# CHAPTER 133

## TRUSTS AND MONOPOLIES

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**133.01 Legislative intent.** The intent of this chapter is to safeguard the public against the creation or perpetuation of monopolies and to foster and encourage competition by prohibiting unfair and discriminatory business practices which destroy or hamper competition. It is the intent of the legislature that this chapter be interpreted in a manner which gives the most liberal construction to achieve the aim of competition. It is the intent of the legislature to make competition the fundamental economic policy of this state and, to that end, state regulatory agencies shall regard the public interest as requiring the preservation and promotion of the maximum level of competition in any regulated industry consistent with the other public interest goals established by the legislature.

**History:** 1979 c. 209.

This section does not require that any regulation must employ the least anticompetitive means to achieve a legislatively mandated goal. It is nowhere stated that it is the intent of this section that the entire statutes be interpreted in light of this section. This section applies when parties assert violations of antitrust law. County of Milwaukee v. Williams, 2007 WI 69, 301 Wis. 2d 134, 732 N.W.2d 770, 05–2686.

A defendant's actions that were exempt from federal antitrust laws were also shielded from state antitrust laws. Suburban Beverages v. Pabst Brewing, 462 F. Supp. 1301 (1978).

The application of ch. 133 to cases involving interstate commerce is discussed. Emergency One, Inc. v. Waterous Co., Inc. 23 F. Supp. 2d 959 (1998).

Spotting unreasonable restraints of trade without difficulty. Hansen, WBB June 1982.

Wisconsin's Antitrust Law: Outsourcing the Legal Standard. Waxman. 94 MLR 1173 (2011).

**133.02 Definitions.** In this chapter:

**(1)** "Commodity" includes, but is not limited to, goods, merchandise, produce and any other article of commerce. "Commodity" includes services, except as used in s. 133.04.

**(2)** "Knowingly" means that the actor believes that the specified fact exists.

**(3)** "Person" includes individuals, the state and all its political subdivisions, all counties, cities, villages, towns, school districts, governmental agencies and bodies politic and corporate, and all corporations, limited liability companies, partnerships, associations, companies, firms, joint ventures, joint stock companies, trusts, business trusts, estates and other legal or commercial entities existing under or authorized by the laws of this or any other state, the United States or any of its territories or any foreign country. Nothing in this definition may be construed to affect labor unions or any other association of laborers organized to promote the welfare of its members, nor associations or organizations intended to legitimately promote the interests of trade, commerce or manufacturing in this state, nor associations, corporate or otherwise, of farmers, gardeners or dairy workers or owners, including livestock farmers and fruit growers engaged in making collective sales or marketing for its members or shareholders of farm, orchard or dairy products produced by its members or shareholders if such activities are exempted under s. 133.07, 133.08 or 133.09 or are otherwise lawful under this chapter.

**History:** 1979 c. 209; 1993 a. 112.

**133.03 Unlawful contracts; conspiracies.** **(1)** Every contract, combination in the form of trust or otherwise, or conspiracy, in restraint of trade or commerce is illegal. Every person who makes any contract or engages in any combination or conspiracy in restraint of trade or commerce is guilty of a Class H felony, except that, notwithstanding the maximum fine specified in s. 939.50 (3) (h), the person may be fined not more than $100,000 if a corporation, or, if any other person, may be fined not more than $50,000.

**(2)** Every person who monopolizes, or attempts to monopolize, or combines or conspires with any other person or persons to monopolize any part of trade or commerce is guilty of a Class H felony, except that, notwithstanding the maximum fine specified in s. 939.50 (3) (h), the person may be fined not more than $100,000 if a corporation, or, if any other person, may be fined not more than $50,000.

**(3)** As an alternative to the criminal penalties for violation of this section, the department of justice or district attorney may bring an action for a civil forfeiture. In an action for a civil forfeiture under this subsection a corporation may be required to forfeit not more than $100,000 and any other person may be required to forfeit not more than $50,000.

**(4)** This section does not apply to ambulance service contracted for under ss. 59.54 (1), 60.565, 61.64 and 62.133.

**History:** 1979 c. 209; 1991 a. 39; 1995 a. 201; 1997 a. 283; 2001 a. 109.

"Rule of reason" and "illegal per se" rules are discussed. Grams v. Boss, 97 Wis. 2d 332, 294 N.W.2d 473 (1980).

Only unreasonable restraints on trade are prohibited. Independent Milk Producers Coop. v. Stoffel, 102 Wis. 2d 1, 298 N.W.2d 102 (Ct. App. 1980).

Refusal by a city to provide sewage service to a portion of a town unless inhabitants agreed to annexation of that portion did not violate antitrust law. Town of Hallie v. City of Chippewa Falls, 105 Wis. 2d 533, 314 N.W.2d 321 (1982).

The antitrust law demonstrates the legislature's intent to subordinate city home–rule authority to its provisions. Unless legislation at least impliedly authorizes a city's anticompetitive action, the city has violated the antitrust law. Amer. Med. Transp. v. Curtis–Universal, 154 Wis. 2d 135, 452 N.W.2d 575 (1990).

The test for applicability of the state antitrust law is whether the legislature intended to allow municipalities to undertake such actions. A city may tie the provision of sewage services to an area outside the city to the acceptance by the area's inhabitants of the city's other services. Town of Neenah Sanitary District No. 2 v. City of Neenah, 2002 WI App 155, 256 Wis. 2d 296, 647 N.W.2d 913, 01–2520.

To prove an allegation of predatory pricing, the plaintiff must show: 1) the prices and other direct revenues from the practice complained of are below an appropriate measure of the defendant's costs; and 2) the defendant has a dangerous probability of recouping its investment losses in its below–cost prices by later raising prices above competitive levels. Conley Publishing Group, Ltd. v. Journal Communications, Inc. 2003 WI 119, 265 Wis. 2d 128, 665 N.W.2d 879, 01–3128.

Chapter 133, particularly s. 133.03, applies to interstate commerce in some circumstances. A complaint under ch. 133 must allege that: 1) actionable conduct, such as the formation of a combination or conspiracy, occurred within this state, even if its effects are felt primarily outside Wisconsin; or 2) the conduct complained of substantially affects the people of Wisconsin and has impacts in this state, even if the illegal activity resulting in those impacts occurred predominantly or exclusively outside this state. Olstad v. Microsoft Corporation, 2005 WI 121, 284 Wis. 2d 224, 700 N.W.2d 139, 03–1086.

The public interest and welfare of the people of Wisconsin are substantially affected, as required in *Olstad,* if prices of a product are fixed or supplies thereof are restricted as the result of an illegal combination or conspiracy. Meyers v. Bayer AG, 2006 WI App 102, 293 Wis. 2d 770, 718 N.W.2d 251, 03–2840.

The test for substantial effects under *Olstad* requires that the appellants allege: 1) specific effects on Wisconsin commerce, not merely effects that are nationwide; and 2) that these effects on Wisconsin are more than a general nationwide effect on price. Szukalski v. Crompton Corporation, 2006 WI App 195, 296 Wis. 2d 728, 726 N.W. 2d 304, 03–3132.

When the circumstances involve interstate commerce and the challenged conduct occurred outside of Wisconsin, a complaint under ch. 133 is sufficient if it alleges price fixing as a result of the formation of a combination or conspiracy that substantially affected the people of Wisconsin and had impacts in this state. Plaintiffs are not required to assert allegations of disproportionate impacts on Wisconsin. An allegation that thousands of Wisconsin consumers paid supracompetitive prices as a result of monopolistic conduct by an interstate seller states a basis for recovery. Meyers v. Bayer AG, 2007 WI 99, 303 Wis. 2d 295, 735 N.W.2d 448, 03–2840.

Chapter 125 contemplates and expressly directs that regulation is to supersede competition in the retail sale of alcohol beverages. The regulatory scheme indicates a legislative intent to make state antitrust law not applicable by authorizing contrary or inconsistent conduct by granting municipalities broad statutory authority to prescribe or orchestrate anticompetitive regulation in the sale and consumption of alcohol if that regulation serves an important public interest. Private parties are eligible for antitrust immunity when they act in concert, in an anticompetitive manner, in direct response to pressure bordering on compulsion from a municipality. Eichenseer v. Madison–Dane County Tavern League, Inc. 2008 WI 38, 308 Wis. 2d 684, 748 N.W.2d 154, 05–1063.

The state antitrust statute was intended to be a reenactment of the federal Sherman Antitrust Act and is generally controlled by federal court decisions. Lerma v. Univision Communications, Inc. 52 F. Supp. 2d 1011 (1999).

**133.04 Price discrimination; intent to destroy competition. (1)** No person may discriminate, either directly or indirectly, in price between different purchasers of commodities of like grade and quality, for the purpose or intent of injuring or destroying competition in any level of competition or any person engaged therein.

**(2)** Any person violating this section may be fined not more than $25,000 or imprisoned in the county jail for not more than one year or both.

**(3)** As an alternative to the criminal penalty for violation of this section, the department of justice or district attorney may bring an action for a civil forfeiture. In an action for a civil forfeiture under this subsection a person who violates this section may be required to forfeit not more than $25,000.

**(4)** The provisions of this section as they relate to the business of insurance are superseded by the provisions of chs. 611, 613 and 628.

**History:** 1979 c. 209; 1979 c. 355 ss. 131, 132; 1983 a. 215 s. 17.

Civil violations of this section must meet the ordinary civil burden of proof. Carlson & Erickson v. Lampert Yards, 190 Wis. 2d 650, 529 N.W.2d 905 (1995).

Promotional price cutting and section 2 (a) of the Robinson–Patman Act. Gifford. 1976 WLR 1045.

**133.05 Secret rebates; unfair trade practices. (1)** The secret payment or allowance of rebates, refunds, commissions or unearned discounts, whether in the form of money or otherwise, or the secret extension to certain purchasers of special services or privileges not extended to all purchasers purchasing upon like terms and conditions, such payment, allowance or extension injuring or tending to injure a competitor or destroying or tending to destroy competition, is an unfair trade practice and is prohibited.

**(2)** No person may induce, solicit or receive anything of value which is prohibited under sub. (1).

**(3)** Any person knowingly violating this section may be fined not more than $25,000 or imprisoned in the county jail for not more than one year or both.

**(4)** As an alternative to the criminal penalty for violation of this section, the department of justice or district attorney may bring an action for a civil forfeiture. In an action for a civil forfeiture under this subsection a person who violates this section may be required to forfeit not more than $25,000.

**(5)** This section does not apply to the insurance business.

**History:** 1979 c. 209; 1983 a. 215.

Competitive injury is a required element under this section, but intent to injure is not. OB–GYN Assoc. of Neenah v. Landig, 129 Wis. 2d 362, 384 N.W.2d 719 (Ct. App. 1986).

A violation of sub. (1) occurs when a discount, both secret and unearned, tends to injure or injures competition. "Earned" discount is defined. Jauquet Lumber v. Kolbe & Kolbe Millwork, 164 Wis. 2d 689, 476 N.W.2d 305 (Ct. App. 1991).

This section is not unconstitutionally vague. Knowledge is an element of a violation of sub. (2). Carlson & Erickson v. Lampert Yards, 183 Wis. 2d 220, 515 N.W.2d 305 (Ct. App. 1994).

Civil violations of this section must meet the ordinary civil burden of proof. Carlson & Erickson v. Lampert Yards, 190 Wis. 2d 650, 529 N.W.2d 905 (1995).

"Rebates," "refunds," and "discounts" in sub. (1) mean essentially the same thing, a reduction or credit that is tied to the price of the good or service being purchased by the recipient of the reduction or credit. To be a "discount" a payment or allowance must be a reduction from the price that would be paid if the "discount" were not given. Tele–Port, Inc. v. Ameritech Mobile Communications, Inc. 2001 WI App 261, 248 Wis. 2d 846, 637 N.W.2d 782, 00–2627.

Civil violations of this section must be proved by clear, satisfactory and convincing evidence.

**133.06 Interlocking directorates. (1)** No corporation with its principal place of business in this state may elect or appoint any person as a director or permit any person to serve as a director, if:

(a) That person was at the same time a director of any other corporation; and

(b) Either corporation has capital, surplus and undivided profits aggregating more than $100,000. In this paragraph, the amount shall be determined by the aggregate amount of the capital, surplus and undivided profits, exclusive of dividends declared but not paid to stockholders, at the end of the fiscal year of the corporation next preceding the election of directors; and

(c) Such corporations are, or have been, by virtue of their business and location of operation, competitors, so that the elimination of competition by agreement between them would violate this chapter.

**(2)** If a corporation has lawfully elected or appointed a director, the corporation may permit the director to serve in such capacity for one year thereafter, notwithstanding sub. (1). This section shall not apply to any corporation chartered by the federal government if its selection of directors is exempt from state law, but a person may be deemed ineligible for the service on the board of any corporation not so exempt because of concurrent service on the board of an exempt corporation.

**(3)** Any corporation violating this section may be enjoined from permitting such person to serve as a director and from doing business in this state, so long as such violation continues.

**(4)** This section does not apply to the insurance business.

**History:** 1979 c. 209; 1983 a. 215.

**133.07 Certain organizations and activities not forbidden. (1)** This chapter shall not prohibit the existence and operation of labor, agricultural or horticultural organizations, instituted for the purpose of mutual help, and not having capital stock or conducted for profit, or organizations permitted under ch. 185 or 193; shall not forbid or restrain individual members of such organizations from lawfully carrying out the legitimate objects thereof; and such organizations, or the members thereof, shall not be held or construed to be illegal combinations or conspiracies in restraint of trade, under this chapter. The labor of a human being is not a commodity or article of commerce.

**(2)** This chapter does not prohibit activities of any public utility, as defined in s. 196.01 (5), or telecommunications carrier, as defined in s. 196.01 (8m), which are required by ch. 196 or rules or orders under ch. 196, activities necessary to comply with that chapter or those rules or orders or activities that are actively supervised by the public service commission. This subsection does not apply to activities of a public utility or telecommunications carrier that are exempt from public service commission regulation under s. 196.195, 196.202, 196.203, 196.206, 196.219, 196.499, or 196.50 (2) (i) or by other action by the commission.

**History:** 1979 c. 209; 1993 a. 496; 2005 a. 441; 2011 a. 22.

Antitrust — Labor law. 1976 WLR 271.

**133.08 Working people may organize; injunction not to restrain certain acts. (1)** Working people may organize themselves into or carry on labor unions and other associations or organizations to aid their members to become more skillful and efficient workers, the promotion of their general intelligence, the elevation of their character, the regulation of their wages and their hours and conditions of labor, the protection of their individual rights in the prosecution of their trade or trades, the raising of

funds for the benefit of sick, disabled, or unemployed members, or the families of deceased members, or for such other object or objects for which working people may lawfully combine, having in view their mutual protection or benefit.

**(2)** No restraining order or injunction may be granted by any court of this state, in any case between an employer and employees, between employers and employees, between employees or between persons employed and persons seeking employment, involving or growing out of any dispute whatsoever concerning employment, unless necessary to prevent irreparable injury to property or to a property right of the party making the application, for which injury there is no adequate remedy at law, and the property or property right must be described with particularity in the application, which must be in writing and sworn to by the applicant, or by the applicant's agent or attorney. No such restraining order or injunction may be granted except by the circuit court, and then only upon such reasonable notice of application therefor as the court directs by order to show cause, but in no case less than 48 hours, which shall be served upon the party or parties sought to be restrained or enjoined as shall be specified in the order to show cause.

**(3)** No such restraining order or injunction may prohibit any person or persons, whether singly or in concert, from terminating any relation of employment, or from ceasing to perform any work or labor, or from recommending, advising, or persuading others by peaceful means so to do; or from attending at any place where any such person or persons may lawfully be, for the purpose of peacefully obtaining or communicating information, or from peacefully persuading any person to work or to abstain from working; or from ceasing to patronize or to employ any party to such dispute, or from recommending, advising, or persuading others by peaceful and lawful means so to do; or from paying or giving to, or withholding from, any person engaged in such dispute, any strike benefits or other moneys or things of value; or from peaceably assembling in a lawful manner, and for lawful purposes; or from doing any act or thing which might lawfully be done in the absence of such dispute by any party thereto. Any of the acts specified in this paragraph shall not be considered or held to be violations of any laws of this state.

**(4)** Whenever in any matter relating to the violation of any such restraining order or injunction an issue of fact shall arise, such issue, whether presented in a civil or a criminal proceeding, shall be tried by a jury, in the same manner as provided for the trial of other cases. All contempt proceedings brought for the alleged violation of any such restraining order or injunction, are independent, original and special proceedings, and shall require a unanimous finding of the jury. The requirement for trial by jury shall not apply to direct contempts committed in the immediate presence of the court.

**History:** 1977 c. 449; 1979 c. 209, 355.

**133.09 Collective bargaining.** This chapter shall be so construed as to permit collective bargaining by associations of producers of agricultural products, by organizations permitted under ch. 185 or 193 and by associations of employees when such bargaining is actually and expressly done for the individual benefit of the separate members of each such association making such collective bargain.

**History:** 1979 c. 209; 2005 a. 441.

**133.10 Examination of adverse party. (1)** The examination of any party, or if a corporation or limited liability company be a party, of the president, secretary, other principal officer or the general managing agent thereof, or of the person who was such president, secretary, officer or agent at the time of the occurrence of the facts made the subject of the examination, or of any person acting for another or for a corporation, limited liability company or partnership, other than as a witness on a trial, may be taken by deposition at the instance of the department of justice in any such action or proceeding at any time between the commencement thereof and final judgment. Such deposition shall be taken within the state before a judge at chambers or a supplemental court commissioner on previous notice to such party and any other adverse party or the attorney thereof of at least 5 days, and may be taken without the state.

**(2)** The attendance of the party to be examined may be compelled by subpoena, without prepayment of witness fees, and the examination is subject to the same rules as govern that of other witnesses; but such party shall not be compelled to disclose anything not relevant to the controversy.

**(3)** The examination may not be compelled in any other county than that of the party's residence except in the county of Dane; but the deposition of a defendant who is a nonresident of the state may be taken as in other cases.

**History:** 1979 c. 209; 1993 a. 112; 2001 a. 61.

**133.11 Investigatory proceeding. (1)** Whenever the attorney general files with any supplemental court commissioner a statement that the attorney general has reason to believe and does believe that a violation of this chapter has occurred, the commissioner shall issue a subpoena or a subpoena requiring the production of materials as requested by the department of justice. Mileage or witness fees are not required to be paid in advance but claims for such mileage and fees duly verified and approved by the department of justice shall be audited and paid out of the state treasury and charged to the appropriation provided by s. 20.455 (1) (d), and shall be at the same rates as witnesses in the circuit court.

**(2)** The testimony shall be taken by a stenographic reporter, transcribed, read to or by the witness and subscribed by the witness, unless the parties represented shall stipulate, upon the record, that the reading of the transcript of the testimony to or by the witness and the signature thereto are waived, and that the transcript may be used with like force and effect as if read and subscribed by the witness. The attendance of the witness for the purpose of reading and subscribing the transcript may be compelled in the same manner that attendance to be examined may be compelled.

**(3)** The supplemental court commissioner shall be entitled to the fees as provided in s. 814.68 (1). All such fees and all other costs and expenses incident to the inquiry shall be paid out of the appropriation provided by s. 20.455 (1) (d).

**History:** 1979 c. 209; 1981 c. 314; 1981 c. 317 s. 2202; 2001 a. 61.

**133.12 Domestic and foreign corporations and limited liability companies; cancellation of charters or certificates of authority for restraining trade; affidavit.** Any corporation or limited liability company organized under the laws of this state or foreign corporation or foreign limited liability company authorized to transact business in this state pursuant to a certificate of authority from the department of financial institutions which violates any provision of this chapter, may, upon proof thereof, in any circuit court have its charter or authority to transact business in this state suspended, canceled or annulled. Every corporation shall, in its annual report filed with the department of financial institutions, show whether it has entered into any contract, combination in the form of trust or otherwise, or conspiracy in restraint of trade or commerce. The department of justice shall enforce this section.

**History:** 1979 c. 209; 1993 a. 112; 1995 a. 27, 400.

**133.13 Interrogatories. (1)** If the department of justice has reason to believe that any corporation or limited liability company has violated any provision of this chapter, the department of justice may address to any such corporation or limited liability company or to any director, officer or manager interrogatories deemed necessary to determine whether or not the entity has violated any provision of this chapter. The corporation, limited liability company, director, officer or manager so addressed shall promptly and fully answer in writing under oath the interrogatories; the failure or neglect by any such corporation, limited liability company, director, officer or manager to do so within 60 days from receipt of the interrogatories, unless the time is extended in writing by the

department of justice, shall constitute grounds for suspension, cancellation or annulment of its corporate charter or authority to transact business in this state under s. 133.12.

**(2)** Any person providing information under this section may designate the information as confidential business information or a trade secret as defined in s. 134.90 (1) (c). The department of justice shall notify the person providing the information 15 days before any information designated as confidential or trade secret is disclosed to the legislature, a state agency, a local unit of government or any other person. The person furnishing the information may seek a court order limiting or prohibiting the disclosure. In such cases the court shall weigh the need for confidentiality of the information against the public interest in the disclosure. Confidentiality is waived if the person providing the information consents to disclosure or if disclosure is authorized by a court.

**History:** 1979 c. 209; 1985 a. 236; 1993 a. 112.

**133.14 Illegal contracts void; recovery.** All contracts or agreements made by any person while a member of any combination or conspiracy prohibited by s. 133.03, and which contract or agreement is founded upon, is the result of, grows out of or is connected with any violation of such section, either directly or indirectly, shall be void and no recovery thereon or benefit therefrom may be had by or for such person. Any payment made upon, under or pursuant to such contract or agreement to or for the benefit of any person may be recovered from any person who received or benefited from such payment in an action by the party making any such payment or the heirs, personal representative or assigns of the party.

**History:** 1979 c. 209.

The fact that plaintiff gave illegal rebates to competitors is no defense to an action for the price of goods sold. Roux Laboratories v. Beauty Franchises, 60 Wis. 2d 427, 210 N.W.2d 441.

Remedy provided by s. 133.23 (1969 stats.) is not on its face unconstitutional. Madison v. Hyland, Hall & Co. 73 Wis. 2d 364, 243 N.W.2d 422.

**133.15 No privilege from self–accusation. (1)** No person may be excused from answering any of the interrogatories authorized under this chapter, nor from attending and testifying, nor from producing any books, papers, contracts, agreements or documents in obedience to a subpoena issued by any lawful authority in any action or proceeding based upon or growing out of any alleged violation of any provision of this chapter or of any law of this state in regard to trusts, monopolies or illegal combinations on the ground of or for the reason that the answer, testimony or evidence, documentary or otherwise, required may tend to incriminate or subject the person to a penalty or forfeiture. No person may be prosecuted or subjected to any penalty or forfeiture for or on account of testifying or producing evidence, documentary or otherwise, in obedience to any request under this section or any subpoena, in any such action or proceeding, except that the charter of any corporation or limited liability company may be vacated and its corporate existence annulled or its certificate of authority to transact business in this state may be canceled and annulled as provided in this chapter, and except that no person testifying in any such action or proceeding may be exempt from punishment for perjury committed in so testifying.

**(2)** The immunity provided under sub. (1) is subject to the restrictions under s. 972.085.

**History:** 1979 c. 209; 1989 a. 122; 1993 a. 112.

Fifth amendment privilege must be claimed as to each question. State v. Hall, 65 Wis. 2d 18, 221 N.W.2d 806.

**133.16 Injunction; pleading; practice.** Any circuit court may prevent or restrain, by injunction or otherwise, any violation of this chapter. The department of justice, any district attorney or any person by complaint may institute actions or proceedings to prevent or restrain a violation of this chapter, setting forth the cause and grounds for the intervention of the court and praying that such violation, whether intended or continuing be enjoined or prohibited. When the parties informed against or complained of have been served with a copy of the information or complaint and cited to answer it, the court shall proceed, as soon as may be in accordance with its rules, to the hearing and determination of the case; and pending the filing of the answer to such information or complaint may, at any time, upon proper notice, make such temporary restraining order or prohibition as is just. Whenever it appears to the court that the ends of justice require that other persons be made parties to the action or proceeding the court may cause them to be made parties in such manner as it directs. The party commencing or maintaining the action or proceeding may demand and recover the cost of suit including reasonable attorney fees. In an action commenced by the department of justice, the court may award the department of justice the reasonable and necessary costs of investigation and an amount reasonably necessary to remedy the harmful effects of the violation. The department of justice shall deposit in the state treasury for deposit in the general fund all moneys that the court awards to the department or the state under this section. The costs of investigation and the expenses of suit, including attorney fees, shall be credited to the appropriation account under s. 20.455 (1) (gh). Copies of all pleadings filed under this section shall be served on the department of justice.

**History:** 1979 c. 209; 1995 a. 27; 2001 a. 109; 2003 a. 309.

**133.17 Prosecutions. (1)** The department of justice or the district attorney shall institute, manage, control and direct, in the proper county, all prosecutions for violations of this chapter. When prosecuting violations of this chapter, the department of justice shall have and exercise all powers conferred upon district attorneys.

**(2)** Any district attorney bringing any action under this chapter shall serve copies of all pleadings on the department of justice within 3 days from the time of filing. If the department of justice brings any action under this chapter, it shall serve copies of all pleadings on the district attorney of the county where the action is brought within 3 days from the time of filing.

**History:** 1979 c. 209.

**133.18 Treble damages; statute of limitations. (1)** (a) Except as provided under par. (b), any person injured, directly or indirectly, by reason of anything prohibited by this chapter may sue therefor and shall recover threefold the damages sustained by the person and the cost of the suit, including reasonable attorney fees. Any recovery of treble damages shall, after trebling, be reduced by any payments actually recovered under s. 133.14 for the same injury.

(b) No damages, interest on damages, costs or attorney fees may be recovered under this chapter from any local governmental unit or against any official or employee of a local governmental unit who acted in an official capacity.

**(2)** A civil action for damages or recovery of payments under this chapter is barred unless commenced within 6 years after the cause of action accrued. When, in a civil class action, a class or subclass is decertified or a class or subclass certification is denied, the statute of limitations provided in this section is tolled as to those persons alleged to be members of the class or subclass for the period from the filing of the complaint first alleging the class or subclass until the decertification or denial.

**(3)** Whenever any civil or criminal action or proceeding is instituted by the state under this chapter, the running of the statute of limitations in respect of every other right of action based in whole or in part on any matter complained of in the state's action or proceeding shall be suspended during the pendency thereof and for one year thereafter. The pendency of any such action or proceeding instituted by the state shall not be grounds for staying any other action or discovery in such other action.

**(4)** A cause of action arising under this chapter does not accrue until the discovery, by the aggrieved person, of the facts constituting the cause of action.

**(5)** Each civil action under this chapter and each motion or other proceeding in such action shall be expedited in every way and shall be heard at the earliest practicable date.

**(6)** In a civil action against a person or entity specified in s. 893.80, the amount recovered may not exceed the amount specified in s. 893.80 (3).

**History:** 1979 c. 209; 1981 c. 314 s. 146; 1987 a. 377.

Factors to be considered in fixing attorneys' fees are discussed. Punitive damages may not be awarded in addition to treble damages. John Mohr & Sons, Inc. v. Jahnke, 55 Wis. 2d 402, 198 N.W.2d 363.

Public policy does not prohibit insurance coverage for statutorily imposed multiple damages. Cieslewicz v. Mutual Service Cas. Ins. Co. 84 Wis. 2d 91, 267 N.W.2d 595 (1978).

The remedy under this section is confined to violations of this chapter. Gerol v. Arena, 127 Wis. 2d 1, 377 N.W.2d 618 (Ct. App. 1985).