisions of section 192.47, constables, marshals, deputy marshals, and federal law enforcement officers.

(2) INTENTIONAL INJURY TO OR INTERFERENCE WITH PROPERTY. Whoever intentionally destroys, impairs, injures, interferes or tampers with real or personal property with reasonable grounds to believe that such act will hinder, delay, or interfere with the preparation of the United States or of any of the states for defense or for war, or with the prosecution of war by the United States, shall be punished by imprisonment for not more than 10 years, or by a fine of not more than \$10,000, or both, except that if such person so acts with the intent to hinder, delay or interfere with the preparation of the United States or of any of the states for defense or for war, or with the prosecution of war by the United States, the minimum punishment shall be imprisonment for not less than one year.

(3) INTENTIONALLY DEFECTIVE WORKMANSHIP. Whoever intentionally makes or causes to be made or omits to note on inspection any defect in any article or thing with reasonable grounds to believe that such article or thing is intended to be used in connection with the preparation of the United States or any of the states for defense or for war, or for the prosecution of war by the United States, or that such article or thing is one of a number of similar articles or things, some of which are intended so to be used, shall be punished by imprisonment for not more than 10 years, or a fine of not more than \$10,000, or both, except that if such person so acts or so fails to act with the intent to hinder, delay or interfere with the preparation of the United States or of any of the states for defense or for war, or with the prosecution of war by the United States, the minimum punishment shall be imprisonment for not less than one year.

(4) ATTEMPTS. Whoever attempts to commit any of the crimes defined by this section shall be liable to one-half the punishment prescribed for the completed crime. In addition to the acts which constitute an attempt to commit a crime under the law of this state, the solicitation or incitement of another to commit any of the crimes defined by this section not followed by the commission of the crime, the collection or assemblage of any materials with the intent that the same are to be used then or at a later time in the commission of such crime, or the entry, with or without permission, of a building, inclosure or other premises of another with the intent to commit any such crime therein or thereon shall constitute an attempt to commit such crime.

(5) CONSPIRATORS. If 2 or more persons conspire to commit any crime defined by this section, each of such persons is guilty of conspiracy and subject to the same punishment as if he had committed the crime which he conspired to commit, whether or not any act be done in furtherance of the conspiracy. It shall not constitute any defense or ground of suspension of judgment, sentence or punishment on behalf of any person prosecuted under this section, that any of his fellow conspirators has been acquitted, has not been arrested or convicted, is not amenable to justice or has been pardoned or otherwise discharged before or after conviction.

(6) WITNESSES' PRIVILEGES. No person shall be excused from attending and testifying or producing any books, papers or other documents before any court, magistrate, referee or grand jury upon any investigation, proceeding or trial, for or relating to or concerned with a violation of any provision of this section or attempt to commit such violation, upon the ground or for the reason that the testimony or evidence, documentary or otherwise, required of him by the state may tend to convict him of a crime or to subject him to a penalty or forfeiture; but no person shall be prosecuted or subjected to any penalty or forfeiture for or on account of any transaction, matter or thing concerning which he

may so testify or produce evidence, documentary or otherwise, and no testimony so given or produced shall be received against him, upon any criminal investigation, proceeding or trial, except upon a prosecution for perjury or contempt of court based upon the giving or producing of such testimony.

(7) UNLAWFUL ENTRY ON PROPERTY. (a) Any person or state or any political subdivision thereof engaged in, or preparing to engage in, the manufacture, transportation or storage of any product to be used in the preparation of the United States or of any of the states for defense or for war or in the prosecution of war by the United States or the manufacture, transportation, distribution or storage of gas, oil, coal, electricity or water, or any of said natural or artificial persons operating any public utility, whose property, except where it fronts on water or where there are entrances for railway cars, vehicles, persons or things, is surrounded by a fence or wall, or a fence or wall and buildings, may post around his or its property at each gate, entrance, dock or railway entrance and every 100 feet of water front a sign reading "No Entry Without Permission."

(b) Whoever without permission shall wilfully enter upon premises so posted shall be punished by a fine of not more than \$50, or by imprisonment in the county jail for not more than 30 days, or by both such fine and imprisonment.

(8) QUESTIONING AND DETAINING SUSPECTED PERSONS. Any peace officer or any person employed as watchman, guard, or in a supervisory capacity on premises posted as provided in subsection (7) may stop any person found on any premises to which entry without permission is forbidden by said subsection and may detain and demand of him his name, address and business in such place. If such peace officer or employe has reason to believe from the answers of the person so interrogated that such person has no right to be in such place, such peace officer or employe shall forthwith release or arrest such person without a warrant on a charge of violating the provisions of subsection (7) and such employe in case of arrest shall forthwith turn him over to a peace officer.

(9) CLOSING AND RESTRICTING USE OF HIGHWAY. (a) Any person, municipal corporation, or state or any political subdivision thereof engaged in or preparing to engage in the manufacture, transportation or storage of any product to be used in the preparation of the United States or any of the states for defense or for war or in prosecution of war by the United States, or in the manufacture, transportation, distribution or storage of gas, oil, coal, electricity or water, or any of said natural or artificial persons operating any public utility, who has property so used which he or it believes will be endangered if public use and travel is not restricted or prohibited on one or more highways or parts thereof upon which such property abuts, may petition the highway commissioners of any city, village, town or county to close one or more of said highways or parts thereof to public use and travel or to restrict by order the use and travel upon one or more of said highways or parts thereof.

(b) Upon receipt of such petition, the highway commissioners shall set a day for hearing and give notice thereof by publication in a newspaper having general circulation in the city, village, town or county in which such property is located, such notice to be at least 7 days prior to the date set for hearing. If after hearing the highway commissioners determine that the public safety and the safety of the property of the petitioner so require, they shall by suitable order close to public use and travel or reasonably restrict the use of and travel upon one or more of said highways or parts thereof, except that the highway commissioners may issue written permits to travel over the highways so closed or restricted, to responsible and reputable persons for such term, under such conditions and in such form as said commissioners may prescribe. The order of such highway commissioners closing or restricting the use of one or more of said highways shall be effective only so long as the public safety and the safety of the property of the petitioner may require. Such order shall be vacated by the highway commissioners when the necessity which prompted it has ceased to exist. Any person feeling aggrieved by any order of the highway commissioners rendered pursuant to this subsection may, within 7 days after the issuance of such order, petition the state highway commission for a review thereof. A copy of said petition shall, within the period named, likewise be filed with the clerk of the local highway commissioners. The clerk shall thereupon certify to the state highway commission a copy of the order in question together with a transcript of any testimony that may have been taken and any documentary evidence received on which such order was based. On the record so certified and on any additional evidence deemed necessary by it, the state highway commission shall render its decision affirming, vacating or modifying the order in question. Should additional evidence be deemed necessary by the state highway commission, at least 7 days' notice of any hearing for that purpose shall be given the person bringing the petition for review and the clerk of the local highway commissioners.

(c) Appropriate notices in letters at least 3 inches high shall be posted conspicuously at each end of any highway so closed or restricted by such order. The highway commissioners may at any time revoke or modify any order so made.

(10) PENALTY FOR GOING UPON CLOSED OR RESTRICTED HIGHWAY. Whoever violates any order made under subsection (9) shall be punished by imprisonment in the county jail for not more than 10 days, or by a fine of not more than \$50, or both.

(11) RIGHTS OF LABOR. Nothing in this section shall be construed to impair, curtail or destroy the rights of employes and their representatives to self-organization, to form, join or assist labor organization, to strike, to bargain collectively through representatives of their own choosing, and to engage in concerted activities, for the purpose of collective bargaining or other mutual aid or protection, under either the federal labor relations act or the Wisconsin employment peace act.

(11a) NATIONAL RAILWAY LABOR ACT NOT AFFECTED. Nothing in this section shall be deemed or construed to interfere with or abridge or in any manner diminish or affect the rights provided for under the National Railway Labor Act.

(12) SEVERABILITY. If any provision of this section or the application thereof to any person or circumstances is held invalid, such invalidity shall not affect other provisions or applications of the section which can be given effect without the invalid provision or application, and to this end the provisions of this section are declared to be severable.

(13) SHORT TITLE. This section may be cited as the "Sabotage Prevention Act."

(14) EFFECTIVE PERIOD OF SECTION. This section and all orders made under it shall be in force until May 15, 1943, and thereafter whenever the United States is at war, except that any violation of this section, committed while the section is in force, may be prosecuted and punished thereafter, whether or not this section is in force at the time of such prosecution and punishment. [1941 c. 106]