

## CHAPTER 100.

## MARKETING; WAREHOUSES; TRADE PRACTICES.

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**Cross Reference:** See definitions in 93.01.

**100.01 Produce wholesalers, unfair conduct, liability for damages.** (1) DEFINITIONS. When used in this section:

(a) "Produce" means any kinds of fresh fruit or fresh vegetable, including potatoes and onions intended for planting.

(b) "Dealer" means a person who for resale buys, sells, offers or exposes for sale, or has in possession with intent to sell, any produce except that raised by him and that purchased by him exclusively for his own sale at retail.

(c) "Commission merchant" means a person engaged in receiving produce for sale for or on behalf of another.

(d) "Broker" means a person engaged in negotiating sales or purchases of produce for or on behalf of the seller or the buyer.

(e) "Produce wholesaler" means a commission merchant, dealer or broker.

(2) UNFAIR CONDUCT. It shall be unlawful:

(a) For a dealer to reject or fail to deliver in accordance with the contract, without reasonable cause, produce bought or sold or contracted to be bought or sold by such dealer.

(b) For a commission merchant, without reasonable cause, to fail to deliver produce in accordance with the contract.

(c) For a commission merchant to fail to render a true itemized statement of the sale or other disposition of a consignment of produce with full payment promptly in accordance with the terms of the agreement between the parties, or, if no agreement, within 15 days after receipt of the produce. Such statement of sale shall clearly express the gross amount for which the produce was sold and the proper, usual or agreed selling charge, and other expenses necessarily and actually incurred or agreed to in the handling thereof.

(d) For a commission merchant or broker to make a fraudulent charge in respect to produce.

(e) For a commission merchant or broker to discard, dump or destroy without reasonable cause produce received by him.

(f) For a produce wholesaler to make for a fraudulent purpose or for the purpose of depressing the market a false or misleading statement concerning the grade, condition, markings, quality, quantity, market quotations or disposition of any produce or of the condition of the market therefor.

(g) For a produce wholesaler to receive produce from another state or country for sale or resale within this state and give the buyer the impression that the commodity is of Wisconsin origin.

(h) For a produce wholesaler, for a fraudulent purpose, to remove, alter or tamper with any card, stencil, stamp, tag, certificate or other notice placed upon any container or railroad car containing produce by the original packer or by or under authority of any federal or state inspector and bearing a certificate as to the grower, grade or quality of such produce.

(3) ACCEPTANCE IMPLIED. If any dealer fails to notify the seller of rejection within 24 hours after he receives notice of arrival of the produce, he will be deemed to have accepted it as being in accordance with the contract.

(4) DOUBLE DAMAGES. A produce wholesaler who violates any provision of sub. (2) shall be liable to any person injured thereby for twice the amount of damages sustained in consequence of such violation and such liability may be enforced by suit in any court of competent jurisdiction.

**History:** 1953 c. 296.

Bond provided for by (2) (d), Stats. 1951, who is not a commission merchant. 41 Atty. is not applicable to payment for produce Gen. 316.  
purchased by a licensed produce wholesaler

**100.02 Commission merchants, duties, must account.** (1) No person, firm, association, or corporation receiving any fruits, vegetables, melons, dairy, or poultry products or any perishable farm products of any kind or character, other than cattle, sheep, hogs or horses, hereinafter referred to as produce, for or on behalf of another, shall without good and sufficient cause therefor, destroy, or abandon, discard as refuse or dump any produce directly or indirectly, or through collusion with any person, nor shall any person, firm, association or corporation knowingly and with intent to defraud make any false report or statement to the person, firm, association, or corporation from whom any produce was received, concerning the handling, condition, quality, quantity, sale or disposition thereof, nor shall any person, firm, association or corporation knowingly and with intent to defraud fail truly and correctly to account and pay over to the consignor therefor. The state department of agriculture shall by regulation provide for the making of prompt investigations and the issuing of certificates as to the quality and condition of produce received, upon application of any person, firm, association, or corporation shipping, receiving, or financially interested in, such produce. Such regulations shall designate the classes of persons qualified and authorized to make such investigations and issue such certificates, except that any such investigation shall be made and any such certificate shall be issued by at least two disinterested persons in any case where such investigation is not made by an officer or employe of the department. A certificate made in compliance with such regulations shall be prima facie evidence in all courts of the truth of the statements therein contained as to the quality and condition of the produce; but if any such certificate is put in evidence by any party, in any civil or criminal proceeding, the opposite party shall be permitted to cross-examine any person signing such certificate, called as a witness at the instance of either party, as to his qualifications and authority and as to the truth of the statements contained in such certificate.

**History:** 1951 c. 261 s. 10.

**100.03 Food processors' payments; bond or security.** (1) (a) No operator of any food processing plant, for which a license is required by s. 97.06, shall buy or otherwise take title to or possession of any farm product from the producer thereof without paying to the producer the full agreed price at the time of obtaining such possession or control, unless the applicant shall first satisfy the department that his financial condition is such as to reasonably assure prompt payment to growers of the produce contracted for or received by him as and when the same becomes due and payable. Such application shall be accompanied by a financial statement of the applicant's most recently completed fiscal year and such supplemental and additional information as the department may require.

(b) No operator of a food processing plant, for which a license is required by s. 97.06, shall, through a subsidiary or affiliate as herein defined, buy or otherwise take title to or possession of any farm product for which the producer thereof has not been paid the full agreed price, unless the applicant shall first satisfy the department that the financial condition of such subsidiary or affiliate is such as to reasonably assure prompt payment to such producers of the farm product processed by the applicant, in accordance with the contract between such producers and such subsidiary or affiliate. The term "subsidiary or affiliate" shall include any person who is a partner in an applicant partnership or is an officer or has a controlling interest in an applicant corporation, and any partnership of which the applicant is a partner, and any corporation controlled by the applicant, and any corporation controlled by the same person or persons controlling the applicant. In any case where the department is not satisfied that the financial condition of such subsidiary or affiliate reasonably assures such prompt payment, or finds that the current financial position of such subsidiary or affiliate is not accurately shown by the statement filed with the department, it may require as a condition to the issuance of a license that the applicant guarantee such payment to such producers by such subsidiary or affiliate and may require in addition to such guarantee that the applicant furnish bond or security as provided in sub. (2), conditioned upon the performance of such guarantee.

(2) In any case where the department is not satisfied that the financial condition of the applicant does reasonably assure such prompt payment, or finds that the applicant's current financial position is not accurately shown by the statement so filed, it may require as a condition to the issuing of such license that the applicant either:

(a) Make and file a surety bond in such sum as it deems sufficient, executed by the applicant as principal and by a surety company qualified and authorized to do business in this state as surety; such bond shall be in such form as the department may prescribe, be made payable to the state of Wisconsin for the benefit of producers who might suffer by reason of default of the principal, and be conditioned that the principal shall pay or cause to be paid to producers all sums owing producers for products contracted for or received by the principal as the same become due. In lieu of such bond the applicant may deposit cash or negotiable securities in such amount and in such manner and form as the department approves.

(b) Make and file with the department an agreement providing for the "set aside" of processed produce equivalent to not less than 30 per cent of the produce obtained from producers, in trust for such producers. No part of such "set aside" shall be released by the trustee unless an amount equivalent to the value of such released portion shall have been paid to apply pro rata on the claims of producers or is paid over to the trustee for such payment. The applicant shall agree to pay all expenses of such trust. The department may release the "set aside" upon the filing of a current financial statement.

(3) Upon receipt of evidence of default by any licensee in making payment to producers the department may commence an action for the recovery of claims of all producers or otherwise assist the producers to establish an organization for the purpose of making collection.

**History:** 1953 c. 362; 1955 c. 355; 1957 c. 368.

**100.04 Grading of Swiss Cheese.** (1) Swiss or Emmenthaler cheese, in drum or wheel style, shall be purchased, sold, exchanged, or offered for sale or exchange in this state only upon the basis of the grade established by law or by general order of the department under s. 93.09 as determined by a qualified cheese grader employed by the department, except as to any individual sale of 100 pounds or less or of more than 100 pounds when limited to one wheel. All such cheese shall be graded at the factory whenever practical.

(2) The cost of such grading shall be charged to and collected from the owners of the cheese so graded in the sum of one-fortieth cent per pound, except that the department may charge an average fee of 5 cents for each wheel.

**History:** 1955 c. 112.

**100.06 Dairy licenses; financial condition.** (1) (a) No person shall operate a dairy plant or receiving station, as defined in s. 97.04, and no license therefor shall be issued unless he shall have first satisfied the department that his financial condition is such as to reasonably assure prompt payment to the producers for the milk and cream to be purchased by him as and when the same becomes due and payable.

(c) The department shall require the applicant to file a verified statement of his business operations and financial condition. The licensee, during the term of his license, may be required to file such statements periodically. All such statements shall be confidential and shall not be open for public inspection. The department may require such statements to be certified by a public accountant. Such statements and audits, when made by the department, shall be paid for at cost.

(2) In all cases where it appears that the financial condition of the applicant or of the licensee is not adequate to reasonably assure payment when due for the milk, cream or dairy products to be purchased by him, the department may require:

(a) The filing of a bond or other security acceptable to the department in an amount not to exceed the sum reasonably likely to be due and accrued at any one time for such milk, cream or dairy products, which bond or security shall be payable to the department for the benefit of the persons who would otherwise suffer by reason of the default of the licensee in the payment for such milk, cream or dairy products.

(b) The filing of an agreement providing for the complete control over all manufactured or processed milk and dairy products by a trustee to be selected at least annually by the producers. Such trustee shall make and file a trustee's bond and contracts signed by the operator and the purchaser of the dairy products requiring that payment for all such products sold be made to him as trustee. Such trustee shall maintain a separate bank account for that purpose and shall at least annually render a true and correct account of his dealings to the department and to the producers.

(c) That the licensee shall receive no milk or cream on credit after the 5th day of any month unless at least 90 per cent of the value of the milk or cream delivered during the first 15 days of the preceding month shall have been paid, nor after the 20th day of any month unless the value of all of the milk or cream delivered during the previous month shall have been paid in full; provided that when payment is based on the value of Swiss cheese manufactured from the milk or cream so delivered, an extension of 2 months during which the product is held for curing shall be allowed if the manufactured product

is the property of the producers or if the proceeds from the sale thereof are made payable to and distributed by a banking institution.

(3) (a) All dairy plant operators shall inform producers delivering milk and cream of the financial basis on which the license was issued including the type and amount of security, if any, filed under this section by statement in writing to each producer patron at least once every 6 months.

(b) No person shall receive milk, cream or dairy products which will increase the amount due and accrued from him beyond the amount represented as a basis for the issuance of a license without first notifying the department.

(4) Any person injured by the breach of any obligation under this section may file with the department a verified proof of claim. Upon receipt of such claim or any other evidence of default, the department, by order, may require all interested creditors to file their verified proofs of claim before a certain date or be barred from participating in any recovery made by the department. Notice of the entry of such order shall be given by posting a copy thereof on the premises described in the license and by publication once a week for 3 successive weeks in a newspaper having general circulation in the community. The date of posting and the date of last publication shall not be less than 30 days prior to the last date for the filing of such claims. The department shall make the necessary audit and by order allow or disallow all claims presented. Notice of allowance or disallowance and request for the payment within 30 days of the claims allowed shall be sent to the principal and surety by registered mail. The department may demand, collect and receive from the licensee or the trustee, or from the surety or sureties of either of them, the amount determined to be necessary to satisfy such claims. It may commence an action for that purpose in the circuit court of the county in which the licensed plant is located. Upon receipt of the money to be applied to the satisfaction of such claims as provided in this section, the department shall make distribution to the claimants in accordance with the order allowing claims, in full or pro rata, as the case may be. No claims for the purchase price of any milk, cream or dairy products the value of which was due and payable more than 30 days prior to the date the first written notice of default is received by the department, nor claims covering transactions wherein the seller has granted to the licensee any voluntary extension of credit, shall be allowed or paid under this section.

(5) When any dairy plant or receiving station shall employ or retain a sales agent or commission dealer to market and distribute its dairy products, and such sales agent or commission dealer shall sell such dairy products to a dairy products dealer, such dairy products dealer shall directly remit or transmit all moneys due thereunder to such dairy plant operator or to the trustee thereof, as the case may be. The dairy plant or receiving station shall be responsible for the payment of any commission or salary that may be due to such sales agent or commission dealer. Such payment by the dairy products dealer shall be considered as in full release, payment and discharge of any obligation thereunder.

(6) Compliance with this section shall be an additional requirement for the license and noncompliance shall be ground for denial, suspension or revocation of license, under s. 97.04. Section 97.04 (9) and (10) shall apply to this section.

(7) The whole claim of any person against any licensee under s. 97.04 on account of milk, cream or dairy products sold or delivered to such licensee and any judgment therefor shall be entitled to the same preference in any insolvency or other creditor's proceedings as is given by any law of this state to claims for labor. One claim may be filed for any number of producers and when so filed the preference shall be allowed on the amount due each producer. Such preference shall also be given in bankruptcy proceedings to the extent permitted by the federal law. This section shall not affect or impair any other lien, security or priority for said claim or judgment.

(8) Nothing in this section shall be construed to apply to the sale of milk, cream or dairy products in interstate commerce to an out-of-state plant operator or dealer not licensed under this section. The protection to producers afforded by this section shall be available to the producers of any state selling milk or cream to any dairy plant licensed in this state.

**History:** 1953 c. 214; 1957 c. 152.

The department of agriculture, in a proceeding against the surety on the bond of the drawer of the check, correctly determined that no part of the money due to the payee of the check for the milk delivered by him had been paid to him or to any person authorized by him to receive payment, war-

ranteeing the allowance of his claim. *Saint Paul-Mercury Ind. Co. v. Dept. of Agriculture*, 259 W 42, 47 NW (2d) 312. Bank receiving funds for distribution to milk producers under (1) (a) must be authorized to act as trustee under 221.04 (6). 40 Atty. Gen. 484.

**100.07 Milk payments; audits.** (1) Whenever petitions signed by more than 60 per cent of the producers of milk delivered to any dairy plant or petitions signed by more than 60 per cent of the producers comprising any municipal milk shed shall be presented to the department asking for the audit of payments to producers, the department

by investigation and public hearing shall determine the facts in support of and against such petition and render its decision thereon. The department by order shall define the plants and areas affected. All persons receiving from producers in any such plant or area milk any part of which is used for fluid distribution shall keep adequate records of all purchases and all usage or disposition of milk and shall make reports thereof as prescribed by the department. The department shall have free access to such records and shall after entry of such order audit the receipts and usage or disposition of milk and cream at intervals sufficiently frequent to keep the producers informed for bargaining purposes.

(2) Each such person shall deduct from the price to producers an amount sufficient to administer this section, to be the same for all, and not to exceed one-half cent per 100 pounds of milk received or its equivalent. Amounts so deducted are trust funds and shall be paid to the department.

(3) Whenever petitions signed by more than 51 per cent of the producers of milk delivered to any such plant or in any such municipal milk shed shall be presented to the department asking for discontinuance of such auditing service, it shall promptly hold a public hearing to determine the sufficiency of such petitions, and if it shall appear that the required number of persons have so petitioned, the auditing service shall be ordered discontinued. Plants and areas now being audited by the department shall continue to receive such service until an order of discontinuance is made as herein provided.

(4) Authorized officials of any organization whose members are producers delivering milk to any such plant or in any such municipal milk shed may sign petitions for such auditing service or for the discontinuance thereof for and on behalf of the producer members of such organization.

(5) Any person who violates this section by failing to pay to the department the deductions required by this section, or by failing to make or to keep the required records or reports, or by wilfully making any false entry in such records or reports, or by wilfully failing to make full and true entries in such records or reports, or by obstructing, refusing or resisting other than through judicial process any department audit of such records, shall be fined not to exceed \$200 or imprisoned in the county jail not more than 6 months or by both.

(6) Action to enjoin violation of this section may be commenced and prosecuted by the department in the name of the state in any court having equity jurisdiction.

**History:** 1951 c. 223.

**100.12 Refusal of commission merchant to furnish written statement of transaction prima facie evidence of gambling.** (1) Every person doing business as a commission merchant or broker shall furnish, upon demand, to any person for whom he has executed an order for the purchase or sale of a commodity, whether for immediate or future delivery, a written statement containing the following information:

(a) The name of the party from whom the commodity was bought or to whom it was sold, whichever the case may be; and

(b) The time when, the place where, and the price at which such commodity was bought or sold.

(2) Refusal upon demand to furnish the written statement specified in sub. (1) is prima facie evidence that the purchase or sale of the commodity was not a bona fide business transaction.

(3) Transactions by or between members of a lawfully constituted chamber of commerce or board of trade which has been organized pursuant to the laws of this state are prima facie valid if they are conducted in accordance with the charter of such chamber of commerce or board of trade and the rules, by-laws and regulations adopted thereunder.

**History:** 1955 c. 696.

**100.13 Warehouseman.** (1) **DEFINITIONS, LICENSES.** (a) "Warehouseman" as used in this section excludes: Municipal and railroad corporations; those licensed under sections 99.02 as to business covered by such license and 126.07; co-operative associations storing farm products and merchandise for members; those who own and use warehouses for storage of manufactured dairy products, or canned produce and dairy products, manufactured by them; and field warehouses. It includes every other person who stores property for hire.

(b) The state department of agriculture may exempt from the operation of this section a warehouse or portion thereof if the operator has a license under the federal bonded warehouse act.

(c) A person desiring a warehouseman's license shall make application on a form furnished by the department and shall set forth the location, size, character and equipment of the building or premises to be used by him, the kinds of goods intended to be stored, the name of each partner, if a partnership, and the names of the officers, if a corporation, and such other facts as the department requires to show that the property

proposed to be used is suitable for a warehouse and that the applicant is qualified as a warehouseman. If the property proposed to be used is suitable for a warehouse and the applicant is entitled to a license, he shall be notified of the fact and upon payment of the license fee and giving the bond required a license shall issue.

(2) **WAREHOUSEMEN CLASSIFIED.** Warehousemen are classified as follows: Warehousemen who have less than 10,000 square feet of floor space constitute class 1; warehousemen who have 10,000 square feet or over but less than 50,000 constitute class 2; warehousemen who have 50,000 square feet or over but less than 100,000 constitute class 3; warehousemen who have 100,000 square feet or over but less than 150,000 constitute class 4; and warehousemen who have 150,000 square feet or over constitute class 5.

(3) **LICENSE FEES, TERM.** (a) Every warehouseman before he is licensed shall pay into the state treasury an annual fee, as follows: For class 1, \$10; for class 2, \$20; for class 3, \$30; for class 4, \$40; and for class 5, \$50.

(b) No license shall be issued for part of a year for less than the annual fee, and the license is not transferable. The license period expires June 30.

(4) **BOND.** (a) Every warehouseman, before he is licensed, shall file with the department a bond to the state of Wisconsin, with one or more sureties, who shall justify in double the amount of such bond, or with a surety company licensed by this state as surety. Such bond must be acceptable to the department and shall be conditioned that the warehouseman will faithfully perform his obligations as a warehouseman. Any person whose property is stored in any such licensed warehouse may apply to the department to determine the sufficiency of such bond. When, upon such request, the department determines that a bond is insufficient, it may require an additional bond, and unless it is given within the time fixed by a written demand therefor the license may be suspended or revoked. Any warehouseman may, in lieu of such bond, file with the department a certified copy of a legal liability insurance policy of like amount which is acceptable to the department and payable to the state for the benefit of the owners of stored property, and which provides that the policy shall not be canceled during the license period except upon 15 days' notice in writing to the department. Failure to keep such bond or policy of insurance in force shall be cause for revoking the license.

(b) The bond or insurance policy shall be in amount as follows: For class 1, \$5,000; for class 2, \$10,000; for class 3, \$15,000; for class 4, \$20,000; and for class 5, \$25,000.

(c) In the case of warehousemen engaged exclusively in storing wearing apparel the department may accept, in lieu of bond, a certified copy of insurance policies protecting the owners of all stored goods against loss or damage by fire, wind, water or theft.

(5) **SIGN POSTED.** Every warehouseman shall keep a conspicuous sign posted on the outside of each warehouse, at its main entrance, and another conspicuous sign posted at its main exit which sign shall state clearly the name of the warehouseman, his license number, and that the warehouse is a public warehouse.

(7) **TRANSACTIONING BUSINESS WITHOUT A LICENSE.** No person shall act or hold himself out as a warehouseman or advertise for or solicit business as a warehouseman without a warehouseman's license, or when his bond has become void or has been found insufficient.

**History:** 1951 c. 355.

**100.14 Uniform labels and trade-marks.** (1) The department may adopt uniform labels and trade-marks for brands of Wisconsin products and shall, upon request, permit the use of such labels and trade-marks by any person engaged in the production or distribution of products who complies with regulations issued by the department for the use of such labels or trade-marks.

(2) The secretary of state shall, upon application of the department, record any such label or trade-mark under ss. 132.01 to 132.11. The department shall be entitled to protect such label or trade-mark under said sections and in any other manner authorized by law.

**100.15 Regulation of trading stamps.** (1) No person, firm, corporation, or association within this state shall use, give, offer, issue, transfer, furnish, deliver, or cause or authorize to be furnished or delivered to any other person, firm, corporation, or association within this state, in connection with the sale of any goods, wares or merchandise, any trading stamp, token, ticket, bond, or other similar device, which shall entitle the purchaser receiving the same to procure any goods, wares, merchandise privilege, or thing of value in exchange for any such trading stamp, token, ticket, bond, or other similar device, except that any manufacturer, packer, or dealer may issue any slip, ticket, or check with the sale of any goods, wares or merchandise, which slip, ticket or check shall bear upon its face a stated cash value and shall be redeemable only in cash for the amount stated thereon, upon presentation in amounts aggregating twenty-five cents or over of redemption value, and only by the person, firm or corporation issuing the same; provided, that the

publication by or distribution through newspapers, or other publications, of coupons in advertisements other than their own, shall not be considered a violation of this section; and provided further, that this section shall not apply to any coupon, certificate or similar device, which is within, attached to, or a part of any package or container as packed by the original manufacturer and is directly redeemed by such manufacturer.

(2) The giving, offering, issuance or delivery of any trading stamp, token, ticket, bond, slip, check or other similar device having a redemption value, by any person, firm, corporation or association, in connection with the resale of any goods, wares or merchandise which were bought by such person, firm, corporation or association with knowledge or notice that the resale price thereof had been fixed or established by the producer or distributor thereof, when the price obtained on the resale less the total redemption value of the device herein mentioned given in connection therewith is below the fixed or established minimum price, is declared to be an unfair method of competition in business, and notwithstanding the provisions of subsection (1) of this section, or any other provision in the statutes, is prohibited. In addition to the penalty provided in section 100.26 for violation of this section, an injunction may be issued by any court of competent jurisdiction restraining further violation hereof at the suit of any person, firm or corporation damaged or affected thereby.

(3) Notwithstanding sub. (1), it shall be lawful to give, offer, issue, furnish or deliver, in connection with the sale of goods, wares, merchandise or services, stamps, tokens, tickets, or similar devices, without any stated cash value, when such stamps, tokens, tickets, or similar devices are redeemable only in payment for parking privileges for automobiles or fares on urban passenger transit facilities.

**History:** 1951 c. 261 s. 10; 1957 c. 516.

There is a sufficient compliance with the requirement of a stated cash value if, with no purpose to deceive and as a matter of convenience only, the coupon states the amount of the sale and indicates that the cash value is a certain percentage of that amount. State ex rel. Downey-Farrell Co. v. Weigle, 168 W 19, 168 NW 385.

Whether ch. 238, Laws 1931, exempting the original manufacturer of merchandise from the provisions of (1), relating to trading stamps, is constitutional or not, a vendor of cigarettes who is not the original manufacturer is subject to the prohibition of (1). 38 Atty. Gen. 596.

Scheme whereby merchandise is sold accompanied by labels redeemable otherwise than in cash and not attached by original manufacturer violates trading stamp law. 38 Atty. Gen. 660.

See note to 348.01, citing 41 Atty. Gen. 111.

Trading stamps redeemable in merchandise may be issued to hotel guests in proportion to their payment of room rent, since renting of hotel room is not a "sale of goods, wares or merchandise" in the meaning of (1), but such trading stamps may not lawfully be issued in connection with payment for meals served. 44 Atty. Gen. 17.

**100.16 Selling with pretense of prize.** No person shall sell or offer to sell anything whatever, by the representation or pretense that a sum of money or something of value, which is uncertain or concealed, is inclosed within or may be found with or named upon the thing sold, or that will be given to the purchaser in addition to the thing sold, or by any representation, pretense or device, by which the purchaser is informed or induced to believe that money or something else of value may be won or drawn by chance by reason of such sale.

**100.17 Guessing contests.** No person or persons or corporations in their own name or under any assumed trade name, with intent to defraud, shall advertise or represent in printing or writing of any nature, any enigma, guessing or puzzle contest, offering to the participants therein any premium, prize or certificate entitling the recipient to a credit upon the purchase of merchandise in any form whatsoever; nor shall any person or corporation in the printing or writing, advertising or setting forth any such contests, fail to state definitely the nature of the prizes so offered; nor shall any person or corporation fail to state clearly upon all evidences of value issued as a result of such contest in the form of credit certificates, credit bonds, coupons, or other evidences of credit in any form whatsoever, whether the same are redeemable in money or are of value only as a credit upon the purchase of merchandise; nor shall any person or corporation issue to any person as a result of any such contest, any instrument in the form of a bank check or bank draft or promissory note or any colorable imitation of any of the foregoing; nor shall any person or corporation refuse or fail to award and grant the specific prizes offered to the persons determined to be entitled thereto under the terms of such contest, or fail to redeem any credit certificate, credit bonds, coupons or other evidences of credit issued as a result of any such contest, according to the terms thereof.

**100.18 Fraudulent advertising.** (1) No person, firm, corporation or association, or agent or employe thereof, with intent to sell, distribute, increase the consumption of or in any wise dispose of any real estate, merchandise, securities, employment, service, or anything offered by such person, firm, corporation or association, or agent or employe thereof, directly or indirectly, to the public for sale, hire, use or other distribution, or with intent to induce the public in any manner to enter into any contract or obligation relating

to the purchase, sale, hire, use or lease of any real estate, merchandise, securities, employment or service, shall make, publish, disseminate, circulate, or place before the public, or cause, directly or indirectly, to be made, published, disseminated, circulated, or placed before the public, in this state, in a newspaper, magazine or other publication, or in the form of a book, notice, handbill, poster, bill, circular, pamphlet, letter, sign, placard, card, label, or over any radio or television station, or in any other way similar or dissimilar to the foregoing, an advertisement, announcement, statement or representation of any kind to the public relating to such purchase, sale, hire, use or lease of such real estate, merchandise, securities, service or employment or to the terms or conditions thereof, which advertisement, announcement, statement or representation contains any assertion, representation or statement of fact which is untrue, deceptive or misleading.

(2) It shall be deemed deceptive advertising within the meaning of this section, to advertise anything as "free" when the gift is contingent upon a purchase unless the fact that such purchase is necessary is clearly stated in the advertisement. No person shall advertise, offer to give or give any item of merchandise contingent upon the sale of petroleum products at retail.

(3) It shall be deemed deceptive advertising, within the meaning of this section, for any person, firm or corporation, engaged in the business of buying or selling new or secondhand furs, wearing apparel, jewelry, furniture, pianos, phonographs, or other musical instruments, motor vehicles, stocks, or generally any form of property, real, personal or mixed, or in the business of furnishing any kind of service or investment, to advertise such articles, property or service for sale or purchase, in any manner indicating that the sale or purchase is being made by a private party or householder not engaged in such business. And every such firm, corporation or association, engaged in any such business, in advertising goods, property or service for sale or purchase, shall affirmatively and unmistakably indicate and state that the seller or purchaser is a business concern and not a private party.

(4) It shall be deemed deceptive advertising, within the meaning of this section, for any person, firm or corporation to take donations or sell merchandise or tickets of admission or solicit programs or any other advertising when any part of the proceeds will be donated to any organization or fund, unless said advertising shall contain a correct statement of the amount to be donated to any such organization or fund, set out substantially in the following manner: (a) the minimum amount stated in dollars; or (b) the minimum percentage of the gross income; or (c) the minimum percentage of the net income. If the amount to be donated is to be based on the net income such donor shall file with the secretary or treasurer of the fund or organization receiving the donation before commencing such advertising, an itemized statement, under oath, setting forth the maximum amounts to be deducted from gross income in determining the net income. Such statement shall be open to examination by the public. If merchandise is to be received and donated to such organization or fund, without change of form, the advertising shall state what percentage of the total amount of merchandise collected will be donated to such organization or fund.

(5) Any person, firm, corporation or association engaged in any business mentioned in sub. (3), or in any other kind of business, whether conducting such business in a store, business block, residence or other building, shall at all times keep a conspicuous sign posted on the outside of his establishment and another conspicuous sign in the salesroom, which sign shall clearly state the name of the association, corporation or individual who actually owns said merchandise, property or service which are being offered to the public and not the name of any other person; provided, however, that the exterior sign shall not be required where the seller has no control over the exterior of the premises where such business is conducted.

(6) All advertising which shows or in any manner relates to the price at which motor fuel is offered for sale at retail, except multiple gallon computers attached to or forming a part of any dispensing equipment shall show only (a) the single gallon unit price including all applicable taxes in one amount or (b) the single gallon product price, the taxes applicable thereto, and the total single gallon unit price including all applicable taxes. In any such advertising, all numerals which represent either price or taxes shall be of the same type and size except that fractions of a cent shall be shown in figures one-half the height, width and prominence of the whole numbers.

(7) The state department of agriculture shall enforce the provisions of this section. Actions to enjoin violation of this section or any regulations thereunder may be commenced and prosecuted by the department in the name of the state in any court having equity jurisdiction. This remedy is not exclusive.

(8) Every wholesaler and every other person selling or distributing motor fuel in this state shall keep posted in a conspicuous place, most accessible to the public at his place of business, and on every pump from which delivery is made directly into the fuel tank attached to a motor vehicle, a placard showing the net selling price per gallon of all



grades of motor fuel and the amount of the license tax per gallon thereon. On pumps or other dispensing equipment from which motor fuel is sold and delivered directly into fuel supply tanks attached to motor vehicles, such posting shall be in figures not less than one inch high, except that no such placard shall be required on a computer pump whereon the total net selling price per gallon including all taxes is legibly shown on its face. All sales shall be made at the posted price and delivery slips shall also show the net selling price per gallon of all grades of motor fuel and the amount of the license tax per gallon thereon. If the wholesaler or person has more than one place of business in this state, the wholesaler or person shall post said placard at all of his places of business. All prices posted shall remain in effect for at least 24 hours after they are posted.

(9) (a) It is deemed deceptive advertising, within the meaning of this section, for any person or any agent or employe thereof to make, publish, disseminate, circulate or place before the public in this state in a newspaper or other publication or in the form of book, notice, handbill, poster, bill, circular, pamphlet, letter, sign, placard, card, label or over any radio or television station or in any other way similar or dissimilar to the foregoing, an advertisement, announcement, statement or representation of any kind to the public relating to the purchase, sale, hire, use or lease of real estate, merchandise, securities, service or employment or to the terms or conditions thereof which advertisement, announcement, statement or representation is part of a plan or scheme the purpose or effect of which is not to sell, purchase, hire, use or lease the real estate, merchandise, securities, service or employment as advertised.

(b) This subsection does not apply to the owner, publisher, printer, agent or employe of a newspaper or other publication, periodical or circular, or of a radio or television station, who in good faith and without knowledge of the falsity or deceptive character thereof, publishes, causes to be published or takes part in the publication of such advertisement.

**History:** 1951 c. 462; 1953 c. 510; 1955 c. 460; 1957 c. 241.

It is not a violation of (8) for gasoline dealers to sell to motor vehicle department patrol cars at a discount from the regular price without posting such discount price. Also a gasoline dealer can sell to other fleet car or truck accounts at a price which is less than the regular price. Such dealer should post both the regular price and the fleet or truck price. This latter price may be posted in terms of so many cents per gallon, in terms of so many cents discount from the regular price, or in terms of a percentage discount from the regular price. 45 Atty Gen. 301.

**100.19 Distribution methods and practices.** (1) The methods of distribution and practices in the distribution of food products and fuel shall be free from needless waste and needless duplication which tend to increase the cost of such products to the consuming public. Methods of distribution and practices in the distribution of food products and fuel, wherever such waste or duplication tends to increase the costs of such products to the consuming public, are hereby prohibited.

(2) The department, after public hearing, may issue general orders forbidding methods of distribution or practices in distribution which are found by the department to cause waste or duplication as defined herein. The department, after public hearing, may issue general orders prescribing methods of distribution or practices in distribution which are found by the department to avoid waste or duplication as defined herein.

(3) The department, after public hearing, may issue a special order against any person, enjoining such person from employing any method of distribution or practice in distribution which is found by the department to cause waste or duplication as defined herein. The department, after public hearing, may issue a special order against any person, requiring such person to employ the method of distribution or practice in distribution which is found by the department to avoid waste or duplication as defined herein.

**100.20 Methods of competition and trade practices.** (1) Methods of competition in business and trade practices in business shall be fair. Unfair methods of competition in business and unfair trade practices in business are hereby prohibited.

(2) The department, after public hearing, may issue general orders forbidding methods of competition in business or trade practices in business which are determined by the department to be unfair. The department, after public hearing, may issue general orders prescribing methods of competition in business or trade practices in business which are determined by the department to be fair.

(3) The department, after public hearing, may issue a special order against any person, enjoining such person from employing any method of competition in business or trade practice in business which is determined by the department to be unfair. The department, after public hearing, may issue a special order against any person, requiring such person to employ the method of competition in business or trade practice in business which is determined by the department to be fair.

(4) The attorney-general may file a written complaint with the department alleging that the person named therein is employing unfair methods of competition in business or

unfair trade practices in business or both. Whenever such a complaint is filed it shall be the duty of the department to proceed, after proper notice and in accordance with its rules, to the hearing and adjudication of the matters therein alleged, and the attorney general may appear before the department in such proceedings. He shall be entitled to judicial review of the decisions and orders of the department as provided in chapter 227.

(5) Any person suffering pecuniary loss because of a violation by any other person of any order issued under this section may sue for damages therefor in any court of competent jurisdiction and shall recover twice the amount of such pecuniary loss, together with costs, including a reasonable attorney's fee.

**History:** 1951 c. 622; 1957 c. 610.

**100.201 Unfair trade practices in the dairy industry. (1) DEFINITIONS.** When used in this section unless context otherwise requires:

(a) "Selected dairy products" includes milk, cream, ice cream, frozen desserts, ice milk and sherbet.

(b) "Sell at retail," "sales at retail," and "retail sales" mean and include any transfer for a valuable consideration made in ordinary course of trade or the usual conduct of the seller's business, of title to tangible personal property to the purchaser for consumption or use other than resale or further processing or manufacturing. The above terms shall include any transfer of such property where title is retained by the seller as security for the payment of the purchase price.

(c) "Sell at wholesale," "sales at wholesale," and "wholesale sales" mean and include any transfer for a valuable consideration made in ordinary course of trade or the usual conduct of the seller's business, of title to tangible personal property to the purchaser for purposes of resale or further processing or manufacturing. The above terms shall include any transfer of such property where title is retained by the seller as security for the payment of the purchase price.

(d) "Retailer" means every person engaged in the business of making sales of selected dairy products at retail within this state; provided that in the case of a person engaged in the business of making both sales at retail and sales at wholesale such term shall apply only to the retail portion of such business.

(e) "Wholesaler" means every person engaged in the business of making sales of selected dairy products at wholesale within this state; provided that, in the case of a person engaged in the business of making both sales at retail and sales at wholesale such term shall apply only to the wholesale portion of such business.

(2) Each of the practices described in this subsection is declared to be an unfair trade practice. It is unlawful for any person to be engaged in such practices. No wholesaler shall:

(a) Give or extend discounts or rebates to retailers on selected dairy products, except in accordance with published price lists available for inspection and copying by any retailer or wholesaler, provided always, that a wholesaler may sell selected dairy products at a price lower than said published prices in order to meet a bona fide offer by a competitor to a particular retailer, but such additional discount or rebate shall not be given until the wholesaler shall first have made a written record of the date of such competitive offer, the terms thereof, the name of the retailer to whom made and the name of the competitor by whom made. Such record shall be available for inspection and copying by any retailer or wholesaler upon his written request therefor. It is the duty of every wholesaler under this subsection to prepare and publish as hereinafter provided current price lists giving the prices of all selected dairy products sold by him at wholesale and giving the effective date or dates of such prices. Such price lists shall be available for inspection and copying by any retailer or wholesaler upon his written request therefor. The failure or refusal of any wholesaler to make available for inspection any record or price list required to be made available under this subsection within 24 hours after a request has been received shall be prima facie evidence of a violation of this section and shall be punished as provided in s. 100.26 (3). In case of the failure of any wholesaler to make available any record or price list to any wholesaler or retailer, the court, or a judge thereof, shall, upon a showing of such failure or refusal, and upon notice, order said wholesaler to give to the retailer or wholesaler so requesting, within a specified time, an inspection thereof, with permission to make a copy therefrom.

(b) Furnish, give, lend, sell, or rent any advertising material of any form or matter except matter advertising the wholesaler's own products, providing that not more than one-third of the space or cost in advertising matter be used to identify the retailer.

(c) Make payments of money, credit, gifts or loans to retailers as rental for the storage or display of selected dairy products on the premises where they are offered for sale by the retailer.

(d) Make or underwrite loans to a retailer or become bound in any manner for the financial obligation of any retailer except that a wholesaler may lend money to a re-

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

(e) Furnish, sell, give, lend or rent any equipment to a retailer except:

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

2. The wholesaler may provide without restriction coin-vending machines from which the product vended is consumed on the premises.

3. The wholesaler may furnish storage cabinets to retailers without restriction, provided such storage cabinets are used exclusively for the storage and preservation of selected dairy products distributed or manufactured by the wholesaler, and are not used by the retailer or anyone else to sell or offer for sale at retail any of the products stored therein.

(f) Maintain or make repairs of any equipment owned by a retailer except those used exclusively for selected dairy products. On such repairs the wholesaler shall make charges for the service and parts at the same prices as are charged by third persons rendering such service in the community where the retailer is located but in no event shall the charges be less than the cost thereof to the wholesaler plus a reasonable margin of profit.

(g) Extend or give credit to any retailer in excess of 30 days payable 15 days thereafter.

(h) Give any other gift of money, merchandise, services or materials of any value to any retailer to assist him in the conduct of his business.

(3) Nothing in this section shall be interpreted to prohibit the operation of a retail outlet by a wholesaler for retail sales or to prohibit the use by him in such retail outlet any equipment or advertising or miscellaneous matter owned by him provided that such retail outlet is under direct control and management of the wholesaler.

(4) Nothing in this section shall be interpreted to prohibit the giving away of merchandise to be consumed on the premises.

(5) For the purpose of this section any subsidiary or affiliate corporation, co-operative, officer, director or partner of a corporation, co-operative, or partnership which is a wholesaler of selected dairy products is deemed to be a wholesaler of selected dairy products.

(6) (a) Violators of this section shall be subject to the penalties prescribed in s. 100.26 (3).

(b) Participation by a retailer in any of the prohibited trade practices shall be fined \$100.

(c) Violators of this section shall be subject to a suit for damages by the injured person, corporation, partnership or business as prescribed under s. 100.20 (5).

(d) Any retailer or wholesaler may file a written complaint with the department alleging that a person named therein is engaging in unfair trade practices as defined in this section. Whenever such a complaint is filed it is the duty of the department to proceed to hearing and adjudication as provided in s. 100.20.

(7) (a) "Broker" means any person engaged in negotiating sales or purchases of selected dairy products for or on behalf of a retailer or wholesaler, or both.

(b) It is unlawful for a broker to offer for sale or purchase or participate in the offering for sale or purchase of selected dairy products if such sale or purchase, if engaged in by a wholesaler, violates this section.

**History:** 1955 c. 597, 660; 1957 c. 352.

**100.202 Contracts in violation void.** All contracts and agreements made in violation of s. 100.201 are void.

**History:** 1955 c. 597.

**100.22 Unfair discrimination in purchase of dairy products.** (1) Any person, firm or corporation, foreign or domestic, engaged in the business of buying milk, cream or butter fat for the purpose of manufacture, that shall discriminate between different sections, communities, towns, villages or cities of this state, or between persons, firms or corporations in any locality of this state, by paying for such commodity at a higher price or rate in one section, community, town, village or city, or to any person, firm or corporation in any locality of this state, than is paid for the same commodity by said person, firm or corporation, foreign or domestic, in another section, community, town, village or city, or to another person, firm or corporation in any locality of this state, shall be guilty of unfair discrimination, which is hereby prohibited and declared unlawful; provided, that it shall be a justification for such a discrimination in price if the difference is merely commensurate with an actual difference in the quality or quantity of the commodity purchased or in transportation charges or other expense of marketing involved in said purchase.

(2) Proof of any justification, as described in subsection (1) of this section, may be made by the defendant but no such justification need be negatived in the information or complaint, and, if so negatived, no proof in relation to the matter so negatived shall be required on the part of the informant or complainant.

(3) Whenever the department is credibly informed that this section has been violated, it shall make investigation and shall report the results of the investigation to the attorney general and the secretary of state. The department shall co-operate with the attorney general in the securing of evidence of violations of this section.

**100.23 Contracts; void.** All contracts or agreements made in violation of any of the provisions of section 100.22 shall be void.

**100.24 Revocation of corporate authority; ouster.** (1) Any corporation organized under the laws of this state which shall violate any order issued under section 100.20, or which is found guilty of unfair discrimination under section 100.22, shall forfeit all the rights and privileges conferred by the laws of this state upon corporations and shall forfeit its charter.

(2) Upon complaint being made to the attorney general and evidence presented to him which shall satisfy him that any domestic corporation has violated any order issued under section 100.20, or has violated any of the provisions of section 100.22, he shall forthwith bring an action in the name of the state to have the charter of such corporation annulled.

(3) Any foreign corporation which shall violate any order issued under section 100.20, or which is found guilty of unfair discrimination under section 100.22, shall, upon proof thereof, in any court of competent jurisdiction, have its license or authority to do business in this state canceled.

(4) Upon complaint being made to the attorney general and evidence presented to him which shall satisfy him that any foreign corporation has violated any order issued under section 100.20, or has violated any of the provisions of section 100.22, he shall forthwith bring an action in the name of the state to have the license or authority of such corporation to do business in this state canceled, and to oust such corporation from all business of every kind and character in this state.

**100.25 Cumulative remedies.** Nothing in sections 100.22 to 100.24, inclusive, shall be construed as repealing any other law of this state, but the remedies herein provided shall be cumulative to all other remedies provided by law in and for such cases.

**100.26 Penalties.** (1) Any person who violates any provision of this chapter for which no specific penalty is prescribed shall be fined not to exceed \$200, or imprisoned in the county jail not more than 6 months or both.

(2) Any person violating any of the provisions of section 100.02 shall be guilty of a felony and upon conviction shall be punished by a fine of not less than fifty dollars nor more than three thousand dollars, or by imprisonment for not less than thirty days nor more than three years, or both.

(3) Any person who violates any provision of section 100.04, 100.15, 100.19, 100.20 or 100.22, or who intentionally refuses, neglects or fails to obey any regulation made under section 100.04, 100.19 or 100.20, shall, for each offense, be punished by a fine of not less than twenty-five dollars nor more than five thousand dollars, or by imprisonment in the county jail for not more than one year, or by both such fine and imprisonment.

(5) Any person violating s. 100.03 or 100.06 or any order or regulation of the department thereunder, or s. 100.13 (7) or 100.18 (9), shall be fined not less than \$25 nor more than \$1,000, or imprisoned for not more than one year or both. Each day shall constitute a separate offense.

**History:** 1951 c. 223 s. 17, 18; 1953 c. 214; 1957 c. 241.

**100.30 Unfair sales act.** (1) **POLICY.** The practice of selling certain items of merchandise below cost in order to attract patronage is generally a form of deceptive advertising and an unfair method of competition in commerce. Such practice causes commercial dislocations, misleads the consumer, works back against the farmer, directly burdens and obstructs commerce, and diverts business from dealers who maintain a fair price policy. Bankruptcies among merchants who fail because of the competition of those who use such methods result in unemployment, disruption of leases, and nonpayment of taxes and loans, and contribute to an inevitable train of undesirable consequences, including economic depression.

(2) **DEFINITIONS.** When used in this section unless context otherwise requires:

(a) "Cost to retailer" means the invoice cost of the merchandise to the retailer within 30 days prior to the date of sale, or replacement cost of the merchandise to the retailer, whichever is lower; less all trade discounts except customary discounts for cash; to which shall be added freight charges not otherwise included in the invoice cost or the replacement cost of the merchandise as herein set forth, and cartage to the retail outlet if done or paid for by the retailer, which cartage cost, in the absence of proof of a lesser cost, shall be deemed to be three-fourths of one per cent of the cost to the retailer as herein defined after adding thereto freight charges but before adding thereto cartage and markup and a markup to cover a proportionate part of the cost of doing business, which markup, in the absence of proof of a lesser cost, shall be 6 per cent of the cost to the retailer as herein set forth after adding thereto freight charges and cartage but before adding thereto a markup.

(b) "Cost to the wholesaler" means the invoice cost of the merchandise to the wholesaler within 30 days prior to the date of sale, or the replacement cost of the merchandise to the wholesaler, whichever is lower; and including any excise taxes imposed on such merchandise or the sale thereof, less all trade discounts except customary discounts for cash; to which shall be added freight charges not otherwise included in the invoice cost or the replacement cost of the merchandise as herein set forth, and cartage to the retail outlet if done or paid for by the wholesaler, which cartage cost, in the absence of proof of a lesser cost, shall be deemed to be three-fourths of one per cent of the cost to the wholesaler as herein set forth after adding thereto freight charges but before adding thereto cartage and markup, and a markup to cover a proportionate part of the cost of doing business, which markup, in the absence of proof of a lesser cost, shall be 2 per cent of the cost to the wholesaler as herein set forth after adding thereto freight charges and cartage but before adding thereto a markup.

(c) "Replacement cost" means the cost per unit at which the merchandise sold or offered for sale could have been bought by the seller at any time within 30 days prior to the date of sale or the date upon which it is offered for sale by the seller if bought in the same quantity or quantities as the seller's last purchase of the said merchandise.

(d) "Cost to retailer" and "cost to wholesaler" as defined in paragraphs (a) and (b) of this section mean bona fide costs; and purchases made by retailers and wholesalers at prices which cannot be justified by prevailing market conditions within this state shall not be used in determining cost to the retailer and cost to the wholesaler.

(e) "Sell at retail", "sales at retail", and "retail sale" mean and include any transfer for a valuable consideration, made in the ordinary course of trade or in the usual prosecution of the seller's business, of title to tangible personal property to the purchaser for consumption or use other than resale or further processing or manufacturing. The above terms shall include any transfer of such property where title is retained by the seller as security for the payment of the purchase price.

(f) "Sell at wholesale", "sales at wholesale" and "wholesale sales" mean and include any transfer for a valuable consideration made in ordinary course of trade or the usual conduct of the seller's business, of title to tangible personal property to the purchaser for purposes of resale or further processing or manufacturing. The above terms shall include any transfer of such property where title is retained by the seller as security for the payment of the purchase price. In cases of sales by wholesalers and retailers under this section all fractions of a cent shall be carried to the next cent.

(g) "Retailer" means and includes every person, partnership, corporation or association engaged in the business of making sales at retail within this state; provided that, in the case of a person, partnership, corporation or association engaged in the business of making both sales at retail and sales at wholesale, such term shall be applied only to the retail portion of such business. The term "retailer" shall apply to manufacturers who sell to retailers and who own or operate retail stores or sell direct to the public, and for the purpose of this section the invoice price to the manufacturer's retail store shall be the wholesale charge invoiced to other retailers.

(h) "Wholesaler" means and includes every person, partnership, corporation, or association engaged in the business of making sales at wholesale within this state; provided that, in the case of a person, partnership, corporation or association engaged in the business of making both sales at wholesale and sales at retail, such term shall be applied only to the wholesale portion of such business.

(i) The term "retailer" and the term "wholesaler" shall both be applied to all merchants buying from the manufacturer any merchandise to be sold at retail by such merchants, and both the wholesale markup of 2 per cent to cover in part the cost of doing business, and the retail markup of 6 per cent to cover in part the cost of doing business, shall be added to the invoice cost on all such merchandise so purchased from the manufacturer.

(j) When one or more items are advertised, offered for sale, sold or offered as a gift, or given tied in or combined with the sale of one or more other items, the price of all items shall be subject, on the basis of aggregate cost, to the requirements of par. (a) or (b).

(3) ILLEGALITY OF LOSS LEADERS. Any advertising, offer to sell, or sale of any item of merchandise either by retailers or wholesalers, at less than cost as defined in this section with the intent or effect of inducing the purchase of other merchandise or of unfairly diverting trade from a competitor, impairs and prevents fair competition, injures public welfare and is unfair competition and contrary to public policy and the policy of this section.

(4) PENALTIES. Any retailer who, with the intent of inducing the purchase of other merchandise or of unfairly diverting trade from a competitor or otherwise injuring a competitor, shall advertise, offer to sell, or sell at retail any item of merchandise at less than cost to the retailer as defined in this section; or any wholesaler who, with intent of inducing the purchase of other merchandise or of unfairly diverting trade from a competitor or otherwise injuring a competitor, shall advertise, offer to sell, or sell at wholesale any item of merchandise at less than cost to the wholesaler as defined in this section, shall be fined not less than \$50, nor more than \$500 for the first offense and not less than \$200 nor more than \$1,000 for the second and each subsequent offense, or, for each offense, imprisoned not less than one month nor more than 6 months, or both. Evidence of any advertisement, offer to sell, or sale of any item of merchandise by any retailer or wholesaler at less than cost as defined in this section shall be prima facie evidence of intent to induce the purchase of other merchandise, or to unfairly divert trade from a competitor, or to otherwise injure a competitor.

(5) SPECIAL REMEDY. In addition to the penalties provided, the courts of this state are invested with jurisdiction to prevent and restrain violations of this section, and it shall be the duty of the several district attorneys to institute proceedings in equity to prevent and restrain violations. Any person damaged, or who is threatened with loss or injury, by reason of a violation of this section, shall be entitled to sue for and have injunctive relief in any court of competent jurisdiction against any damage or threatened loss or injury by reason of a violation hereof.

(6) EXCEPTIONS. The provisions of this section shall not apply to sales at retail or sales at wholesale where:

(a) Merchandise is sold in bona fide clearance sales, if advertised, marked, and sold as such;

(b) Perishable merchandise must be sold promptly in order to forestall loss;

(c) Merchandise is imperfect or damaged or is being discontinued and is advertised, marked and sold as such;

(d) Merchandise is sold upon the final liquidation of any business and is advertised, marked, and sold as such;

(e) Merchandise is sold for charitable purposes or to relief agencies;

(f) Merchandise is sold on contract to departments of the government or governmental institutions;

(g) The price of merchandise is made in good faith to meet competition;

(h) Merchandise is sold by any officer acting under the order or direction of any court.

**History:** 1951 c. 261 s. 10; 1955 c. 460; 1957 c. 186, 371.

This section is a constitutional exercise of the police power of the state. As applied in an injunction action, the provision in (4) that evidence of the sale of merchandise at less than defined cost shall be prima facie evidence of intent to induce the purchase of other merchandise or to unfairly divert trade from a competitor or to otherwise injure a competitor, is not an unreasonable presumption in favor of the plaintiff, and does not amount to a conclusion of guilt, but merely

places on the defendant the burden of going forward with evidence bringing him within any of the 8 exceptions available to him under (6) regardless of intent, or evidence negating the prima facie showing of wrongful intent. *State v. Ross*, 259 W 373, 48 NW (2d) 460.

(4) and (6) (g) construed. (37 Atty. Gen. 420 discussed.) 43 Atty. Gen. 27.

Under (2) (a) it is permissible to deduct from invoice cost a quantity discount which

can be accurately computed for the purpose of determining cost to retailer within 30 days prior to the date of sale. 43 Atty. Gen. 104. The advertising and giving of gifts not contingent upon or tied to sales does not constitute a sale below cost in violation of 100.30. 44 Atty. Gen. 352.

**100.31 Marketing authority law, Milwaukee.** (1) **SHORT TITLE.** This section may be referred to as the "Marketing Authority Law."

(2) **PURPOSE.** The purpose of this section is to provide a permissive method for establishment of markets in cities of the first class to facilitate efficient and economic handling of farm commodities, primarily fresh fruits and vegetables, at wholesale in the interest of the grower, the food trade and the consuming public.

(3) **DECLARATION OF NECESSITY.** It is found and declared that large quantities of fruits and vegetables, grown in Wisconsin for domestic and foreign markets or brought from foreign states or countries into this state for consumption, must pass through wholesale marketing systems which are obsolete and inadequate to meet present and future requirements; that the inadequacy of these systems contributes to high handling costs and deterioration with concomitant losses to growers, handlers and the consuming public; that improvement of these systems would annually result in large savings to the consuming public, handlers and agricultural producers alike, all for the general welfare; that the efforts of the public officers, the produce trade and other interested industries to achieve these improvements by purely private means have not succeeded; that the establishment and operation of terminal markets become and are public uses and purposes for which public money may be spent and private property acquired and are governmental functions of state concern; that it is in the public interest to permit creation of marketing facilities which are to be organized and operated on a nonprofit, self-liquidating basis.

(4) **DEFINITIONS.** In this section, unless the context otherwise requires:

(a) "Farm products" include all agricultural, floricultural, vegetable and fruit products of the soil, live stock and meats, poultry, eggs, dairy products, and any and all products which have their situs of production on the farm.

(b) "Food products" include any and all products either in a natural or processed state used by man or animal as food.

(c) "Person" means any individual, partnership, corporation, association or any other business entity.

(d) "Farmer" means any person principally engaged in the commercial production of farm products.

(e) "Wholesaler" means any person other than a farmer who engages primarily in the trading in farm and food products for resale to persons other than consumers.

(f) "Retailer" means any person other than a farmer who engages primarily in the selling of farm or food products directly to consumers.

(g) "Authority" means a public corporation, created under the provisions of this section.

(h) "Terminal market" or "market" means the physical areas, structures and appurtenances, located in a predominantly consuming area, and owned, leased or operated by the authority in connection with the performance of its functions under this section, primarily for the purpose of facilitating the sale or other disposal of farm and food products at wholesale.

(i) "City" means any city of the first class. "The city" means the particular city for which a particular marketing authority is created.

(5) **ESTABLISHING AUTHORITY; PETITION PROCEDURE.** Any organization or group of farmers, wholesalers, retailers, or any political subdivision of the state may, individually or jointly, petition the director of the state department of agriculture, in the manner hereinafter provided, for the establishment of a marketing authority in and for any city of the first class. The petition shall set forth:

(a) The territory in which the authority shall be designated to operate, the city of the first class in which the market is to be located;

(b) The name and post-office address of each petitioner, and the fact that each such petitioner operates within the territory of operation described in the petition; the qualifications of each such petitioner under the provisions of this section; the name and post-office address of the individual representative of each such petitioner empowered to execute the petition in its behalf; and a statement of the action by each such petitioner authorizing the submission of the petition under the provisions of this section and granting authority to its individual representative to execute the same;

(c) The proposed legal name of the authority which shall include the term "Marketing Authority";

(d) The purposes of the authority, and the need therefor, its proposed methods of financing, management and operation and its plans for construction and future development;

(e) The names and post-office addresses of the nominees from among whom the governor is to appoint the board of directors, as provided for in this section, together with the names and post-office addresses of those who participated in the nomination of each category of directors, as hereinafter provided.

(6) HEARINGS ON PETITION. Upon the receipt of a petition, meeting the requirements of subsection (5), the director of the state department of agriculture shall cause an investigation to be made; shall, within 3 months, cause a public hearing relative thereto to be held; and shall promptly report his findings with recommendations to the governor, taking into consideration in the holding of such hearings and the making of such recommendation, the type, plans and financial soundness of the authority, the trading area to be served, the proximity of existing or proposed markets, and the natural flow of produce in the territory of operation, and any other circumstances which in his opinion may be relevant.

(7) CERTIFICATE OF AUTHORITY. The governor, if he is satisfied that the purposes of this section will be effectuated, shall approve said petition and shall cause to be prepared and issued a certificate of authority creating such authority and granting to it the right of operation as a public corporation in accordance with the provisions of this section; provided, however, that the governor, prior to such approval, may direct the director of the state department of agriculture to hold further hearings and to submit new or additional recommendations.

(8) FIRST BOARD OF DIRECTORS; AUTHORITY. The first board of directors of a marketing authority shall consist of 9 members, as follows:

(a) The governor shall appoint 2 directors from a list of 4 wholesalers nominated by a majority vote at a general meeting of the wholesalers licensed under the United States Perishable Agricultural Commodities Act and operating within the territory of operation as defined in the certificate of authority; 2 directors from a list of 4 farmers nominated by a general farm organization or general farm organizations qualified in the opinion of the governor to represent agricultural producers residing and marketing their products within said territory; one director from a list of 3 consumers to be nominated by the chief executive officer of the city served by the authority; one director from a list of 3 businessmen, not wholesalers or retailers, nominated by the chief executive officer of the city served by the authority; and one director from a list of 3 retailers nominated by an association of retailers in said territory, through the formal action of the association's governing body or by a majority vote at a meeting of retailers, existing within said territory, called for that purpose by the petitioner or petitioners upon due notice given in a newspaper or other publication of general circulation in said territory;

(b) The chief executive officer of the city served by the authority shall serve as director or shall appoint a representative who shall be an official of the city;

(c) The director of the state department of agriculture, or his representative from the department of agriculture appointed by him, shall be a member of the board of directors, who shall be entitled to a vote at all meetings of the board.

(9) TENURE OF OFFICE OF FIRST BOARD OF DIRECTORS. Of the first board of directors of a marketing authority, one farmer director and one wholesaler director shall be appointed for a term of 3 years; one director representing farmers, one director representing wholesalers, and the director representing the city shall be appointed for a term of 2 years; and the director representing consumers, the director representing retailers, and the director representing businessmen, shall be appointed for one year. Each director shall be appointed and qualify.

(10) SUBSEQUENT BOARDS OF DIRECTORS. At the expiration of the term of the first appointed directors, their successors shall:

(a) Be nominated and appointed, as provided in subsection (8) hereof, for terms of 3 years or until their respective successors shall have been appointed and qualify, except that the governor shall appoint the 2 wholesaler directors from a list of 4 wholesalers nominated by a majority of the wholesalers operating within the market. In the event of any of the above groups failing to nominate candidates for the board of directors under this section, the governor shall appoint a director or directors with similar qualifications.

(11) REMOVAL OF DIRECTORS, VACANCIES. The governor after notice and opportunity for hearing, may remove any director of any authority created hereunder, because of inefficiency, neglect of duty or misconduct in office. In the event that any director is unable or fails for any reason to complete his term, the governor shall appoint in his place for the unexpired term, nominated in the same manner as the director he is to succeed.



(12) OATH OF OFFICE, CONDUCT OF BUSINESS. Each member of the board of directors of any authority created hereunder, shall before entering upon the duties of his office, take the constitutional oath of office and file the same in the office of the secretary of state. Five members of the board of directors of a marketing authority shall constitute a quorum for the transaction of business; in each case the concurrence of a majority present at a meeting at which a quorum is present shall be necessary for the passage of any resolution, order or determination. The board of directors of either type of facility may appoint an executive committee and such other special committee as it deems proper. Each board shall meet at least once each quarter during the fiscal year, and during its first meeting of each fiscal year, shall choose a chairman and a treasurer by a majority of all directors. The directors of a marketing authority shall receive \$10 for each meeting and shall be paid actual travel expenses not to exceed 5 cents per mile.

(13) POWERS. Any authority created under the terms of this section, shall, through the action of its board of directors, taken as provided in this section, have power:

(a) To acquire by purchase, lease, condemnation or otherwise, such land or any interest in land, or other property, real or personal, as may be necessary in its opinion to the operation of the market, and may mortgage, sell, lease, rent, exchange or otherwise dispose of, any such property as it may deem advisable; provided, however, that no real estate shall be sold unless the sale is approved by the governor and trustee of the bondholders, and provided further that no such real estate shall be used as a market, unless such property is acquired by a governmental agency;

(b) To plan, build, construct or operate, or cause to be built, constructed or operated such buildings, structures, equipment and appurtenances thereto as it may deem necessary for the operation of the market, including, without limiting the generality of the foregoing, restaurants, filling stations, garages and warehouses, provisions for sanitation and similar accessories for market operation;

(c) To borrow money, make and issue negotiable notes, bonds, refunding bonds, and other evidences of indebtedness or obligations herein called "bonds" of the authority, said bonds to have a maturity date not longer than 30 years from the date of issue, and to secure the payment of such bonds or any part thereof by pledge or mortgage of all or any of its revenues, receipts or other assets, real or personal, and to make such agreements with the purchasers or holders of such bonds, or with others in connection with any such bonds whether issued or to be issued, as the authority shall deem advisable, and in general to provide for the security for said bonds and the rights of the holders thereof; provided, however, that no obligations incurred by the authority shall be a debt of the state or any of its political subdivisions, or a pledge of the credit or taxing power of the state or any political subdivision thereof. The authority is authorized to receive appropriations, gifts, and contributions of money, supplies, goods and services, or loans thereof, if approved by the governor or appropriate state agency, and the political subdivisions of this state are hereby authorized to make, upon such terms and in such manner as may be required by the laws of this state, such appropriations and loans to such authorities;

(d) To employ a market manager qualified to operate a market of the type contemplated by the authority and such additional employes as may be necessary for the management and operation of the market;

(e) To fix the salaries of the market manager and any other authorized employes of the market;

(f) To fix, alter, charge and collect rentals and charges for stores, stalls, space, buildings, equipment and other appurtenances, privileges, and services furnished or performed, in or in connection with the market, for the purpose of providing for the payment of the expenses of the authority, the construction, improvement, repair, maintenance and operation of its properties, the payment of the principal of and interest on its obligations, and to fulfill the terms and provisions of any agreements made with the purchasers or holders of any such obligations; provided, however, that such rentals and charges shall not be designed to render a profit to the authority;

(g) To promulgate reasonable rules or regulations relating to the use of the market, including, without limiting the generality of the foregoing, rules and regulations relating to hours of business, sanitation, traffic, and such other matters as are normally incidental to the proper management of a market; provided, that no such rule or regulation shall fix or regulate prices, profits or types of farm and food products dealt in;

(h) In its discretion, reasonably exercised, and after due notice and an opportunity to be heard, to suspend or revoke any or all rights or privileges of any person violating the rules and regulations provided for in paragraph (g), enjoyed in connection with his activities in the market;

- (i) To make contracts of any name and nature and to execute all instruments necessary or convenient for the carrying on of its business;
- (j) To enter into and maintain contracts for all such types of insurance as it may deem necessary to protect the authority against loss;
- (k) To enter into contracts of group insurance for the benefit of its employes, and to set up a retirement or benefit fund for such employes;
- (l) To adopt and use a corporate seal;
- (m) To make by-laws for the management and regulation of its affairs;
- (n) To sue and be sued in its corporate name;
- (o) To delegate to the market manager or other officers of the authority such duties and responsibilities in relation to the operation of the market as it may deem reasonably necessary;
- (p) In general, to do such other acts and things as may be reasonably necessary or convenient to carry out the powers hereinabove enumerated, and to carry on the operations of a wholesale market for farm and food products in accordance with the general purposes of this section.

(14) LIMITATION OF POWERS. The exercise of the powers, granted in subsection (13), shall be deemed to be expressly limited as follows:

(a) The authority shall be subject to all of the zoning, building, fire, sanitary, health and other police ordinances and regulations of the state and political subdivisions in which it is established;

(b) The authority shall have no power to discriminate in its operations against the sale of any farm or food products, or against any producer of such products, on account of the county, state or political subdivision in which any such products are produced, or on account of the legal nature of the producer or other person engaged in the marketing of any such products, or on account of the conditions of employment or the nature of the labor employed in the production or marketing of such products or on account of the method of transportation; but every authority shall take every reasonable precaution to prevent any such discrimination;

(c) The authority shall have no power to acquire, construct, maintain or operate more than one market, nor shall it acquire, construct, maintain or operate a market which is not operated primarily for the purpose of handling farm and food products at wholesale;

(d) No member of the board of directors of any authority shall be interested directly or indirectly in any transaction with the authority except in connection with his normal business operations in the market;

(e) No authority shall itself engage directly or indirectly in the purchase or sale of farm or food products, or engage in any business other than that of managing the market authority;

(f) Since it is the purpose of this section to provide a market place where private enterprise can operate effectively and the management of which will remain in the hands of those using it, management shall not interfere with such incidents of private enterprise as profits, prices and types of farm or food products dealt in.

(15) BONDS. (a) 1. The bonds of the authority hereinabove referred to as authorized to be issued, shall be authorized by resolution or resolutions of the board thereof and shall be of such series, bear such date or dates, mature at such time or times, not exceeding 30 years from their respective dates, bear interest at such rates, not exceeding 6 per cent per annum, payable annually or semiannually, be in such denominations, be in such form, either coupon or fully registered without coupons, carry such registration, exchangeability and interchangeability privileges; be payable in such medium of payment and at such place or places; be subject to such terms of redemption not exceeding 105 per cent of the principal amount thereof; and be entitled to such priorities with respect to the revenue or receipts of the authority, as all such resolution or resolutions may provide. The bonds shall be signed by such officers as the authority shall determine, and coupon bonds shall have attached thereto interest coupons bearing the facsimile signature of the treasurer of the authority, all as may be prescribed in such resolution or resolutions. Any such bonds may be issued and delivered notwithstanding that one or more of the officers signing such bonds or the treasurer whose facsimile signature shall be upon the coupons, if any, shall have ceased to be such officer or officers at the time such bonds shall actually be delivered. Pending the preparation and delivery of definite bonds, interim receipts or temporary bonds may be issued and delivered to the purchaser or purchasers of such definite bonds, and may contain such terms and conditions as the authority may determine.

2. Said bonds may be sold at public or private sale for such price or prices as the

authority shall determine, provided that the interest cost to maturity of the bonds shall not exceed 6 per cent per annum.

(b) Any resolution or resolutions authorizing the issuance of any bonds may contain provisions which shall be part of the contract with the holders thereof, as to:

1. Pledging the full faith and credit of the authority (with the express understanding that no obligations incurred by the authority shall be an obligation of the state or any of its political subdivisions, or a pledge of the credit and taxing power of the state or any political subdivisions thereof) as security for such obligations, or restricting such security to all or any part of the revenues of the authority from all or any of its properties;

2. The construction, improvement, operation, extension, enlargement, maintenance and repair of the properties of the authority, and the duties of the authority with reference thereto;

3. The terms and provisions of the bonds;

4. Limitations on the purposes to which the proceeds of the bonds then or thereafter to be issued may be applied;

5. The rate of rentals and charges for stores, stalls, space, buildings, equipment and other appurtenances, privileges, and the services furnished or performed, on or in connection with the market;

6. The setting aside of reserves and sinking funds and the regulation and the disposition thereof;

7. Limitations on the issuance of additional bonds;

8. The terms and provisions of any deed of trust or indenture securing the bonds or under which the same may be issued, and

9. Any other or additional agreements with the holders of the bonds;

10. In order to secure any such bonds, any authority may enter into any mortgages, deeds of trust, indentures or other agreements with any bank or trust company, or other person or persons in the United States having power to enter into the same, including any federal agency, and may assign and pledge any or all of the revenues, receipts or other assets, real or personal, of the authority thereunder. Such mortgage, deed of trust, indenture or other agreement may contain such provisions as may be customary in such instruments, or as the authority may authorize, including but without limitation provisions as to (1) the construction, improvement, alteration, expansion, operation, maintenance and repair of any properties of the authority, and the duties of the authority with reference thereto, (2) the application of funds and the safeguarding of funds on hand or on deposit, (3) the rights and remedies of the trustee and the holders of the bonds (which may include restrictions upon the individual right of action of such bondholders) and (4) the terms and provisions of the bonds or the resolutions authorizing the issuance of the same.

(c) Said bonds shall have all the qualities of negotiable instruments under the law merchant and the negotiable instrument law of this state. In the event that the authority shall default in the payment of the principal of or interest on any of the bonds, whether at maturity or upon call for redemption, and such default shall continue for a period of 30 days; or in the event that the authority or any officers, agents or employes thereof shall fail or refuse to comply with the provisions of this section or shall default in any agreement made with the holders of the bonds, any holder of bonds or trustee therefor shall have the right to apply in an appropriate judicial proceeding to any court of competent jurisdiction for the appointment of a receiver to represent the bondholders for the purposes herein provided, whether or not all bonds have been declared due and payable and whether or not such holders or trustee therefor are seeking or have sought to enforce any other right or exercise any remedy in connection with such bonds. Upon application the court may appoint, and if the application is made up the holders of or a trustee on behalf of the holders of 25 per cent in aggregate principal amount of such bonds then outstanding shall appoint, a receiver to represent the bondholders for the purposes herein provided.

(d) The receiver so appointed shall forthwith directly or by his agents and attorneys enter into and upon and take possession of the properties of the authority, and may exclude the authority, its officers, agents and employes and all persons claiming under them wholly therefrom and shall have, hold, use, operate, manage and control the properties of the authority in the name of the authority, or otherwise, as the receiver may deem best and shall exercise all of the rights and powers of the authority with respect to such properties as the authority itself might do. Such receiver shall maintain, restore, insure and keep insured the properties of the authority and from time to time shall make all such necessary or proper repairs as may seem expedient to such receiver, and shall establish, levy, maintain and collect such rents and charges in connection with the properties of the authority as such receiver may deem necessary, proper or reasonable and shall collect and receive all revenues of the authority and deposit the same in a separate account

and apply such revenues so collected and received in such a manner as the court shall direct.

(e) Whenever all that is due upon the bonds and interest thereon, and upon any other obligations and interest thereon, having a charge, lien or other incumbrance on the revenues of the authority under any of the terms of any covenants or agreements with the holders of bonds shall have been paid or deposited as provided therein, and all the faults shall have been cured and made good, the court may, in its discretion and after such notices and hearings as it deems reasonable and proper, direct the receiver to surrender possession of the properties of the authority to the authority, the same right of the holders of the bonds to secure the appointment of a receiver to exist upon any subsequent default as herein provided.

(f) Such receiver shall in the performance of the powers hereinabove conferred upon him act under the direction and supervision of the court making such appointment and shall at all times be subject to the orders and decrees of such court and may be removed thereby. Nothing herein contained shall limit or restrict the jurisdiction of such court to enter such other further orders and decrees as such court may deem necessary or appropriate for the exercise by the receiver of any functions specifically set forth therein.

(g) Notwithstanding anything in this section to the contrary, said receiver shall have no power to sell, assign, mortgage or otherwise dispose of any assets of whatever kind or character belonging to the authority and useful therefor, but the authority of any such receiver shall be limited to the operation and maintenance of the authority and no court shall have any jurisdiction to enter any orders or decrees requiring or permitting said receiver to sell, assign, mortgage or otherwise dispose of any such assets.

(h) Subject to any contractual limitations binding upon the holders of any issue of bonds or trustee therefor included but not limited to the restrictions of the exercise of any remedy to a specified proportion or percentage of such holders, any holders of bonds, or trustee therefor, shall have the right and power for the equal benefit and protection of the holders of bonds similarly situated:

1. By mandamus or other suit, action or proceeding at law or in equity to enforce his rights against the authority and any of its officers, agents or employes, and to require and compel such authority or any such officers, agents or employes to perform and carry out its and their duties and obligations under this section and its and their covenants and agreements with bondholders;

2. By action or suit in equity to require the authority to account as if it were the trustee of an express trust for the bondholders;

3. By action or suit in equity to enjoin any acts or things which may be unlawful or in violation of the rights of the bondholders;

4. Bring suit on the bonds;

5. By notice in writing to the authority, declare all bonds due and payable, and if all defaults shall be made good then with the consent of the holders of 25 per cent or such other percentage as may be specified in any resolution, indenture or other instrument authorizing the issuance of such bonds of the principal amount of the bonds outstanding, to annul such declaration and its consequences.

(i) No remedy conferred by this section upon any holder of bonds, or any trustee therefor, is intended to be exclusive of any other remedy, but each such remedy is cumulative and in addition to any other remedy and may be exercised without exhausting and without regard to any other remedy conferred by this section or any other law. No waiver of any default or breach of duty or contract, whether by any holder of bonds, or any trustee therefor, shall extend to or shall affect any subsequent default or breach of duty or contract or shall impair any rights or remedies thereon. No delay or omission of any bondholder or any trustee therefor to exercise any right or power or shall be construed to be a waiver of any such default or acquiescence therein. Every substantive right and every remedy conferred upon the holders of bonds may be enforced and exercised from time to time and as often as may be deemed expedient. In case any suit, action or proceeding to enforce any right or exercise any remedy shall be brought or taken and then discontinued or abandoned, or shall be determined adversely to the holder of the bonds, or any trustee therefor, then and in every such case the authority and such holder, or such trustee, shall be restored to their former positions and rights and remedies as if no such suit, action or proceeding had been brought or taken.

(16) EXEMPTION FROM TAXATION. The effectuation of the authorized purposes of the authorities created under this section, being public corporations, shall and will be in all respects for the benefit of all the people of this state, for the increase of their commerce and prosperity, and for the improvement of their health and living conditions. Since such authority will be performing essential public functions in effectuating such purposes, the bonds issued by any such authority, their transfer and the income therefrom, shall at

all times be free from taxation within this state. The authority shall be subject, however, to all state and local taxes except those from which it is exempted by this subsection.

(17) **AUDIT AND PUBLICATIONS.** (a) Immediately after the close of each fiscal year, every authority established pursuant to this section shall cause an audit to be made of its operations for such fiscal year. Such audit shall be made by a certified public accountant, or firm of accountants not regularly employed by the authority for its accounting purposes, or, with the approval of the proper state official, by a regular state accounting agency. Within 90 days after the close of its fiscal year each such authority shall file with the state department of agriculture a copy of such audit together with the names of the officers and directors thereof. Any person violating or failing to comply with the provisions of this section shall be guilty of a misdemeanor.

(b) Every authority established hereunder shall keep such records and make such reports to the state department of agriculture as may be required by the director thereof.

(c) In case any such authority shall fail or refuse to keep such records and to make such reports as are required by subsection (b), the director of the state department of agriculture through the attorneys for the state of the several counties and cities, may institute the necessary proceedings or otherwise, in his discretion, to have the directors, or such of them as are responsible for such failure or refusal, removed from office as provided herein.

**History:** 1951 c. 261 s. 10.

**100.32 Agricultural Marketing Act.** (1) **DEFINITIONS.** As used in this section:

(a) "Marketing order" means an order issued by the director pursuant to this section.

(b) "Agricultural commodity" means any distinctive type of fruit or vegetable in its natural state except fruits or vegetables which are marketed for processing.

(c) "Producer" means any person engaged in the business of producing or causing to be produced for market in commercial quantities any agricultural commodity.

(d) "Handler" means any person engaged within this state in the business of distributing or placing in the channels of trade or commerce, an agricultural commodity, or any person engaged as a processor in the business of processing an agricultural commodity who resells a fruit or vegetable in its natural state.

(e) "Affecting producer or handler" means any producer or handler of an affected commodity.

(f) "Affected commodity" means any agricultural commodity for which the director has established a list of producers or handlers pursuant to this section.

(2) **POLICY.** It is declared to be the policy of this state to promote orderly and efficient marketing of agricultural commodities and to prevent economic waste of the agricultural wealth of this state. Unfair methods of competition, lack of uniform grading and classification of agricultural commodities, and the inability of individual producers to obtain present markets or to develop new or larger markets for Wisconsin grown agricultural commodities result in disorderly marketing of such commodities. As a result agricultural producers are prevented from receiving a fair return for the products which they market. Such conditions jeopardize the continued production of an adequate food supply for this and other states, and may result in unemployment with its attendant burdens on the citizens of this state. The production, processing and marketing of agricultural commodities within this state is hereby declared to be affected with a public interest and the provisions of this section are enacted for the purpose of protecting the health, peace, safety and general welfare of the people of this state.

(3) **AUTHORITY OF DIRECTOR.** The director shall administer and enforce the provisions of this section. In order to effectuate the declared purposes of this section, the director is hereby authorized to issue, administer and enforce marketing orders under this section regulating producer marketing or handling of agricultural commodities within this state.

(4) **MARKETING ORDER.** Whenever the director has reason to believe that the issuance of a marketing order or amendments to an existing marketing order will tend to effectuate the declared policy of this section with respect to any agricultural commodity, he shall, either upon his own motion or upon petition signed by 5 per cent or 100 of the affected producers or handlers, whichever is less, give due notice of and an opportunity for a public hearing upon a proposed marketing order or such amendments to such existing marketing order. Prior to the issuance of a notice of public hearing on any proposed marketing order, the director shall establish a list of producers or handlers of the affected commodity or make any such existing list current. The director shall publish a notice to producers or handlers of the commodity to be affected, requiring them to file with the director a report showing the producer's or handler's name, mailing address and the yearly average quantity of the affected commodity produced or handled by him in the

5 years preceding the date of the notice or in such lesser period as the producer or handler has produced or handled the commodity in question. The notice shall be published in such newspaper or newspapers within the affected areas as the director may prescribe and shall be mailed to all affected producers or handlers on record with the director. All reports shall be filed with the director within 20 days from the last date of publication of the notice or within 30 days after the mailing of the notice to the affected producers or handlers, whichever is later. The director shall keep such lists at all times as current as possible and may require information from affected producers or handlers at various times in accordance with rules prescribed by the director. Such producer or handler lists shall be final and conclusive in making determinations relative to the assent of producers or handlers upon the issuance, amendment or termination of a marketing order and in elections under this section. The director shall then notify affected producers or handlers so listed by mail that the public hearing affording opportunity for them to be heard upon the proposed issuance, amendment or termination of the marketing order will be held at the time and place stated in the notice. Such notice of the hearing shall be given not less than 10 days nor more than 60 days prior to the hearing.

(5) PUBLIC HEARING. At the public hearing the director shall receive evidence and testimony offered in support of or opposition to the proposed issuance of, amendment to or termination of a marketing order, and concerning the terms, conditions, scope and area thereof. Such hearing shall be public and all testimony shall be received under oath. A full and complete record of all proceedings at such hearing shall be made and maintained on file in the office of the director, which file shall be open to public inspection. The director shall base his findings upon the testimony and evidence received at the hearing, together with any other relevant facts available to him from official publications of institutions of recognized standing. The director shall prescribe in his findings such official publications upon which any finding is based.

(6) DECISIONS. (a) The director shall make and publish findings upon every material point controverted at the hearing and required by this section, and upon such other matters and things as he may deem fitting and proper. He shall also issue a decision within 45 days after the close of the hearing based upon his findings and shall cause copies of the findings and recommended decision to be delivered or mailed to all parties of record appearing at the hearing or their attorneys of record. The decision shall contain the text in full of any order or amendment or termination of existing order, and may deny or approve the proposal in its entirety or it may recommend a marketing order containing other or different terms or conditions from those contained in the proposal, but such decision shall be substantially within the purview of the notice of hearing and shall be supported by evidence taken at the hearing or by documents of which the director is authorized to take official notice. The director shall not approve the issuance, amendment or termination of any marketing order unless he shall find with respect thereto:

1. That the proposed issuance, amendment or termination thereof is reasonably calculated to attain the objectives sought in such marketing order;

2. That the proposed issuance, amendment or termination is in conformity with this section, and within the applicable limitations and restrictions set forth therein will tend to effectuate the declared purposes and policies of this section;

3. That the interests of consumers of such commodity are protected in that the powers of this section are being exercised only to the extent necessary to attain such objectives.

(b) The director shall deliver or mail copies of the decision to the same parties to whom copies of the findings are required to be sent. If the final decision denies the proposal in its entirety, no further action shall be taken by the director.

(7) ASSENT. After the issuance by the director of the decision approving the issuance, amendment or termination of a marketing order, the director shall determine by a referendum whether the affected producers or handlers assent to the proposed action or not. The director shall within 45 days after issuance of the decision conduct the referendum among the affected producers or handlers, based on the list as provided for in sub. (4), and the affected producers or handlers shall be deemed to have assented to the proposed order if two-thirds by number of those voting, representing 51 per cent or more of the volume of the affected commodity produced or handled by those voting, assent to the proposed order. The determination by volume shall be made on the basis of the volume as determined in the list of affected producers or handlers created under sub. (4). The director shall issue rules establishing procedures for the conduct of such referendum. The director shall consider the approval or disapproval of any co-operative marketing association authorized by its producer members to act for them in any such referendum as being the approval or disapproval of the producers who are the members of such association of producers. The co-operative shall first determine that a majority of the membership authorize its action concerning the marketing order. If the requisite assent is given,

the director shall promulgate the order and shall mail notices of the same to all affected producers or handlers.

(8) **TERMINATION OF ORDERS.** Marketing orders may be terminated in the same manner provided for their issuance, except that the required assent shall be 51 per cent or more by number of those voting, representing 51 per cent or more by volume of the affected commodity produced or handled by those voting; but the director shall suspend or terminate any marketing order whenever he finds, after public hearing duly noticed and held in accordance with this section, that such marketing order is contrary to or does not tend to effectuate the declared purposes of this section. Every marketing order shall terminate 3 years from the date of its issuance or last assent. Within 6 months of the expiration of such 3-year period the director shall conduct a referendum as provided for in sub. (7) to determine whether such marketing order shall remain in effect.

(9) **PUBLIC RECORD.** Each referendum shall be conducted by secret ballot, and the ballots and results shall be a matter of public record and open to inspection.

(10) **MARKETING AGREEMENTS.** In order to effectuate the declared policy of this section, the director shall have the power, after due notice and opportunity for hearing, to enter into marketing agreements with distributors, producers and others engaged in the handling of any agricultural commodity, regulating the preparation for marketing and handling of such agricultural commodity. Such marketing agreements shall be binding upon the signatories thereto exclusively. The purposes and provisions of this section relating to marketing orders shall be applicable to marketing agreements, except for the provisions relating to establishing a list of producers or handlers and conducting a referendum.

(11) **REPORTS.** The director shall have the power to require handlers and producers of agricultural commodities to file such information and reports as may be reasonably necessary to assist him in carrying out his functions under this section.

(12) **RULES.** The director may issue such rules as may be necessary for each order to facilitate his administration of this section, including, but not limited to, rules relative to the collection of assessments and expenditures of funds.

(13) **DEFINITION OF AREA.** A marketing order shall define the area of the state to be covered by the order, which may be all or any portion of the state. The order may provide that its provisions covering standards, grades, labels and trade practices apply with respect to the affected commodity marketed or sold within such area regardless of where produced.

(14) **ADVISORY BOARD.** (a) *Selection.* Every marketing order issued pursuant to this section shall provide for the establishment of an advisory board to assist the director in the administration of the marketing order. If the marketing order affects directly only producers of a particular commodity, the members of the board shall be producers. If the marketing order affects directly only handlers of a particular commodity, the members of the board shall be handlers. If the marketing order affects directly both producers and handlers of a particular commodity, such board shall be composed of both producers and handlers. Each marketing order shall prescribe the number and term of office of members of the advisory board. Members of the advisory board shall be elected by the affected producers and handlers by secret ballot at the time of the referendum provided for in sub. (7). Notice of the director's decision shall contain a call for nominations and limit the time within which they can be filed. Nominations shall be signed by at least 5 persons qualified to vote for such candidates.

(b) *Duties.* The duties of any such board shall be advisory only and may include only the following:

1. To recommend to the director administrative rules relating to the marketing order.
2. To receive and report to the director complaints of violations of the marketing order.
3. To recommend to the director amendments to the marketing order.
4. To advise the director in the assessment of members of the industry and in the collection of funds to cover expenses incurred by the director in the administration of the marketing order.
5. To advise the director in the collection of such information and data as the director may deem necessary to the proper administration of this section.
6. To advise the director in the administration of this section.

(c) *Vacancies.* Upon the expiration of the term of any member of the advisory board, the director shall call for an election as provided in this subsection to fill such vacancy.

(15) **ASSESSMENTS.** For the purpose of providing funds to defray the necessary expenses incurred by the director in the formulation, issuance, administration and enforcement of each marketing order issued under this section, each such marketing order shall

provide for the levying and collection of assessments in sufficient amounts to defray such expenses. Each marketing order shall indicate the maximum rate of any such assessment which may be collected and the proportion, if any, payable by each producer and handler directly affected by such marketing order. The advisory board elected to advise the director in administering each marketing order shall recommend to the director from time to time budgets to cover necessary expenses and the assessment rate necessary to provide sufficient funds. If the director finds that each such budget and assessment rate are proper and equitable and will provide sufficient moneys to defray the necessary expenses, he may provide such budget and rate of assessment and order that each producer and handler so assessed shall pay to the director, at such times and in such instalments as the director may prescribe, an assessment based upon the units in which such agricultural commodity is marketed or upon any other uniform basis which the director determines to be reasonable and equitable, but in amounts which in the case of producers, in addition to inspection fees, will not exceed 2 per cent of the gross dollar volume of sales of the affected commodity by all such producers regulated by such marketing order, or in amounts which in the case of handlers will not exceed 2 per cent of the gross dollar volume of purchases of the commodity affected by the marketing order from producers or of the gross dollar volume of sales of the commodity affected by the marketing order and handled by all distributors or other handlers regulated by such marketing order during the marketing season or seasons during which such marketing order is effective. Such assessments shall be in addition to fees which are established by the department to cover actual cost of inspection.

(16) COLLECTION. To collect such assessments each order may require:

(a) Payment of producer assessment before the affected units are shipped off the farm, or payment of assessment at different or later times and in such event the order may require any person subject to the assessment to give adequate assurance or security for its payment.

(b) Every affected producer or handler subject to assessment under such order to deposit with the director in advance an amount based on the estimated number of affected units upon which such person will be subject to such assessment in any one year during which such marketing order is in force, or upon any other basis which the director determines to be reasonable and equitable and specifies in such order, but in no event shall such deposit exceed 25 per cent of the estimated total annual assessment payable by such person. At the close of such marketing year the sum so deposited shall be adjusted to the total of such assessments payable by such person.

(c) Handlers receiving the affected commodity from the producer, including warehousemen, to collect producer assessments from producers whose production they handle and remit the same to the director. The lending agency for a commodity credit corporation loan to producers shall be deemed a handler for the purpose of this paragraph. No affected units shall be transported, carried, shipped, sold, stored or otherwise handled or disposed of until every due and payable assessment provided for by this subsection has been paid and a receipt issued, but no liability under this subsection shall attach to common carriers in the regular course of their business.

(17) REFUNDS. Moneys collected by the director pursuant to any marketing order from any assessment for marketing purposes or as an advance deposit thereon shall be used by the director only for the purpose of paying for the costs or expenses arising in connection with carrying out the purposes and provisions of such agreement or order. Upon termination of any marketing order, any and all moneys remaining with the director and not required to defray expenses or repay obligations incurred shall be returned to the affected producers or handlers in proportion to the assessments paid by each in the 2-year period preceding the date of the termination order.

(18) NONPAYMENT. Any due and payable assessment levied under this section and every sum due under any marketing order in a specified amount shall constitute a personal debt of every person so assessed or who otherwise owes the same and the same shall be due and payable to the director when payment is called for by the director. In the event any person fails to pay the full amount of such assessment or such other sum on or before the due date, the director may add to such unpaid assessment or sum an amount not exceeding 10 per cent of the same to defray the cost of enforcing the collection of the same. In the event of failure of such person or persons to pay any such due and payable assessment or sum, the director may bring a civil action against such person in a court of competent jurisdiction for the collection thereof, together with the above specified 10 per cent thereon, and such action shall be tried and judgment rendered as in any other cause of action for debt due and payable.

(19) APPLICATION OF FUNDS. All moneys which are collected or otherwise received pursuant to each marketing order created under this section shall be used by the director



solely for the administration of the marketing order concerned in accordance with s. 20.142 (42m) and shall not be used for any other marketing order or to influence either state or federal legislation.

(20) **MARKETING ORDER PROVISIONS.** Subject to the restrictions and limitations set forth in this section, any marketing order issued by the director pursuant to this section may contain any or all of the following provisions for regulating or providing methods for regulating producer marketing or handling, or any of the operations of distributing by handlers of any agricultural commodity within this state:

(a) Provisions establishing or providing for establishing, with respect to any agricultural commodity, either as delivered by producers to handlers, or as handled or marketed by producers or handlers: grading standards, standards of quality, condition, size or maturity, which standards may include minimum standards, provided the standards so established shall not be established below any minimum standards prescribed by law for such commodity; uniform inspection and grading of such commodity in accordance with the standards so established; and provisions prohibiting the sale of commodities specified in the order as undergrade in regular trade channels, whether or not produced in the area affected by the marketing order.

(b) Provisions relating to the prohibition of unfair trade practices. In addition to the unfair trade practices now prohibited by law, applicable to the distributing or handling of agricultural commodities within this state, the director is authorized to include in any marketing order issued under this section provisions designed to correct any trade practice affecting the distributing or handling of any agricultural commodity within this state which the director finds is unfair and detrimental to the effectuation of the declared purposes of this section.

(c) Provisions for the establishment of plans for advertising and sales promotion to maintain present markets or to create new or larger markets for agricultural commodities grown in this state. The director is authorized to prepare, issue, administer and enforce plans for promoting the sale of any agricultural commodity. Any such plan shall be directed toward increasing the sale of such commodity without reference to a particular brand or trade name. No advertising or sales promotion program shall be issued by the director which shall make use of false or unwarranted claims on behalf of any such product or disparage the quality, value, sale or use of any other agricultural commodity. The costs of such program shall be defrayed by the assessments provided for herein.

(d) Provisions for carrying on applied research studies in the production, processing or distribution of any agricultural commodity and for the expenditure of moneys for such purposes.

(e) Provisions establishing or providing authority for establishing for any agricultural commodity, either as such commodity is produced or is delivered by producers to handlers, or as handled or otherwise prepared for market, or as marketed by producers or handlers, an educational program designed to acquaint producers, handlers or other interested persons with quality improvement, including sanitation practices, procedures or methods as applied to such commodity.

(f) Provisions for the adoption of a uniform brand name or device to identify affected commodities of a specified quality produced or handled under a marketing order; but no marketing order provision issued under this paragraph shall make the use of such brand name or device by affected handlers or producers compulsory.

(g) Provisions establishing procedures to be followed where the director finds that the imposition of the order as to any individual producer would result in undue hardship.

(21) **ENFORCEMENT.** Any person who violates this section or any order issued pursuant thereto shall be fined not to exceed \$100 or imprisoned not to exceed 30 days. In the event of violation or threatened violation of this section or of any marketing order duly issued or entered into pursuant to this section, the director shall be entitled to an injunction to prevent further violation and to a decree of specific performance of such order, and to a temporary restraining order; and upon trial of such action, if judgment is in favor of the plaintiff, the court shall permanently enjoin the defendant from further violation.

(22) **RESTRAINT OF TRADE.** In any civil or criminal action or proceeding for violation of any rule of statutory or common law against monopolies or combinations in restraint of trade, proof that the act complained of was done in compliance with this section or a marketing order issued under this section and in furtherance of the purposes and provisions of this section shall be a complete defense to such action or proceeding.

(23) **PRICE FIXING.** Nothing contained in this section shall permit fixing of prices not otherwise permitted by law or any limitation on production, and no marketing order or agreement, or any rule thereunder, shall contain any such provision.

(24) TITLE. This section shall be known and may be cited as the "Wisconsin Agricultural Marketing Act".

**History:** 1957 c. 511.

**100.35 Furs to be labeled.** (1) No person shall sell or offer or display for sale any coat, jacket or other garment made wholly or partially of fur without having attached thereto and conspicuously displayed a tag or label bearing in plain print in English the species of fur or pelt used therein. This section shall not apply to such garments as are displayed or offered for sale or sold at a price of less than \$50.

(2) Any person violating this section shall be punished as in section 100.26 (1).

**History:** 1951 c. 223.